

Ananda Vs. State Of Karnataka

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Court : Karnataka

Decided On : Jun-08-2022

Judge : M.Nagaprasanna

Appeal No. : CRL.P 1829/2022

Appellant : Ananda

Respondent : State Of Karnataka

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE08H DAY OF JUNE, 2022 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA CRIMINAL PETITION No.1829 OF 2022 BETWEEN: ANANDA S/O JONAPPA AGED ABOUT30YEARS, R/AT TRUNASI VILLAGE MASTHI HOBLI, MALUR TALUK KOLAR DISTRICT - 563 139. ... PETITIONER (BY SRI BASAVARAJU T.A., ADVOCATE) AND:

1. STATE OF KARNATAKA BY MASTHI POLICE STATION, KOLAR DISTRICT REPRESENTED BY LEARNED STATE PUBLIC PROSECUTOR PUBLIC PROSECUTORS OFFICE AT HIGH COURT BUILDING, HIGH COURT OF KARNATAKA AMBEDKAR VEEDI AT BENGALURU - 560 001.

2. SUSHEELAMMA W/O LATE CHIKKATHIMMARAYAPPA AGED ABOUT46YEARS, R/AT TRUNASI VILLAGE MASTHI HOBLI2MALUR TALUK KOLAR DISTRICT - 563 139. ... RESPONDENTS (BY SRI K.S.ABHIJITH, HCGP

FOR R1; R2 SERVED - UNREPRESENTED) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE

ORDER

DATED 31.12.2021 PASSED IN S.C.NO.227/2018 BY HONBLE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT KOLAR DISTRICT. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

ON 24.05.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/accused No.1 in S.C.No.227 of 2018 has knocked the doors of this Court in the subject petition calling in question order dated 31-12-2021 by which the II Additional District and Sessions Judge, Kolar has added a charge under Section 7 of the POCSO Act (the Act for short) apart from the allegations which were initially levelled and punishable under Sections 366A, 506 and 34 of the IPC.

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2. Heard Sri T.A.Basavaraju, learned counsel appearing for the petitioner and Sri K.S.Abhijith, learned High Court Government Pleader for the 1st respondent.

3. The facts, necessary for consideration of the subject lis, are as follows: A complaint came to be registered on 01-12-2016 on an allegation that when the victim was going to the school at Masthi, the petitioner is said to have asked her to sit on the bike to drop her at the school. The victim sits on the bike and they reached Masthi Dinne where accused 2 and 3 along with accused No.1 kidnapped and taken the victim to Halasumaranadoddi. The purpose of such kidnap was to get her married to accused No.4. The complaint further narrates that she escaped from the clutches of the accused and contacted the complainant and her relatives. Thereafter, a complaint came to be registered against all the accused including the petitioner for offences punishable under Sections 366A, 506 and 34 of the 4 IPC. The crime came to be registered on 06-12-2016 for an incident that had happened on 01-12-2016.

4. The issue in the case at hand is not with regard to merits of the matter. What drives the petitioner to this Court at this juncture is an order passed by the learned Sessions Judge altering the charge invoking his power under Section 216 of the Cr.P.C. on an application being made by the prosecution seeking alteration of the charge and inclusion of offence punishable under the Act. The application was filed by the prosecution on 25.01.2021 on account of certain statements recorded during the trial before the learned Sessions Judge. The petitioner and others filed their objections for alteration of the charge. The learned Sessions Judge by his order dated 31-12-2021 allows the application permitting amendment of the charge for inclusion of Section 7 of the Act.

5. The learned counsel appearing for the petitioner submits that the very order passed by the learned Sessions Judge is contrary to law as the charge is altered after three years 5 of commencement of trial which could not have been done and for such alteration of charge there was no evidence but merely on the statement of the victim which does not touch upon the offence punishable under Section 7 of the Act, the charge that is added casts grave prejudice to the petitioner. He would submit that the victim was taken only to get her married to accused No.4 and nobody has indulged in any act that would become offence punishable under the Act.

6. On the other hand, the learned High Court Government Pleader would seek to justify the order and submits that the charge can be altered by the learned Sessions Judge at any time and alteration of charge now made does indicate the offence punishable under the Act. He seeks dismissal of the petition.

7. I have given my anxious consideration to the submissions of the respective learned counsel and perused the material on record. In furtherance whereof, the issues that fall for my consideration are:

6. (i) Whether the charge can be altered under Section 216 of the Cr.P.C. after commencement of trial and recording of evidence of several witnesses?. and (ii) Whether the order directing alteration of the charge warrants interference?. Issue No.1: (i) Whether the charge can be altered under Section 216 of the Cr.P.C. after commencement of trial and recording of evidence of several witnesses?.

8. To consider the issue whether the Court would be well within its jurisdiction to alter the charge at any stage of the proceedings, it is germane to notice source of power for such alteration. Section 216 of the Cr.P.C. reads as follows: 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. 7 (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. Section 216 (1) permits any Court to alter or add to any charge at any time before the judgment is pronounced. Other sub-sections quoted (supra) deal with the manner in which such alteration of charge has to be made.

9. This power of alteration of the charge, as found in the statute, can be exercised by any Court, before pronouncement of the judgment, which would mean after the matter is reserved for its judgment the charge can be altered. The power of such 8 alteration of charge is also considered by the Apex Court in the case of ANANT PRAKASH SINHA @ ANANT SINHA v. STATE OF HARYANA AND ANOTHER¹ wherein the Apex Court holds that the charge can be altered at any time during the proceedings, which would mean even after the case is reserved for its judgment. But, what has to be seen is, whether there is material and what is the prejudice that would be caused to the accused by such act. The Apex Court in the said judgment holds 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 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. (Emphasis supplied) 1 (2016) 6 SCC1059 The Apex Court, in a later judgment, following ANANT PRAKASH SINHAS case has in DR. NALLAPAREDDY SRIDHAR REDDY v. STATE OF ANDHRA PRADESH AND OTHERS² has held as follows: 16. Section 216 appears in Chapter XVII Cr PC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase add to any charge in sub-section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done at any time before judgment is pronounced. Sub-section (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the prosecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 Cr PC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.

17. The decision of a two-Judge Bench of this Court in P. Kartikalakshmi v. Sri Ganesh [P. Kartikalakshmi v. Sri Ganesh, (2017) 3 SCC347 (2017) 2 SCC (Cri) 84]., dealt with 2 (2020) 12 SCC46710 a case where during the course of a trial for an offence under Section 376 IPC, an application under Section 216 was filed

to frame an additional charge for an offence under Section 417 IPC. F.M. Ibrahim Kalifulla, J.

while dealing with the power of the court to alter or add any charge, held: (SCC p. 350, para

6) 6. Section 216 Cr PC 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 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 PC 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. (emphasis supplied) 18. In *Anant Prakash Sinha v. State of Haryana* [*Anant Prakash Sinha v. State of Haryana*, (2016) 6 SCC105 (2016) 2 SCC (Cri) 525]. , a two-Judge Bench of this Court dealt with a situation where for commission of offences under Sections 498-A and 323 IPC, an application was filed for framing an additional charge under Section 406 IPC against the husband and the mother-in-law. After referring to various decisions of this Court that dealt with the power of the court to alter a 11 charge, Dipak Misra, J.

(as the learned Chief Justice then was), held: (SCC p. 116, paras 18-19) 18. 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 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.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 Cr PC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. (emphasis supplied) 19. In CBI v. Karimulla Osan Khan [CBI v. Karimullah Osan Khan, (2014) 11 SCC538 (2014) 3 SCC (Cri) 437]. , this Court dealt with a case where an application was filed under Section 216 Cr PC during the course of trial for addition of charges against the appellant under various provisions of IPC, 12 the Explosives Act, 1884 and the Terrorist and Disruptive Activities (Prevention) Act, 1987. K.S.P. Radhakrishnan, J.

speaking for the Court, held thus: (SCC p. 546, paras 17-18) 17. Section 216 Cr PC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions at any time and before the judgment is pronounced would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 Cr PC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 Cr

PC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (emphasis supplied) 20. In *Jasvinder Saini v. State (NCT of Delhi)* [*Jasvinder Saini v. State (NCT of Delhi)*, (2013) 7 SCC256 (2013) 3 SCC (Cri) 295]., this Court dealt with the question whether the trial court was justified in adding a charge under Section 302 IPC against the accused persons who were charged under Section 13 304-B IPC. T.S. Thakur, J.

(as he then was) speaking for the Court, held thus : (SCC pp. 260-61, para

11) 11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court. (emphasis supplied) 21. 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 14

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 supplied) In the light of the judgments rendered by the Apex Court as afore-quoted, the submission of the learned counsel appearing for the petitioner that the charge could not have been altered after three years of commencement of trial is unacceptable, as the language employed under Section 216 of the Cr.P.C. is unequivocal that a Court trying a case is empowered to alter the charge. The usage of the word may only deploy judicial discretion to be exercised while altering the said charge. Therefore, the submission that charge cannot be altered after 15 the trial has progressed to a large extent is rejected. Issue No.1 is answered against the petitioner. Issue No.2: (ii) Whether the order directing alteration of the charge warrants interference?.

10. The afore-quoted fact is not in dispute. The offences initially alleged against the petitioner were the ones punishable under Sections 366A, 506 and 34 of the IPC. Section 366A IPC deals with procuration of minor girl and reads as follows: 366A. Procuration of minor girl.-Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. Whoever, by any means whatsoever, induces any minor girl to go from any place or do any act or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person, the offence would become punishable for a term that 16 may extend to ten years. The said offence is alleged and a charge to that effect is also framed by the Court.

11. The victim tenders her evidence on 05-08-2019 and the said evidence insofar as it pertains to examination-in-chief reads as follows: itPjz AP:05.08.2019 g : Az Q v g gv. UAq g : Uge Ai :

19. P : Ut : vt U DgAi Az PA tz m Eg Aq El Cg R QU PtzAv iqVz. (QAI ZguAi Incamera proceedings P qv) PA118Q CAi v PA36 37 P PAi Cr P zRPv. R Zgu i ggjAz: zq, DP aP AiAz Qgv. vt Uz Ez. Dgvg Uv. 2016 g wAi AiAi i dAig Pf Nzwz. d AP:

22. 08-1999 DVz. vt UAz iU qzPAq Uwz. :01-12-2016 gAz JAAv U 8.30 P PfU qzPAq UwzU vt - i gAi Dg DAZ Pf qv JAz ZP z PgzPAq i Ai l. C Aiiz MAz Pg Awz, Czg wP PfU qvg 17 JAz z. D Pj Uz w, PA Uz Adx Ezg. Dg DAZ Cz Pj wz. Pg Pf z EzzjAz egV QgaPAq. Dzg Pg . vrU PgzPAq z. C igzrU PgzPAq zg. Cz Av AiiVv. PVz rzg qz CjPAq zg. Aiigzg zAiiU JAz zg. PU Av zAiiU JAz zg. Av zAiiU PgzPAq Az JAz zg. zAiiUzg fAvV q JAz zg. Pj PgzPAq UU 3 d Dgvg zz lgz eUU J nzzg. Ci irzg. QAI : :

16. 09.2019 gAz Pg itPjv Azgz R Zgu i gjAz:

3. d Dgvg CjPAq UU Dg Av j Ez. CigzrU Dg Av U PgzPAq z. C Dg Av l g Aiig Eg. C Dg Av zAiiUzg fAv q JAz z. U 4 d Dgvg l gz eUU n Ci irzg. l r JAz J PPAqg q. vPAq Cig zrAi MAz gz PU Az Awz. v v iU F J Ai z. Avg v i ouU :

06. 12-2016 gAz zg Plg. Dgvg U lgz eUU n Ci irzg JAz zj . Pgt E g Ez, U vAzgAiiUvz JAz . zg Pl Avg g iAz vtU U gAi zg U vlz PgzPAq Vz, CjU CjPAq z JAz vjz, DU gd, Adx, ZzrAi C Ez, C g dg irz, CzP irgv. zj dg C qwz, Cz 5 v Ai 5(J) JAz Ugwv. 18 Hj AZw iqv JAz zjAz zg Pq vq Dv. g Pgz J.J.Dg DvU PgzPAq V zjAz jP irzg. C Cjz Aiz zsjz mU qzPAqg. AiiAiz Az Eg .i 1 jAz 5 C Q Ugwvg. ij dq Cg Az PgzPAq Vz. g Az P Pngv. g Az Cx Aiig Az F AiU . Pgt E g DVz, AiizU CAf . AiiAiz Az Eg 2 g mz Eg Pg v 3 g Eg mg P Q Ugwvg. Dgvg U vA Ci irz, CjU P PqP JAz PPv. Dvv Aiv rz, DU i Uge z irPAqg DAZ, w v Cg Aig FU U vA A Pqvg.

(Emphasis added)

Later, the witness was cross-examined on 24-09-2019. The evidence in the cross-examination reads as follows: U 4 d Dgvg l gz eUU n Ci irzg. l r JAz J

PPAqg q JAz g Az . MAzg Az UAUggz Ez. Dgvg z irPAq g g HgU Ezg JAzg Uw.

(Emphasis added)

What triggers the prosecution to file the application is the evidence afore-quoted. In the examination-in-chief the victim 19 narrates that the car in which she was travelling was not stopped near the college and even when she shouted the car was not stopped. The car was taken to accused No.1s house at Halasumaranadoddi where she pleaded with all the accused that she should be let off. She would further state that three accused have touched her body in places where they should not have touched. The kind and nature of touching of a 16 years old minor girl will come about only when the trial gets concluded after the evidence is let in.

12. The very fact that the victim child has deposed in the examination-in-chief and sustained the same in the cross- examination would indicate that it is a matter for trial, as this Court cannot at this juncture consider as to what has transpired at the time when the victim was carried to a particular place and the statement of the victim being that she was touched inappropriately in all places of her body. After the evidence afore-quoted the prosecution seeks to incorporate offences punishable under Section 7 of the Act. It is germane to notice 20 Section 7 of the Act which deals with sexual assault and reads as follows: 7. Sexual assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. Section 7 of the Act which pertains to sexual assault is on its appearance in two parts. The first part of the section deals with acts of touching specific sexual parts of the body with sexual intent. The second part speaks about any other act done with sexual intent which involves physical contact but without penetration. Therefore, the second part of Section 7 of the Act is prima facie applicable in the case at hand qua the evidence of the victim child. The child speaks of touching by the accused at inappropriate places of her body.

13. In the light of what is afore-observed, no fault can be found with the order of the concerned Court in allowing the application filed by the prosecution under Section 216 of the Cr.P.C. seeking alteration of charge for addition of offence 21 punishable under Section 7 of the Act. In view of the preceding analysis, I do not find any warrant to exercise the jurisdiction of this Court under Section 482 of the Cr.P.C. to interfere with the order impugned.

14. In the result, the Criminal Petition fails and is accordingly dismissed. It is made clear that the observations made in the course of this order are only for the purpose of consideration of challenge to the order impugned and they shall not bind or influence further proceedings pending before the competent Court. Sd/-
JUDGE bkp CT:MJ

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