

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.5201 OF 2019
WITH
CRIMINAL WRIT PETITION NO.1116 OF 2019**

Nirmal Ramesh Oswal	]	Petitioner
Vs.		
The State of Maharashtra	]	Respondent

.....
Mr. Shashank Mangle, for the Petitioner.

Mrs. Veera Shinde, A.P.P for the Respondent -State.
.....

CORAM : REVATI MOHITE DERE, J.

DATE : 25th NOVEMBER, 2019.

P.C. :

Heard learned Counsel for the parties.

2. Perused the papers. In Writ Petition No.5201 of 2019, the petitioner has impugned the order dated 5th July, 2019 passed by the learned Sessions Judge, Ratnagiri below Exhibit 37 in Session Case No.13 of 2016 (application filed by the petitioner) seeking alteration of charge in respect of section 328 of the Indian Penal Code.

3. In Writ Petition No.1116 of 2019, the petitioner has impugned the order dated 18th January, 2019 passed by the learned Sessions Judge, Ratnagiri below Exhibit 27 in Sessions Case No.13 of 2016 (application preferred by the petitioner) by which the learned Sessions Judge rejected the petitioner's application for referring the matter to the Adjudicating Officer, as contemplated under section 68 of the Food Safety and Standards Act, 2006.

4. The learned Counsel for the parties have tendered two judgments of the Apex Court;

[1] **Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana & Anr., AIR 2016 SC 1197**

[2] **R. Kartikalakshmi Vs. Sri Ganesh, (2017) 3 Supreme Court Cases 347.**

A perusal of the judgment of the Apex Court in the case of **R. Kartikalakshmi** (supra) shows that in paragraphs 6 and 7 of the said judgment, the Apex Court has clearly held that the power under section 216 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. The said judgment holds that no party, neither de facto complainant nor accused or for that matter the prosecution has any vested right to

seek addition or alteration of the charge as the same is not provided under section 216 Cr. P.C. Therefore, no infirmity can be found in the impugned order rejecting the application preferred by the petitioner, for altering the charge in the light of the judgment of the Apex Court. It is pertinent to note that an application filed by the prosecution for alteration of charges i.e to drop section 328 of the I.P.C was earlier rejected by the learned trial Judge. Needless to state, it is always open for the Trial Court to alter the charge, if the facts so warrant, in light of the aforesaid judgment in **R. Kartikalakshmi** (supra). At this stage, the learned Counsel seeks to file a discharge application on the ground that section 328 of the I.P.C would not apply in the facts of the case. If such an application is filed, the learned Sessions Judge to decide the same on its own merits, in accordance with law, un-influenced by the orders passed below Exhibit 7, Exhibit 27 and Exhibit 37.

5. With the aforesaid observations, the Petitions are disposed of.

6. All concerned to act upon the authenticated copy of this order.

[REVATI MOHITE DERE, J.]