

**1.P.Renugopal Vs. State Rep.Through**

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**SooperKanoon Citation :** [sooperkanoon.com/32821](http://sooperkanoon.com/32821)

**Court :** Chennai

**Decided On :** Jan-21-2015

**Judge :** M.Sathyannarayanan

**Appellant :** 1.P.Renugopal

**Respondent :** State Rep.Through

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 21.01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN CrI.R.C.(MD)No.536 of 2014 and M.P.(MD)No.1 of 2014 1.P.Renugopal 2.Palanisamy 3.Chinnathai 4.Gopalakrishnan ..Petitioners versus State rep.through The Inspector of Police, Dindigul Town West Police Station.

(In Crime No.216/2008)..Respondent Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order dated 20.02.2014 made in Cr.M.P.No.219 of 2013 in S.C.No.214 of 2010 on the file of the Magalir Neethimandram (Fast Track Mahila Court).Dindigul and set aside the same.

!For Petitioners : Mr.G.R.Swaminathan for Mr.T.Antony Arul Raj ^For Respondent : Mr.P.Kandasamy, Government Advocate (CrI.Side) :

**ORDER**

By consent, this revision is taken up for final disposal.

2.The petitioners are arrayed as accused Nos.1 to 4 in S.C.No.214 of 2010 on the file of the Magalir Neethimandram (Fast Track Mahila Court).Dindigul and they are facing prosecution for the commission of offence under Section 306 IPC.

3.A perusal of materials available on record would disclose that the respondent-Police after investigating the case, has charged all the accused for the commission of offence under Section 306 IPC and after committal, the trial Court has also framed charge under Section 306 of IPC and proceeded with the trial.

4.It is represented that out of 24 witnesses, 9 witnesses have been examined and the trial is in advanced stage.

At this juncture the respondent / prosecution has filed Crl.M.P.No.219 of 2013 under Section 216 Cr.P.C.to frame additional charges under Sections 498(A) and 304(B) IPC, against the revision petitioners / accused.

5.In the petition, it is averred by the prosecution that one Gokila is the wife of the fiRs.revision petitioner and the marriage between him and Gokila took place on 08.09.2003 as per the wishes of the elders of the family and after marriage, both of them were residing at Dindigul and out of wedlock, a daughter was born, viz.

Krishnapriya.

According to the defacto complainant / P.W.1, who is the brother of Gokila, his sister has been subjected to ill treatment and harassment on account of unreasonable demand of dowry at the hands of all the revision petitioners / accused and unable to bear with the same, she has decided to commit suicide and accordingly, she poured petrol on herself and her daughter, viz.

Krishnapriya who was aged about 4 yeaRs.and committed suicide.

It is further averred by the prosecution that the final report is mainly based on the report of the Revenue Divisional Officer, who has not chosen to examine the relevant witnesses, and during the couRs.of trial, it has been found that the deceased committed self-immolation with her daughter, unable to bear with the torture and ill-treatment on account of demand of dowry, and therefore, the charge

should be altered into one under Sections 498(A) and 304(B) IPC.

6.The said petition was strongly opposed by the revision petitioners accused by contending that the respondent, after full-fledged investigation, came to the conclusion that no material is placed or available to show that the deceased Gokila committed self-immolation on account of demand of dowry and therefore, the final report has been filed under Section 306 IPC.

It is further stated that the trial is also in the advanced stage and alteration of the charge would gravely prejudice them.

Therefore, the revision petitioners have sought for dismissal of the petition.

7.The trial Court, on consideration of the petition and the counter affidavit and on going through the testimonies of the witnesses, viz.

P.Ws.1 to 4, 8 and 9, found that their testimonies prima facie indicate that the deceased Gokila, the wife of the fiRs.revision petitioner/fiRs.accused, was subjected to torture and ill-treatment on account of dowry, which ultimately resulted in her death by way of self-immolation, and therefore, the charge should be altered under Sections 498-A and 304-B IPC.

Citing the said reasons, the trial Court has allowed the petition filed by the prosecution vide the impugned order dated 20.02.2014.

Aggrieved by the same, the accused 1 to 4 / revision petitioneRs.had filed the present Criminal Revision Case.

8.Mr.G.R.Swaminathan, learned counsel for the petitioners / Accused Nos.1 to 4, has vehemently contended that the trial Court, before ordering the petition altering the charge, has failed to take into consideration the scope and ambit of Section 216(4) Cr.PC, as the alteration of the charge especially when the trial is in the advanced stage, would gravely prejudice the accused.

9.The learned counsel for the petitioners has drawn the attention of this Court to Section 8-A of the Dowry Prohibition act, 1961, and also Section 113-B of the Indian Evidence Act, 1872 and would submit that if the death of a married woman

takes place within seven years from the date of marriage, the burden shifts on the accused and therefore, it is very difficult to discharge the burden and in any way, on account of the impugned order, the revision petitioners / accused would be put to grave prejudice as the material witnesses have already been examined.

Therefore, the learned counsel prayed for setting aside the impugned order.

10. In the alternative, the learned counsel for the petitioners also pleaded that in terms of Section 216(4) of Cr.P.C., this Court may order de novo trial, so that prejudice cannot be caused to the accused.

11. Per contra, Mr. P. Kandasamy, learned Government Advocate (Crl. Side) would submit that mainly based upon the report of the Revenue Divisional Officer, final report was filed by the respondent / investigating agency, and later on the testimonies of witnesses had disclosed the commission of offences under Sections 498(A) and 304(B) and therefore, the prosecution has rightly filed the petition under Section 216 Cr.P.C, to alter the charge to include additional charges under Sections 498(A) and 304(B) IPC, and the trial Court, on an elaborate consideration of the materials available on record, rightly ordered the petition.

Therefore, the learned Government Advocate (Crl. Side) prayed for dismissal of this Criminal Revision Case.

12. This Court has carefully considered the rival submissions and also perused the materials available on record in the form of typed set of documents.

For the purpose of deciding this issue, it is relevant and useful to extract Section 216 Cr.P.C., as under: ?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.?

13. The scope of object of Section 216 Cr.P.C., came up for consideration before the Hon'ble Supreme Court in 2014 (2) Crimes 4 (SC).in C.B.I.v.

Karimullah Osan Khan.

The facts of the said case would indicate that the respondent / accused was prosecuted under the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA). The respondent-prosecuting agency filed application under Section 216 Cr.P.C. for addition of charges by including Section 302 IPC and other charges in IPC, and such application was rejected.

Challenging the same, the C.B.I. has filed a Special Leave Petition and later on, it was converted into Criminal Appeal.

The Hon'ble Supreme Court, in paragraphs 14 and 15, observed as follows:  
?.14. Section 216 Cr.P.C. gives considerable powers to the Trial Court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add 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.

15. Section 216 Cr.P.C. 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.P.C., 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.

(See Harihar Chakravarty v.

State of West Bengal (AIR 1954 SC266).

Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in Section 216 Cr.P.C. and other related provisions.?

14. Ultimately, the Hon'ble Supreme Court has held that the trial Court ought to have exercised its powers under Section 216 Cr.P.C. 15. A perusal of the impugned order would disclose that the trial Court has gone into the testimonies of P.Ws. 1 to 4, 8 and 9 and that the testimonies prima facie disclose the fact that all the accused demanded additional dowry of 60 sovereigns of jewels and a cash of Rs. 5 lakhs and on account of the same, the deceased was harassed, and unable to bear with the torture, she has committed suicide by immolation along with her minor daughter Krishnapriya, aged about 4 years. In the considered opinion of this Court, the trial Court has exhaustively gone into the materials placed before it and rightly arrived at the decision based on the testimonies of P.Ws. 1 to 4, 8 and 9 to

take additional evidence.

No doubt, the trial is in the advanced stage.

According to the learned counsel for the petitioners on account of the framing of additional charges, the burden shifts on to the accused in terms of Section 113-B of the Indian Evidence Act and also under Section 8-A of the Dowry Prohibition Act.

Of course, the presumption is a rebuttable one.

16. The learned counsel for the revision petitioners also pleaded that since the petition for framing of additional charges has been allowed, the trial Court may be directed to take de novo trial in terms of Section 216 Cr.P.C. However, this Court is not inclined to accept the said submission for the reason that under Section 216(4) Cr.P.C., when the trial Court is of the opinion that if alteration or addition of charge would result in prejudice to the accused or the prosecution, it may either direct a new trial or adjourn the trial for such period as may be necessary.

This Court is not expressing any opinion with regard to the exercise of powers by the trial Court in terms of the above said provision.

17. This Court, on consideration of the entire materials placed before it, and upon the rival submissions, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the trial Court for allowing the petition filed under Section 216 Cr.P.C. 18. Therefore, the Criminal Revision Case is dismissed, confirming the order dated 20.02.2014 made in Cr.M.P.No.219 of 2013 in S.C.No.214 of 2010 on the file of the Magalir Neethimandram (Fast Track Mahila Court). Dindigul.

Consequently, the connected miscellaneous petition is closed.

19. It is made clear that the observation made herein is only for the purpose of disposal of this revision and this Court is not expressing any opinion as to the merits of the prosecution and the defence projected by the accused with regard to addition of charges under Sections 498(A) and 304(B) IPC.

If the petitioners are so advised, they are at liberty to invoke the provisions of Section 216(4) Cr.P.C., before the trial Court.

Index : Yes/No 21.01.2015 Internet : Yes/No KM M.SATHYANARAYANAN, J.

KM To 1.The Inspector of Police, Dindigul Town West Police Station.

2.The Mahila Court Judge (Fast Track Mahila Court).Dindigul.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Crl.R.C.(MD)No.536 of 2014 and M.P.(MD)No.1 of 2014 21.01.2015

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