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

CRIMINAL WRIT PETITION NO.5868 OF 2019

Swarupa Anil Lodha

...Petitioner

Versus

State of Maharashtra and Anr.

...Respondents

Mr. K. D. Walanju, Appointed Advocate for the Petitioner.

Ms. P.P.Shinde, A.P.P for the Respondent No.1 - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 28th NOVEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 8th April, 2019, passed by the learned Judicial Magistrate First Class, Khadaki, Pune, below Exhibit – 59 in S.C.C. No.564 of 2011, by which, the petitioner's application for alteration of charge under Section 216 of the Code of Criminal Procedure was rejected.
3. Learned APP, at the outset, submits that no infirmity can be found in the aforesaid order. She submits that the Apex Court in the case of

P. Kartikalakshmi v/s Sri Ganesh and Another¹ has in paras 6 and 7 stated that Section 216 of Cr. PC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is further observed that it is 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 is further observed that the power of invocation of Section 216 Cr. PC 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. It is made clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any additional or alteration of charge, because the same is not provided under Section 216 Cr. PC.

4. Learned appointed Counsel for the Petitioner does not dispute the aforesaid legal position. He, however, states that it is always open for the Court to invoke the said provision, if the facts so warrant, alteration/addition of a charge.

5. Needless to state, that the power to alter charge vests with the Court and that it is always open for the Court to alter/add a charge, if the

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facts so warrant, at any time before the judgment is pronounced. Having regard to the judgment of the Apex Court in the case of ***P. Kartikalakshmi (supra)***, nothing survives for consideration in this petition. The petition is dismissed and is disposed of.

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

REVATI MOHITE DERE, J.