



2024/KER/39600

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 11TH DAY OF JUNE 2024 / 21ST JYAISHTA,

1946

CRL.REV.PET NO. 437 OF 2024

CRIME NO.32/2018 OF PUDUKKAD POLICE STATION, THRISSUR

CRMP NO.99 OF 2023 OF ASSISTANT SESSIONS

COURT/ADDITIONAL SUB COURT, IRINJALAKUDA

SC NO.677 OF 2019 OF ASSISTANT SESSIONS

COURT/ADDITIONAL SUB COURT, IRINJALAKUDA

REVISION PETITIONER/REVISION PETITIONER:

ASWATHY K. P. @ ASWATHY

AGED 34 YEARS

D/O.ANITHA,KARYAT HOUSE, MEKKATI DESOM,
THRIKOOR VILLAGE, THRISSUR DISTRICT, PIN -
680306

BY ADVS.

ANESH PAUL

FREDY FRANCIS

RESPONDENT/RESPONDENT:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT
OF KERALA, ERNAKULAM,PIN - 682031

BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 29.5.2024, THE COURT ON 11.06.2024,
DELIVERED THE FOLLOWING:



‘CR’

A. BADHARUDEEN, J.

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Crl.R.P.No.437 of 2024
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Dated this the 11th day of June, 2024

ORDER

This Revision petition under Section 397 r/w 401 of the Code of Criminal Procedure (for short ‘Cr.P.C.’ hereinafter), has been filed by the accused in SC.No.677/2019 on the files of Assistant Sessions Court, Irinjalakuda.

2. The revision petitioner impugns order in Crl.M.P.No.99/2023 in the above case dated 13.02.2024, whereby the learned Assistant Sessions Judge allowed an application filed by the learned Public Prosecutor under Section 216 of Cr.P.C., to alter the charge for the offence punishable under Section 302 of the Indian Penal Code (for short,



‘IPC’ hereinafter), after altering earlier charge framed, alleging commission of offence punishable under Section 304 of IPC.

3. It is argued by the learned counsel for the petitioner that after framing charge under Sections 304 and 309 of IPC, trial started and PWs 1 to 5 were examined. Thereafter, relying on the evidence given by PW5, the court, acting on the application filed by the prosecution under Section 216 Cr.P.C, altered the charge. It is submitted that the prosecution has no right to seek alteration of charge though it is permissible at the volition of the court. The learned counsel placed decision of this Court reported in [MANU/KE/1404/2024], *State of Kerala v. Azeez & Ors.*, where this Court referred decision of the Apex Court reported in [MANU/SC/1321/2014 : (2017) 3 SCC 347], *P.Kartikalakshmi v. Sri Ganesh & anr.* where it was



held as under:

“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.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.”

4. Repelling this contention, the learned Public Prosecutor placed another decision of this Court reported in [2023 KHC OnLine 458 : 2023



KHC 458 : 2023 KER 37477 : 2023 (4) KLT 402], *Silvester @ Silver v. State of Kerala* wherein also this Court considered the power under Section 216 of Cr.P.C and it was held that going by the statutory provisions and the precedents, a proceeding initiated at the instance of the Public Prosecutor or the defacto complainant for alteration of charge is not vitiated since the informant or the Public Prosecutor, by way of an application, could bring to the notice of the court the defects in the charge and court exercises its powers under Section 216 of Cr.P.C based on the material available. The test to be adopted is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. The vital test is the prejudice likely to be caused to the accused. While the Court exercises the powers under Section 216 of Cr.P.C, it shall ensure that no prejudice is caused to the accused and that he



gets a fair trial. In *Silvester @ Silver v. State of Kerala's* (*supra*), the learned Single Judge of this Court relied on *P.Kartikalakshmi v. Sri Ganesh & anr.*'s case (*supra*) and also [2020 (12) SCC 467], *Dr.Nallapareddy Sridhar Reddy v. State of Andhra Pradesh* and [2023 SCC OnLine SC 424], *Soundarajan v. State rep. By the Inspector of Police Vigilance Anti-corruption Dindigul*. That apart the decision reported in [2016 (6) SCC 105], *Anant Prakash Sinha v. State of Haryana* also was referred where the Apex Court held that the Court can change or alter the charge if there is a defect or something is left out, and 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. The Apex Court observed that the principle that has to be kept in



mind is that the charge so framed by the court is in accordance with the materials produced before him or subsequent evidence that comes on record. In *Anant Prakash*, on the locus standi of the informant to make an application to add a charge, the Court observed that it was, in a way, bringing to the notice of the learned Magistrate about the defect in framing of the charge. In such a situation, there was no fault on the part of the court in entertaining the application filed by the informant, the Court observed.

5. Further, in *Silvester @ Silver v. State of Kerala's (supra)* the decision reported in [2014 (11) SCC 538], *Central Bureau of Investigation v. Karimullah Osan Khan*, was referred, where an application was filed under Section 216 CrPC during the course of trial for the addition of charges, the Supreme Court held that Section 216 CrPC 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 in the provision.

6. Another decision referred in *Silvester @ Silver v. State of Kerala's* (*supra*) is [2013 (7) SCC 256], *Jasvinder Saini v. State (Govt. Of NCT of Delhi)*, wherein the Apex Court, while considering the question whether the trial court was justified in adding a charge, held that the Court's power to alter or add any charge under Section 216 of Cr.P.C is unrestrained, provided, such alteration or addition is made before the judgment is pronounced.

7. In *Dr.Nallapareddy's* case (*supra*), on the scope of Section 216 of Cr.P.C, the Apex Court held 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, 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.

8. In paragraph 10 of *Silvester @ Silver v. State of Kerala's* case (*supra*), this Court referred Section 216 of Cr.P.C. and held as under:

“10. Section 216 of Cr.P.C authorises the Court to alter or add any charge at any time before the judgment is pronounced. The provision enables the alteration of a charge based on the materials brought on record during the course of trial. Sub-section (1) of Section 216 of Cr.P.C provides that the addition or alteration has to be done at any time before the judgment is



pronounced. As per sub-section (2) of Section 216 of Cr.P.C, whenever such an alteration or addition is made, it is to be read out and explained to the accused. Sub-section (3) of Section 216 of Cr.P.C provides that if the alteration or additon 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) of Section 216 of Cr.P.C 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.”

9. The above discussion declares the legal position without any iota of doubt that alteration of charge is the vested power of the court and the same is within the domain of the Court, at any time before judgment is pronounced. But parties to the litigation have no such vested right. However, that does not mean that parties could not file petition to alert and ignite the court to exercise the power



under Section 216 of Cr.P.C. In an appropriate case, either the Prosecutor or the defence counsel moves an application, seeking alteration of charge that the same would only alert the court regarding the power vested on the court and ultimately, the court will decide whether alteration of charge in the facts of the case is necessary. To put it otherwise, either at the instance of the prosecution or on behalf of the accused, when the court is ignited regarding the necessity of alteration of charge, the court can exercise its power under Section 216 of Cr.P.C., based on evidence. Likewise, when court feels that power under Section 216 to alter the charge shall be invoked suo motu based on the evidence recorded, the court has the power to alter charge resorting to its power under Section 216 of Cr.P.C. Indubitably, alteration of charge is the vested right of the court within the province of the court and not that of the



parties.

10. In the case at hand, even though an application has been filed by the Public Prosecutor seeking alteration of the charge, in paragraph 6 of the order impugned, the learned Assistant Sessions Judge, opined that there was evidence brought into that the accused put the child into the pond and caused his death. Thus the evidence of PW5 would throw light to an offence of murder separating the same from culpable homicide not amounting to murder. This is the reason why the learned Assistant Sessions Judge altered the charge by invoking the power under Section 216. If so, the challenge against the said order mainly on the ground that Public Prosecutor has no right to file an application to seek alteration of charge would not succeed. Nothing available to hold that the accused in any way prejudiced by the order impugned. In such view



of the matter, the order is perfectly justified.

Accordingly, this Revision Petition must fail. Hence, the impugned order doesn't require interference. Therefore, the Revision Petition stands dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/



APPENDIX OF CRL.REV.PET 437/2024

PETITIONER'S ANNEXURES

ANNEXURE A1 A TRUE COPY OF THE FINAL REPORT
DATED 11.01.2018

ANNEXURE A2 A TRUE COPY OF THE DEPOSITION
OF WITNESS, PW-5

RESPONDENT'S ANNEXURES : NIL