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Crl.R.C.No.1797 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1797 of 2023

1.M.Ramamoorthy

2.K.Sudhakar

... Petitioners/A1 & A2

Vs.

State represented by,
Deputy Superintendent of Police,
Vigilance and anti-Corruption,
Krishnagiri District.

... Respondent/Complainant

PRAYER: The Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the learned Chief Judicial Magistrate, Krishnagiri, in Crl.M.P.No.12926 of 2023 in Spl.C.C.No.04 of 2011 dated 11.10.2023.

For Appellants : Mr.P.Ezhil Nilavan

For Respondent : Mr.C.E.Pratap,
Government Advocate (Criminal side)



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ORDER

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This revision has been filed seeking to set aside the order passed by the learned Chief Judicial Magistrate, Krishnagiri, in Crl.M.P.No.12926 of 2023 in Spl.C.C.No.04 of 2011 dated 11.10.2023, whereby the trial Court has dismissed the petition filed under Section 216 of Cr.P.C. to alter the charges framed against the accused and proceed further according to law in Spl.C.C.No.04 of 2011.

2. The case of the prosecution is as follows:

2.1. The first petitioner/A1-Ramamoorthy was temporarily deputed to the office of Assistant Engineer, TNEB, Pochampalli for about two hours daily in the morning and was working as Technical Assistant in the office of the Executive Engineer, Pochampalli and entrusted to prepare estimates for free Agricultural Electricity connections in the office of the Assistant Engineer, TNEB, Pochampalli. While that being so, on 18.04.2009 one Palaniammal has given an application for obtaining electricity connection and at that time A1 has demanded a sum of Rs.400/- as bribe for effecting electricity connection and to fix an



electric meter and thereby, A1 had committed an offence under Section 7 read with 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and thereby, the first charge against him.

2.2. The second petitioner/A2-Sudhakar is not a public servant and that the second charge against him is that he being the son-in-law of A1 abetted A1 to receive bribe and thereby charged under Section 7 r/w 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act r/w 109 of IPC.

2.3. The third charge framed against A1 is that by misusing his official position, he had received a sum of Rs.300/- as bribe from one Balakrishnan at his office on 22.04.2009 and handed over the same to A2 and thereby, A1 had committed an offence u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

2.4. The fourth charge framed against A2 is that in continuation of the same, A2 knowing that the said amount of Rs.300/- was bribe amount received from Balakrishnan as illegal, received the same from A1 and committed an offence u/s 13(2) r/w 13(1)(d) of Prevention of Corruption



Act, 1988 r/w 109 of IPC.

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2.5. Now, the trial has commenced and when the case was posted for cross-examination of P.W.15-the Investigating Officer, the petitioners had filed the petition under Section 216 Cr.P.C., to alter the charges framed against the accused and proceed further according to law in Spl.C.C.No.4 of 2011.

2.6. The averments in the petition filed by the petitioners is that the first accused was charged u/s 7 r/w 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the second accused was charged under Section 7 r/w 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act r/w 109 of IPC. Admittedly, when A2 is not a public servant, who came to the office of A1 to inform about the illness of his wife, who was admitted in the hospital and his name also does not find place in the FIR, the charges framed against him u/s 7, 13(2) r/w 13(1)(d) will not attract. The further averment in the petition is that both Sections 109 IPC and 12 of PC Act are one and the same and when there is no express provision made for abetment only section 109 IPC is applicable



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and in this case, charges framed under both Section 109 IPC and Section 12 of PC Act, will cause great prejudice to the accused and sought to alter the charges framed against them.

2.7.The respondent had filed counter contending that if any incorrect charges are framed against A2 the Court may at its exclusive discretion, if necessary, alter the charges before pronouncing the judgment and in the instant case, P.W.15-Investigating Officer was already cross-examined by the defence and at this stage, the petitioners had filed the above said petition only to drag on the proceedings and the Spl.C.C.No.4 of 2011 is of the year 2011 and sought to dismiss the petition.

2.8. The trial Court, after hearing both sides, dismissed the said petition finding that the contention of the petitioner that A2 is not a public servant and not abetted A1 in receiving the bribe is a question to be answered during the judgment and it could not be a ground to alter the charges and only after hearing the petitioners, the charges had been framed against them on 08.12.2015 and the witnesses P.Ws.1 to 15 were



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examined and only to protract the proceedings, the above petition has been filed at the fag end of the trial. The learned trial Judge, based on the judgment of the Apex Court in P.Nallammal Vs. State (1999(6) Supreme Court Cases 559) further held that for a private individual, Section 109 IPC could be invoked for his abetment in committing offence under Section 13 of P.C. Act by a public servant. Challenging the said order, the present petition has been filed.

3. Learned counsel for the petitioners would submit that when the second petitioner/A2 is an individual, the charge against him for the offence under Section 12 P.C. Act and Section 109 IPC cannot be sustained and thereby, he would submit that charge has to be altered and the revision has to be allowed.

4. Per contra, Mr.C.E.Pratap, learned Government Advocate (Criminal Side) would submit that it is the case of the year 2011 and the charges were framed as early as on 08.12.2015 and thereafter P.Ws.1 to 15 have been examined by the prosecution and P.W.15 is the Investigating Officer and the petitioners have cross-examined him in



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part. He would further submit that at that point of time, the petitioners have filed the petition seeking to alter the charges framed against them on the ground that A2 is not a public servant and not abetted A1, who is public servant in receiving the bribe. He would also submit that to drag on the proceedings Crl.M.P.No.12926 of 2023 has been filed at the fag end and the trial Court has posted the case for judgment on 31.10.2023 and there is no merit in the case and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal side) appearing for the respondent and perused the materials available on record.

6. Before the trial Court, Crl.M.P.No.12926 of 2023 has been filed by the petitioners under Section 216 Cr.P.C., seeking to alter the charges framed against them during the cross examination of P.W.15-the Investigation Officer.

7. In order to adjudicate upon the dispute, it is necessary to refer to Section 216 of CrPC:



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“216. Court may alter charge.—

- (1) Any court may alter or add to any charge at any time before judgment is pronounced.
- (2) Every such alteration or addition shall be read and explained to the accused.
- (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
- (4) 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 the trial for such period as may be necessary.
- (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

8. Coming to the power under Section 216 Cr.P.C., to alter or add



any charge, which is no more res integra, it is well settled that the power under Section 216 Cr.P.C. is exclusive to the Court at any time before the judgment is pronounced and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right.

9. It is apposite to refer the judgment of the Hon'ble Apex Court in *P.Kartikalakshmi V. Sri Ganesh and another* ((2017) 3 Supreme Court Cases 347) wherein it has been held that the power under Section 216 Cr.P.C. vested in Court is exclusive to the Court and there is no right for any party, neither de facto complainant nor accused nor prosecution, to seek such addition or alteration by filing any application as a matter of right and the relevant paragraphs are as follows.

“6. Having heard learned Counsel for the respective parties, we find force in the submission of learned senior Counsel for Respondent No. 1. Section 216 Code of Criminal Procedure empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the



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offence, the power is always vested in the Court, as provided Under Section 216 Code of Criminal Procedure to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It 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 need 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.

7. We were taken through Sections 221 and 222 of the Code of Criminal Procedure in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Code of Criminal Procedure We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 Code of Criminal Procedure is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear 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 Code of



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Criminal Procedure 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 jeopardized.

8. 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 Code of Criminal Procedure. Therefore, there was no question of the said order being revisable Under Section 397 Code of Criminal Procedure. The whole proceeding, initiated at the instance of the Appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available Under Section 216 Code of Criminal Procedure. To that extent having clarified the legal position, we make it clear that 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. As rightly pointed out by the learned senior Counsel for Respondent No. 1, such a course adopted by the Appellant and entertained by the Court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the Court below."

10. Following the principles laid down in the order referred to supra, this Court finds that the petition filed by the petitioners/accused



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seeking alteration of charge is not maintainable and this Court do not find any error or infirmity in the order passed by the trial Court.

Accordingly, the above criminal revision case stands dismissed.

30.10.2023

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To

1. The XII Additional Special Judge for CBI cases,
Chennai
2. The Deputy Superintendent of Police,
Vigilance and anti-Corruption,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA,J.

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