

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

233/2

CRR No. 2382 of 2022 (O&M)

Date of Decision: 29.02.2024

Shriram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Priyavrat Parashar, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.(ORAL)

1. The prayer in the present revision petition is for setting aside the impugned order dated 13.09.2022 passed by learned Additional Sessions Judge, Kaithal vide which the application filed by the petitioner-complainant under Section 216 of the Cr.P.C. for addition of sections 363, 365, 385, and 468 of the IPC in FIR No. 128 dated 04.04.2016 filed under Sections 120-B, 306, 342, 420, 467, 471 and 506 of the IPC registered at Police Station City Kaithal, has been dismissed.

2. Briefly, the facts are that on 21.06.2012, the accused intoxicated the brother of the petitioner-complainant Shriram, namely Rajbir and got an agreement to sell pertaining to land measuring 19 Kanal 18 Marlas situated in the area of Patti Koth and a receipt for Rs. 40,00,000/- executed from him, without making any payment. The accused also obtained his thumb impressions/ signature on many typed and blank papers. Rajbir was kept confined in the house of the accused-Krishan @ Tiwari at gun point. On

23.06.2012, after being released, Rajbir narrated the entire incident to his family after which, a panchayat was held wherein the accused-Krishan @ Tiwari admitted to the allegations. The accused-Krishan @ Tiwari received Rs. 65,000/- for alcohol related expenses and promised to cancel the agreement to sell and the receipt before the panchayat but failed to do the same.

3. On 23.11.2015 complainant-Shriram moved an application before the Superintendent of Police, Kaithal to initiate legal proceedings against the accused. The same was marked to CIA 3rd Police Line, Kaithal where the statement of Rajbir was also recorded. The final report under Section 173 Cr.P.C. dated 14.06.2016 (Annexure P-3) was filed against the accused only under Sections 420, 120-B, 342, 506 of the IPC. A supplementary challan dated 10.04.2018 (Annexure P-4) was filed whereby offences under Sections 467, 471, 306 of the IPC were added and four other persons were arrayed as the accused. Subsequently, charges were framed by the learned Additional Sessions Judge, Kaithal vide order dated 18.07.2018. Thereafter, the petitioner filed an application through Public Prosecutor, Kaithal for addition of charges for offences under Sections 363, 365, 385, 468 of the IPC, which was dismissed vide impugned order dated 13.09.2022 and which order has been impugned in the present revision petition.

4. Learned counsel for the petitioner *inter alia* contends that the material available on record which includes affidavit clearly indicates commission of offences punishable under Sections 363, 365, 385, 468 of the IPC. The FSL report dated 09.01.2020 (Annexure P-8) also corroborates signatures of the accused-Krishan further fortifying the prosecution case.

The learned Court below has erroneously dismissed the application of the petitioner/complainant for alteration of charges under Section 216 Cr.P.C.

5. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the trial Court has exercised the power under Section 216 Cr.P.C., on the application filed by the prosecution and it is a trite law that alteration or addition of charge may be done if in the opinion of the Court, there was omission in framing of the charges or if upon *prima facie* examination of the material brought on record, it leads the Court to form presumptive opinion with regard to the existence of factual ingredients, making out a case for the alleged offence. The Hon'ble Supreme Court in **Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh, 2020(1) R.C.R. (Criminal) 787**, has culled out the test to be adopted by the Court, while deciding the issue with regard to addition or alteration of charges and observed that Section 216 Cr.P.C. provides the Court with an exclusive and wide-ranging power to change or alter any charge but such alteration can only be done, if there was an omission in the framing of charges or the Court comes to the conclusion that a *prima facie* examination leads the Court to form such presumptive opinion, as to the existence of the factual ingredients constituting the alleged offence and such material brought on record, has direct nexus with the ingredients of the alleged offence and such power has to be exercised judiciously and to ensure that no prejudice is caused to the accused.

6. Further, it is a settled law that power under Section 216 Cr.P.C., cannot be invoked at the instance of complainant, accused or the prosecution, the power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision. A two Judge Bench of the Hon'ble Supreme Court in **P. Kartikalakshmi v. Sri Ganesh 2017(3) SCC 347**, has held that:

- context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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.”*
7. In view of the facts and circumstances of the case and the ratio of law laid down in **Dr. Nallapareddy Sridhar Reddy (supra)** and **P. Kartikalakshmi (supra)**, this Court is of the considered opinion that the trial Court has committed no error in dismissing the application seeking amendment of charges. Resultantly, the present petition is dismissed and the order dated 13.09.2022 passed by learned Additional Sessions Judge, Kaithal, is hereby upheld.
8. Pending miscellaneous application(s), if any, also stand disposed of.

29.02.2024

(HARPREET SINGH BRAR)

Rajeev (rvs)

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No