

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3841 OF 2018

Sambhaji Narsingh Mali & anr. .Petitioners

Vs.

The State of Maharashtra .Respondent

Ms Anita Wakchaure, Advocate, for the Petitioners

Mr. P. H. Gaikwad-Patil, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 06.12.2019

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 13.07.2018 passed by the learned DJ-7 & Addl. Sessions Judge, Sangli below Exh. 17 in S. C. No. 175 / 2016, by which the learned Judge was pleased to allow the Application filed by the prosecution for framing of charge as against the Petitioners under Section 326 of the Indian Penal Code.

3. Perused the papers. Learned counsel for the Petitioners relied on the Judgment of the Apex Court in the case of ***P. Kartikalakshmi Vs. Sri Ganesh And Another***, reported in (2017) 3 ***Supreme Court Cases*** 347, in particular, paras 6 & 7 of the said

Judgment. She submits that an Application filed by the prosecution or de facto Complainant or accused for alteration of charge under Section 216 of the Code of Criminal Procedure is not maintainable in view of the said Judgment.

4. Learned APP does not dispute the same.

5. Paras 6 & 7 of the Apex Court Judgment in the case of P. Kartikalakshmi (Supra) reads thus :-

“6. Having heard the learned counsel for the respective parties, we find force in the submission of learned Senior Counsel for Respondent No. 1. Section 216 CrPC 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 CrPC 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 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. 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 CrPC 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 CrPC. 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 jeopardised.”

6. In view of the legal position, the Petition is allowed and the impugned order dated 13.07.2018 passed by the learned DJ-7 & Addl. Sessions Judge, Sangli below Exh. 17 in S. C. No. 175 / 2016 is quashed & set aside. Needless to state that it is always open for the trial Court to exercise its powers under Section 216 of the Code of Criminal Procedure having regard to the Judgment of the Apex Court in the case of P. Kartikalakshmi (Supra).

7. Accordingly, the Petition is disposed of.

(REVATI MOHITE DERE, J.)