

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21521 of 2016

Arising Out of PS. Case No.-203 Year-2014 Thana- DHAMDAHA District- Purnia

Kamal Kishore Gupta son of Late Vaisakhi Sah, Resident of village-
Chandrarahi, P.S.- Dhamdaha, District- Purnea

... .. Petitioner/s

Versus

1. State of Bihar
2. Vikash Kumar Gupta, S/o Vishwanath Sah, Resident of village-
Chandrarahi, P.S.- Dhamdaha, District- Purnea

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Siya Ram Shahi

For the Opposite Party/s : Mr.Anita Kumariapp

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

4 03-10-2023 The present petition, under Section 482 of the Cr.

P.C., has been preferred by the petitioner against the impugned
order dated 08.03.2016, passed by Ld. Additional District &
Sessions Judge-II, Purnea in Sessions Case No. 292 of 2015,
arising out of Dhandaha P.S. Case No. 203 of 2014, whereby
the application, filed under Section 216 Cr.P.C. on behalf of the
informant to add charge under Section 468 of the Indian Penal
Code, has been allowed.

2. The relevant facts of the case is that the FIR
bearing Dhamdaha P.S. Case No. 203 of 2014 was lodged
against the petitioner, being driver of Bolero vehicle bearing
registration no. JH 20A 7112, under Sections 279, 304A, 302,



467, 468 and 120B of the IPC. Subsequently, charge was framed under Sections 302 and 120B of the IPC. Thereafter, during trial, on application of the informant for addition of charge under Sections 468 of the IPC, Ld. Trial Court has added the charge under Sections 467 and 468 of the IPC.

3. Heard both the parties at length.

4. Ld. counsel for the Petitioner submits that alteration of charge is provided under Section 216 of the Cr. P.C. whereby it is the Court which may alter or add to any charge at any time before judgment is pronounced and no party is authorized to move any application for addition or alteration of any charge nor Court is required to entertain such an application from either of the parties. Any such application on behalf of either of the parties is not maintainable. Hence, the impugned judgment is not sustainable in the eye of law. He refers to a decision of Hon'ble Supreme Court in **P. Kartikalakshmi Vs. Sri Ganesh and Anr.** case as reported in **2017 3 SCC 347**, wherein Hon'ble Supreme Court has clearly held that power of invocation of Section 216 Cr.PC is exclusively confined to the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment. It was also made clear by Hon'ble Apex Court 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.PC. It was further held that 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. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 Cr. PC. Therefore, there was no question of the said order being revisable under Section 397 Cr. PC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. The whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court.

5. The **P. Kartikalakshmi** case (Supra) has been followed by Hon'ble Allahabad High Court in **Nanhe Bhaiya @ Nanhan Singh Vs. State of U.P.** as decided on 31st March, 2023.

6. Ld. APP for the State admits that in view of the aforesaid judgments, the impugned order is not sustainable.



However, he submits that even going by the said judgments, Trial Court is still at liberty to alter or add any charge on its own.

7. Considered the submissions advanced by both the parties and perused the material on record.

8. It is found that addition of charge has been made on application of the informant. However, considering the ratio of **P. Kartikalakshmi** case (Supra) and **Nanhe Bhaiya @ Nanhan Singh** case (Supra), the application moved by the prosecution to add charge under Section 468 was not maintainable. Hence, the Impugned Order allowing aforesaid application of the prosecution adding charge under Sections 467 and 468 of the Indian Penal Code is not sustainable in the eye of law. Hence, the impugned Order is accordingly set aside.

9. It is, however, clarified that the Trial Court is still at liberty to alter or add charge on his own as per law. Hon'ble Supreme Court in paragraph no. 6 of the Judgment **P. Kartikalakshmi** (Supra) has clearly held that 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.

10. Even, Hon'ble Allahabad High Court in the **Nanhe Bhaiya** case (Supra) has observed at the end of the judgment that it is made clear that the Ld. Trial Court concerned shall be at liberty to pass appropriate order keeping in view the provision contained in Section 216 Cr.P.C., on its own instance and also keeping in view the observation made herein above after affording opportunities to all concerned parties.

11. The present petition is accordingly allowed, with the aforesaid observation.

(Jitendra Kumar, J)

Amrendra/-

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