

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 500 of 2021

1. Seema Suryawanshi W/o Ramprakash Suryawanshi Aged About 27 Years R/o Village Birkona, P. S. Koni, Tahsil And District Bilaspur Chhattisgarh
2. Sandeep Kumar Suryawanshi S/o Ramadhar Suryawanshi Aged About 38 Years R/o Village Birkona, P. S. Koni, Tahsil And District Bilaspur Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Home, Mahanadi Bhawan, Mantralaya, Naya Raipur District Raipur Chhattisgarh
2. The Director General Of Police Chhattisgarh Raipur Chhattisgarh Address- Police Head Quarter, Naya Raipur Atal Nagar, Raipur Chhattisgarh
3. The Inspector General Of Police Bilaspur Range, Bilaspur Chhattisgarh
4. The Superintendent Of Police Bilaspur District Bilaspur Chhattisgarh
5. The Station House Officer Police Station Koni, Bilaspur District Bilaspur Chhattisgarh
6. Ashwani Suryawanshi S/o Lakhan Lal Suryawanshi Aged About 37 Years R/o Village Birkona, P. S. Koni, Tahsil And District Bilaspur Chhattisgarh

---- Respondents

For Petitioners	: Shri Siddharath Dubey, Advocate
For State	: Shri Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

04.08.2021

1. The petitioners have filed the present petition with a prayer that offence Under Section 307 and 120-B of IPC be also levied against respondent No.6.
2. The brief facts as projected by the petitioners are that petitioners are daughter and son of Shri Ramadhar Suryawanshi respectively who are residing at Birkona, Bilaspur(C.G.). On 13.07.2021 the respondent No.6 along with his associates have approached Ramadhar Suryawanshi, started abusing him

without any cause and made an attempt to kill their father. However, the petitioners' father saved himself and thereafter he received medical facilities. As such prima-facie offence under Section 307 should have been leveled against respondent No.6, the police has registered offence under Sections 294, 323, 506 of IPC against respondent No.6. For registration they have also submitted complaint to the Inspector but no action has been taken.

3. The learned counsel for the petitioner has filed present petition with a prayer for alteration of charges. The Criminal Procedure Code is complete Code and it has provided various stages of trial where the petitioner can move an application for alteration of charges against the respondent No.6. The Section 216 CrPC provided that the Court may alter or add to any charge at any time before judgment is pronounced.
4. The petitioner has alternate remedy of filing application under Section 216 for altering charges if Concerned Magistrate is satisfied with the material placed on record he may alter the charge. The Section 216 of CrPC which extracted below:-
 - (1) Any Court may alter or add to any charge at any time before judgment is pronounced.
 - (2) Every such alteration or addition shall be read and explained to the accused.
 - (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
 - (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
 - (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

5. From the perusal of the Section 216 CrPC, it is quite clear that if there is material for framing of charges under Section 307, 120-B is available, the Magistrate may apply its mind and may alter the charges and can frame other charges mentioned in FIR. The petitioners may also file an application for altering the charges. Therefore, the petitioners have an alternate remedy of filing an application before the concerned Court for alteration of charges as such the present writ petition is not maintainable.
6. Consequently, the present petition is disposed of with liberty to petitioners to move an application before the concerned trial Court for alteration of charges and if sufficient material is available on record, the trial Court may alter the charges before completion of trial.
7. This Court has not expressed anything and not given any opinion on the merit.
8. The trial Court is free to decide the application in accordance with law without being influenced from any of the observation made by this Court while hearing the present writ petition.
9. Accordingly, the present WPCR is disposed of.

Sd/-
(Narendra Kumar Vyas)
Judge