



2023:KER:37477

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 5<sup>TH</sup> DAY OF JULY 2023 / 14TH ASHADHA, 1945

CRL.MC NO. 3606 OF 2023

AGAINST THE ORDER IN CRL.MP 674/2022 IN S.C 492/2017 OF

PRINCIPAL ASSISTAN SESSIONS COURT, NORTH PARAVUR

PETITIONERS/ACCUSED NOS.1 AND 2:

- 1 SILVESTER @ SILVER,  
AGED 43 YEARS,  
S/O. XAVIOUR, KAIMATHURUTHIL HOUSE,  
KURUMBATHURUTH KARA,  
CHENDAMANGALAM VILLAGE, PIN - 683594
- 2 MANIKANDAN,  
AGED 36 YEARS,  
S/O. HARIHARAN,  
KAPPITHANPARAMBIL HOUSE,  
KURUMBATHURUTH KARA,  
CHENDAMANGALAM VILLAGE, PIN - 683594  
BY ADVS.  
C.P.UDAYABHANU  
NAVANEETH.N.NATH

RESPONDENT/COMPLAINANT:

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

BY ADV  
SRI.G.SUDHEER, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 05.07.2023, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:



**C.R**

**K.BABU, J.**

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Crl.M.C No.3606 of 2023  
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Dated this the 5<sup>th</sup> day of July, 2023

**ORDER**

The challenge in this Crl.M.C is to the order dated 15.02.2023 in Crl.M.P No.674/2022 in S.C No.492/2017 on the file of the Principal Assistant Sessions Court, North Paravur.

2. Heard both sides.

3. The petitioners are the accused in the Sessions Case. Charges were initially framed against them alleging offences under Sections 452, 324, 323, 308 and 354 read with Section 34 of IPC.

4. The prosecution examined PWs 1 to 14 and proved Exts.P1 to P13 and M01.

5. The accused were examined under Section 313 Cr.P.C. Then the Public Prosecutor filed a petition under Section 216 Cr.P.C for altering the charge by adding Section 307 instead of Section 308 IPC. The Court below, after considering the entire materials, altered the charge by deleting Section 308 and framing the charge under Section 307 IPC.



6. The learned counsel for the petitioners contended that the entire proceedings initiated for alteration of charge are vitiated as the application was filed by the Public Prosecutor. The learned counsel relied on **Kartikalakshmi.P v. Sri. Ganesh and another ((2017) 3 SCC 347)** and **Vijay Kumar Jain v. State of Madhya Pradesh (2020 KHC 4053) = (MANU/MP/0594/2020)** to substantiate his contentions.

7. The learned Public Prosecutor relying on **Dr.Nallapareddy Sridhar Reddy v. State of Andhra Pradesh [(2020) 12 SCC 467]** and **Soundarajan v. State rep. by the Inspector of Police Vigilance Anti-corruption Dindigul (2023 SCC Online SC 424)** contended that the proceedings initiated for alteration of charges are in no way vitiated as the Public Prosecutor has a duty to bring to the notice of the Court that proper charge is not framed.

#### The Question

8. Would a proceeding initiated at the instance of the Public Prosecutor for alteration of the charge under Section 216 Cr.P.C be treated as vitiated due to want of jurisdiction?

9. For convenience of analysis, Section 216 Cr.P.C is extracted



below:

**“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.”

10. Section 216 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 or addition of a charge based on the materials brought on record during the course of trial. Sub-section (1) of Section 216 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 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 Cr.P.C 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 as if the additional or alternative charge is the original charge. Sub-section (4) of Section 216 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.

11. The power of the Court to alter a charge under Section 216 Cr.P.C is comprehensive enough for remedying the defects in a charge, where they arose while framing the charge or due to non-framing of charge, or whether the defects were discovered during the course of trial. The expressions “at any time” and “before the judgment is pronounced” indicate that the power of the Court is very wide.



12. A Two-Judge Bench of the Supreme Court in **Kartikalakshmi** considered a case where during the course of trial an application under Section 216 Cr.P.C was filed by the defacto complainant to frame an additional charge for an offence under Section 417 IPC.

13. In **Kartikalakshmi** the Supreme Court held thus:

“6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. 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 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.

7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. 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 CrPC 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 CrPC. 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 jeopardised."

14. In **Anant Prakash Sinha v. State of Haryana [(2016) 6 SCC 105]** (a latter decision), another Two-Judge Bench of the Supreme Court considered a case where the defacto complainant filed an application under Section 216 Cr.P.C for framing an additional charge. The Supreme 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 Supreme Court observed that the principle that has to be kept in mind is that the charge so framed by the Magistrate 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 learned Magistrate in entertaining the application filed by the informant, the Court observed.

15. In **Central Bureau of Investigation v. Karimullah Osan Khan [(2014) 11 SCC 538]**, while dealing with a case where an application was filed under Section 216 Cr.P.C during the course of trial for the addition of charges, the Supreme Court held that Section 216 Cr.P.C 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.

16. In **Jasvinder Saini v. State (Govt. of NCT of Delhi) [(2013) 7 SCC 256]**, the Supreme 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 Cr.P.C is unrestrained, provided, such alteration or addition is made





before the judgment is pronounced.

17. The learned counsel for the petitioner, relying on **Vijay Kumar Jain**, submitted that the ratio in **Kartikalakshmi** is that a proceeding initiated at the instance of the Public Prosecutor is vitiated due to want of jurisdiction.

18. The learned counsel canvassed the decision in **Vijay Kumar Jain**, wherein the Madhya Pradesh High Court held that the law declared in **Anant Prakash** is hit by the principle of *per incuriam*.

19. I am unable to accept the contention of the learned counsel for the petitioner. The principle declared in **Kartikalakshmi** is that Section 216 Cr.P.C is an enabling provision for the purpose of alteration or addition of any charge and no party, the defacto complainant, the accused or the Public Prosecutor, has any vested right to seek any addition or alteration of charge and also that the Court exercises the enabling provision to alter charge in a situation when it comes to the knowledge that a necessity has arisen for the charge to be altered or added and it may do so on its own. I am of the view that there is no conflict in **Kartikalakshmi** and **Anant**



**Prakash** on the power and jurisdiction of the Court under Section 216 Cr.P.C.

20. I respectfully disagree with the view of the Madhya Pradesh High Court in **Vijay Kumar Jain** that **Anant Prakash** is hit by the principle of *per incuriam*.

21. In **Soundarajan**, on the scope of Section 216 Cr.P.C, the Supreme Court held that apart from the duty of the Trial Court, even the Public Prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.

22. In **Dr.Nallapareddy**, on the scope of Section 216 Cr.P.C, the Supreme Court held thus:

“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, 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."

23. The statutory provision and the precedents relied on above lead me to conclude that a proceeding initiated at the instance of the Public Prosecutor or the defacto complainant for alteration of charge is not vitiated. The informant or the Public Prosecutor, by way of an application, may bring to the notice of the Court the defects in the charge and the Court exercises power under Section 216 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 Cr.P.C, it shall ensure that no prejudice is caused to the accused and that he gets a fair trial.

24. In the present case, the petitioners have no case that any



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prejudice has been caused to them while directing the alteration of the charge. The order impugned requires no interference.

The Criminal M.C stands dismissed.

Sd/-  
K.BABU,  
JUDGE

KAS



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**APPENDIX OF CRL.MC 3606/2023**

PETITIONER ANNEXURES

Annexure 1	COPY OF THE CRL. M.P. 674/2022 DATED 14.06.2022 FILED BY THE ADDL. PUBLIC PROSECUTOR
Annexure 2	CERTIFIED COPY OF THE ORDER IN CRL. M.P. 674/2022 DATED 15.02.2023 PASSED BY THE HON'BLE PRINCIPAL ASST. SESSIONS COURT, NORTH PARAVUR