

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.428 of 2021

Arising Out of PS. Case No.-92 Year-2015 Thana- RAHIKA District- Madhubani

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1. MUKTESHWAR MISHRA Son of Late Harshit Mishra Resident of Village - Dumri, P.S. Rahika, District - Madhubani.
 2. AMIT MISHRA Son of Sri Mukteshwar Mishra Resident of Village - Dumri, P.S. Rahika, District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. SHYAM SUNDER MISHRA Son of Late Deokant Mishra Resident of Village - Dumri, P.S. Rahika, District - Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Udbhav Pravin Kumar, Advocate
For the State	:	Mr. Abhay Kumar, A.P.P.
For the O.P. No.2	:	Mr. Subhash Kumar Jha, Advocate Mr. Sunil Kumar, Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 02-04-2024 Heard learned advocate for the petitioners and learned Additional Public Prosecutor for the State as well as learned advocate on behalf of opposite party no.2.

2. An order dated 19.03.2021 passed by the learned Sessions Judge, Madhubani in Cr. Revision No.378 of 2019 is under challenge in the instant revision.

3. It is submitted on behalf of the petitioners that upon investigation, police submitted charge sheet in connection with Rahika P.S. Case No.92 of 2015 under Section 341, 323, 504/34 of the Indian Penal Code. The aforesaid police case gave rise to



G.R. Case No.1916 of 2015, it appears from the order passed by the learned Additional Chief Judicial Magistrate on 08.11.2016 that the accused persons were examined under Section 251 of the Cr.P.C.. Substance of acquisitions under Section 341, 323, 504/34 of the I.P.C. was read over and explained to the accused persons, they pleaded not guilty. Accordingly, the case was fixed for recording evidence. Subsequently, the informant filed an application under Section 216 of the Cr.P.C. praying for adding charge under Section 324 of the I.P.C. The said application was rejected by the Trial Court on the ground that the prosecution failed to bring any new material/evidence nor produced any witnesses before the Court and there was no sufficient ground to frame charge against the accused persons for the offence punishable under Section 324 of the I.P.C.

4. The aforesaid order dated 07.09.2019 was challenged in revision before the Additional Sessions Judge, Madhubani at the instance of the informant. The learned Sessions Judge by his order dated 19.03.2021 allowed the revision and directed the Trial Court to pass a fresh order in accordance with law. The aforesaid order is under challenge in the instant revision.

5. Section 216 of the Cr.P.C. speaks for alteration of



charge. Section 216 of the Cr.P.C. runs thus :-

“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.”

6. Plain reading of the aforesaid provision shows that a complainant or prosecution is open to apply for alteration of charge under Section 216 of the Cr.P.C. even at the stage of Trial and if such application is made, a judge is not required to go in detail every statement/evidence which has been collected by the Investigating Officer at the stage of framing of charges. The decision of the Hon’ble Allahabad High Court in the case of *Nepali Devi Vs. State of Uttar Pradesh* reported in **(2019) SCC Online All. 4366** supports the view of this Court.

7. It is submitted by the learned advocate for the petitioners that the Trial Court can only convert a summons case into a warrant case under the provision of Section 259 of the Cr.P.C. when in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner



provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.

8. It is submitted by the learned advocate for the petitioners that without commencement of trial, the trial court is under no obligation to alter the charge incorporating section 324 of the I.P.C.

9. It is needless to say that in summons procedure case, the accused is examined under Section 251 of the Cr.P.C. on the basis of the materials collected by the Investigating Officer during investigation. Similarly, in warrant cases on police report, charge is framed on the basis of the police report i.e. charge sheet and the materials collected by the Investigating Officer. It is found from the impugned order that the Investigating Officer collected medical report of the informant and the medical report suggested that the informant received incised injury on his leg. Allegation of the informant is that one of the accused assaulted him with Bhala (a sharp cutting weapon) on his leg. He sustained bleeding injury due to such assault. The nature of injury clearly suggest an acquisition under Section 324 of the I.P.C. The Trial Court failed to consider the materials on record available in the case diary at the time of examination of the accused under Section 251 of the Cr.P.C.



This Court is sure that had the medical document been seen by the learned Magistrate he ought to have decided to frame charge under Section 324 of the I.P.C. It is not out of place to mention that Section 259 of the Cr.P.C. comes into operation at the stage of Trial of a summons procedure case. While trying a case under summons procedure, if the Magistrate finds that interest of justice demands trial by applying warrant procedure. It is open for him to recall the witnesses.

10. When evidence has not been recorded as yet and it is found from the record that the Investigating Officer ought to have submitted the charge sheet under Section 324 I.P.C. but he omitted to submit such charge sheet. The Court cannot be directed to go on for Trial on the basis of examination of the accused under Section 251 of the Cr.P.C. Charge can be altered at any stage, when in a summons procedure case, it is found by the revisional Court that there is medical report in the case diary showing incised injury of the informant. Such material clearly attracts Section 324 of the I.P.C. and on the basis of such prima-facie satisfaction the Revisional Court directed the Trial Court to pass an order afresh taking into consideration the materials in the case diary, especially the injury report of the informant.

11. I do not find any illegality or irregularity in the



impugned order and the instant revision is liable to be dismissed. Accordingly, the revisional application is dismissed. There shall be no order as to costs.

(Bibek Chaudhuri, J)

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