



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	25.06.2021
DELIVERED ON	09.07.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 747 of 2016

M.Umapathi ...Revision Petitioner/Respondent/Accused
Vs.
D.Raja Mohamed ...Respondent/Revision Petitioner/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records in Cr.Rev.P.No.86 of 2014 on the file of the learned IV Additional District Judge, Madurai, dated 31.03.2016, reversing the order of the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai in Cr.M.P.No.298 of 2014 in S.T.C.No.860 of 2012, dated 27.06.2014 and set aside the same as illegal.

For Petitioner : Mr.A.John Vincent
For Respondent : No Appearance

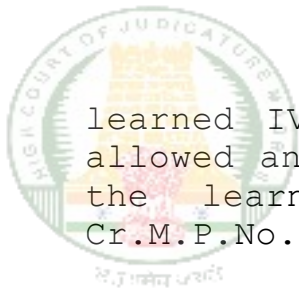
O R D E R

This Criminal Revision Case has been filed by the petitioner/respondent/accused to set aside the order, dated 31.03.2016 made in Cr.Rev.P.No.86 of 2014 on the file of the learned IV Additional District Judge, Madurai, dated 31.03.2016 reversing the order passed by the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai in Cr.M.P.No.298 of 2014 in S.T.C.No.860 of 2012, dated 27.06.2014.

2.Heard the learned counsel appearing for the petitioner.

3.The respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act and the same was taken on file in S.T.C.No.860 of 2012 by the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai. Thereafter, he filed a petition under Section 216 of Cr.P.C., in Cr.M.P.No.298 of 2014 to alter the charge from Section 138 of the Negotiable Instruments Act to Sections 420, 468 and 471 of IPC. It was dismissed by the learned Judicial Magistrate on the ground that no new materials should come into existence through evidence. So, charge cannot be altered and the trial Court dismissed the said petition.

4.Aggrieved by the above said order, the respondent/complainant filed Cr.Rev.P.No.86 of 2014 before the



learned IV Additional District Judge, Madurai. The revision was allowed and the learned IV Additional District Judge has directed the learned Judicial Magistrate to alter the charges in Cr.M.P.No.298 of 2014 in S.T.C.No.860 of 2012.

5. Aggrieved by the same, the revision petitioner/respondent has preferred this revision.

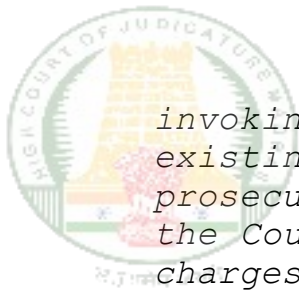
6. First of all, this revision is not maintainable, since revision against the order in another revision. Further, as against the order of dismissal passed by the trial Court, the respondent/complainant filed the revision before the learned VI Additional District Judge, which is not maintainable. This view reiterated in the decision of this Court in the case of (H.A.Hurul Firdhouse, represented by her power agent **H.A.Abdul Jabbar Vs. State, represented by Inspector of Police, W-22, All Women Police Station, Mylapore, Chennai and 2 and others**) reported in **2010 (3) Madras Weekly Notes (Crl.) 368**, wherein it was held that an order passed by the Trial Court dismissing an application filed under Section 216 of Cr.P.C., cannot be regarded as a final decision and therefore, as against that order, a Criminal Revision Case is not maintainable. But for the following reasons, this Court is inclined to interfere with the order passed by the learned IV Additional District Judge. Section 216 of Cr.P.C., empowers the Court to alter any charge at any time before judgment is pronounced i.e., only the Court.

7. The only question arises for consideration in this revision case is whether the complainant has a right to file an application under Section 216 of Cr.P.C., to alter charges and whether such an application is maintainable.

8. The Hon'ble Supreme Court of India and this Court in series of decisions have categorically held that neither the prosecution (complainant) nor the accused have any right to seek for alteration or adding of a charge. It is evident from Section 216 of Cr.P.C. that alteration or amendment or addition of a charge can be done only by the Court.

9. In the case of **Krishnammal Vs. The Revenue Divisional Officer and Others** reported in **(2008) Criminal Law Journal 2845**, it was held that,

"From the conjoint reading of the provisions of the said Sections, it is pellucid that only the Court is having power to frame charge or alter it or add new charges at any time before judgment is pronounced. Neither the prosecution nor the person interested, has right to file petition by



invoking either of the said Sections so as to delete the existing charges or add new charges. In short, either the prosecution or the person interested, has no right to ask the Court either to alter the existing charges or to add new charges."

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10.The above principle was followed by another judgment of this Court in the case of the **State represented by the Inspector of Police Vs. K.P.Sankar and Others in Crl.R.C.No.713 of 2015, dated 12.08.2015**. The relevant portion of the order in Paragraph Nos.18 and 20 reads as follows:-

"...18.Yet another argument raised on behalf of the respondent is that as against the order of dismissal passed by the trial Court, dismissing the application filed by the prosecution under Section 216 of Cr.P.C., the present Criminal Revision Case is not maintainable. This view is reiterated in the decision of this Court in the case of (H.A.Hurul Firdhouse, represented by her power agent H.A.Abdul Jabbar Vs. State, represented by Inspector of Police, W-22, All Women Police Station, Mylapore, Chennai and 2 and others) reported in 2010 (3) Madras Weekly Notes (Crl.) 368 wherein it was held that an order passed by the Trial Court dismissing an application filed under Section 216 of Cr.P.C., cannot be regarded as a final decision and therefore, as against that order, a Criminal Revision Case is not maintainable. The relevant portion of the order in Paragraph No.8 reads as follows:-

"..8.Section 216, Cr.P.C. does not contemplate any application being filed either by the prosecution or by any witness including the de-facto complainant. It simply states the power of the Court to alter the charge or add any charge to the charge already framed. The stage at which such alteration or addition to charge can be made is also indicated thereon. Such an alteration or addition can be made at any time before judgment is pronounced. The Section also provides for the follow up action to be taken in the case the alteration or addition to the charges is made after considerable progress in the trial of the case.

9.In the light of the said provision we have to consider the order passed by the learned Trial Magistrate. A reading of the order of the learned Trial Magistrate will show that, on a proper understanding of the context of the said provision, the learned Trial Magistrate has passed the impugned order. The learned Trial Magistrate has expressed a clear opinion that the petition itself was premature one as none of the
for prosecution was cross examined and five



more witnesses were to be examined and that the question of framing an additional charge could be considered at a later stage in the light of the evidence to be adduced during the course of the trial. The said opinion is in tune with the intention of the legislature in enacting the said provision. Therefore, as rightly contended by the learned Senior Counsel for the respondent, there is no defect infirmity in the order passed by the Trial Court warranting interference by this Court.

10.....The present order refusing to frame an additional charge does not preclude the Trial Court to frame an additional charge at a later stage of the proceedings, if it may, be warranted. In other words, the power conferred on the Court under 216 is not barred by the dismissal of the present petition filed by the de-facto complainant before the Trial Court. At any time before the pronouncement of judgment, such a power can be exercised. If the order of the lower Court is considered in the light of the said explanation, the contention raised on behalf of the respondent that the impugned order cannot be stated to be "not an interlocutory" order has got to be countenanced.

20.Thus, the legal position emanates from the above decisions it that neither the prosecution nor the de-facto complainant or any one interested in the criminal case is entitled to file an application under Section 216 of Cr.P.C., and it is only for the Trial Court to decid about framing of an additional charge or alter an existing charge upon arriving at a subjective satisfaction on the basis of existence of materials available on records. It can also be culled out that as against an order passed by the Trial Court in an application under Section 216 of Cr.P.C., a criminal revision case under Section 397 of Cr.P.C., is not maintainable as such an order did not finally determine the prosecution case and it is an interlocutory in nature. Thus, the Trial Court, in the present case, is right in dismissing the application filed by the prosecution under Section 216 of Cr.P.C., for inclusion of an additional charge under Section 302 of IPC against the respondents/accused..."

This was also confirmed by the Full Bench of the Hon'ble Supreme Court of India in the case of **P.Kartikalakshmi Vs. Sri Ganesh and Others** reported in **(2017) 3 SCC 347**. The relevant

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portion of the paragraph No.7 of the Judgment reads as follows:-

"...7....In the light of our conclusion that the power of invocation of Section 216 Cr.P.C 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, we make it clear that no party, neither de-facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 Cr.P.C. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised."

11.In view of the above, this Court is of the view that the concerned Court can only alter charges.

12.With the above observations, the Criminal Revision Case is allowed and the order dated 31.03.2016 in Cr.Rev.P.No.86 of 2014 passed by the learned IV Additional District Judge, Madurai, is hereby set aside.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The IV Additional District Judge, Madurai.

2.The Judicial Magistrate No.I,
Fast Track Court at Magisterial Level, Madurai.

3. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.JOHN VINCENT, Advocate (SR-22047[F] dated 12/07/2021)

Order made in

Crl.RC(MD)No. 747 of 2016

09.07.2021