

Court No. - 29

Case :- APPLICATION U/S 482 No. - 2593 of 2024

Applicant :- Arvind Kumar And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Amit Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Heard Shri Amit Tripathi, learned counsel for the applicants and Shri S. P. Tiwari, learned AGA for the State.

The applicants were chargesheeted under Sections 323 and 354A I.P.C. An application was preferred by the first informant before the trial court seeking the amendment of the chargesheet and incorporating the additional Sections which were disclosed in the materials in the record.

The learned trial court by order dated 13.10.2023 has allowed the application of the first informant and directed that the case under Section 323, 354A,, 452, 392 I.P.C. be placed for framing of charge on 15.12.2023.

The contention of the learned counsel for the applicants is that the trial court has exceeded its jurisdiction by bringing about the changes in the chargesheet before framing of the charge.

Learned AGA submits that the applicants are not prejudiced by the order passed by the learned trial court, inasmuch as, they can always assail the charge by filing discharge application or invoke appropriate remedies under the Cr.P.C.

There is ample jurisdiction vested in the trial court to frame and alter the charge under Section 240 and 216 Cr.P.C. respectively. The charge has to be framed by the trial court based on the materials in the record and the offences disclosed therein. If the investigating officer has not referenced certain provisions in the chargesheet but when ingredients of the offence are disclosed, the trial court can validly frame the charge in regard to the aforesaid offences.

Reference in this regard may profitably be made to the judgement rendered by the Supreme Court in **Anant Prakash Sinha Vs. State of Haryana** reported at **AIR 2016 SC 1197**. The Supreme Court while examining the scope of the Section 216 Cr.P.C. for alteration or addition of charge by holding thus:

"16. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in,

charges already framed cannot be altered, for that is not the purport of Section 216 Cr.P.C."

The learned trial court shall frame the charge in light of the discussion made above and upon independent application of mind.

With the aforesaid directions, the Application U/S 482 is disposed of.

Order Date :- 20.3.2024

Dhananjai