

**HON'BLE SRI JUSTICE P. KESHAVA RAO**  
**CRIMINAL REVISION CASE No.316 of 2018**

**ORDER:**

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the 1<sup>st</sup> respondent State.

The present revision case is filed questioning the orders passed in CrI.M.P.No.9680 of 2017 in C.C.No.327 of 2010 dated 19.12.2017 on the file of the Judicial Magistrate of First Class, Badvel, dismissing the petition filed under Section 216 Cr.P.C., to add Section 326 IPC and prosecute accused Nos.1 to 7 for the offence under Sections 324, 427 and 326 read with 34 IPC.

The facts of the case are that the petitioner herein is the complainant and respondent Nos.2 to 8 are the accused for the offence under Sections 324, 427 and 325 read with 34 IPC in C.C.No.327 of 2010 on the file of the Judicial Magistrate of First Class, Badvel. Pending the said case, after examination of PW.4, the petitioner filed CrI.M.P.No.9680 of 2017 under Section 216 Cr.P.C., requesting the Court to add Section 326 IPC and prosecute accused Nos.1 to 7. The learned Magistrate dismissed the said petition on 19.12.2017. Aggrieved by the same, the present revision case is filed.

In the said petition, it is stated that the doctor i.e., PW.4 deposed that PW.1 sustained grievous injuries and he received X-ray report from RIMS Hospital, Kadapa. As per the evidence of PWs.1 to 3, the accused beat PWs.1 and 2 with sticks and stones and caused injuries. Hence, the accused are liable to be prosecuted under Section 326 IPC since the grievous injuries caused are with sticks and stones, which are deadly weapons.

Therefore, charge under Section 325 IPC has to be altered with Section 326 IPC.

Per contra, the learned Public Prosecutor appearing for the 1<sup>st</sup> respondent State submitted that though PW.4 was examined, the copy of the said X-ray is not produced by the petitioner before the Court. Merely, because PW.4 has stated that PW.1 has received grievous injury that itself will not become a ground for the petitioner to file the present application. On that count, he sought dismissal of the revision case.

Section 216 Cr.P.C., 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.

(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.”

Having heard both the counsel and a perusal of the material on record, it is revealed that while giving evidence, PW.4 referred the injuries of PWs.1 and 2 basing on the X-ray report MLC.No.1132 dated 03.05.2010. But the petitioner has not produced either the X-ray or the report before the Court. Since PW.4 has given evidence based on the said report, the petitioner wanted not only to summon the said record as well as the

Government doctor, but to alter the charge from Section 325 to Section 326 IPC. However, the prosecution contended that the doctor, who is sought to be summoned, is the same Radiologist or not, and there is no proof on record. The opinion of a medical officer is not a condition precedent for altering the charge by adding Section 326 IPC. PW.4 deposed that the injury caused was due to hard and blunt force. The opinion expressed by a medical expert is only a piece of evidence and the same has to be corroborated and linked with the evidence of other witnesses. Therefore, based on PW.4 evidence alone, which is not a conclusive one, the petitioner cannot file a petition for alteration of charge. In fact, the charges are framed for specific offences as referred supra. In the light of the allegations made, there is no irregularity in the charges so framed already.

In these circumstances, this Court is of the opinion that there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

---

**P. KESHA RAO, J**

Date: 27.07.2018.  
ES