

Subhash Kumar Ram and Ors Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Jul-17-2017

Appellant : Subhash Kumar Ram and Ors

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 421of 2017

---- 1. Subhash Kumar Ram, S/o Ram Chandra Ram.

2. Ram Chandra Ram, S/o late Parmeshwar Ram.

3. Brinda Devi, W/o Ram Chandra Ram, R//o village-Barachak, P.O. & P.S. Barachak, District-Burdwan (W.B.).Petitioners Versus The State of Jharkhand
.....Opposite Party ---- Coram: HON'BLE MR JUSTICE RONGON MUKHOPADHYAY ----- For the Petitioners: Mr. Nityanand Prasad Choudhary, Advocate For the State : APP For the Informant : Mr. Sheo Kumar Singh, Advocate ----- 03/17/07/2017 Heard the parties. This application is directed against the order dated 16.2.2017 passed by the learned Additional Sessions Judge-1, Jamtara in Jamtara P.S. Case No. 353 of 2015, whereby and whereunder the charge has been altered under the provisions of Section 216 Cr.P.C. to 366A and 120B of the Indian Penal Code and Section 10 of the POCSO Act. It has been submitted by the learned counsel for the petitioner that the charge was altered at the instance of the informant, which is not maintainable as under section 216 Cr.P.C. the power lies entirely with the court to alter charge suo motu or if it is

brought to the knowledge of the court there is no necessity of passing any order or entertaining an application preferred by the informant or by the State to alter charge under the provisions of Section 216 Cr.P.C. It has further been submitted that if such applications are allowed to be entertained, same would lead to unnecessary delay in disposal of the trial and ultimately a chaotic situation will emerge. Learned counsel in support of his contention has referred to a judgment of the Honble Supreme Court passed in the case of P. Kartikalakshmi Vs. Sri Ganesh and Another reported in (2017) 3 SCC347 Mr. Sheo Kumar Singh, learned counsel for the informant, on the other hand, has supported the impugned order and has stated that since sufficient reasons have been given, the charge was altered by the learned trial court to one under section 366A and 120B of the Indian Penal Code and Section 10 of the POCSO Act. Learned counsel submits that under section 216 Cr.P.C., the Court thus have the power to either suo motu alter charge or it -2- can alter charge on an application filed by the prosecution and in support of his contention he has referred to the case of Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana and Another reported in (2016) 6 SCC105 Factual aspect of the case as would be evident from the written report of the informant is that when he returned home from his duty on 1.10.2005, his wife had told him that one Subhash Kumar had taken away his daughter to the market but she has not yet returned. It is alleged that the informant and his wife tried to trace out their daughter but she could not be found which led to institution of an FIR being Jamtara P.S. Case No. 353 of 2015. The victim on being recovered was examined on 10.10.2015 under section 164 Cr.P.C.. After conclusion of investigation, chargesheet was submitted against the petitioners under section 366A, 376(i)/34 of the Indian Penal Code, pursuant to which cognizance was taken under section 366A of the Indian Penal Code only. Subsequently the case was committed to the court of Sessions and charge was framed under section 366 of the Indian Penal Code against the petitioner no. 1 and under section 366/120B of the Indian Penal Code against the petitioner nos. 2 and 3. The case was transferred to the Court of learned Additional Sessions Judge-1, Jamtara for disposal and during trial the informant had filed an application for amendment of the charge framed earlier to which the petitioners had also filed a rejoinder. Ultimately by impugned order dated 16.2.2017, learned trial court altered the

charge to one under sections 366A and 120B of the Indian Penal Code and Section 10 of the POCSO Act. The only question to be determined in this application is whether the learned trial court had the power to entertain the application preferred by the informant for amending/altering the charge. Learned counsel for the petitioner has referred to the judgment in the case of P. Kartikalakshmi (Supra), wherein while considering the powers of the court under section 216 Cr.P.C. with respect to the maintainability of an application for alteration of charge, it was held as follows:-

6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 Cr.P.C. 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 -3- vested in the Court is exclusive to the Court and there is no right in any party to seek for 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 Cr.P.C. 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 comes to its notice or 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 to 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 law.

7. We were taken through Section 221 and 222 Cr.P.C. in this 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 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 Cr.P.C.. Therefore, there was no question of the said order being revisable under Section 397 Cr.P.C. 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 Cr.P.C. To that extent, having clarified the legal position, we make it clear that the whole proceedings initiated as 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. Learned counsel for the informant has relied upon the judgement in the case of Anant Prakash Sinha @ Anant Sinha (Supra), wherein it was held as follows:- 18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is -4- that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 Cr PC.

22. Being of this view, this Court upheld the order passed by the High Court. The said decision in Shiv Kumar case is, in our opinion, is distinguishable on facts. The instant case does not pertain to trial or any area by which a private lawyer takes control of the proceedings. As is evident, an application was filed by the informant to add a charge under Section 406 IPC as there were allegations against the husband about the criminal breach of trust as far as her stridhan is concerned. It was, in a way, bringing to the notice of the learned Magistrate about the defect in framing of the charge. The court could have done it suo motu. In such a situation, we do not find any fault on the part of the learned Magistrate in entertaining the said application. It may be stated that the learned Magistrate has referred to the materials and recorded his prima facie satisfaction. There is no error in the said prima facie view. We also do not perceive any error in the revisional order by which the revisional court has set aside the charge framed against the mother-in-law. Accordingly, we affirm the order of the High Court in expressing its disinclination to interfere with the order passed in revision. We may clarify that the entire scrutiny is only for the purpose of framing of charge and nothing else. The learned Magistrate will proceed with the trial and decide the matter as per the evidence brought on record and shall not be influenced by any observations made as the same have to be restricted for the purpose of testing the legal defensibility of the impugned order. In the case of P. Kartikalakshmi (Supra), which was delivered on 12th August, 2014, it was categorically held that no party, neither defacto 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. However, it has been indicated therein that the Court can exercise its power under certain contingency which comes to its notice or is brought to its notice. Necessity for alternation or addition of charge, it may do so on its own and no order need be passed for that purpose. Judgement in the case of Anant Prakash Sinha @ Anant Sinha (Supra) was delivered on 4th March, 2016, in which considering the provisions of Section 216 Cr.P.C., which were invoked on an application preferred by the informant to add section 406 of IPC to the charge, it was held therein that such application was in a way bringing to the notice of the court about defects in framing of the charge. On the same breath, it was also stated that the Court could have altered or added the charge suo motu.

The above noted judgements have thrashed out the essence of Section 216 Cr.P.C. and although different views have been discussed in the said judgements but the common thread which runs through both the judgments are -5- that the Court may alter or add charge either suo motu or if it comes to the knowledge of the Court that a necessity had arisen for the charge to be altered or added. The filing of an application by the informant for alternation of charge in the present case was by way of bringing to the notice of the learned trial court the allegations so that charge be altered under sections 366A and 120B and Section 10 of the POCSO Act, which was duly accepted by the learned trial court. Learned trial court could have altered or added the charge suo motu but since the factual aspect was brought to the notice of the learned trial court and on proper consideration the power under section 216 Cr.P.C. was exercised by the learned trial court and the charges were altered. Sufficient reasonings have also been given by the learned trial court while passing the impugned order dated 16.2.2017. There being no error or illegality in the impugned order dated 16.2.2017, I am not inclined to entertain this application, which is accordingly dismissed. (Rongon Mukhopadhyay, J) Rakesh/

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