

Judgment Reserved on 6.8.2025

Judgment Delivered on 13.8.2025

Neutral Citation No. - 2025:AHC:138157

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 4615 of 2025

Applicant :- Ramanand Kannaujiya

Opposite Party :- State Of U.P. And 11 Others

Counsel for Applicant :- Manoj Kumar

Counsel for Opposite Party :- G.A.,Sanjay Kumar Mishra

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant, learned counsel for the private-respondents (accused) as well as learned AGA for the State-respondent and perused the record.

2. The present applicant has invoked the inherent power of this Court under Section 528 BNSS beseeching the quashing of the impugned order dated 13.12.2024 passed by the Additional District and Sessions Judge/Special Judge, PC Act (UPSEB), Gorakhpur in Sessions Trial No. 688 of 2023 (State vs. Dara Nishad and others), arising out of Case Crime No. 377-A of 2004, under Sections 147, 148, 149, 307, 323, 426, 504 and 506 IPC, Police Station-Barhalganj, District-Gorakhpur, whereby application (paper No. 64Kha) moved on behalf of the first informant under Section 216 CrPC has been rejected.

3. As per FIR version, on the date of occurrence of offence i.e. 17.11.2004 while the first informant (applicant herein) was going to Lucknow along with Vikash Nigam, Ram and Ram Bhuvat Nishad, when, reaching to east of Dr. Shameem Azmi's hospital located at Barhalganj, the accused persons, namely, Dwarika Singh Nishad, Raj Kumar Nishad and others, have laid an ambush beforehand, armed with revolver, guns, country made pistols and rifles, suddenly made a deadly attack and began firing upon the police squad vehicle and the Sumo vehicle. During the time of attack, they snatched Rs. 50,000/- kept in Sumo, and also took away the revolver/pistol of Raju, who was sitting inside, and hit the vehicle with butt of rifles, causing damage to the vehicle. The first informant and co-passengers, in order to save their lives, took shelter inside the vehicle and somehow managed to escape alive. The accused used obscene abuse directed at mother and sisters, and threatened the first informant saying that you bastards survived this time, but in future, you will have to lose your lives. The accused were arrogant, unruly and organized people. With the intention to killing, they have committed the offence.

4. After due investigation, the Investigating Officer has submitted the charge sheet arraigning eleven persons as accused (respondent No. 2 to 12 herein). Based on charge sheet, cognizance/summoning order has been passed. The case has been committed before the Sessions Court, Gorakhpur, vide order dated 27.3.2023, registered as Sessions Trial No. 688 of 2023 (State vs. Dara Nishad and others). Learned trial court, vide order dated 10.7.2023, has framed as many as seven charges viz. under Sections 147, 148, 307/149, 323, 426, 504 and 506 IPC. During pendency of the trial, first informant (applicant herein) has deposed as PW-1. At later stage, the present applicant has moved an application dated 21.10.2024 (paper No. 64Kha) under Section 216 CrPC to frame additional charge for the offence under the SC/ST Act. The accused have filed their detailed objection (paper No. 65Kha) against the said application for addition of charge under the SC/ST Act. After hearing the parties, the Additional Sessions Judge/Special Judge (Prevention of Corruption Act (UPSEB), Gorakhpur has rejected the aforesaid application, vide order dated 13.12.2024, which is under challenge before this Court.

5. Learned counsel for the applicant states that statement of PW-1 (applicant herein) does disclose the commission of offence under the SC/ST Act inasmuch as at the time of occurrence of offence dated 17.11.2004, the accused have uttered caste based slur intending to insult the first informant because of his caste. He has laid emphasis on the statement of PW-1 (annexure No. 6). It is next submitted that the learned trial court has failed to exercise its jurisdiction under Section 216 CrPC and rejected the application in a perfunctory manner without application of mind.

6. Per contra, learned counsel for the accused has vehemently opposed the submissions advanced by the learned counsel for the applicant and contended that the cross-examination of PW-1 does not disclose any offence under the SC/ST Act. Before the stage of deposition, PW-1 has not made any allegation for the commission of offence under the SC/ST Act, however, at the stage of deposition, being PW-1, first informant has tried to fabricate the case under the SC/ST Act. It is next submitted that there is no illegality, perversity, ambiguity and infirmity in the order under

challenge; thus, instant application is liable to be dismissed with costs being misconceived and devoid of merits.

7. Having considered the rival submissions advanced by the learned counsel for the parties and perusal of record, it manifests that, prima facie, there was no material before the stage of deposition of PW-1, to establish any offence under the SC/ST Act. Allegations levelled against the accused, as mentioned in the FIR, do not disclose commission of any crime under the SC/ST Act. During the trial, while the first informant entered the witness box, being PW-1, he has tried to make out a case, in his examination-in-chief, for the commission of offence under the SC/ST Act. In his statement, he has deposed that at the time of incident in question, the accused had abused the caste based slur. Relevant portion of the deposition of PW 1 (page No. 68 and 69 of instant application- [page No. 1 and 2 of the examination-in-chief]), which has been made basis for moving an application under Section 216 CrPC, is quoted hereinbelow:

“(PW-1 Statement)”

Witness-Ramanand Dhobi, son of Hemraj Dhobi, age 50 years, occupation agriculture, resident of village Davanadih, police station Badhalganj, district Gorakhpur; has given the following statement under oath:

"I belong to the Dhobi caste, which is categorized under the Scheduled Castes. The incident is of date 17.11.2004, and the time was approximately 3:30 PM. I was going to Lucknow to meet Ram Bhuval Nishad, the then MLA of Kaudiram and a Chairman with Minister of State status in the Fisheries Department. As we were about to reach Badhalganj, on the east side of Dr. Shameem Azmi's hospital, the following persons, who were lying in wait beforehand, attacked:

Dara Nishad, Raj Kumar Nishad, Narendra Nishad, Joginder Nishad, son of Raj Kumar Nishad alias Mala Nishad, Badni Nishad, son of Dayanand, Vinod, son of Nadni Nishad, Ram Prakash Gaur, son of Tribhuvan, Buddhi Chand, son of Vishwanath Nishad, resident of village Masvaniya, Triloki, resident of town Dohrighat

All of them were present there, along with 4-5 other unknown persons whose names I do not know but I can recognize them if they come before me.

These people, armed with country-made pistols (katta), revolvers, rifles, and guns, attacked the vehicle. The vehicle belonged to the Honourable Minister, and while attacking it, they began shouting.

After that, they also attacked my brother Ramakant Dhobi, son of Hemraj Dhobi, and me, and started hurling caste-based obscene abuses, such as:

"Bhosdi wale Chamar ki jaat", "Dhobi saale, Dhobi ki jaat", "Saale madarchod" and similar derogatory slurs."

(Translation by Court)

8. While confronting PW-1 during cross-examination, he has not disclosed anything that he had been abused with a caste based slur at the time of incident in question. In his cross-examination, he came with the case that at the time of the incident, he locked himself inside the vehicle as pellets were fired at the vehicle. The relevant portion of the cross-examination (page No. 79 and 80 of the application-[paper No. 32Ka/12 to 13Ka/13]), which has been pointed out by the learned counsel for the accused, is quoted hereinbelow:

“(PW-1 Cross)”

I do not currently remember which vehicle the security personnel were in. Four security personnel were armed with weapons and rifles. The accused were on foot. The security vehicle was in front, followed by the Ambassador car, and then my vehicle in which we were sitting.

One person had a pistol in his hand, one had a gun, and one had a country-made pistol (katta). I saw revolvers with several people.

I cannot estimate from what distance the shots were fired. About three to four rounds were fired.

I cannot say how many bullets were fired at my vehicle. I also cannot tell whether my vehicle was fired upon with a revolver, pistol, or which weapon.

We were in a Tata Sumo, and it had closed windows. After firing, the accused fled towards the east. We had locked the vehicle. A crowd gathered quite some time after the incident. After the crowd arrived, we unlocked the vehicle and came out. When we came out of the vehicle, the accused were running away."

(Translation by Court)

9. I am sceptical of the submissions advanced by learned counsel for the applicant that the court below has failed to exercise its jurisdiction under Section 216 Cr.P.C. Needless to say that any court may alter or add a charge at any time before the judgment is pronounced; however, such power entrusted to the court is not

unfettered and the same is subject to the evidence recorded during the course of trial before the court concerned. It is the duty of the court, while dealing with an application under Section 216 Cr.P.C., to ensure that addition, deletion or alteration of any charge does not encompass any prejudice or operation to the accused. The Hon'ble Supreme Court of India in the case of **Central Bureau of Investigation vs. Karimullah Osan Khan** reported in (2014) 11 SCC 538 has expounded in paragraph 18 that for adding or altering the charge, there must be some material before the court. Paragraph nos. 17 and 18 of the said judgment is quoted herein below :-

17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (See Harihar Chakravarty v. State of W.B.) Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 CrPC and other related provisions."

10. The Hon'ble Supreme Court in the case of **P. Kartikalakshmi vs. Sri Ganesh & Another** reported in (2017) 2 SCC (Cri.) 84 has elucidated the power of the Court under Section 216 Cr.P.C. and held that power under Section 216 Cr.P.C. vested in the Court is exclusive to the Court and there is no right in any party neither de facto complainant nor accused nor prosecution to seek such addition or alteration by filing an application as a matter of right.

Relevant paragraph nos. 7 and 8 of the said judgment are quoted herein below :-

"7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.

8. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available under Section 216 CrPC. To that extent, having clarified the legal position, we make it clear that the whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court. As rightly pointed out by the learned Senior Counsel for Respondent 1, such a course adopted by the appellant and entertained by the court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the court below."

11. Hon'ble Supreme Court, in its recent judgement dated April 17, 2025 passed in Criminal Appeal No. 1319 of 2013 with Criminal Appeal No. 272 of 2014 (Director of Revenue Intelligence Vs. Raj Kumar Arora and others) has elucidated the scope of Section 216 CrPC, as follows:

143. Under this provision, any Court is empowered to "alter" or "add" to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in

the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

144. The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court suo moto as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.

145. This Court in *Anant Prakash Sinha v. State of Haryana and Another* reported in (2016) 6 SCC 105 summarised the principles as regards Section 216 CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under Sections 498-A and 323 IPC. During the pendency of the matter, the informant wife had filed an application under Section 216 CrPC for framing an additional charge under Section 406 IPC against both the husband and the mother-in-law on the ground that there was an express complaint with regard to the misappropriation of her entire Stridhan and other articles. Hence, it was contended that the accused persons had committed criminal breach of trust, however, a charge sheet was not filed in respect of the said offence. The application was allowed by the Trial Court and subsequently, the Revisional Court upheld the framing of charge under Section 216 CrPC IPC only against the appellant-husband. This Court while agreeing with the High Court summarised the principles underlying Section 216 CrPC as follows:

i. First, the test for exercise of power under Section 216 CrPC is that it must be founded on the material available on record and therefore, it can be on the basis of the complaint or the FIR, or other accompanying documents or materials brought on record during the course of the trial. The charge which has been framed by the Trial Court must therefore be in accord with the materials available before him.

ii. Secondly, the power must not be construed in a restricted manner to mean that unless evidence has been let in, the charges that have already been framed cannot be altered. The Court is empowered to change or alter the charge framed, if it finds that there is a defect or that something has been left out in the order framing charge.

iii. Thirdly, it is obligatory for the Court to ensure that no prejudice is caused to the accused due to the addition or alteration of charge. The accused must be informed and made aware of the new charge as also the case against him so that he can understand the defence that can be led on his behalf.

The relevant observations are reproduced hereinbelow:

“18. 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 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. It has been held in Amar Singh v. State of Haryana [Amar Singh v. State of Haryana, (1974) 3 SCC 81 : that the accused must

always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused. [...]" (Emphasis supplied)

146. In another decision of this **Court in Nallapareddy Sridhar Reddy v. State of A.P. reported in (2020) 12 SCC 467**, the scope of powers under Section 216 was elaborated. It was stated that the power under this provision to alter a charge is an exclusive and wide-ranging power and this is clear from the fact that it may be exercised at any time before the judgment is pronounced, meaning also at a stage wherein the evidence and arguments are completed and the judgment is reserved. It was further stated that if the Court is of the opinion that there was an omission in the framing of charge or if the existence of the factual ingredients constituting another offence is also inferred from a prima facie examination of the material brought on record, the alteration or addition of a charge can be done. Such material brought on record must have a direct nexus with the ingredients of the alleged offence. This Court cautioned that the power under this provision must be exercised judiciously and observed as follows:

“21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges,

whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

(Emphasis supplied)

12. In this conspectus, as above, I am of the view that in absence of any credible material collected during the investigation or any evidence adduced during the trial before the court concerned to substantiate the involvement of the accused (respondents No. 2 to 12 herein) in any offence under the SC/ST Act, it would not be befitting to allow the application under Section 216 CrPC to frame new charge. The mere deposition made by the first informant, being PW-1, in his examination-in-chief regarding abuse with a caste based slur, which could not withstand his cross-examination, is not, prima facie, sufficient to indict the accused or to summon for trial of new charge under the SC/ST Act. No other credible evidence except the deposition of PW-1 has been adduced before the trial court concerned, prima facie, to establish the involvement of the accused in the overt act for which additional charge has been sought to be framed. Neither any justifiable ground is made out nor there is any abuse of the process of law to quash the order impugned in exercise of inherent jurisdiction under Section 528 BNSS. The court below has not committed any illegality, perversity or ambiguity in rejecting the application (paper No. 64Kha) filed on behalf of the first informant (applicant herein) under Section 216 CrPC.

13. Resultantly, instant application under 528 BNSS, being misconceived and devoid of merits, is dismissed with no order as to the costs.

Order Date :- 13.8.2025

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