

(2024) 02 PAT CK 0010

Patna High Court

Case No: Criminal Miscellaneous No. 20205 Of 2016

Md. Asif

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 143, 144, 147, 323, 380, 384, 386, 427, 451, 452
- Code Of Criminal Procedure, 1973 - Section 216, 397, 482

Hon'ble Judges: Jitendra Kumar, J

Bench: Single Bench

Advocate: Uma Shankar Singh, B.N.Pandey, P.K. Jha, Rajesh Kumar Jha, Meenakshi Priya

Final Decision: Dismissed

Judgement

1. The present petition under Section 482 of Cr.PC has been preferred by the Petitioner against the impugned order dated 02.03.2016, passed by Ld. Sub Divisional Judicial Magistrate, Darbhanga in T.R. No. 747 of 2016 corresponding to G.R. No. 195 of 2006, arising out of Laheriyasarai P.S. Case No. 32 of 2006, whereby the application filed on behalf the prosecution for alteration of charge has been rejected.

2. The relevant facts of the case is that Laheriyasarai P.S. Case No. 32 of 2006 was lodged under Section 143, 144, 451, 380, 384, 386 and 427 of the Indian Penal Code. Subsequently, after investigation charge sheet was submitted and cognizance was taken and thereafter charge was framed against the accused persons for the offence punishable under Sections 147, 144, 323, 427, 452, and 451 of the Indian Penal Code. Charge under Section 380 of the Indian Penal Code, however, was not framed. Subsequently, trial proceeded and five prosecution witnesses were examined. Argument on behalf of both the sides were already heard and the case was fixed for judgment on 25.06.2015 and at that stage the prosecution filed the said application for alteration of charge praying for addition of charge under Section 380 of the Indian Penal Code. However, Ld. Trial Court rejected the application filed by the prosecution holding that application is meant to delay the disposal of the case which is already nearly about ten years old.

3. I heard Ld. counsel for the Petitioner who is son of the Petitioner and Ld. APP for the State.

4. Ld. counsel for the Petitioner submits that Ld. Trial Court has arbitrarily rejected the application on the ground of delay in disposal of the trial. He further submits that as per the merit of the case, charge under Section 380 of the Indian Penal Code is also made out and Ld. Trial Court should have allowed the application adding charge under

Section 380 of the Indian Penal Code to the charge already framed.

5. However, per contra, Ld. APP for the State vehemently opposes the prayer of the Petitioner, submitting that alteration of charge is provided under Section 216 of the Cr. P.C. whereby it is the Court which may alter or add to any charge at any time before judgment is pronounced and no party is authorized to move any application for addition or alteration of any charge nor Court is required to entertain such an application from either of the parties. Any such application on behalf of either of the parties is not maintainable. Hence, the impugned judgment is not sustainable in the eye of law.

6. Hence, Ld. APP submits that Ld. Trial Court has rightly rejected the application of the Petitioner, though on different grounds. He also refers to a decision of Hon'ble Supreme Court in P. Kartikalakshmi Vs. Sri Ganesh and Anr. (2017 3 SCC 347), wherein Hon'ble Supreme Court has clearly held that power of invocation of Section 216 Cr.PC is exclusively confined to 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 was also made clear by Hon'ble Apex Court 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.PC. It was further held that 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. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 Cr. PC. Therefore, there was no question of the said order being revisable under Section 397 Cr. PC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. The whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court.

7. The P. Kartikalakshmi case (Supra) has been followed by Hon'ble Allahabad High Court in Nanhe Bhaiya @ Nanhan Singh Vs. State of U.P. as decided on 31st March, 2023.

8. Hence, Ld. APP for the State submits that there is no infirmity in the impugned order, whereby Ld. Trial Court has rejected the application of the prosecution for addition of charge. However, he concedes that going by the said judgment, Ld. Trial Court is at liberty to alter or add any charge on its own.

9. I considered the submissions advanced on behalf of both the parties and perused the record. It is found that at the stage of judgment, prosecution has moved the application for addition of charge under Section 380 of the Indian Penal Code and the same was rejected by Ld. Trial Court. Though the ground for rejection of the aforesaid application is delay, the said application for addition of charge was not maintainable in view of the ratio of P. Kartikalakshmi case (supra) and Nanhe Bhaiya @ Nanhan Singh case (supra). Hence, there is no infirmity in the impugned order, whereby the application for addition of charge has been rejected by Ld. Trial Court.

10. It is, however, clarified that the Trial Court is always at liberty to alter or add charge on his own as per law. Hon'ble Supreme Court in paragraph no. 6 of the Judgment P. Kartikalakshmi (Supra) has clearly held that 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.

11. Even, Hon'ble Allahabad High Court in the Nanhe Bhaiya case (Supra) has observed at the end of the judgment that it is made clear that the Ld. Trial Court concerned shall be at liberty to pass appropriate order keeping in view the provision contained in Section 216 Cr.P.C., on its own instance and also keeping in view the observation made hereinabove after affording opportunities to all concerned parties.

12. The present petition being devoid of merit is accordingly dismissed with the aforesaid observation.