

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

CRIMINAL APPLICATION (APL) NO. 743 OF 2023

Arun S/o. Natthuji Zatale and Ors.

.VS.

The State of Maharashtra and Anr.

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

Mr Gajendra Sadar, Advocate for the applicants
Ms M. H. Deshmukh, APP for non-applicant No.1/State

CORAM : G.A. SANAP, J.
DATE : JUNE 19, 2023.

Heard learned Advocate for the applicants and
learned APP for non applicant No.1/State

2. In this criminal application, the applicants/accused have questioned the correctness of the order dated 14.02.2023 passed by the learned Judicial Magistrate First Class, Court No.1, Chandur Bazar, District Amravati whereby the learned Magistrate was pleased to allow the application made by the informant for alternation of charge framed under Section 324 to Section 326 of the Indian Penal Code.

3. The application under Section 216 of the Code of

Criminal Procedure was made by the complainant. It was not made by the prosecutor. Learned Magistrate has recorded in his order that x-ray report of the injuries sustained by the informant indicates that he had sustained fracture. The x-ray reports are on record at Exh. 46 & 47. It is the case of the prosecution that the injuries were caused by stick and iron pipe. Learned Magistrate initially framed the charge under Section 324 of the Indian Penal Code. The prosecutor, for the reasons best known to him, did not either apply for alternation of charge or made submissions before the learned Magistrate to that effect. The informant, who had sustained the fracture, applied before the learned Magistrate under Section 216 of the Code of Criminal Procedure. Learned Magistrate has observed in the order that the informant had sustained the fracture. It has also been observed in the order that these injuries were caused by dangerous weapon or means.

4. The main objection of the accused to this order passed by the learned Magistrate is that the application made for alternation of the charge by the informant was not maintainable under the law. In support of this submission reliance has been placed on the decision in the case of ***P. Kartikalakshmi .v/s. Sri Ganesh and Another***, reported in,

(2017) 3 SCC 347, wherein it is held that the powers under Section 216 are vested in the Court exclusively. There is no right in any party, neither *de facto* complainant nor accused nor prosecution, to seek such addition or alternation by filing any application as a matter of right.

5. In my view, in this case undisputedly the application was made by the informant. The informant or the prosecutor could have brought this fact to the notice of the Court and requested the Court to consider the alternation of charge. Learned Magistrate then was required to apply his mind to the material placed on record and proceed further for alternation of charge. It is to be noted that in my view considering the law laid down by the Apex Court in ***P. Kartikalakshmi (supra)*** the order passed by the Magistrate altering the charge cannot be sustained. Therefore, the order has to be set aside.

6. It is to be noted that as per Section 216 of the Code of Criminal Procedure the Court can alter or add the charge at any time before the judgment is pronounced. In this case, the evidence of the prosecution is going on. The duty has been cast on the Court to frame the proper charge consistent with the case of the prosecution and the material complied

in the charge sheet. In this case, the x-ray reports are on record. The x-ray report and the x-ray plates indicate that the informant had sustained fracture. The fracture falls within the grievous hurt as understood by Section 320 of the Indian Penal Code. It is undisputed that the weapons used in the crime are stick and iron pipe. Learned Magistrate has recorded in his order that these injuries were caused by dangerous weapons or means. In the fact situation, even if the order passed by the learned Magistrate is set aside, in the backdrop of the law laid down by the Hon'ble Apex Court, I am of the opinion that in order to avoid miscarriage of justice, it would be the duty of the learned Magistrate to alter the charge invoking his power under Section 216 of the Code of Criminal Procedure and by following procedure and mechanism provided under Section 216 of the Code of Criminal Procedure strictly. Accordingly, the application is **allowed.**

7. The impugned order dated 14.02.2023 passed by the learned Judicial Magistrate First Class, Court No.1, Chandur Bazar, is quashed and set aside.

8. Learned Magistrate is directed to alter or add the charge framed under Section 324 of the Indian Penal Code

and frame the charge under Section 326 of the Indian Penal Code.

9. The learned Magistrate shall follow the procedure in entirety as provided under Section 216 of the Code of Criminal Procedure.

10. Learned Magistrate shall alter the charge within 15 days from today. Considering the fact that the charge sheet was filed in the year 2011, the learned Magistrate shall decide the case within a period of three months from today.

11. The criminal application stands **disposed of**.

(G. A. SANAP, J.)

Namrata