

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO. 286/2019

**Manishkumar Shankarlal Sarda and anr...Versus... State of Maharashtra and
ors**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.D.Deoras, Advocate for applicants
Mr. A.R.Chutke, APP for Respondent No. 1
Mr. M.PKhajanchi, Advocate for Respondent Nos.3 to 5

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/01/2022

Heard Mr. Deoras, Advocate for the
applicants, Mr. Khajanchi, Advocate for Respondent Nos. 3
to 6 and learned APP for Respondent/State.

The application challenges the order below
Exh. 36, dated 2.3.2019 passed by the learned Sessions
Court on an application under Section 216 of the Cr.PC for
seeking alteration of charge from one under Section 306 of
the IPC to Section 302 of the IPC. The learned Sessions
Court has recorded that the printed FIR prima facie reveals
that the accused had abetted the deceased Priya in
committing suicide and there is also an allegation that the
suicidal note was hidden and destroyed by the accused.

Learned counsel for the applicant has relied
upon **Anant Prakash Sinha vr. State of Haryana (SC) 2016**
(6) SCC 105, to submit that an application can be
maintained by the complainant for adding additional

charge. The above proposition is opposed by Mr. Khajanchi, learned counsel for Respondent Nos. 3 to 6 by relying upon **P Kartikalaxmi vrs. Shri Ganesh and another (2017) 3 SCC 347**.

The Sessions Court has observed that perusal of the medical papers prima facie demonstrate that there is no material to show that the cause of death of the deceased was homicidal one and not a suicidal one, in absence of which, there was nothing on record to alter the charge from Section 306 to Section 302 of the IPC. No material has been placed on record or brought to my notice by the learned counsel for the applicant to indicate otherwise, considering which I do not see any infirmity in the impugned order.

In so far as the contention that the complainant would be entitled to seek an alteration of charge, the Hon'ble Apex Court in **P Kartikalaxmi** (supra) has categorically held 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 alternation of charge, because it is not provided under Section 216 of Cr.PC., in view of which, alteration of charge cannot be claimed as a matter of a vested right. It would however be open for the complainant or the prosecution to bring to the notice of the learned Court any circumstances which may require the alteration of the

charge as held in **Anant Prakash Sinha** (supra) and in case such application is filed, it shall be the sole discretion of the Court whether to alter or not the charge framed.

In view of the above discussion, I do not see any merit in the revision application and the same is dismissed.

JUDGE

rvjalit