

## THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 11.05.2007

+ **CRL REV. P. No.595/2006**

**VERGHESE STEPHEN**

... Petitioners

- versus -

**CENTRAL BUREAU OF INVESTIGATION**

... Respondent

### Advocates who appeared in this case:

For the Petitioner : Mr Aman Lekhi, Sr Advocate with Mr Ajay Kumar Jain.  
For the Respondent/CBI : Mr R.M. Tiwari.

### **CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

- |    |   |     |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in Digest?                    | Yes |

### **BADAR DURREZ AHMED, J**

1. The petitioner is aggrieved by the order dated 27.05.2006 passed by the learned Additional Sessions Judge whereby his application under Section 216 of the Code of Criminal Procedure, 1973 (herein referred to as 'the Code') for alteration of charge was dismissed.

2. By an order dated 16.04.2005, the Special Judge, Delhi had directed the framing of charges against the petitioner and the co-accused K.K. Mishra. Another co-accused M/s Stejac Video Products (P) Ltd was

discharged. The petitioner was charged on two counts. Firstly, he was charged under Section 120-B IPC read with Section 420 IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. Secondly, he was charged under Section 420 IPC.

3. It is pertinent to note here that no revision petition was filed against the order on charge. However, an application under Section 216 of the Code was filed on 29.05.2005 before the learned Special Judge. The prayer made in the said application was as under:-

“It is therefore respectfully prayed this Hon'ble Court be pleased to withdraw charge under Section 420 IPC as also the charge of conspiracy under Section 120B to commit the said offence and the offences under the 13(2) read with Section 13 (1) (d) Corruption Act and alter the charge to one under Section 417 IPC.”

4. In the said application, it was indicated in paragraph 3 thereof that Section 420 IPC was not attracted and the only charge if at all which could be framed against the petitioner was under Section 417 IPC. It was further contended that there was no evidence at all from which a conspiracy to commit the offence under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 could be made out. On these grounds, the aforesaid prayer was made in the said application under Section 216 of the Code.

5. The said application was dismissed as being premature. The learned Special Judge observed as under while dismissing the said application:-

“6. It is well settled that Criminal Court has no power to review its own order. What cannot be done directly also cannot be allowed to be done indirectly. The general principles of interpretation of Statutes is that in construing a remedial statute the court ought to give to it the “widest operation which its language will permit”. The words of such a statute must be so construed as “to give the most complete remedy which the phraseology will permit”, so as to secure that the relief contemplated by the statute should not be denied to the class intended to be relieved”. Therefore, if the powers of review are not conferred on this court by a Statute then same cannot be inferred under the garb of interpretation to the Statute. The interpretation of Statute is confined to the scope which its language will permit.

7. Once, a Criminal Court has framed the charge, then the order of framing charge cannot be reviewed by the same court unless and until there is evidence on the record to support the addition or alteration of charge. The evidence available on the record at the time of framing the charge on 16.4.2005 have already been considered by the predecessor court and thereafter no further evidence has been recorded in this case. If the contention of the counsel for the accused persons is accepted, then same would amount to review of order of charge dated 16.4.2005 without any further evidence.

8. No doubt, erroneous and improper charge can be corrected under section 216 of the Cr.P.C. by re-framing it properly or by adding to it or altering it for an offence proveable by the evidence. Thus power to add or alter a charge is comprehensive enough for remedying defects, whether they arise out of framing of a charge or the non framing of a charge and whether they are discovered at the inception of the trial or at subsequent stage of the trial, prior to pronouncement of Judgment. I am fortified in my view by Judgments in case of **State of Maharashtra Vs. Salman Salim Khan, 2004 Criminal Law Journal, 920, Rocky**

**Benedick and others Vs. State of Sikkim, 2003 Criminal Law Journal, 3309, Vibhuti Narain Chaubey vs. State of UP, 2003 Criminal Law Journal, 196 and Hariharan Chakarvarty vs. State of West Bengal, AIR 1954 SC 266.**

9. Thus in the light of the above discussion, I find no merit in this application at this stage and accordingly the same is dismissed as premature.”

6. Elaborate arguments were advanced on behalf of the petitioner by Mr Lekhi, the learned senior counsel who appeared for him, with regard to the ambit and scope of the powers of the court under Section 216 of the Code. He submitted that the learned Special Judge had erred in dismissing the application under Section 216 without going into the merits of whether the charges framed required alteration or not. He submitted that under Section 216 of the Code, the court had ample power to alter or add to any charge at any time before the judgment was pronounced and it did not matter as to whether, after the initial framing of charges, any further evidence was brought to light or not. What was relevant was that if it appeared to the court that a charge required alteration or any charge required to be added, then the court could do so at any time before the judgment is pronounced. This power, according to Mr Lekhi, is not circumscribed by the requirement of any fresh material or new evidence. Various references were made to the New Shorter Oxford English Dictionary to indicate that the word “alter” implied change or modification and, therefore, the question of review was built in the same expression. Accordingly, it was contended that the court had power to entertain the application under Section

216 and since it refused to do so, the present revision petition was clearly maintainable and this court ought to direct that the application be taken up and disposed of on merits. Mr Lekhi submitted that insofar as remedial provisions are concerned, the court is obliged to give such provisions the widest operation of its language so as to advance the remedy. He referred to the decision of the Bombay High Court in the case of **State of Maharashtra v. Ramdas Shankar Kurlekar and Another**: 1999 CRI. L.J. 196 (DB) wherein in paragraph 32, it is observed:-

“Even though a Court can alter a charge with the available material, if a prejudice is caused to the accused by altering the charges then it is not permissible for the trial Court to change the charge.”

Reading the above observation of the Bombay High Court, Mr Lekhi submitted that this is clearly indicative of the power of the court to alter a charge on the basis of available material and not necessarily on new material.

7. Mr Lekhi also referred to the decision in the case of **Queen-Empress v. Vajiram**: 16 Bom. 414, wherein it was held that an application for alteration of charges by addition of certain offences under Section 423 and 424 of the Indian Penal Code ought to be disposed of at the commencement of the trial itself and should not be left to be decided at the conclusion of the trial. He also submitted that the power to remedy the defects by alteration of the charges would include the case of withdrawal of a charge incorrectly framed. For this

proposition, he placed reliance on the decision of a learned single Judge of the Allahabad High Court in the case of **Dwarka Lal v. Mahadeo Rai and Others:** **12 ILR 551 (Allahabad Series).**

8. Mr Tiwari, who appeared on behalf of the CBI, contended that a joint reading of Sections 216 and 217 of the Code would indicate that before the court alters or adds any charge, there must be some progress in the trial. Mr Tiwari contended that the remedy against an order on charge and the framing of charges lay in filing a revision petition before this court. The petitioner did not file any revision petition but chose to file an application under Section 216 of the Code which was not maintainable without any further advancement in the case. The order on charge was passed on 16.04.2005. Mr Tiwari referred to the decision of the Supreme Court in the case of **State of Maharashtra v. Salman Salim Khan & Another:** 2004 SCC (Cri) 337 (paragraph 4) to submit that something must happen in the trial to enable the court to take action under Section 216 of the Code. He also referred to the decision of the Supreme Court in the case of **Hasanbhai Valibhai Qureshi v. State of Gujarat and Others:** 2004 SCC (Cri) 1603 (paragraph 10). He also placed reliance on a decision of the Calcutta High Court in the case of **Rajendra Singh v. State and Others:** 1989 Cri L.J. 255 (DB) to submit that the power to add or alter a charge cannot be exercised unless there is evidence on record to support the addition or alteration of charge. Lastly, he referred to the decision of a learned single

Judge of the Allahabad High Court in the case of *Vibhuti Narayan Chaubey, alias Lala Chaubey and Others v. State of U.P.*: 2003 CRI. L.J. 196 to submit that Section 216 of the Code related to alteration of charge and / or an addition of a charge but, did not permit the deletion of a charge.

9. I have considered the arguments advanced by the counsel for the parties and have examined the papers placed before me and I am of the opinion that this revision petition cannot be allowed. Section 216 of the Code reads 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 section 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.”

10. It is abundantly clear that the above provision only speaks of alteration of or addition to any charge. There is no reference to the deletion of any charge. In the present case, the petitioner was charged substantively for the offence under Section 420 IPC and for conspiracy under Section 120-B IPC read with Section 420 IPC and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. What the petitioner is seeking is that the charge of conspiracy pertaining to Section 120-B IPC be deleted altogether. Although the petitioner has styled this prayer as a withdrawal of the charge so as to include it within the ambit of the decision of the Allahabad High Court in the case of **Dwarka Lal** (*supra*), however, I find myself unable to agree with the conclusion of the learned Judge in that case. On the contrary, I find that in a subsequent decision of the Allahabad High Court itself in the case of **Vibhuti Narayan** (*supra*), the said court had clearly held that Section 216 of the Code did not provide for deletion of a charge and that the word “delete” had intentionally not been used by the Legislature. I am in agreement with this conclusion. The petitioner is seeking the deletion of the charge of conspiracy altogether. That is not permissible under Section 216 of the Code. A charge once framed must lead to either acquittal or conviction at the conclusion of the



trial. Section 216 of the Code does not permit deletion of the same. If the petitioner felt aggrieved, he could have filed a revision petition against the order on charge and the framing of the charge. He, however, chose not to do so.

11. There is no doubt that the court exercising powers under Section 216 may alter or add to a charge at any time before the judgment is pronounced. However, certain safeguards which are provided in the Section itself have to be kept in mind so as not to cause any prejudice to the accused. Section 217, which is essentially a corollary to Section 216 of the Code, permits the recalling of the witnesses when charges are altered. However, the Supreme Court in the case of the *State of Maharashtra v. Salman Salim Khan (supra)* has clearly indicated that the law governing the trial of criminal offences provides for alteration of charges at any stage of the proceeding depending upon the evidence adduced in the case. The court also cautioned that the arguments regarding the framing of proper charges are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, the proceedings can get protracted by the intervention of the Supreme Court.

12. In *Hasanbhai Valibhai Qureshi (supra)*, the Supreme Court observed as under:-

“10. Therefore, if during trial the trial court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate.

13. There is, therefore, some indication that once the charges are framed, the same can be altered and / or added to provided that there is some progress in the trial and some material comes before the trial court enabling it to alter or add to the charge already framed.

14. The petitioner has contended that Section 420 IPC is not made out and the petitioner at best could only be charged under Section 417 IPC and, therefore, this charge also requires to be altered. It must be remembered that Section 417 IPC is a minor offence compared to the more serious offence of Section 420 IPC. Situations such as this are covered by the provisions of Section 222 of the Code which reads as under:-

**“222. When offence proved included in offence charged.**

- (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.
- (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor

offence, although he is not charged with it.

- (3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.
- (4) Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

#### **Illustrations**

- (a) A is charged under section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.
- (b) A is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.”

15. It is, therefore, clear that while the petitioner may be charged under Section 420 IPC and tried for the same offence, it may eventually turn out that he is only guilty of an offence under Section 417 IPC. In that eventuality, it would be lawful for the court to convict the petitioner under Section 417 although he was not charged with it. This is clearly indicated by the provisions of Section 222 read with illustrations extracted above. Therefore, there is no

necessity of altering the charge from one under Section 420 IPC to one under Section 417 IPC.

16. In view of the foregoing, the impugned order does not call for any interference at this stage. This revision petition is dismissed.

**BADAR DURREZ AHMED**  
**( JUDGE )**

**May 11, 2007**  
*δυττ*