

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.735 of 2015**

1. Biram Bai, W/o Late Raghuwar Sahu, aged about 72 years.
 2. Bholaram Sahu, S/o Late Raghuwar Sahu, aged about 40 years,
- Both are the resident of 152/9, Street-6 Steel Colony, Supela,
Distt. Durg

---- Applicants

Versus

State Of Chhattisgarh Through: Police Station Supela, Distt. Durg

---- Non-applicant.

For Applicant:	:	Mr. Vivek Sharma, Advocate
For Respondents :		Mr. Aupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/09/2015

(1) The applicants were charge sheeted for the offences punishable under Sections 306 & 304(B) read with Section 34 of the Indian Penal Code and charges for the aforesaid offences were framed against the applicants by order dated 16.05.2006.

(2) Applicants herein preferred Criminal Revision No. 494/2006 against the order framing charge before this Court and ultimately the said revision was dismissed as withdrawn with liberty to raise all the grounds during the course of trial.

(3) Thereafter, applicants filed an application under Section 216 of the Code of Criminal Procedure for deletion of charge under Section 304-B read with Section 34 of the Indian Penal Code. By the impugned order

dated 05.08.2015, learned trial Court has rejected that application holding that charge under Section 304(B)/34 cannot be deleted as the order framing charge has become final.

(4) Mr. Vivek Sharma, counsel for the applicants would submit that no charge under Section 304(B) of the Indian Penal Code is made out against the applicants and, as such, the trial Court is absolutely unjustified in rejecting the application filed under Section 216 of the Code of Criminal Procedure as charge under Section 304(B) read with Section 34 of the Indian Penal Code deserves to be deleted.

(5) At this stage, it would be appropriate to set out the provision contained in Section 216 of the Code of Criminal Procedure, which reads as under:-

“216. *Court may alter charge.*- (1) Any Court may alter or add to any charge at any time before judgment is pronounced.”

(6) A careful perusal of the aforestated provisions would show that this clause does not provide for deletion of the charge as word “delete” has intentionally been not used by the legislature. An erroneous and improper charge may be corrected under Section 216 Cr.P.C. by reframing it properly or by adding to it or altering it for an offence provable by the evidence. This power to add or to alter a charge is comprehensive enough for remedying defects, whether they arise out of the framing of a charge or the non-framing of a charge and whether they are discovered at the inception of the trial or at subsequent stage of the trial, prior to pronouncement of judgment. This power to add to or alter a charge cannot, however, be exercised unless there is evidence on record to support the addition or alteration of charge.

(7) Way back, in the matter of **Sohan Lal & others Vs. State of Rajasthan**¹, their Lordships of the Supreme Court had an occasion to define the meaning of alteration of the charge and the meaning of addition of the charge as under:-

“12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges.”

(8) Thus, by no stretch of imagination, charge can be struck off exercising power under Section 216 (1) of the Code. Once the charge is framed the case will result, either in acquittal or in conviction in accordance with provisions of trials prescribed under the Chapter 18, 19 and 20 of the Cr.P.C.

(9) In sum & substance, once the cases of trial before the Court of Session, the trial Court commences upon framing of charge under Section 228 of the Code of Criminal Procedure, charges so framed cannot be withdrawn and will result either in acquittal or conviction in accordance with the provisions to trial prescribed under the Chapters XVIII of the Code of Criminal Procedure. Thus, the learned Sessions Judge is absolutely justified in rejecting the application under Section 216 of the Code of Criminal Procedure for deletion of charge under Section 304-B of the Indian Penal Code by the impugned order. I do not find any illegality in the order impugned warranting interference of this Court under revisional jurisdiction.

¹ (1990) 4 SCC 580

(10) The revision is, therefore, liable to be dismissed and it is hereby dismissed at the admission stage itself without notice to the other side. However, as the charges have been framed by order dated 16.05.2006 and till this date trial has not progressed, therefore, the trial Court is directed to expedite the trial and conclude it within a period of four months from the date of receipt of copy of this order.

Sd/-
(Sanjay K. Agrawal)
JUDGE

D/-