



2025:AHC:157671

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8646 of 2025

Anil Kumar Jaiswal And 6 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Ajit Kumar Singh
Counsel for Opposite Party(s)	:	G.A., Mohammad Zafar Yab Khan, Shahroze Khan

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Rejoinder affidavit filed today, is taken on record.
2. Heard learned counsel for the applicants, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.
3. The present 528 BNSS application has been filed to quash/set aside the impugned order dated 31.01.2025 passed by the Court of Additional Sessions Judge, Court No. 1, Siddharth Nagar while deciding upon the application under Section 239 of BNSS as well as the entire proceeding of Session Trial No. 68 of 2018 (State vs. Anil Kumar & Others), arising out of Case Crime No. 196 of 2015, under Sections 323, 504 and 506 IPC, Police Station- Itwa, District- Siddharth Nagar, pending before the Court of Additional Sessions Judge, Court No. 1, Siddharth Nagar.
4. It is argued that on 18.03.2025, FIR No. 196 of 2015 was registered under Sections 147, 148, 452, 323, 504 and 506 IPC against applicants and other co-accused totally 9 named accused and one unnamed accused with regard to offence committed on 18.03.2015 by the accused persons, who are influential and *bhumafia*. It is alleged that informant was engaged in fixing window and named accused persons entered into the house of informant and started committing assault on the ladies and children and when brother of informant came for rescue, he was brutally assaulted by means of sharp edged weapon, as a result thereof, he sustained grievous injury on his head. His father fell down and applicants put him on gun point and when other persons came there, accused persons assaulted them with rods.

5. Learned counsel for the applicants submits that applicants are innocent and have been falsely implicated in the present case. I.O. submitted charge sheet after through investigation as charge-sheet no. 37 of 2015 dated 26.05.2015 against three accused under Sections 323, 504 & 506 IPC and exonerated seven named persons as no offence has been found against them. Thereafter, trial started P.W.1 and P.W.2 have been examined by the Trial Court. On going session trial, opposite party no. 2 moved application under Section 239 of BNSS with mala-fide and ulterior motive for alteration of charges against the applicants. Accused applicants filed objection dated 08.01.2025. Trial Court without considering the objection raised by the applicants passed impugned order dated 31.01.2025 and summoned the applicant under additional Sections 147, 452, 325 IPC. Application filed by the opposite party no. 2 under Section 239 BNSS for alteration of charge and the court without appreciating the material evidence on record, altered the charge under Sections 147, 452, 325 IPC is illegal, arbitrary and against the dictum provided by the Hon'ble Apex Court in **P. Karitikalakshmi v. Sri Ganesh and another; (2017) 3 SCC 347**. The Hon'ble Apex Court in para-6 & 7 of the said judgment has provided as under:-

"6....Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

7. We were taken through Sections 221 & 222 Cr.P.C. in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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 jeopardized."

6. In the aforesaid judgment, the Apex Court has held that Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right.

7. He next submitted that while passing the impugned order dated 31.01.2025, the court concerned ignored the principles relating to object and scope of power of Court to alter or add any charge. The impugned order has been passed in a very hurried manner as Doctor of the injured was not examined. The impugned order dated 31.01.2025 suffers from grievous illegality and liable to be quashed.

8. *Per contra*, learned counsel for the informant/opposite party no. 2 vehemently opposed the submissions raised by learned counsel for the applicants and submitted that the contents of first information report itself reveal that accused-applicants entered into the house of informant and committed assault upon the ladies and children and they have been assaulted by sharp edged weapon, as a result thereof, they received injuries. On account of assault committed by applicants, ribs of the father of informant was found fractured. The same was illegally and in collusion with the applicants overlooked by the I.O. while conducting the investigation, thereafter, I.O. has submitted charge-sheet under Sections 323, 504, 506 IPC in a very cursory manner. Application moved by opposite party no. 2 under Section 239 BNSS is just and proper and the Trial Court has rightly summoned the accused-applicants after altering the charge under Sections 147, 452, 325 IPC. The Additional Session Judge after perusing the statements of P.W. 1 & P.W.2 as well as medical examination report of the injured, where, ribs of the injured was found fractured, rightly allowed the application filed under Section 239 BNSS.

9. In support of his submissions, learned counsel for the informant/opposite party no. 2 has placed reliance upon the judgment of Hon'ble Apex Court in

Anant Prakash Sinha @ Anant Sinha v. State of Haryana & Anr. [Criminal Appeal No. 131 of 2016 (Special Leave Petition (Criminal) No. 837 of 2016)] and judgments of this Court in ***Application U/S 482 No. 19093 of 2020 (Rekha And 2 Others v. State of U.P. and Another)*** and ***Application U/S 482 No. 6145 of 2024 (Mukeem @ Mukeem Sheikh v. State of U.P. Prin.Secy. Home Civil Sectr. Lko. And Another)***.

10. Learned A.G.A. has also vehemently opposed the submissions raised by learned counsel for the applicants and submitted that impugned order dated 31.01.2025 is just and proper. Further, as per the medical examination report, ribs of the injured found fractured, as such, prima facie, offence under alleged sections is made out and Trial Court has rightly altered the charge.

11. Considered the submissions raised by learned counsel for the parties and perused the entire record. Before appreciating the controversy involved in the present case, it is relevant to produce the provision of Section 239 BNSS:-

"239. (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

12. The Hon'ble Apex Court in ***P. Karitikalakshmi (Supra)*** has held that it is well settled that the power vested in the Court is exclusive to the Court and

there is no right in any party to seek for such addition or alternation by filing any application as a matter of right. Apex Court in *Anant Prakash Sinha @ Anant Sinha (Supra)* has held that the Court can change or alter charge if there is defect or something is left out. The test to be applied is that it must be founded on the material evidence available on record and 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. Section 239 BNSS gives considerable powers to the Trial Court that 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 "judgement 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.

13. It is therefore seen that the scope of powers of the court to alter or add any charge under Section 239 BNSS is very wide in nature and it confers exclusive jurisdiction on the court in regard to such matters which may be exercised at any time before the judgment is pronounced. The rights of the parties in regard to the same would be extremely limited and no addition or alteration or objection with regard thereto, can be raised as a matter of right.

14. In the present case, first information report was registered under Sections 147, 148, 452, 323, 504 & 506 IPC but I.O. after investigation submitted charge-sheet under Sections 323, 504 & 506 IPC despite injured has received grievous injuries, thereafter, informant/opposite party no. 2 filed an application under Section 239 BNSS. After examining the prosecution witnesses upon aforesaid application moved on behalf of the informant, the trial court has duly considered the facts and circumstances of the case and the evidence, which was on record, to come to a conclusion that the necessary alteration in the charge was required and accordingly proceeded to allow the application.

15. In view of the settled legal position in case of any omission in framing of the charge if it comes to the knowledge of the court trying the offence, the power to alter the charge under Section 239 BNSS is always vested in the Court to be exercised at any time before the judgment is pronounced. The section is in the nature of an enabling provision for the Court to exercise its

power under certain contingencies when the relevant facts with regard thereto are brought to its notice. In case where a situation so demands if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, the Court may do so on its own or upon an application of the parties.

16. It may be reiterated that the test to be applied in this regard is that it must be founded on material available on record and the principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with materials produced before him or the subsequent evidence which comes on record.

17. The contention relating to the defence of the accused which seeks to impeach the veracity of the depositions made by the prosecution witnesses would be a question to be seen at the trial and need not be determined at the time of framing of charge. The stage of appreciation of evidence on merit by the court comes up only after the charges have been framed and the trial has commenced. For the purpose of framing of charge the court only needs to prima facie determine that there exists sufficient material for the commencement of trial.

18. Counsel for the applicants could not point out any material error or irregularity in passing of the impugned order dated 31.01.2025 while allowing the application filed by the informant/opposite party no. 2 under Section 239 BNSS so as to persuade this Court to exercise its inherent jurisdiction under Section 528 BNSS. Application moved by informant/opposite party no. 2 is very much supported by evidence and other submission raised by learned counsel for the applicants are disputed question of facts which cannot be adjudicated by this Court in exercise of its inherent jurisdiction under Section 528 BNSS.

19. The application thus fails and is, accordingly, ***dismissed***.

September 8, 2025
Aditya

(Deepak Verma,J.)