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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ CRIMINAL MISCELLANEOUS CASE NO. 4421 OF 2022,
CRL.M.A. 18014/2022 & CRL.M.A. 18015/2022

Between:-

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D/O XXX
R/O XXX

.....PETITIONER

(Through: Mr. Mahavir Sharma, Ms. Nikita Agarwal and Mr. K
P Singh, Advocates.).

AND

STATE
(GOVT. OF NCT OF DELHI) RESPONDENT NO. 1

DR. SURESH CHANDRA VATS
S/O OM PRAKASH SHARMA
R/O C-404, SARASWATI VIHAR,
DELHI-110088 RESPONDENT NO. 2

ALSO AT:

ORCHID PETALS APARTMENT, VILLA NO.9,
SOHNA ROAD, GURGAON

AND AT:

VIVEKANANDA INSTITUTE OF
PROFESSIONAL STUDIES,
AU BLOCK, RANIKHET, PITAMPURA,
DELHI-110034



NAVAL JHA
S/O SH. SATYANARAYAN JHA
R/O E-27, BEGAM VIHAR,
BEGUMPUR, DELHI **RESPONDENT NO. 3**

JAGDISH
S/O SH. BHIKAM RAM,
R/O VILLAGE & PO SAKRI,
TEHSIL BAIJNATH, KANGRA
HIMACHAL PRADESH **RESPONDENT NO. 4**

C/O C-404, SARASWATI VIHAR,
DELHI-110088

(Through: Mr. Utkarsh, APP for the State with SI Narain, PS: Maurya Enclave.

Mr. N. Hariharan, Senior Advocate with Mr. Sahil Ahuja, Mr. Vaibhav Sharma and Mr. Rakesh Malhotra, Advocates for R-2.)

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Pronounced on : 11.10.2022

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The petitioner in the instant petition under Section 482 of the Code of Criminal Procedure, 1973 (in short, Cr.P.C.) seeks for issuance of direction to the trial court to pass an order on the application under Section 216 read with Section 323 of the Cr.P.C for addition of charge under Section 376 of the IPC before proceeding further with the recording of evidence.

2. The facts of the case show that on 28.01.2015, the petitioner made a complaint to the SHO of Police Station Maurya Enclave, Delhi



regarding commission of offence of sexual harassment, stalking and threat to murder. Since no action was taken on the said complaint, therefore, the petitioner on 17.02.2015, filed an application under Section 156 (3) of the Cr.P.C before the court of learned ACMM, Rohini courts for issuance of direction to register an FIR. On 17.02.2015 itself, before issuance of any direction on her petition under Section 156 (3) of Cr.P.C., the concerned police registered an FIR No.149/2015 against the respondent for offences punishable under Sections 376(2)(d)/354/354A/354B/354D/506/201/34 of the IPC and 67A of the Information Technology Act, 2000 (in short 'IT Act')

3. After investigation, the police submitted the chargesheet. On 18.01.2018, the learned Additional Sessions Judge discharged respondent No.2/accused for the offence punishable under Section 376 (2) (d) of IPC. However, the said court found the respondents/accused to be liable for trial for other offences. Since the other offences were triable by Magistrate, accordingly, the respondents/accused were directed to appear before the CMM, North-West in terms of Section 228 of Cr.P.C for trial of other offences, for which chargesheet was filed against them.

4. During the course of the trial, the learned trial court proceeded to record the evidence of prosecution witnesses. After examination of the prosecutrix as PW-6, she was extensively cross-examined and, thereafter, on 23.07.2022, when her evidence was complete, the petitioner/prosecutrix filed an application under Section 216 read with Section 323 of the Cr.P.C before the concerned Metropolitan Magistrate for addition of charge under Section 376(2)(d)(k) of the IPC and for committal of the trial to the Sessions Court. Along with the aforesaid



application, the petitioner also filed an application under Section 216 (4) of the Cr.P.C. for adjournment of the proceedings. On 23.07.2022, the learned MM had taken note of the said application and granted time to the defence counsel to file appropriate reply to the said application. The trial was accordingly directed to be listed for argument on the pending application as well as for further prosecution evidence on 29.07.2022. The matter was taken up for further consideration on 30.07.2022 instead of 29.07.2022. The learned counsel appeared on behalf of the complainant and made his arguments on the application under Section 216 of the Cr.P.C. The court thereafter proceeded to record that the matter to come up for orders/evidence on 08.08.2022. The aforesaid order was immediately objected by the learned counsel appearing on behalf of the complainant on the ground that the application under Section 216 of the Cr.P.C. should be decided first before proceeding to take further evidence. According to him, even if the application is not being decided, the learned Judge should adjourn the matter till appropriate order on her application under Section 216 of the Cr.P.C. is passed. The learned MM, however, posted the matter on 08.08.2022 itself, as has been directed by the court concerned in its initial part of the order sheet. On 08.08.2022, the Presiding Officer was on leave. Therefore, the matter was further taken up on 22.08.2022. The learned MM on 22.08.2022, directed for further arguments on the application under Section 216 of the Cr.P.C. and for prosecution evidence on 01.09.2022. On 01.09.2022, the matter was further adjourned for recording of further prosecution evidence on 20.09.2022.

5. The learned counsel appearing on behalf of the petitioner submits that the course followed by the learned MM is absolutely illegal and



improper, inasmuch as, when an application under Section 216 of the Cr.P.C. is under consideration, the trial court should not have proceeded to record further prosecution evidence as the same would result in causing great prejudice to the petitioner. If her application for addition of charge is accepted, the trial will have to be committed to the Court of Sessions and hence the entire exercise of recording of the further evidence would become a futile exercise. In support of his submissions, he has placed reliance on decisions of the Hon'ble Supreme Court in the matters of *Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh & Ors.*¹ and *Anant Prakash Sinha v. State of Haryana & Anr.*². Reliance is also placed on the decision of this court in the matters of *Mahender Singh v. State of NCT of Delhi and Ors.*³, *X v. State of NCT of Delhi and Anr.*⁴ and the decision in the matter of *Miss Y v. State & Anr.*⁵.

6. Learned senior counsel appearing on behalf of the respondents/accused, on advance notice, opposes the prayer and submits that the entire endeavor by the petitioner is to protract the proceedings of the trial. According to him, a detailed reply to the application submitted by the petitioner was filed by the accused. It has also been submitted that the provisions under Section 216 of the Cr.P.C. are enabling in nature and it is for the court concerned to decide at appropriate stage as to whether the charges in question are required to be altered or to be added. Learned senior counsel places reliance on the decision of the Hon'ble

¹ 2020 12 SCC 467

² (2016) 6 SCC 105

³ 2020 SCC OnLine Del 1760

⁴ 2016 SCC OnLine Del 2742

⁵ 2016 SCC Online Del 5185



Supreme Court in the matter of *P Kartikalakshmi v. Sri Ganesh and Anr.*⁶, and submits that the instant petition is misconceived and this court should not entertain it, at this stage.

7. I have heard learned counsel appearing on behalf of the parties and perused the record.

8. The question which requires to be considered by this court is as to whether the trial court has committed any error in keeping the application under Section 216 of the Cr.P.C. pending and simultaneously proceeding with recording of the further prosecution evidence. In the case in hand, the Magistrate has not declined to entertain the application or the instant is not the case where the Magistrate has passed an order rejecting the application. It is the case where no order on an application under Section 216 of the Cr.P.C. has been passed. The question that arises for consideration is whether this court should direct the Magistrate to pass order on an application under Section 216 of the Cr.P.C., at this stage.

9. Under the provisions of Section 216 of the Cr.P.C., the court is certainly authorized to alter or add to the charge at any time before the judgment is pronounced. Sub-Section 216 (4) of the Cr.P.C. 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 Cr.P.C. deals with recalling of the evidence when the charge is altered or added by the court, after commencement of the trial. The Hon'ble Supreme Court in the matter of *P Kartikalakshmi (supra)* as cited by the

⁶ (2017) 3 SCC 347



respondents has held that the power vested with the court is exclusive to the court and there is no right with any party to seek for such addition or alteration by filing any application as a matter of right. It has also been held that the provision 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 needs to be passed for that purpose.

10. It is, thus, seen that so far as the interpretation with respect to provision of Section 216 of the Cr.P.C. is concerned, the same is an enabling provision. The decision in the case of ***P Kartikalakshmi (supra)*** is fully applicable. The same is a binding precedent for the issue involved in the instant case. As far as the decision in the case of ***Dr. Nallapareddy Sridhar Reddy (supra)*** cited by the learned counsel appearing on behalf of the petitioner is concerned, the same relates to a case where the appellant was aggrieved with the directions issued by the concerned court for framing of charges against him for offence punishable under Sections 406 and 420 of the IPC. Initially, the charges under Sections 406 and 420 of the IPC were not framed against the accused, however, the order of discharge was challenged by the other side before the High Court. The High Court opined that the order of the trial court was without any reason as ingredient of Sections 406 and 420 of the IPC were not attracted. Therefore, after examining the material available on record, the court directed for framing of additional charges under Section 406 and 420 of the IPC. The said order was challenged by the appellant in that case before the Hon'ble Supreme Court. It is thus seen that the decision in the case of ***Dr. Nallapareddy Sridhar Reddy (supra)*** would



not be applicable in the instant case as the said decision is an authority for the proposition laid down therein that alteration of charge can be made on the pronouncement of judgment also. The same is not the issue involved in the present case.

11. In the matter of *Anant Prakash Sinha (supra)*, the Hon'ble Supreme Court was considering two aspects of the matter. The first aspect was that whether without evidence being adduced, another charge could be added, and the second aspect, was as to whether the learned Magistrate was right in his approach in entertaining the application preferred by the informant. So far as the second aspect which was involved in the case of *Anant Prakash Sinha (supra)*, is concerned, the same may have relevance in the instant case but the fact remains that in the case of *Anant Prakash Sinha (supra)*, such an application was entertained by the Magistrate and charges were added.

12. So far as the other decision cited by the learned counsel appearing on behalf of the petitioner is concerned, the legal proposition laid down therein is not disputed. It is a settled law that singular fact can make a difference with respect to applicability of a particular decision. The precedent is an authority for the proposition laid down therein.

13. So far as the application with respect to Section 216 (4) of the Cr.P.C. for adjournment of the trial is concerned, the same is also misconceived. A perusal of Section 216 (4) of the Cr.P.C. clearly indicates that the same is subsequent to a decision of alteration or addition of charges. It is, therefore, stipulated therein that 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 for such period as may be necessary. It is, thus, seen that the stage of sub-section 4 of Section 216 of the Cr.P.C. is subsequent to the decision of alteration or addition of the charge. In the instant case, no such decision has yet been rendered by the court concerned. Therefore, the trial court has not erred in not adjourning the matter till the main application under Section 216 of the Cr.P.C. is decided.

14. A careful perusal of Section 216 of the Cr.P.C. and the scheme of Chapter XVII of the Cr.P.C. does not indicate that the trial court is required to pronounce its judgment on charges at multiple stages. Neither Chapter XVIII nor Chapter XIX of the Cr.P.C. envisages multiple orders on charges. Once charges are framed, the trial court is to proceed with the trial for recording evidence as per law and to pass judgment of acquittal or conviction. The mandate of 216 of the Cr.P.C. is not to scuttle the process of trial at intermittent stages but to enable the trial court to see whether it is required to alter or add any charge. This exercise of altering or adding may not be required in each trial and will depend upon the facts of individual trial whether such an exercise is warranted or not. The power under Section 216 of the Cr.P.C. is exercisable at any time before the judgment is pronounced. For exercise of such power, no application, oral or written, is necessary, however, there is no bar if any oral or written request is made but the same is not necessarily to be dealt with immediately, else the accused or the complainant at every stage may require the trial court to pass orders. The same would completely frustrate the purpose of speedy trial and the trial court would be compelled in deciding the trial in piecemeal.



15. In view of the aforesaid legal position it is clear that firstly, the provisions of Section 216 of the Cr.P.C. are enabling and can be exercised at any stage before pronouncement of the judgment; secondly, filing of such an application is not required and thirdly, since there is no bar on filing such an application, therefore, the application can be filed but it is not necessary to immediately pass an order on receipt of such an application. It is the duty cast upon the court to apply its mind and if necessary, alter or add any charge at any time before judgment is pronounced. Obviously, if such a decision is taken, the concerned court has to follow the further recourse as mentioned in Section 216 of the Cr.P.C. itself so as to ensure that no prejudice is caused either to the accused or the prosecution. The same is not the case here. The trial court in its discretion at the present stage of trial, does not find it necessary to alter or add any charge, either on its own or even on an application filed by the petitioner/prosecutrix. The High Court in exercise of its power under Section 482 of the Cr.P.C. should not issue any direction for passing of the order on such an application. Hence, in view of the aforesaid, this court is of the opinion that the trial court has not committed any error in proceeding further with the trial without passing any order on an application under Section 216 of the Cr.P.C.

16. However, looking to the legal position that under Section 216 of the Cr.P.C., the duty is cast upon the trial court to see that in an appropriate case, on the basis of sufficient material, it can alter or add charges, therefore, the trial court is at liberty to consider the application under Section 216 of the Cr.P.C. at an appropriate stage where it considers necessary.



17. In view of the above, the instant petition, along with pending applications, stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 11, 2022

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