

Ram Pratap Yadav @ R.P. Yadav vs State Of U.P. Thru. Prin. Secy. Home ... on 27 March, 2025

Author: Manish Kumar

Bench: Manish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17569

Court No. - 14

Case :- APPLICATION U/S 482 No. - 1957 of 2025

Applicant :- Ram Pratap Yadav @ R.P. Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And Another

Counsel for Applicant :- Mrs.Suniti Sachan,Gangeshwar Pandey

Counsel for Opposite Party :- G.A.,Vikas Vikram Singh

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the applicant, learned counsel for the respondent and Shri Piyush Kumar Singh, learned A.G.A for the State and perused the record.

2. The present application under Section 482 Cr.P.C (now Section 528 B.N.S.S) has been preferred with a prayer to set-aside the impugned order dated 15.02.2025 passed by learned Sessions Judge, Rae Bareli on the application no. 1028Kha preferred by the applicant in Sessions Trial no. 11/2020 (State Versus Suresh Yadav and others) arising out of Case crime no. 0366 of 2019, Under Sections: 147, 148, 149, 323, 302, 201, 120-B and 216 1.P.C. Police Station: Harchandpur, District: Rae Bareli, as contained in (Annexure No. 01) to this application, during the pendency of application, in the

interest of law and justice; with a further prayer that this Hon'ble Court may graciously be pleased to direct the learned Sessions Judge, Raebareli to abstain from or not pass final judgement in the case, arising out of Sessions Trial no. 11/2020 (State Versus Suresh Yadav and others) arising out of case crime no. 0366 of 2019, Under Sections: 147, 148, 149, 323, 302, 201, 120-B and 216 I.P.C., till the final disposal of the present application.

3. Learned counsel for the applicant has submitted that an F.I.R dated 10.10.2019 was lodged by the respondent no. 2 under Sections 147, 148, 149, 323, 120-B, 216, 301 and 302 I.P.C against the name accused persons, in which the applicant was not named. It is further submitted that during the investigation by the Police, the name of the applicant was cropped up in the statement of the co-accused Arkit Yadav and Harshit Verma (who were also not named in the F.I.R) and the chargesheet has been filed against the applicant also alongwith other co- accused persons .

4. The applicant had moved an application under Section 216 Cr.P.C to alter of charge with a prayer that the offence under Section 216 and 120 B I.P.C is not made out against the applicant, as per the statement of prosecution witness. The said application of the applicant under Section 216 I.P.C has been rejected by passing the impugned order dated 15.02.2025, without considering the contents of the application and without application of mind. The application was rejected merely on the ground that the statements have already been recorded under Section 313 Cr.P.C. The matter is at the stage of final hearing, for taking final decision after appreciating the evidence and the arguments made by both the parties and moving such an application at this stage is nothing but to delay the proceedings.

5. It is further submitted that the application preferred by the applicant under Section 216 Cr.P.C is maintainable on behalf of the applicant and it cannot be turned down merely on the ground that the intention of moving such an application is for delaying the completion of the trial. He further submitted that Section 216 Cr.P.C empowers the court to alter or add any charge at any time before the judgment is pronounced and in support of her submission, learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of Dr. Nallappareddy Sridhar Reddy versus The State of Andhra Pradesh, reported in AIR 2020, Supreme Court 753.

6. On the other hand, learned A.G.A has submitted that no application under Section 216 Cr.P.C is maintainable on behalf of either of the parties. It is the discretion of the court as only the court is empowered to alter or add the charge under Section 216 Cr.P.C and in support of his submission, he relied upon the judgment of this Court dated 05.07.2019 in the case of Kuldeep versus State of U.P, passed in Application under Section 482 Cr.P.C No. 10708 of 2019, by placing reliance upon the law laid down by the Hon'ble Supreme Court in the case of Anant Prakash Sinha versus State of Haryana and another; 2016 CRI.L.J. 1836 and P. Kartikalakshmi versus Shri Ganesh and another; (2017) 2 SCC (Cri) 84 .

7. Shri Vikas Vikram Singh, learned counsel for the respondent no. 2 has submitted that the application under Section 216 Cr.P.C on behalf of the applicant is not maintainable and it has rightly been rejected by the learned trial court. In support of his submission, he has relied upon the judgments of the Hon'ble Supreme Court in the case of P. Kartikalakshmi versus Shri Ganesh and

another, reported in (2017) 3 SCC 347, K. Ravi versus State of Tamil Nadu and Another, reported in 2024 SCC Online SC 2283, and also the judgment of the High Court in Arvind Yadav versus State of U.P and another passed in Application under Section 482 No. 41830 of 2022.

8. It is further submitted that the applicant had also moved an application for discharge under Section 227 Cr.P.C almost by taking the same pleas which had been taken in the application under Section 216 Cr.P.C. The discharge application was rejected. The said fact is not disputed by the learned counsel for the applicant.

9. After hearing learned counsel for the parties and going through the records of the case and the judgments cited by the respective parties, the Section 216 Cr.P.C empowers the court to alter or add any charge at any time before the judgment is pronounced. For convenience, Section 216 Cr.P.C. is quoted hereinbelow:-

"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 has 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."

10. From perusal of the aforesaid Section which reveals that undoubtedly, the court may alter or add any charge before judgment is pronounced but at the same time, for alteration of charge, no application is maintainable on behalf of either of the parties, as settled by the Hon'ble Supreme Court in the case of P. Kartikalakshmi (supra) and Anant Prakash (supra) which has been followed till date. The relevant extracts of the judgment in the case of P. Kartikalakshmi (supra) are quoted hereinbelow:-

" 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. (emphasis supplied)

7. We were taken through Sections 221 & 222 of the 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 jeopardized." (emphasis supplied)

11. This Court by its judgment and order dated 22.05.2023 passed in Application under Section 482 No. 41830 of 2022 (Arvind Yadav vs. State of U.P. and Anr.). The relevant paragraphs of the same are quoted hereinbelow:-

"14. The law has been settled by Hon^{ble} Apex Court in the case of P. Kartikalakshmi (supra) 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. It is also held by Hon^{ble} Apex Court that no party neither de-facto complainant nor the accused or for that kind of matters, the prosecution has any vested right to seek any addition or alteration of charge. The Hon^{ble} Apex Court has held that the application filed on behalf of complainant before the trial court under Section 216 Cr.P.C. was not maintainable.

15. Now it is well settled law that no party either complainant or accused has any vested right to move any application under Section 216 Cr.P.C. to add or alter any charge and any application moved by any party is not maintainable and it is only the Court which is empowered to alter or add any charge at any point of time before pronouncement of judgment. (emphasis supplied)

16. In the present case, the application filed by informant/opposite party no.2 under Section 216 Cr.P.C. was allowed by the trial court by the impugned order, which is against the law."

12. The relevant paragraph of the judgment and order dated 05.07.2019, which has been relied by learned AGA in the case of Kuldeep (supra) is quoted hereinbelow:-

"In the said matter, issue before the Court was that whether application moved by the private counsel on behalf of informant could have been entertained or not and Court has held that moving application is nothing but bringing into the notice of the learned Magistrate about the defect in framing of the charge. Court could have done it suo motu or being brought into its notice, therefore, there is no infirmity and illegality, if the charges are altered on the application filed by a private counsel on behalf of informant. Therefore, it is very much clear that the subsequent judgement is not contrary to earlier judgement i.e. P. Kartikalakshmi (Supra) and it is in consonance with earlier judgement affirming the law laid down by the Apex Court in the first judgement. He has also placed reliance upon Full Bench judgement of this Court in the case of Ganga Saran (Supra) and submitted that in case, if there are two judgements on the same point, later judgement shall prevail over the earlier judgement. Full Bench judgement is not applicable in the present case as both the judgements i.e. P. Kartikalakshmi (Supra) and Anant Prakash Sinha @ Anant Sinha (Supra) are not contrary to each other, but in consonance with each other. Lastly, he has placed reliance upon the judgement of this Court in the case of Harveer Singh (Supra), where according to learned counsel for the applicant, Court after considering both the judgements, has affirmed the order of revisional court by which section 307 I.P.C. was added in the charges after rejection of application by the Magistrate. I have perused the said judgement. Though in the said judgement, there is reference of both judgements i.e. P. Kartikalakshmi (Supra) and Anant Prakash Sinha @ Anant Sinha (Supra), but only after reference, Court has proceeded to pass order on the facts of the case without giving any finding that why in light of both the judgements of Apex Court, learned Magistrate is bound to pass order and revisional court has rightly exercised its jurisdiction. In fact, while deciding the application, Court has not considered the law laid down by the Apex Court in the cases of P. Kartikalakshmi (Supra) and Anant Prakash Sinha @ Anant Sinha (Supra), therefore, the same cannot be followed as it is contrary to law laid down by the Apex Court and further does not give finding in judgement for not following both the judgements of the Apex Court, which clearly say that no party has any right to move application under section 216 Cr.P.C. for alteration of charges.

Therefore, considering the facts and circumstances of the case as well as law laid down by the Apex Court, this fact is very much clear that under section 216 Cr.P.C., neither prosecution nor defence has any right for alteration of charges and their right only confined to bring some evidence or fact into the notice of Court for alteration of charge, but thereafter it is only upon the Court to alter the charge or reject the application for alteration of charges." (emphasis supplied)

13. The judgment relied upon by learned counsel for the applicant in the case of Dr. Nallappareddy Sridhar Reddy (supra) is not applicable in the given facts of the present case as in that case, before framing of charges, the additional chargesheet was filed with the permission of the Court, but at the time of framing of the charges, it was not brought to the notice of the court and the material was already available at the time of framing of the charge, which was not considered. The relevant extracts of the same are quoted hereinbelow:-

"4 On 13 February 2017, an application was filed by the Public Prosecutor under Section 216 of CrPC for alteration of charge stating that even though an 4 " Dowry Prohibition Act" 5 ?Cr.PC" additional charge-sheet had been filed by the investigating officer on 12 April 2013 implicating the appellant for crimes under Sections 406 and 420, charges were not framed by the trial judge under those provisions. On 21 February 2017, the Trial Court allowed the application and charges under Sections 406 and 420 were framed against the appellant. The Trial Court observed that the court only had the opportunity of going through the original charge-sheet dated 30 June 2012 and not the additional charge-sheet dated 12 April 2013 that was kept in a separate bundle. Aggrieved by the order of the Trial Court, the appellant instituted revisional proceedings before the High Court. (emphasis supplied) 5 On 1 June 2017, a Single Judge of the High Court allowed the revision petition and set aside the order of the Trial Court framing additional charges on the ground of procedural irregularity but left it open to the Trial Court to frame, if at all necessary, any additional charges after providing both the sides with an opportunity of hearing and recalling witnesses." (emphasis supplied) 12 In the present case, the investigating officer upon receipt of additional information about the alleged commission of offences under Sections 406 and 420 by the appellant, obtained permission for further investigation. Statements of witnesses recorded under Section 161 of CrPC indicated that the appellant had raised a demand of Rs 5,00,000/- for securing a doctor's job for the complainant's 10 (2016) 6 SCC 105 11 (2010) 9 SCC 368 daughter in the United Kingdom. After investigation, an additional charge-sheet was filed on 12 April 2013 against the appellant for offences under Sections 406 and 420 of the IPC. This is evident from the counter affidavit filed by the fourth respondent before this Court which contains the docket order of the Additional Junior Civil Judge, Sattenapalli. In an order dated 16 August 2013 it was stated: (emphasis supplied) ?... Additional charge sheet filed by investigating officer through learned APP. This case was taken on file u/s 498 -A of I.P.C and Section 4 of D.P. Act against A.1 to A.3 on 28.09.2012. Perused the Addl. Charge Sheet and other available material on record. Heard learned APP. It is a fit case to take on file Section 406 and 420 of IPC also against A.1.

Call on 16.09.2013.? (Emphasis supplied) The order dated 13 February 2017 stated thus:

?... In the case on hand, initially charge sheet was filed for the offence u/s 498-A IPC, Section 3 and 4 of the Dowry Prohibition Act and the cognizance was taken for those offences by my predecessor. Later an additional charge sheet was filed by the investigation officer in this case and my predecessor was please to take cognizance of offences punishable u/s 406, 420 IPC also on 16.08.2013. But the fact of filing of additional charge sheet was not brought to the notice of this Court and the additional charge sheet was kept as a separate bundle in the record. So, charges were framed against the accused only for the offence punishable u/s 498-A IPC and Section 3, 4 of the Dowry Prohibition Act and Sect. 406 and 420 of I.P.C were ignored. This fact came out to the notice of this Court while this Court has gone through the entire record after hearing arguments for disposal of the case. On 13.02.2017 the learned Asst. Public Prosecutor has also filed a petition u/s 216 of CrPC, with a prayer to add Section 406, 420 of IPC and to frame charges for those offences also...? (Emphasis supplied) 13 It is evident from the record that the earlier Additional Junior Civil Judge perused the additional charge-sheet and took cognizance of offences under Sections 406 and 420 of the IPC. However, at the time of framing charges, the additional charge-sheet was not brought to the notice of the court and the framing of charges against the appellant under Sections 406 and 420 was not considered. Therefore, the appellant was charged only for offences under Section 498 A of the IPC along with Sections 3 and 4 of the Dowry Prohibition Act. It was when an application under Section 216 of CrPC was filed by the public prosecutor on 13 February 2017 that it was brought to the notice of the Trial Judge that charges under Sections 406 and 420 were not framed."

14. In the aforementioned judgment in paragraph 16, the judgment of Hon'ble Supreme Court in the case of P. Kartikalakshmi (supra) has also been relied upon wherein, it has been held that there is no right to any party to seek for any addition or such alteration by filing any application. The relevant paragraph 16 is quoted hereinbelow:-

" 16 The decision of a two-judge Bench of this Court in P Kartikalakshmi v Sri Ganesh¹², dealt with a case where during the course of a trial for an offence under Section 376 of the IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 of the IPC. Justice F M Ibrahim Kalifulla, while dealing with the power of the court to alter or add any charge, held:

?6. ...Section 216 CrPC 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 ¹² (2017) 3 SCC 347 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 CrPC 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) 17 In *Anant Prakash Sinha v State of Haryana*¹³, a two judge Bench of this Court dealt with a situation where for commission of offences under Sections 498A and 323 of the IPC, an application was filed for framing an additional charge under Section 406 of the 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 charge, Justice Dipak Misra (as the learned Chief Justice then was), held:

?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 ¹³ (2016) 6 SCC 105 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."

15. In view of the facts and circumstances, as discussed hereinabove, keeping in mind the law settled as discussed above and on facts as well that after filing of the charge-sheet, the discharge application was moved by the applicant under Section 227 Cr.P.C which was rejected, so at such a belated stage, moving an application under Section 216 Cr.P.C for alteration of charge which is not maintainable as per the law discussed hereinabove, is nothing but to delay the proceedings and as per the law settled by Hon'ble Supreme Court, if such applications moved by the parties are being entertained, then the very purpose of speedy trial will frustrate. It is to be noted that the facts of the case in the case of Dr. Nallappareddy Sridhar Reddy (*supra*) relied by the applicant were different, where the additional evidences were on the record was left out to be considered, hence it is not applicable to the present case. Hence, no interference is called for.

16. In view of above, the present application is hereby dismissed.

Order Date :- 27.3.2025 DiVYa