

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59724 of 2024

Arising Out of PS. Case No.-324 Year-2011 Thana- MINAPUR District- Muzaffarpur

1. Fuldeo Mahto Son of Late Manki Mahto Resident of village - Ali Neura, P.S.- Meenapur, District - Muzaffarpur.
2. Santosh Kumar @ Santosh Mahto Son of Sri. Fuldeo Mahto Resident of village - Ali Neura, P.S.- Meenapur, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Prachi Pallavi, Adv.

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-02-2025

Heard the parties.

2. That this is an application for quashing the impugned order dated 14.05.2024, passed by the Court of Additional District & Sessions Judge-V, Muzaffarpur in Sessions Trial 656/2013 wherein the learned court has invoked the powers under Section 216 of the Cr.P.C., 1973 has altered the charge, by changing the date of occurrence.

3. The crux of argument as raised by learned counsel for the petitioner is that the petition under Section 216 of Cr.P.C. cannot be initiated by either of the parties rather it is for the Court to take notice for the amendment of charges as and when required and relied upon the legal report



of Hon'ble Supreme Court as available through **P. Kartikalakshmi vs. Sri Ganesh and Anr.** reported on **(2017) 3 SCC 347.**

4. In aforesaid context, it would be apposite to reproduce para nos. 7 and 8 of **P. Kartikalakshmi vs. Sri Ganesh and Anr. case (supra)** which reads as follows:-

"7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. 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 CrPC 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 CrPC. 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.

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 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. 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 CrPC. 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 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.”

5. Learned counsel for the petitioner further submitted that in view of above settled legal provision the impugned order which was passed by learned trial court be set aside as it was initiated on the basis of application moved by informant.

6. Learned APP while opposing the prayer of quashing submitted that from the facial perusal of impugned order, it transpires that only typographical error on FIR qua occurrence was corrected. It is submitted that date of occurrence is 16.11.2011 but it was wrongly mentioned as



19.11.2011 by SHO, Minapur. It is submitted that in fact the application was required to be moved under Section 362 of the Cr.P.C. as correction is apparently clerical in nature. It is further submitted by learned APP that now the record is fixed for argument and from impugned order it transpires that witnesses were not recalled for re-examination, therefore, no prejudice as submitted above caused to the petitioner. It is submitted that present petition preferred intentionally as to cause delay in trial.

7. In view of aforesaid, the present petition devoid of any merits.

8. Accordingly, the present quashing petition stands dismissed.

9. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2025
Transmission Date	07.02.2025

