IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.53 of 2021

R.Vivekanandan
S/o.Ramakrishnan ... Petitioner /Accused

Vs.

State by Deputy Superintendent of Police
Vigilance and Anti Corruption, Erode
Cr.No.3/AC/2017/ER ... Respondent/Complainant

Prayer: Criminal Revision petition filed under Section 397 r/w 401 of Cr.P.C. against the order passed by the Special Judge/Chief Judicial Magistrate, Erode in Crl.MP.No.15716 of 2019 in Special C.C.No.2/2019 dated 04.12.2020 the Petitioner/Accused his preferring this revision to call for the records and revise the same.

For Petitioner : Mr.C.R.Malarvannan
For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

O R D E R

Petition has been filed seeking to call for the records and set aside the order passed by the learned Special Judge / Chief Judicial Magistrate, Erode in Crl.M.P.No.15716 of 2019 in Spl.C.C.No.02/2019 dated 04.12.2020, allowing the petition filed by the prosecution under Section 216 Cr.P.C. for framing charges.

2.The brief facts of the case is that on the complaint given by the defacto complainant the respondent police registered a case against the petitioner / accused in Crime No.3/AC/2017/ER for offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After completion of investigation, the respondent filed the charge sheet and the case was taken on file in Spl.C.C.No.2 of 2019 by the Special Judge / Chief Judicial Magistrate, Erode. As per the charge sheet the case of the prosecution is that the accused was working as Inspector of Police, Nambiyur Circle, Gobichettypalayam, Erode District between 13.01.2014 and 18.05.2017. The defacto complainant T.Sekar @ T.Palanisamy is a resident within the limits of the Nambiyur Police Station. He is an agriculturist and business man. One Muthuramalingam was a tenant under the defacto complainant. The son of

Muthuramalingam viz. Santhosh @ Santhosh Kumar was harassing the daughter of the defacto complainant viz. Sathya, thereby, the defacto complainant asked the said Muthuramalingam to vacate the house. On the same night, the son of Muthuramalingam viz. Santhosh @ Santhosh Kumar along with his brother Dinesh and other family members had come to the house of the defacto complainant and picked up a quarrel. During the quarrel, both parties have assaulted each other. Hence a case and counter case were registered against both the parties. Crime No.98/2017 was registered against the defacto complainant and three others and Crime No.99/2017 was registered against Muthuramalingam and four others. The accused is the Investigating Officer in both the cases.

4.The problem between the defacto complainant group and the said Muthuramalingam group continued. Thereafter, during the night between 21.04.2017 and 22.04.2017 the son of Muthuramalingam viz. Santhosh @ Santhosh Kumar attempted to kidnap Selvi.Sathya, the daughter of the defacto complainant and thereby there was a quarrel and both the parties assaulted each other again in which Santhosh @ Santhosh Kumar had sustained injuries and was admitted in the Government Hospital, Tirupur and based on his complaint, a case in Crime No.141/2017 was registered by the accused for offence under Sections 147, 148, 294(b), 342 and 307 IPC on 22.04.2017 against the defacto complainant and six others including the son of the defacto complainant viz. Srisarvesh. Similarly, Crime No.142 of 2017 was registered against Santhosh @ Santhosh Kumar for the offences under Section 448, 355, 506(1) IPC on the complaint given by the defacto complainant.

5.The accused / Investigating Officer on 23.04.2017, had demanded and accepted a sum of Rs.50,000/- from the defacto complainant as illegal gratification other than legal remuneration as a motive or reward for not remanding his wife viz. Pathmavathi to judicial custody in Crime No.141 of 2017, which has been registered against the defacto complainant's family. Hence, the accused was alleged to have committed offence under Section 7 of Prevention of Corruption Act, 1988 and since the accused by corrupt or illegal means and by abusing his official position, obtained for himself pecuniary advantage of Rs.50,000/- as illegal gratification and he had also committed an offence of criminal misconduct punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

6.Thereafter once again on 08.052017, the accused had demanded Rs.2 Lakhs from the defacto complainant for deleting the name of Srisarvesh, the son of the defacto complainant from the case and at the request of the defacto complainant, the accused had reduced the amount to Rs.1 Lakh and once again on

13.05.2017 and 15.05.2017, the accused insisted his demand to the defacto complainant and finally reduced the amount to Rs.50,000/-. As the defacto complainant did not want to give any bribe, he had given a complaint and based on the complaint, preliminary enquiry was initiated by the respondent herein. Again on 16.05.2017 at Nambiyur Police Station, the accused raised his demand to Rs.1.25 Lakhs and at the request of the defacto complainant, the accused had agreed for Rs.1 Lakh and that to be given in two instalments.

7.On 18.05.2017, in pursuance of the earlier demand the accused accepted the first instalment of Rs.50,000/- from the defacto complainant between 12.20 hrs and 12.30 hrs in the presence of official witness and he was caught red handed while receiving the bribe. Hence, the accused is alleged to have committed offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

8.The respondent after completion of investigation had filed the final report against the accused for the offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After filing the charge sheet, the Trial Court supplied copies to the accused under Section 207 IPC and proceeded to frame charge against the accused on 03.09.2019. The trial Court after perusing the entire materials available on record, had chosen to frame charges against the accused only for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and had left the Section 7 of the Act.

9.While so, the prosecution finding that it is a case of demand of illegal gratification, pursuant to which a trap was laid and that the accused was caught red handed and finding that charge u/s.7 of Prevention and Corruption Act, was not framed against the accused, filed a petition in Crl.M.P.No.15716 of 2019 under Section 216 Cr.P.C. to alter the charge and to frame charge against the accused including the offence under Section 7 of Prevention of Corruption Act also. The Trial Court finding that a distinct offence u/s.7 of the Prevention of Corruption Act has been made out against the accused and a mistake had crept in while framing charges and that the accused was not charged for the relevant offence under Section 7 of Prevention of Corruption Act, allowed the petition and recorded the finding that

> *"in order to reach the ends of justice in this case, based on the available materials on record, it is necessary to add the charge for the offence Under Section 7 of Prevention of Corruption Act along with Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988"*

against which, the present Revision has been filed.

10.Learned counsel for the petitioner assailing the order would submit that the Trial Court had committed grave error in accepting and allowing the petition filed by the prosecution and rendering a finding that it was necessary to frame charge against the petitioner for the offence under Section 7 of Prevention of Corruption Act also. The Trial Court was obvious of the fact and having considered the available materials on record and having intentionally left to add charge under Section 7 of Prevention of Corruption Act initially, had erroneously altered the charge and added charge under Section 7 of Prevention and Corruption Act belatedly on the ground that illegal error has crept in the case. Having perused the materials and having framed charges for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the trial Court ought to have waited for completion of trial to see whether the prosecution has let in evidence for the offence under Section 7 of the Prevention of Corruption Act, 1988 also and only after finding that the evidence is available, the trial Court should have altered the charge as per Section 221 Cr.P.C. He would further submit that the learned Trial Judge, having framed charges for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, cannot review his own order and alter the charges without any fresh materials being brought on record that too at the behest of the prosecution, thereby, he would seek to set aside the order.

11.Per contra, learned Additional Public Prosecutor would submit that it is a case where the accused had demanded illegal gratification. Based on the complaint, a preliminary enquiry was conducted, pursuant to which, a trap was laid and the accused was caught red handed while receiving the bribe. Hence, the petitioner / accused is also liable to be charged for a distinct offence u/s.7 of the Prevention of Corruption Act, 1988, whereas, the trial Court had framed charge against the petitioner / accused only for the offence u/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act and the charge u/s.7 of the Prevention of Corruption Act had been left out. Even before the trial could commence, the prosecution found out that an inadvertent error had crept in and had brought it to the knowledge of the trial Court.

12.He would further submit that as per Section 216(1) Cr.P.C., any Court may alter or add any charge at any time before judgment is pronounced. In this case, trial had not commenced and such alteration and addition of charge would not cause any prejudice to the accused. The trial Court finding that an inadvertent error had crept in and finding that it would not cause any prejudice to the accused had rightly altered and added the charge for offence u/s.7 of Prevention and Corruption

Act, since there was demand and acceptance of illegal gratification by the petitioner / accused. The trial Court after analysing the materials on record and after analysing various judgments of the Hon'ble Apex Court as well as the High Court had passed a detailed and reasoned order. In support of his contentions learned Additional Public Prosecutor would rely on the decisions of the Hon'ble Apex Court in Dr.Nallapareddy Sridhar Reddy V. State of Andhra Pradesh and others reported in (2020) 12 SCC 467 wherein the Hon'ble Apex Court has held as under;

> *"14.It is evident from the record that the earlier Additional Junior Civil Judge perused the additional charge-sheet and took cognizance of offences under Sections 406 and 420 of the IPC. However, at the time of framing charges, the additional charge-sheet was not brought to the notice of the court and the framing of charges against the appellant under Sections 406 and 420 was not considered. Therefore, the appellant was charged only for offences under Section 498A of the IPC along with Sections 3 and 4 of the Dowry Prohibition Act. It was when an application under Section 216 of CrPC was filed by the public prosecutor on 13 February 2017 that it was brought to the notice of the Trial Judge that charges under Sections 406 and 420 were not framed.*

15. In order to adjudicate upon the dispute, it is necessary to refer to Section 216 of CrPC:

> *"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 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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

16.Section 216 appears in Chapter XVII of the CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase "add to any charge" in Sub-Section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done "at any time before judgment is pronounced". Sub- Section (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the persecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-Section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 of the CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.

17.The decision of a two-judge Bench of this Court in P Kartikalakshmi v Sri Ganesh12, dealt with a case where during the course of a trial for an offence under Section 376 of the IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 of the IPC. Justice F M Ibrahim Kalifulla, while dealing with the power of the court to alter or add any charge, held:

"6. ... Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is 12 (2017) 3 SCC 347 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 may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law." (Emphasis supplied)

18.In Anant Prakash Sinha v State of Haryana13, a two judge Bench of this Court dealt with a situation where for commission of offences under Sections 498A and 323 of the IPC, an application was filed for framing an additional charge under Section 406 of the IPC against the husband and the mother-in law. After referring to various decisions of this Court that dealt with the power of the court to alter a charge, Justice Dipak Misra (as the learned Chief Justice then was), held:

"18. ... the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence 13 (2016) 6 SCC 105 comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial..." (Emphasis supplied) "

19.In CBI v Karimullah Osan Khan14, this Court dealt with a case where an application was filed under Section 216 of CrPC during the course of trial for addition of charges against the appellant under various provisions of the IPC, the Explosives Act 1884 and the Terrorist and Disruptive Activities (Prevention) Act 1987. Justice K S P Radhakrishnan, speaking for the Court, held thus:

"17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court." 14 (2014) 11 SCC 538

20.In Jasvinder Saini v State (Govt of NCT of Delhi) 15, this Court dealt with the question whether the Trial

Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B of the IPC. Justice T S Thakur (as he then was) speaking for the Court, held thus:

> *"11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial.There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in . It is all the same trite that the question of any such addition or alSection 216ternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court."*

21.From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there 15 (2013) 7 SCC 256was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to *the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.*

22.The appellant has relied upon a two-judge Bench decision of this Court in Onkar Nath Mishra v The State16 to substantiate the point that the ingredients of Sections 406 and 420 of the IPC have not been established. This Court while dealing with the nature of evaluation by a court at the stage of framing of charge, held thus:

> *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not 16 (2008) 2 SCC 561 a ground for convicting the accused has been made out.At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."*

13.Admittedly it is a case where on the complaint given by the defacto complainant that the petitioner / accused had demanded illegal gratification, a preliminary enquiry was conducted and thereafter a trap was laid, pursuant to which, the petitioner / accused was caught red handed while receiving illegal gratification on 18.05.2017. As per the materials available in the charge sheet, a distinct charge for the offence u/s.7 of the Prevention of Corruption Act, 1988 is made out against the accused, however inadvertently the trial Court had left out Section 7 of the Prevention of Corruption Act at the time of framing charges.

14.In this case, the trial Court after carefully analysing the materials available on record and finding that an error had crept in and that charge under Section 7 of the Prevention of Corruption Act, 1988 had been left out despite materials being available, had allowed the petition and added charge under Section 7 of the Prevention of Corruption Act, 1988 along with charge under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. As stated above, in this case exercise has been done even before commencement of the trial and thereby the petitioner / accused is not prejudiced in any manner.

15.In the light of the above, this Court does not find any infirmity or illegality in the order passed by the Trial Court.

16.In the result, this Criminal Revision case stands dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Special Judge / Chief Judicial Magistrate
Erode

2.The Deputy Superintendent of Police
Vigilance and Anti Corruption, Erode

3.The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.Mohideen Basha, Advocate SR.NO..9636

AKM/30.03.21/ 11P-5C/

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