

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No. 24643 OF 2017**

**ORDER:**

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the order dated 23-11-2017 in CrI.M.P.No. 680 of 2016 in C.C.No. 894 of 2010 on the file of the Court of IV Additional Chief Metropolitan Magistrate, Hyderabad (for short, 'the Court below').

2. By the impugned order, the Court below partly allowed the petition by framing additional charge for the offence punishable under Section 509 of Indian Penal Code (for short, 'I.P.C.'). The case of the petitioner-accused is that CrI.M.P.No. 680 of 2016 was filed only to harass her without any material and insisted the Court below to frame additional charges for the offences punishable under Sections 509 I.P.C. and 66-A of Information Technology Act, 2000, which is illegal. In support of her contention, the petitioner placed reliance on **Shreya Singhal Vs. Union of India**<sup>1</sup> and requested this Court to quash the order under challenge.

3. Section 216 Cr.P.C. is an enabling provision which permits the Court to alter or add any charge at any point of time before judgment is pronounced. The limitation is only pronouncement of judgment to exercise such power. Before pronouncing judgment, there is no interdict on the powers of the magistrate or any Court to alter or add any charge or frame additional charge. To exercise power under Section 216 Cr.P.C., there must be *prima facie* evidence against the accused. According to Section 216 Cr.P.C., any Court may alter or add to any charge at any time before judgment is pronounced. Every such alteration or addition shall be read and explained to the accused. If the alteration or addition

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<sup>1</sup> AIR 2015 SC 1523

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. Section 217 Cr.P.C. obligates the Court to recall the witnesses when charges are altered. Therefore, the only interdict on the powers of the Court under Section 216 Cr.P.C. is pronouncement of judgment and before pronouncing judgment, the Court is at liberty to frame additional charge or alter any charge on its own motion or on the application of any of the parties. The Court below having considered the material on record including the examination of witnesses and material objects marked before it concluded that there is *prima facie* material against the petitioner to frame additional charge for the offence punishable under Section 509 I.P.C. since the petitioner sent objectionable messages through her cell phone and the entire record is available with the Court below including the cell phone which is used for transmitting the messages from her cell phone to the cell phone of *de facto* complainant. According to Section 509 I.P.C., whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, is liable to be punished. The facts of the present case *i.e.* sending obscene scenes or objectionable messages by cell phone would attract the offence punishable under Section 509 I.P.C. *prima facie*. Therefore, I find no error in the impugned order of the Court below warranting interference of this Court. Consequently, the petition is liable to be dismissed.

4. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 28-12-2017.

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**M.SATYANARAYANA MURTHY, J.**

JSK

