

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

918 CRIMINAL WRIT PETITION NO.1452 OF 2022

**OMPRAKASH @ BACCHU BABURAO KADU
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Rahul O. Awasarmol, Advocate for the petitioner
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 17th November, 2022

P. C.

1. Heard the learned counsel for the parties. The matter is taken up for final hearing with the consent of the parties.

2. Challenge in the petition is to an order passed by the learned Additional Sessions Judge, Osmanaba dated 03-03-2021 framing additional charge for the offences punishable under Section 353 read with Section 149 of the Indian Penal Code. It is the case of the petitioner that when FIR was lodged it was for the offences punishable under Section 353, 186, 143, 147, 149 and Section 506 of the Indian Penal Code and Section 135 of the

Maharashtra Police Act. He further submits that when the charge-sheet came to be filed, charge-sheet was filed for the offences except 353 of the IPC. Thus, he submits that prosecution is under these sections. He submits that after recording evidence of five witnesses, now the court has framed this additional issue. He submits that at the stage of the trial, it was not permissible for the learned trial court to alternate the charge or to add the charge. On going through the Section 216 of the Cr. P. C. it is seen that trial judge shall alternate charge or add charge at any time during the trial before pronouncement of judgment.

3. Learned counsel relied upon the judgment passed in Criminal Application (APL) No.1146/2018 of this bench at Nagpur in that case it was held that the charge cannot be framed for enhancement of punishment which could be imposed on the accused with retrospective effect. This judgment has no applicability to the present case.

4. The learned APP submits that the court has very much power to alter or add charge at any stage. What needs to be seen is only a fact that whether there is sufficient material on record to frame the charge. He relies upon the judgment in the case of Hasanbhai Valibhai Qureshi Vs State of Gujrat reported in 2004 AIR (SC) 2078. By relying upon para 9 and 10 he submits that the Code gives ample powers to the courts to alter or amend the charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or he is not prejudiced either by keeping him in the dark about the charge. In this case, the petitioner has failed to show as to in what manner a prejudice is caused to him framing the charge. It is not the case that he will be deprived of the opportunity to defend the charge. This court, thus do not find any reason to cause interference in the impugned order. Hence, the petition fails & stands dismissed.

[KISHORE C. SANT, J.]