

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**



+ CRL.M.C. 2941/2021, CRL.M.A. 18521/2021,  
CRL.M.A. 18522/2021 and CRL.M.A. 18523/2021

Date of Decision : 10.12.2021

IN THE MATTER OF:

NEETU AGGARWAL

..... Petitioner

Through: Mr. C. Mohan Rao, Senior Advocate with  
Ms. Swati Aggarwal, Advocate

versus

GOVT OF NCT OF DELHI AND ORS. .... Respondents

Through: Mr. Hirein Sharma, APP for State with  
SI Rachna, PS Sabzi Mandi  
Mr. B. Badrinath, Advocate for respondent Nos.2  
and 3.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

### **JUDGMENT**

**MANOJ KUMAR OHRI, J. (ORAL)**

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 24.03.2021 passed by the learned ASJ-01 (POCSO), Central District, Tis Hazari Courts, Delhi in SC No. 729/2017, as well as seeking discharge in the said Sessions Case, arising out of FIR No. 120/2017 registered under Sections 354/354A/354B/376/506 IPC and Section 6 of the POCSO Act at P.S. Subzi Mandi, Delhi.

2. Vide order dated 13.03.2018 passed by the learned Special Judge (POCSO Act)/ASJ-01, Central District, Tis Hazari Courts, Delhi in the aforesaid case, charges were initially framed against the petitioner under



Sections 354/354B/506/34 IPC and Section 17 of the POCSO Act. Or

application filed by the complainants under Section 216 Cr.P.C. seeking alteration of Charge, the order dated 13.03.2018 was modified and charges have now been framed against the petitioner under Sections 354/34/506 IPC and Section 17 read with Section 10 of the POCSO Act/Section 109 IPC read with Section 354 IPC vide the impugned order.

3. Briefly stated, the facts of the case are that on 20.05.2017, a complaint was lodged by respondent Nos. 2 and 3/complainants against their father/*Rajesh Aggarwal*, the petitioner, who is their step-mother, and certain other persons stated to be associates of the other two accused, which led to the registration of the present FIR. It was alleged that after the death of the complainants' mother in 2009, their father abused them mentally, physically and sexually between 2009 and 2015. In 2012, the accused/*Sh. Rajesh Aggarwal* got married to the petitioner, whereafter his atrocities were reported to had only increased. It was further alleged that the petitioner used to call her male friends over to the house, who at her instigation and with her support, used to indulge in inappropriate activities and sexually abuse the complainants.

In their complaint, the complainants also alleged that the petitioner used to threaten them that she would sell them on G.B. road and implicate them in prostitution business. It was further stated that the petitioner used to instigate accused/*Rajesh Aggarwal*, who would then beat them up. The complainants also alleged that they were given threats of ousting from the house and/or that they would be killed alongwith their grandmother. Since 2015, the complainants started living separately from the petitioner and accused/*Rajesh Aggarwal*.

4. After completion of investigation, the charge sheet in the case came to

be filed under Sections 363/342/506 IPC and Section 6 of the POCSO Act and Section 622 of Cr.P.C.



The petitioner was formally arrested on 31.08.2017.

5. Learned Senior Counsel appearing for the petitioner submits that the petitioner has been falsely implicated in the present case by respondent Nos. 2 and 3, who are her step-daughters, under the influence of one 'Baba'. It is also submitted that the complaint in the present case was lodged belatedly and from the material placed on record, the charged offences are not made out against the petitioner. Thus, the impugned order is liable to be quashed.

6. Learned counsel for the respondent, on the other hand, has opposed the present petition. He submits that the complainants have levelled specific allegations against the petitioner and while keeping in view the facts of the case, the Charge framed against the petitioner has been rightly modified vide the impugned order. It is also submitted that considering the fact that the complainants, who were minors at the time of the alleged incidents, were threatened for life by their real father and his second wife/petitioner, the alleged delay in lodging of the complaint has been sufficiently explained in the FIR.

7. I have heard learned counsels for the parties and perused the material placed on record.

8. In the impugned order dated 24.03.2021 framing charge, the learned Sessions Judge has made the following observations:-

*"Perusal of the record reveals that charges were framed against accused Rajesh Aggarwal under section 354/354A/354/354B/376(2)(f)/506 IPC and section 10/12/6 of POCSO Act. It is noteworthy that as per the material available on record, the allegation of penetrative sexual assault upon the victims have been made for the period prior to November, 2012 when the POCSO Act was not in force. In these circumstances,*



the provisions of POCSO Act NEUTRAL CITATION NO. 2022/04000235 the incidents of penetrative sexual assault committed by accused Rajesh Aggarwal.

*It is also noteworthy that the section 376 IPC was amended with effect from 03.02.2013 vide the Act 13 of 2013, therefore, as the allegations of rape have been made against accused Rajesh Aggarwal for a period prior to 03.02.2013, therefore, the provisions of unamended section 376 IPC shall apply to the present case and the act of the accused Rajesh Aggarwal would fall under section 376(2)(f) of IPC (unamended). It is also noteworthy that section 354A IPC/354B IPC with which the accused has been charged with, would not be applicable inasmuch as the said sections were introduced by the amendment Act 13 of 2013 carried out in the IPC with effect from 03.02.2013. The material available on record also reveals that the victims had been beaten by the accused Rajesh Aggarwal and therefore section 323 IPC is also liable to be framed against him.”*

9. Before proceeding to analyse the facts of the present case, I deem it apposite to recapitulate the position of law on the scope of power under Section 216 Cr.P.C.

10. In Jasvinder Saini and Others v. State (Government of NCT of Delhi) reported as **(2013) 7 SCC 256**, while interpreting Section 216 Cr.P.C., the Supreme Court has clearly explicated that a Court has power to alter or add any charge until the judgment is pronounced. In the said decision, the Court has also outlined circumstances in which need for such alteration may generally arise, which are as follows:-

*“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 is pronounced. It is all the same trite that the question of any such addition or alternation 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.”*

*(emphasis added)*

11. Subsequently, the ambit of power exercisable under Section 216 Cr.P.C. was once again outlined by the Supreme Court in P. Kartikalakshmi v. Sri Ganesh and Another reported as **(2017) 3 SCC 347**. Relevant extract from the decision is reproduced below:-

*“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 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 added)*

12. Recently, in Dr Nallapareddy Sridhar Reddy v. State of Andhra Pradesh and Others reported as **(2020) 12 SCC 467**, the scope of power under Section 216 Cr.P.C. has been acutely considered by the Supreme Court and the



principles governing exercise thereof ~~NEUTRALISATION OF THE FOLLOWING~~ terms:-

*“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 was 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.*

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*25. The veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charge the court needs to prima facie determine that there exists sufficient material for the commencement of trial. The High Court has relied upon the materials on record and concluded that the ingredients of the offences under Sections 406 and 420 IPC are attracted. The High Court has spelt out the reasons that have necessitated the addition of the charge and hence, the impugned order does not warrant any interference.”*

*(emphasis added)*



13. Adverting to the present case, it is noted that after charges were initially framed against the petitioner vide order dated 13.03.2018, she did not assail the order before a higher Court and the same attained finality. In fact, the matter proceeded for recording of prosecution evidence. Only when the complainants filed an application under Section 216 Cr.P.C. seeking alteration of the Charge, the accused/petitioner also filed an application seeking discharge in the present case, which was dismissed vide order dated 24.03.2021 passed by the Sessions Court.

14. From a perusal of the material placed on record, it is apparent that at the time of framing of charges in 2018, the learned Judge had failed to apply judicious mind to the facts of the case, inasmuch as some of the allegations levelled against the accused attracted criminal liability as per law that existed prior to the amendments in the POCSO Act and the IPC in 2012 and 2013. Besides, some of the charges that ought to have been framed against the accused, as per the facts borne out from the material placed on record, were not framed in the initial order on charge. Considering the same, the Sessions Court rightly altered the charges against the petitioner vide the order dated 24.03.2021 and I find no illegality or perversity in the same.

15. In view of the aforesaid, no ground to interfere with the impugned order is made out. Accordingly, the present petition is dismissed. Miscellaneous applications are disposed of as infructuous.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**DECEMBER 10 , 2021**

*Click here to check corrigendum, if any*