

Dr.Nallapareddy Sridhar Reddy vs The State Of Andhra Pradesh on 21 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 753, AIRONLINE 2020 SC 48, (2020) 1 ALLCRILR 340, (2020) 1 CRIMES 198, 2020 (1) KCCR SN 26 (SC), (2020) 1 RECCRIR 787, (2020) 1 UC 30, (2020) 2 SCALE 263

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Bench: Hrishikesh Roy, Dhananjaya Y Chandrachud

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1934 of 2019
(Arising out of SLP(Crl.) No. 3884 of 2019)

Dr Nallapareddy Sridhar Reddy

...Appellant

Versus

The State of Andhra Pradesh & Ors

...Respondent

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 This appeal arises from the judgment of a Single Judge of the High Court of Andhra Pradesh dated 6 March 2019. A revision petition 1 filed by the fourth respondent against an order of the Additional Junior Civil Judge, Sattenapalli was allowed and directions were issued for the framing of charges against the appellant under Sections 406 and 420 of the Indian Penal Code 1860 2. 2 On 10 March 2011, a First Information Report 3 was lodged by the fourth respondent, who is the father-in-law of the appellant, alleging that the appellant and the members of his family had harassed his daughter with demands for 1 Criminal Revision Case no 2712 of 2017 2 “IPC” 3 “FIR” money and transfer of land in their names. The FIR recites that the appellant and the daughter of the fourth respondent got married in 2003. Allegedly, in 2006 the appellant and his family refused to take the complainant’s daughter to the United Kingdom where

her husband was staying unless her Stridhana property was transferred in their names.

3 On 30 June 2012, a charge-sheet was filed against the appellant and his parents for offences under Section 498A of the IPC along with Sections 3 and 4 of the Dowry Prohibition Act 1961⁴. The investigating officer, upon receipt of additional information about the commission of other offences by the appellant, obtained permission from the Trial Court for further investigation. Based on the statements of various witnesses under Section 161 of the Code of Criminal Procedure 1973⁵ with respect to the appellant raising a demand of Rs 5,00,000/- for securing a job for the complainant's daughter as a doctor in the United Kingdom, an additional charge-sheet was filed on 12 April 2013 in respect of the alleged commission of offences under Sections 406 and 420 of the IPC. The Trial Court framed charges against the appellant only for offences mentioned in the original charge-sheet dated 30 June 2012 under Section 498A of the IPC along with Sections 3 and 4 of the Dowry Prohibition Act. The trial commenced and after the recording of evidence and conclusion of arguments, the case was reserved for judgment on 13 February 2017.

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 an⁴ "Dowry Prohibition Act"⁵ "CrPC" 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.

5 On 1 June 2017, a Single Judge of the High Court allowed the revision petition⁶ 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.

6 The Trial Court after hearing arguments on behalf of both the sides and perusing the material available on record concluded that the ingredients for offences under Sections 406 and 420 IPC were not made out and by an order dated 11 October 2017 rejected the application for framing additional charges. The fourth respondent filed a revision petition before the High Court against the above order of the Trial Court.

7 On 6 March 2019, a Single Judge of the High Court allowed the revision petition⁷ and set aside the Trial Court's order. The High Court held that the Trial⁶ Criminal Revision Case no 661 of 2017⁷ Criminal Revision Case no 2712 of 2017 Court while rejecting the application under Section 216 did not disclose the reasons for concluding that the ingredients of Sections 406 and 420 were not attracted and only touched upon the lapses of the prosecution in not seeking an alteration of charges during the course of the trial. The High Court while directing the framing of additional charges under Sections 406 and 420 of IPC evaluated the witness statements brought on record during the course of investigation and referred to the additional charge-sheet filed on 12 April 2013.⁸

Aggrieved by the order dated 6 March 2019 of the High Court, the appellant moved this Court under Article 136 of the Constitution. 9 Ms Anitha Shenoy, learned Senior Counsel appearing on behalf of the appellant has urged the following submissions:

- (a) An application for alteration of charge under Section 216 was intentionally filed on the date of the pronouncement of judgment to unnecessarily delay the proceedings;
- (b) The FIR dated 10 March 2011, filed by the fourth respondent, has no mention of any demand or payment of Rs 5,00,000/- to the appellant for securing a job for the complainant's daughter. The FIR only refers to facts with respect to alleged offences under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act;
- (c) Both the fourth respondent and his daughter being doctors are aware that a doctor's job cannot be secured in the United Kingdom without clearing an entrance test. Accordingly, the question of paying Rs 5,00,000/- to the appellant for securing a job does not arise;
- (d) PW 6, who is a friend of the fourth respondent is an interested witness as they have been friends for the past twenty-five years;
- (e) PW 5, who is the brother-in-law of the fourth respondent, is an interested witness and during the cross-examination he was unable to mention the date, month and year on which the alleged amount was paid to the fourth respondent for payment to the appellant. There exists no documentary material to indicate that the fourth respondent borrowed money from PW 5; and
- (f) The ingredients of Sections 406 and 420 have not been fulfilled. At the stage of framing of charge, the court is not expected to go deep into the probative value of the material on record. The court only needs to consider whether there is ground for presuming that the offence has been committed (*Onkar Nath Mishra v The State*⁸). There exists a fine distinction between cheating and a mere breach of contract. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct. To hold a person guilty of cheating, it is necessary to show existence of fraudulent or dishonest intention at the time of making the promise. (*Hridaya Ranjan Prasad Verma v State of Bihar*⁹).

10 On the other hand, Mr A T M Ranga Ramanujam, learned Senior Counsel, appearing on behalf of the fourth respondent submitted thus:

- (a) The fourth respondent did not intend to delay the pronouncement of the decision. The additional charge sheet and the cognizance order had been in place before the Trial Court since 2013. The additional charge-

8 (2008) 2 SCC 561 9 (2000) 4 SCC 168 sheet missed the attention of the Magistrate because it was kept in a separate docket;

(b) The charge can be altered by the court at any time before the pronouncement of the judgment based on the materials available or subsequently brought on record during the course of the trial (Anant Prakash Sinha v State of Haryana¹⁰). In the present case, the investigating officer filed the additional charge-sheet only after he received additional information during the course of investigation in relation to offences under Sections 406 and 420 of the IPC. Though, the appellant was initially charged in pursuance of the original charge- sheet dated 30 June 2012, subsequent evidence brought on record does not restrict the court from altering the charge; and

(c) At the time of framing of charge, it is sufficient if the court is able to form a presumption regarding the existence of ingredients constituting the offence found upon the material placed before it. It is not necessary for the court to undertake an analysis of the credibility, veracity or evidentiary value of the materials placed before it (Sajjan Kumar v Central Bureau of Investigation¹¹).

¹¹ The rival submissions fall for our consideration.

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:

“... Additional charge sheet filed by investigating officer through learned APP. This case was taken on file u/s 498 -A of IPC and Sec. 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, Sec. 3 & 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 Sec. 3, 4 of the

Dowry Prohibition Act and Sect. 406 and 420 of IPC 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 498A 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 order to adjudicate upon the dispute, it is necessary to refer to Section 216 of CrPC:

“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.” 15 Section 216 appears in Chapter XVII of the CrPC. 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 persecutor 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 of the CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.

16 The decision of a two-judge Bench of this Court in *P Kartikalakshmi v Sri Ganesh*¹², 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.

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 CrPC. 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)

18 In CBI v Karimullah Osan Khan¹⁴, this Court dealt with a case where an application was filed under Section 216 of CrPC during the course of trial for addition of charges against the appellant under various provisions of the IPC, the Explosives Act 1884 and the Terrorist and Disruptive Activities (Prevention) Act 1987. Justice K S P Radhakrishnan, speaking for the Court, held thus:

"17. 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 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 CrPC 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 CrPC, 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." 14 (2014) 11 SCC 538 (Emphasis supplied)

19 In Jasvinder Saini v State (Govt of NCT of Delhi)¹⁵, this Court dealt with the question whether the Trial Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B of the IPC. Justice T S Thakur (as he then was) speaking for the Court, held thus:

“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)

20 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 15 (2013) 7 SCC 256 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, 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.

21 The appellant has relied upon a two-judge Bench decision of this Court in *Onkar Nath Mishra v The State*¹⁶ to substantiate the point that the ingredients of Sections 406 and 420 of the IPC have not been established. This Court while dealing with the nature of evaluation by a court at the stage of framing of charge, held thus:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not 16 (2008) 2 SCC 561 a ground for convicting the accused has been made out.

At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.” (Emphasis supplied) 22 In the present case, the High Court while directing the framing the additional charges has evaluated the material and evidence brought on record after investigation and held:

“LW1 is the father of the de facto complainant, who states that his son in law i.e., the first accused promised that he would look after his daughter at United Kingdom (UK) and promised to provide Doctor job at UK and claimed Rs.5 lakhs for the said purpose and received the same and he took his daughter to the UK. He states that his son-in-law made him believe and received Rs.5 lakhs in the presence of elders. He states that he could not mention about the cheating done by his son-in- law, when he was examined earlier. LW13, who is an independent witness, also supports the version of LW1 and states that Rs.5 lakhs were received by A1 with a promise that he would secure doctor job to the complainant’s daughter. He states that A1 cheated LW1, stating that he would provide job and received Rs.5 lakhs. LW14, also is an independent witness and he supported the version of LW13. He further states that A1 left his wife and child in India and went away after receiving Rs.5 lakhs.

Hence, from the above facts, stated by LWs. 13 and 14, prima facie, the version of LW1 that he gave Rs.5 lakhs to A1 on a promise that he would provide a job to his daughter and that A1 did not provide any job and cheated him, receives support from LWs. 13 and 14. When the amount is entrusted to A1, with a promise to provide a job and when he fails to provide the job and does not return the amount, it can be made out that A1 did not have any intention to provide job to his wife and that he utilised the amount for a purpose other than the purpose for which he collected the amount from LW1, which would suffice to attract the offences under Sections 406 and 420 IPC. Whether there is truth in the improved version of LW.1 and what have been the reasons for his lapse in not stating the same in his earlier statement, can be adjudicated at the time of trial.

It is also evidence from the record that the additional charge sheet filed by the investigating officer, missed the attention of the lower court due to which the additional charges could not be framed.” (Emphasis supplied)

23 The test adopted by the High Court is correct and in accordance with decisions of this Court. In the counter affidavit filed by the fourth respondent before this Court, depositions of PW 1 (LW 1), PW 5 (LW 12) and PW 6 (LW 13) and their cross-examination have been annexed. The material on record supports the possibility that in April 2006, the appellant demanded Rs 5,00,000/- from PW 1, who is the complainant, in order to secure a doctor’s job for the complainant’s daughter in the United Kingdom. According to PW 1, he borrowed the amount from PW 5 (brother-in-law of PW 1) and paid it to the appellant in the presence of PW 5 and PW 6 (friend of PW 1). Without pronouncing on the probative value of such evidence, there exists sufficient material on record that

shows a connection or link with the ingredients of the offences under Sections 406 and 420 of the IPC, and the charges sought to be added. 24 The veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charge the court needs to prima facie determine that there exists sufficient material for the commencement of trial. The High Court has relied upon the materials on record and concluded that the ingredients of the offences under Sections 406 and 420 of the IPC are attracted. The High Court has spelt out the reasons that have necessitated the addition of the charge and hence, the impugned order does not warrant any interference.

25 We accordingly dismiss the appeal. The trial proceedings pending before the Additional Junior Civil Judge, Sattenapalli shall continue. 26 Pending application(s), if any, shall stand disposed of.

.....J. [Dr DHANANJAYA Y CHANDRACHUD]
.....J. [HRISHIKESH ROY] New Delhi;

January 21, 2020.