

CRM-M-32556-2017
Reserved on: 08.01.2025
Pronounced on: 09.01.2025

...Petitioner

versus

...Respondents

Present: Mr. Anuj Malik, Advocate and
Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondents No.2 to 6.

HARPREET SINGH BRAR J.

1. This present petition has been preferred under Section 482 Cr.P.C. seeking quashing of order dated 19.07.2017 (Annexure P-5) passed by the learned Additional Sessions Judge, Karnal. Vide order dated 25.01.2016 passed by the learned Judicial Magistrate 1st Class, Karnal, application under Section 216 Cr.P.C. was allowed and charges were altered to add Sections 379, 452, 354 of IPC in the case stemming from FIR bearing No. 231 dated 07.06.2013 registered under Sections 148, 149, 323, 506 IPC at Police Station Bhutana. A revision petition was preferred against the said order and vide impugned order dated 19.07.2017, the same was partly allowed and charges were altered to the extent of removing Sections 379 and 354 of IPC.

2. Briefly, the facts are that the petitioner-complainant moved a

complaint before the police on 06.06.2013 against eleven persons. It is alleged that all the said persons unlawfully entered the residence of the complainant when she, her daughter-in-law, and her sister were alone. Subsequently, they are alleged to have outraged the modesty of the complainant's daughter-in-law and caused injuries to her, the complainant, and her sister. Furthermore, it is alleged that while leaving the premises, the accused misappropriated gold and silver ornaments belonging to the complainant and her relatives. On the basis of this complaint, the police registered the FIR (*supra*) and after the investigation concluded, Final Report under Section 173 of Cr.P.C. was filed under Sections 323, 506, 148, 149 of IPC. Thereafter, charges were framed against the respondents-accused under the same sections vide order dated 25.09.2013 (Annexure P-2). Subsequently, the petitioner moved an application under Section 216 Cr.P.C. seeking amendment of charges to include Sections 379, 452, 354 IPC. The same was allowed vide order dated 25.01.2016 (Annexure P-3) and the respondents-accused were additionally charged for offences punishable under Sections 379, 452, 354 IPC. The respondents-accused preferred a revision petition against the said order which was partly allowed vide impugned order dated 19.07.2017 to the extent that while charges under Sections 354 and 379 of IPC were held not sustainable, charge under Section 452 was upheld.

3. Learned counsel for the petitioner *inter alia* submits that the learned Additional Sessions Court erred in interfering with the order passed by the learned trial Court. Firstly, the learned Additional Sessions Judge condoned a delay of four months without providing any sufficient justification. Furthermore, the learned Additional Sessions Court partly allowed the revision petition without fully appreciating the allegations as

leveled in the FIR (*supra*), which clearly establish the existence of a *prima facie* case under Sections 379, 452, 354 IPC. Moreover, despite there being specific allegations in the FIR (*supra*) the investigating officer failed to assign any cogent reason for deleting Sections 379, 452, 354 IPC. This omission was duly rectified by the learned trial Court after the petitioner moved an application under Section 216 of Cr.P.C. and therefore, the decision of the learned Additional Sessions Court is liable to be set aside.

4. *Per contra*, learned counsel for the respondents-accused contends that the order framing charges was never challenged by the petitioner. Further, the application under Section 216 of Cr.P.C. was moved by the petitioner after nearly 02 years from the date charges were initially framed against the respondents-accused. Lastly, it is averred that the impugned order has been passed by the learned Additional Sessions Judge after correct appreciation of the evidence on record in accordance with the law and therefore, no interference is warranted by this Court.

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 the petitioner-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.”*

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. In view of the discussion above, it can be safely concluded that the petitioner 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. As such, the application of the petitioner before the learned trial Court was inherently untenable. Consequently, the order dated 25.01.2016 passed by the learned trial Court was not amenable to revision under Section 397 of the Cr.P.C. before the learned Additional Sessions Court. Since the entire proceeding was initiated at the petitioner's behest, the initial order passed by the learned trial Court and all subsequent proceedings are liable to be set aside being legally non-maintainable.

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 19.07.2017 (Annexure P-5) passed by the learned Additional Sessions

Judge, Karnal and the order dated 25.01.2016 passed by the learned Judicial Magistrate 1st Class, Bhutana, Karnal, are hereby set aside.

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

Reserved on : 08.01.2025
Pronounced on : 09.01.2025
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(HARPREET SINGH BRAR)
JUDGE

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