



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 63 OF 2025

1. Jagannath Sandipan Acharya
Age 34 years, Occu. Agriculturist,
R/o Acharya Takli, Tq. Parli-Vaijnath,
Dist. Beed.
2. Sandipan s/o Ashruba Acharya
Age 69 years, Occu. Agriculturist,
R/o Acharya Takli, Tq. Parli-Vaijnath,
District Beed.
3. Sanjiwani w/o Sandipan Acharya
Age 56 years, Occu. Labour & Household,
R/o Acharya Takli, Tq. Parli-Vaijnath,
District Beed

..APPLICANTS

VERSUS

State of Maharashtra
Through the Police Station Officer,
Police Station Sirsala,
Tq. Parli-Vaijnath, Dist. Beed

..RESPONDENT

....

Mr. V.D. Salunke, Advocate for applicants
Ms. A.S. Deshmukh, A.PP. for the respondent - State

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CORAM : ABHAY J. MANTRI, J.
DATE : 08th OCTOBER, 2025

ORAL JUDGMENT :

1. The applicants, accused, are challenging the order dated 08th January, 2025, passed by learned Additional Sessions Judge, Ambajogai, below Exhibit 269 in Sessions Case No. 46 of 2020, whereby the learned

Judge allowed the application filed by the prosecution to add the words/sentence “*accused administered herbicide glyphosate*” in the charge and thereby altered the charge.

2. Heard learned counsel for the applicants and learned A.P.P. for the State. I have gone through the impugned order and record as well. I have also perused Section 216 of the Code of Criminal Procedure (for short- “*Cr. P C.*”) and judgments relied on by learned counsel for the applicants.

3. On 11th August, 2022, the learned Additional Sessions Judge, Ambajogai, has framed the charge against the applicants. I would like to reproduce the charge framed under Section 302 read with Section 34 of the Indian Penal Code as under :-

“That, during the intervening night of 04/08/2020 to 05/08/2020, between 10.00 p.m. and 7.00 a.m. in the Kitchen and Bedroom of the accused, bearing house No.212, situated at Acharya Takli, Tq. Parli Vaijinath, Dist. Beed, you accused No.1 to 3 in furtherance of a common intention, committed murder of Manisha by assaulting her by means of a wooden rod of Axe on her head, different parts of the body, lips with the intention of causing death, or with intention of causing such bodily injury as is likely to cause death and thereby committed an offence punishable u/sec. 302 r/w 34 of I.P.C. and within my cognizance.

That, on the same date, time and place, you, in furtherance of their common intention, gave the false information about the cause of death, alleging that the deceased Manisha consumed poisonous pesticides with the intention of screening you from legal punishment and thereby committed an offence punishable u/sec. 201 r/w section 34 of I.P.C. and within my cognizance.

That, from 17/02/2019 till 05/08/2020, you, in furtherance of common intention, caused physical as well as

mental harassment to the deceased Manisha due to non-satisfaction of unlawful demand of golden finger ring, four-wheeler and cash amount of Rs. 2,00,000/- to such an extent to drive her to commit suicide and thereby committed an offence punishable u/sec. 498(A) r/w section 34 of I.P.C. and within my cognizance.

And I hereby direct that you be tried on the above-said charge.”

4. It appears from the submission of learned counsel for the applicants that the prosecution closed the evidence, and the statement of the accused was also recorded under Section 313 of the Cr. P. C. and after conclusion of the argument, the prosecution, i.e. the A.P.P., has filed an application on 07th December, 2024, for the addition of the words, “***accused administer herbicide glyphosate***” in the charge. After hearing both parties, the learned Judge, by impugned order, allowed the said application and hence the applicants have preferred this revision application.

5. Learned counsel for the applicant vehemently contended that, as per Section 216 of the Cr. P. C., the Court is empowered to alter the charge *suo-moto*, but not based on the application filed by the prosecution. To buttress his submissions, he relied on the Judgment of the Hon’ble Apex Court in *P. Kartikalakshmi Vs. Sri Ganesh and Another (2017) 3 SCC 347*, and pointed out paragraph no.6 of the said judgment. He further argued that the investigation in the proceeding has already been concluded. A charge sheet has also been filed, and none of the witnesses stated or deposed that the applicants have administered ‘***herbicide glyphosate***’ to the deceased and in

absence of the material from the charge-sheet or evidence on record, learned A.P.P. filed the application to add the said words in the charge and the learned Judge without considering the mandate in Section 216 of the Cr. P. C. has erred in allowing the same, so he urged the revision application to be allowed.

6. He further propounded that the matter at hand clearly shows that the investigation agency has been ignored, and the public prosecutor himself, by signing the application, is trying to play the role of an investigation agency, which cannot be permitted. To support his submission, he has relied on the judgment of this Court in *Wazid Ansari v. Police Inspector and Ors., 2024(3) Bom. C. R. 89* and pointed out paragraph no.20 of the said judgment. Hence, he urged that the passing of the impugned order is contrary to the settled position of law and the mandate of Section 216 of the Cr. P. C., as such, is liable to be set aside.

7. The learned A.P.P. has strongly opposed the application on the ground that the order passed by the learned Judge is just and proper, and no interference is required in it. She further pointed out the evidence of PW 4 - Medical Officer, and paragraph no. 3 of his evidence, and submitted that the doctor opined that the '*herbicide glyphosate*' is detected in the viscera. She further drew my attention to the testimony of P.W. 5 – Mukta Kale, the mother of the deceased, and pointed out paragraph no.3 of her evidence. I have perused both the evidence. None of the witnesses has deposed that the

accused persons administered the '*herbicide glyphosate*' to the deceased. A query was put to the learned A.P.P. to point out from the charge-sheet or evidence on record, who has stated or deposed that the accused persons have administered '*herbicide glyphosate*' to the deceased. On going through the charge-sheet and evidence on record, she failed to point out that any of the witnesses have stated or deposed that the applicants have administered the '*herbicide glyphosate*' to the deceased.

8. Perused the judgment of the Apex Court in *P. Kartikalakshmi* (supra).

In paragraph no.6 of the said judgment, it has been observed thus :-

“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 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 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 come to its notice or are 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 the law.”

On bare perusal of the above observation, it appears that the Hon'ble Apex Court has categorically held that *"the Court is exclusively empowered to alter or add words in the charge at any time, and no right vests in any party either complainant or the accused to seek addition or alteration to a charge by filing an application as a matter of right, as it is not provided under section 216 of the Cr. P. C."* It further held that the application filed by the appellant therein before the trial court was not maintainable. Accordingly, the said appeal was dismissed.

9. In **Wazid Ansari** (supra), this Court has observed as under :-

"20. Matter in hand clearly goes to show that the Investigating Agency has been ignored, and the Prosecutor himself, by signing the application, is trying to play the role of the Investigating Agency, which cannot be permitted. The question of prejudice is certainly available to the accused for the simple reason that after a full-fledged investigation, a chargesheet is filed on a particular set of evidence. Even the charge is framed in the present matter on the basis of evidence or the documents attached to the chargesheet. The accused is certainly entitled to raise his defence on the basis of the material placed along with the chargesheet. If something else is produced which is not found in the chargesheet, the same is certainly going to affect the right as well as the defence of the accused."

10. On perusal of paragraph no. 8 of the impugned order, it appears that the evidence in the case at hand was over, and both parties finally argued the matter. Thereafter, the learned A.P.P. filed the application stating that the

cause of death of the deceased is ‘*administration of poison*’ and he advanced the said argument based on the FSL report submitted on the record. However, the learned trial Court has not considered the mandate in Section 216 of the Cr. P. C., as well as the law laid down in *P. Kartikalakshmi* (supra), erred in observing that the FSL report is received subsequently after framing of the charge. The final cause of death was subsequently brought to record. Therefore, the learned Judge has observed that “*it is settled law that the charge can be altered or amended at any stage,*” and thus allowed the application. The findings recorded by the learned Judge appear to be contrary to the mandate of Section 216 of Cr. P. C. No doubt, the Court is empowered to alter or add any charge *suo-moto at any time before the judgment is pronounced*, but not on the application by any party, and therefore, findings recorded by a learned Judge are improper and unjust. Based on the said findings, the order cannot be sustained in the eyes of the law, and as such, it is liable to be set aside.

11. Thus, considering the above discussion, it is evident that the application preferred by the respondent-state before the trial court itself was/is not maintainable, so it was not incumbent upon the learned Additional Sessions Court to pass an order U/s 216 of the Cr. P. C. Thus, the order passed by the learned Judge permitting the alteration of the charge or permitting the addition of some words/sentence in the charge based on the application filed by the prosecutor is contrary to Section 216 of the Cr. P. C.

Apart from that, without any material or evidence on record, the passing of the impugned order appears perverse, hence liable to be set aside.

12. In view of the above, the criminal revision application is allowed in terms of the prayer clauses (C) and (D). Accordingly, the order dated 08th January, 2025, passed by the learned Additional Sessions Judge, Ambajogai, below Exhibit 269 in Sessions Case No. 46 of 2020, is hereby quashed and set aside.

13. It is made clear that in view of Section 216 of the Cr. P. C. the Court is empowered to alter and/or add any charge at any time before judgment is pronounced. Learned A.P.P. is requested to inform the said order to learned A.P.P. appearing before the learned Sessions Court and contesting the matter.

(ABHAY J. MANTRI, J.)

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