

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.21561 of 2019

Kaliyappa Boopathy

... Petitioner/
Defacto Complainant

Vs.

State represented by,
The Inspector of Police,
Kovilpalayam Police Station,
Coimbatore District.
(Cr.No.266 of 2015.)

... Respondent/
Complainant

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to direct the Learned Magistrate No.III, Coimbatore to take the petition filed by the petitioner under Section 216 of CRPC on file and deal it in accordance to law with respect alteration of the charge by adding Section 307 of IPC with 294(b), 324 and 506(ii) against the accused in C.C.No.578 of 2019 on the file of Magistrate No.III, Coimbatore and proceed accordance to law.

For Petitioner : Mr.P.Saravanan Sowmiyan

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

This petition has been filed aggrieved by the Court below not entertaining an application filed under Section 216 of Cr.P.C filed by the defacto complainant, seeking for alteration of charges.

2.The learned Counsel for the petitioner submitted that the petitioner is already assisting the prosecution after getting an appropriate permission under Section 301 of Cr.P.C. In the course of trial, there were materials to alter the charges. Therefore the petitioner filed an application under Section 216

of Cr.P.C. seeking for alteration of charges. This petition was returned as not maintainable.

3.The learned Counsel for the petitioner submitted that the Court below went wrong in returning the application filed under Section 216 of Cr.P.C. The learned Counsel submitted that even though there was an earlier view taken by the Hon'ble Supreme Court that only the Court has the power to alter or add new charges and neither the prosecution nor the person interested will have a right to file a petition to alter or add charges, there was a march of law wherein the right of victim was also taken into consideration, even though the prosecution is conducted by the State and thereby the Hon'ble Supreme Court has now permitted even the defacto complainant to maintain a petition under Section 216 of Cr.P.C seeking for alteration of charges.

4.The learned Counsel in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court in Anant Prakash Sinha @ Anant Sinha vs. State of Haryana and Another reported in (2016) 2 MLJ (Cr1) 294.

5.Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent police.

6.This Court is in complete agreement with the submissions made by the learned Counsel for the petitioner. The Court below ought not to have returned the application on the ground of maintainability. The law as it stands today is that both the prosecution as well as the victim/defacto complainant can maintain an application for alteration of charges under Section 216 of Cr.P.C. However they will be more in the status of an informant to the Court and ultimately it is the exclusive jurisdiction of the Court to apply its mind on the materials placed before it and take a decision with regard to the alteration of charges. In other words, the Court cannot alter the charges merely because a petition was filed by the prosecution or the defacto complainant.

7.In view of the above, the petitioner is given liberty to re-present the application before the Court below and the Court below shall entertain the same and independently apply its mind with regard to the alteration of charges and follow the guidelines given by the Hon'ble Supreme Court in the judgment

referred supra.

8.This Criminal Original Petition is disposed of with the above directions.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

jas/vs

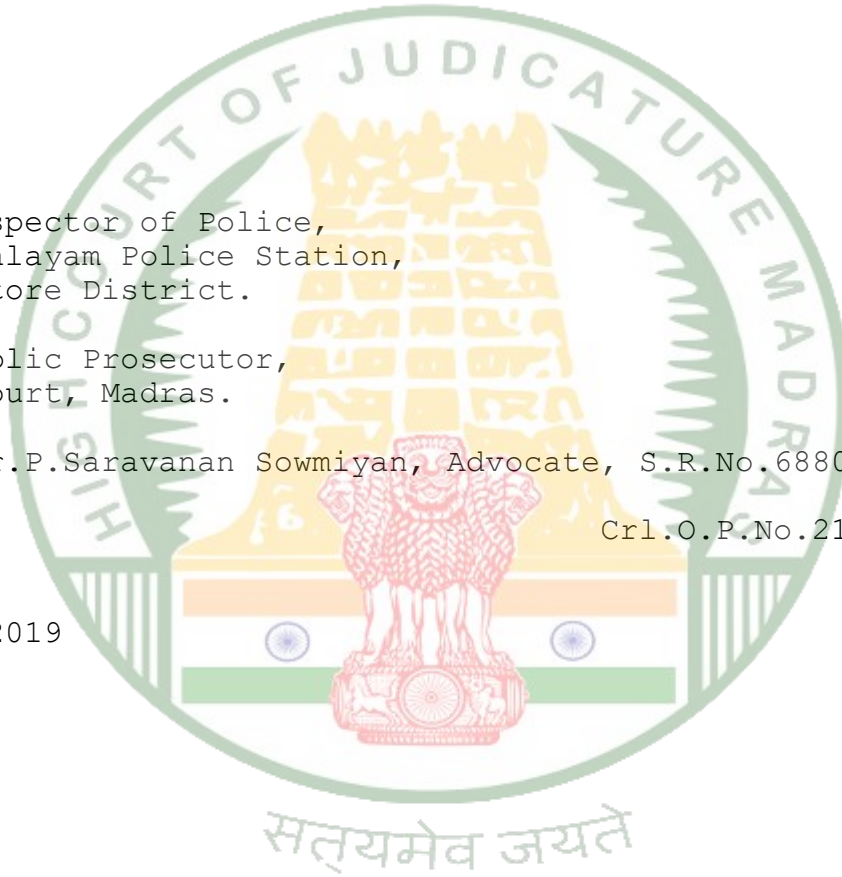
To

1. The Inspector of Police,
Kovilpalayam Police Station,
Coimbatore District.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Saravanan Sowmiyan, Advocate, S.R.No.68805

Crl.O.P.No.21561 of 2019

CA(CO)
CS/25/09/2019



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