

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 28 OF 2021

Arjun s/o Ashok Patil	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. S. D. Hiwrekar, Advocate for the applicant
Smt. Geeta Deshpande, APP for the respondent - State

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CORAM : R. G. AVACHAT, J.

DATED : 19th JUNE, 2021

PER COURT :-

. The challenge in this revision application is to the order dated 01.01.2021, passed by the learned Additional Sessions Judge, Jalgaon, on application Exh.196 in Special (POCSO) Case No.26 of 2014.

2. The application Exh.196 was moved by the Assistant Public Prosecutor, Incharge of the case, for framing of additional charge under Section 376(2)(i)(j)(1) of the Indian Penal Code and Section 3(a) and (b) of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. The learned Advocate for the applicant would submit that the recording of the evidence in the case has already been over. The case is fixed for argument. The applicant has been in jail. The applicant is under trial prisoner. Only with a view to delay hearing of the case, the application was moved. There is no material to connect the applicant with the alleged offence with which he is sought to be additionally charged. The learned Advocate would further submit that if the impugned order is sustained, the applicant would be prejudiced in his defence. The learned Advocate seeks direction to the trial Court to grant the applicant an opportunity of cross examination of the victim, post framing of the additional charge.

4. The learned APP strongly opposed the application on the ground that there is material to connect the applicant with the alleged offence. The victim was nine years old. It is not desirable to call witness of such an age repeatedly, as a witness.

5. Section 216 of the Code of Criminal Procedure, reads as under:

“216. Court may alter charge. - (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 alternate 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 of 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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

6. I have perused the police papers and the impugned order to find no reason to interfere with the impugned order.

7. The offence with which the applicant is being additionally charged, is serious and aggravated.

8. Section 217 of the Code of Criminal Procedure, reads under:-

“217. Recall of witnesses when charge altered. -
Whenever a charge is altered or added to by the Court

after the commencement of the trial, the prosecutor and the accused shall be allowed -

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.”

9. If the applicant moves an application under Section 217 of the Code of Criminal Procedure, the learned Additional Sessions Judge would consider such a prayer on its own merits and if the same is allowed, shall restrict the cross examination to the question of additional charge, alone.

10. With these observations, the revision application stands disposed of.

[R. G. AVACHAT, J.]

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