

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4548 of 2018

ORDER :

Heard both sides.

2. The impugned order of the learned Magistrate in CrI.M.P.No.4899 of 2014, dated 19.01.2018, is simply adding Section 420 IPC in the existing charge framed under Section 497 IPC, which is not the purport of Section 216 Cr.P.C., though the Magistrate got a power for that matter any trial Judge before pronouncement of judgment to alter a charge and not to simply add a section where alteration of charge includes addition or deletion to mean either delete existing charge or frame additional charge and not adding of section or adding of accused simply, thereby the order is liable to be set aside only for that reason as out come of improper application of mind to the said provision. However, it is not a bar for hearing both sides as to any charge that can be framed on merits for the offence under section 420 IPC and if so to pass appropriate orders if at all to add any charge if case made out after hearing. So far as offence under 497 IPC concerned, the charge no way survives in view of Constitution Bench expression of the Apex Court in **Joseph Shine vs. Union of India**¹.

3. Accordingly, the criminal petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

20th December 2018.

mar

¹ AIR 2018 SC 4898