



**116+206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-28451-2023 in/and
CRM-M-8380-2023 (O & M)
Reserved on: 08.01.2025
Pronounced on: 09.01.2025**

Raminder Pal Singh Khurana

...Petitioner

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aayush Gupta, Advocate for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.
Mr. Sahil Nain, Advocate and
Mr. Sandeep Kumar, Advocate for respondent No.2.

HARPREET SINGH BRAR J.

CRM-28451-2023

The present application has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking to place reply of respondent No.2, by way of affidavit, on the record.

For the reasons mentioned in the application, the same is allowed and the reply tendered by respondent No.2 is taken on record.

CRM-M-8380-2023

1. This present petition has been preferred under Section 482 Cr.P.C. seeking quashing of order dated 16.01.2023 (Annexure P-8) passed by the learned Additional Chief Judicial Magistrate, Ludhiana whereby the application under Section 216 Cr.P.C. was allowed in the case stemming from complaint bearing no. COMI/00248/2015 dated 29.01.2014 filed under Sections 420, 465, 467, 468, 471, 120-B IPC.

2. Briefly, the facts are that respondent No.2 had previously filed FIR No.132 dated 10.06.2011 registered under Sections 420, 465, 467, 468,



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471, 120-B IPC at Police Station Division No.5 Ludhiana City alleging that the petitioner and his brother had forged his signatures and transferred his 7900 shares to some other persons. However, a cancellation report was presented when the FSL report concluded that the forged signatures on the transfer slip do not match the handwriting of the petitioner or his brother. Thereafter, respondent No.2 moved the complaint (supra) and the learned trial Court summoned the petitioner and his brother for commission of offence under Section 420 IPC vide order dated 18.11.2017 (Annexure P-4). Charges were framed against the petitioner under Section 420 IPC vide order dated 01.06.2019 (Annexure P-5). Subsequently, respondent No.2 moved an application dated 05.01.2023 (Annexure P-6) under Section 216 Cr.P.C. seeking amendment of charges to include Sections 465, 467, 468, 471, 120-B IPC. The same was allowed vide impugned order dated 16.01.2023 (Annexure P-8) and the petitioner was additionally charged for the offences under Sections 465, 467, 468, 471, 120-B IPC.

3. Learned counsel for the petitioner *inter alia* submits that neither the summoning order nor the order framing charges was ever challenged by respondent No.2. The application under Section 216 Cr.P.C. was moved by respondent No.2, after four years when charges were initially framed against the petitioner. Further, the learned trial Court has failed to appreciate that a cancellation report was moved, on the basis of the conclusions drawn by the FSL, with respect to the FIR registered on the same allegations. Moreover, during investigation, it was realized that the amount for sale of 7900 shares, allegedly sold by the petitioner, was deposited in the account of respondent No.2. As such, the learned trial Court has erred in entertaining the complaint



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(supra) as well as allowing the said application as no wrongful loss has been caused to respondent No.2. Further still, respondent No.2 cannot cause the learned trial Court to review its own order under the garb of Section 216 Cr.P.C., as the same is impermissible in law. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***P. Kartikalakshmi vs. Sri Ganesh 2017(3) SCC 347.***

4. *Per contra*, learned counsel for respondent No.2 submits that the petitioner and his brother fraudulently transferred 3500 shares to one Narinderjit Singh by forging the signature of respondent No.2. They also transferred 4400 shares to Balwant Kaur, mother of the petitioner. In fact, the 3500 shares were later transferred from Narinderjit Singh to Balwant Kaur. He further submits that cancellation report was filed in the FIR case because of the influence exerted by the petitioner and his brother. Moreover, the learned trial Court has allowed the application under Section 216 Cr.P.C. by passing a well reasoned order. It must be noted that Section 216 Cr.P.C. does not prescribe any time limit for alteration of charges. It is settled law that the trial Court has unrestricted power to alter charges at any stage before the pronouncement of the judgment if it is of the opinion that a *prima facie* case is made out. Finally, respondent No.2 is well within his right to move an application under Section 216 Cr.P.C. and alteration of the charges by the learned trial Court would not amount to a review of its own order. Reliance in this regard is placed on the judgments rendered in ***Singh Saini vs. Sohan Singh (2015) 14 SCC 570, Surinder Kumar vs. State of HP 2003 CriLJ 290, CBI vs. Karimullah Osan Khan 2014 (3) Scale 335, Pradeepan vs. State of Kerala (1994) 2 Crimes 328 (Ker), State vs. Baijnath AIR 1953 All 191, A.A.***



Sng vs. *Union Territory of Manipur AIR 1961 Manipur 5* and *Jasvinder Saini vs. State (Govt. of NCT of Delhi) (2013) 7 SCC 256*.

5. Having heard learned counsel for the parties and after perusing the record 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 respondent No.2- the complainant. Proper adjudication of the case calls for a study of the said provision which is reproduced below:

Section 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. A two Judge Bench of the Hon'ble Supreme Court in *P.*

Kartikalakshmi vs. Sri Ganesh (supra), has held that:

“7....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.”*

Therefore, it can be safely concluded that respondent No.2 did not have any locus to file an application under Section 216 Cr.P.C. It is settled law that Section 216 Cr.P.C. cannot be invoked at the instance of complainant, accused or the prosecution, as this power lies exclusively with the Court.

7. While deciding the scope of exercise of the power to alter charges under Section 216 Cr.P.C., a two Judge bench of the Hon’ble Supreme Court in ***Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh, 2020(1) R.C.R. (Criminal) 787***, speaking through Justice Dhananjay Y. Chandrachud, observed as follows:

*“20. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. **The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence.** Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. **The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges.** Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.”* (emphasis added)



8. A reasoned analysis of the record indicates that there is no fresh material available on the record to indicate commission of offences under Sections 465, 467, 468, 471, 120-B IPC. The learned trial Court has cited the deposition of Bhupinder Walia, respondent No.2-complainant, who appeared as PW-1 and curiously, proved the FSL report (Ex. CA). It is rather surprising as to how the complainant, a layman, has proven an FSL report. Moreover, the application under Section 216 Cr.P.C. was moved by respondent No.2, after four years of framing of charges. It is evident that respondent No.2 has indulged in this exercise merely to unjustly protract the trial, which would inevitably cause prejudice to the petitioner. As such, this Court is of the considered opinion that no substantive material is available on record to consider alteration of charges.

9. Accordingly, 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 learned trial Court has erred in allowing the application seeking amendment of charges. Resultantly, the present petition is allowed and the impugned order dated 16.01.2023 (Annexure P-8) passed by the learned Additional Chief Judicial Magistrate, Ludhiana, is hereby set aside.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No