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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2449 of 2024

1 - Chandrashekhar Namdev S/o Late Ramgopal Namdev Aged About 52 Years Address- Ward No. 10, Near Shankar Mandir, Ekta Chowk Mahasamund Dist.- Mahasamund, C.G.

2 - Sanni Namdev S/o Chandrashekhar Namdev Aged About 21 Years Address- Ward No. 10, Near Shankar Mandir, Ekta Chowk Mahasamund Dist.- Mahasamund, C.G.

3 - Ojaswi Namdev S/o Chandrashekhar Namdev Aged About 19 Years Address- Ward No. 10, Near Shankar Mandir, Ekta Chowk Mahasamund Dist.- Mahasamund, C.G.

4 - Anil Suryavanshi S/o Late Rajkumar Suryavanshi Aged About 21 Years R/o Ward No. 04, Ayodhya Nagar Mahasamund, Police Station- Mahasamund, Dist.- Mahasamund, C.G.

5 - Indraraj Suryavanshi S/o Late Rajkumar Suryavanshi Aged About 20 Years R/o Ward No. 04, Ayodhya Nagar Mahasamund, Police Station- Mahasamund, Dist.- Mahasamund, C.G.

... Petitioners

Versus

1 - State of Chhattisgarh Through Station House Officer, Police Station Mahasamund, Dist.- Mahasamund, C.G.

... Respondent

For Petitioners	:	Smt. Smita Jha, Advocate.
For Respondent	:	Shri Ajit Singh, Govt. Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Judgment Reserved on 26.09.2024

Judgment delivered on 01.10.2024

1. The present petition has been filed by the petitioners under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, against the order dated 21-08-2024 passed by learned Ist Additional Sessions Judge, Mahasamund, in Sessions Case No. 52/2022, whereby the learned trial court has allowed the application filed by the prosecution under Section

216 of Cr.P.C. and framed the additional charge of Section 333 of the IPC.

2. Brief facts of the case are that on 19-03-2022 a quarrel took place between the petitioners and the deceased, who was a sub-inspector of police and he ultimately died. The offence under Sections 147, 149 and 302 of IPC was registered bearing Crime No.134/2022 and charge sheet was filed against the petitioners. The petitioners are accused persons in the said offence. The petitioner No. 5 is granted bail by the Hon'ble Supreme Court vide order dated 08-01-2024. The prosecution witnesses were examined, the statement of accused were recorded and after hearing the parties, the case was fixed for passing judgement on 21-08-2024.
3. On 14-08-2024, the prosecution filed an application under Section 216 of the Code of Criminal Procedure, 1973, for framing of the additional charge of Section 333 of IPC. It is averred by the prosecution in the application that the deceased, Vikas Sharma, was on patrolling duty on the date of the incident, and he was discharging his duty. P.W. 6 Akash Sharma has deposed in para 4 of his evidence that the deceased, Vikas Sharma, was on duty at the time of the incident. Further, the witnesses P.W. 2 Durgesh Kumar Kannauje, P.W. 7 Lal Vijay and P.W. 16 Ashish Verma have stated in their evidence that the accused persons have assaulted the deceased by hand and fist and the said evidence is supported by the evidence of Dr. I. Nageshwar Rao, P.W. 12. It is also averred in the application that the deceased, who was on official duty, was being assaulted by the accused persons and therefore, the offence of Section 333 IPC prima facie appears to be made out against the accused persons. It is also averred that the court

has the power to alter or frame the new charge at any time before pronouncement of judgment based on the material available on the record during the trial. Therefore, the additional charge of the offence of Section 333 IPC be framed against the accused persons.

4. Some of the accused persons have filed reply to the application of the prosecution, and after hearing the parties, on 21-08-2024, the learned trial court allowed the application filed by the prosecution under Section 216 of Cr.P.C. and framed the charge of Section 333 of IPC. The order dated 21-08-2024 is under challenge in the present petition.
5. Learned counsel for the petitioners has submitted that the prosecution has no right to file an application for alteration or modification of the charge. It is upon the court to consider the evidence independently as to whether the charge framed earlier is required to be altered or any new charge is to be framed or not in view of evidence came on record. She would also submit that the trial court has ample power to alter, amend or add the charge before the pronouncement of judgment, but not on the basis of the application filed by the parties. She would also submit that from the evidence of I. Nageshwar Rao, P.W. 12, it is clearly established that deceased died due to heart attack/failure but not from the injuries allegedly caused by the accused persons. Therefore, prima facie there is no material available on record for framing of additional charge under Section 333 of IPC. Therefore, the impugned order dated 21-08-2024 be set aside.
6. On the other hand, learned counsel for the State supported the impugned order and has submitted that the learned trial court has rightly exercised its jurisdiction provided under Section 216 of Cr.P.C. and has framed the additional charge of Section 333 of IPC. There is

sufficient material available on record for framing of the additional charge of Section 333 of IPC, and the accused persons have ample opportunity to cross-examine the witnesses. The order impugned is based on proper appreciation of the evidence available on record and principles of law laid down by the Hon'ble supreme Court which needs no interference.

7. I have heard learned counsel for the parties and perused the material produced by the petitioners in the present case.
8. Section 216 of the Cr.P.C. provides for framing or altering the charge framed by the learned trial court and provides that the learned trial court, at any time before the pronouncement of judgment, alter, amend or frame the new charge. Section 216 of the Cr.P.C. is reproduced hereinbelow for ready reference:-

“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 had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

9. True it is that the trial court has ample power to alter, amend or frame new charge at any time before the pronouncement of judgment, but the question would be whether the court can exercise its power on the basis of the application filed by the parties or the court can exercise its jurisdiction on its own based on the evidence available on record. The provision enables alteration or addition of a charge based on material available on record during trial. Sub-section 3 of Section 216 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. Sub-section 4 of Section 216 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.
10. The Hon'ble Supreme Court, in the matter of ***P. Kartikalakshmi Vs. Sri Ganesh, 2017 (3) SCC 347***, dealt with the situation where the application for alteration of the charge was filed. In para 6 of its judgement, the Hon'ble supreme Court has held that :-

“6. Having heard learned counsel for the respective parties, we find force in the submission of learned senior counsel for respondent no.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 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 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.”

11. Similarly, in the matter of **Anant Prakash Sinha Vs. State of Haryana, 2016 (6) SCC 105**, the Hon’ble Supreme Court has considered that:-

“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 CrPC.”

12. Recently, the Kerala High Court, in the matter of **State of Kerala Vs. Azeez and Others reported in 2024 SCC Online (Ker.) 2059** considered that the exercise of jurisdiction cannot be based on the application of the party but should be on the basis of the own satisfaction of the court. Para 12 of the judgement of the Kerala High Court reads as under:-

“12. Thus, the request for the addition of the charge under section 370 IPC, as it stood prior to 2013, cannot be made at the instance of the prosecution. An addition of charge has to be done by the Court based upon its own satisfaction and not at the behest of any of the parties to the trial.”

13. In the present case, the learned trial court after considering the judgement passed by the Hon’ble Supreme Court in the case of **Anant Prakash Sinha (supra), Sajjan Kumar Vs. CBI, 2010 (9) SCC 368** and **CBI Vs. Karimullah Osan Khan, 2014 (11) SCC 538** and also on

the basis of the application filed by the prosecution, allowed the application and framed the charge of Section 333 of IPC. There is no independent consideration of the learned trial court as to on the basis of the evidence brought on record by the parties, whether any ingredients are available to frame charge under Section 333 of IPC or not. The consideration of the learned trial court is “अभियोजन द्वारा प्रस्तुत आवेदन में उल्लेखित माननीय न्याय दृष्टांतों के आलोक में लोक अभियोजक द्वारा प्रस्तुत उपरोक्त आवेदन न्यायहित में स्वीकार किया जाता है।” which cannot be termed as independent consideration or subjective satisfaction of the learned trial court based on the evidence available on record. No doubt that the learned trial court has ample power to alter, amend or frame a new charge any time before the pronouncement of judgment, but not on the application filed by the prosecution.

14. The judgement relied upon by the learned trial court is on the point that the trial court may, at any time before the pronouncement of judgment, alter, add or frame charge. But the question is by which mode. Can it be by own satisfaction or upon the application file by any of the parties? From the aforesaid judgement of the Hon'ble Supreme Court, it is clear that the jurisdiction of Section 216 Cr.P.C. can not be exercised on the application made by any of the parties but on its own satisfaction.
15. For the foregoing reasons, the present petition is allowed and the impugned order dated 21-08-2024 (Annexure P-1) is liable to be and hereby **set aside**. The interference is not on the merits of the case, but on the ground that jurisdiction of Section 216 cannot be exercised on the application made by the parties as in the present case the

prosecution has moved the application, which was allowed by the learned trial court and an additional charge of Section 333 IPC has been framed. The learned trial court will be at liberty to independently consider the alteration or addition of charge in accordance with the law if it is so satisfied.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder