

(2024) 10 AHC CK 0012

Allahabad High Court, Lucknow Bench

Case No: Application U/S 482 No. 5468 Of 2024

Suresh Kumar Shukla @ Suresh
Dutt Shukla

APPELLANT

Vs

State Of U.P. Thru. Prin. Secy.
Home Lko. And Another

RESPONDENT

Date of Decision: Oct. 25, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 173, 216, 222, 224, 319
- Indian Penal Code, 1860 - Section 147, 201, 302, 306, 323, 325, 336, 427

Hon'ble Judges: Saurabh Lavania, J

Bench: Single Bench

Advocate: Vimal Shukla

Final Decision: Dismissed

Judgement

Saurabh Lavania, J

1. Heard learned counsel for the applicant and Sri S.P.Tiwari and Sri Ajay Kumar Srivastava, learned counsel appearing for the State of U.P. and perused the record.
2. In view of proposition settled on the issue involved in this case as also the fact that two witnesses of prosecution have already been examined before the trial Court namely Arun Kumar/PW-1 and Dileep Kumar Tiwari/PW-2, notice to opposite party No.2 is dispensed with.
3. Present application has been filed by the applicant challenging the order dated 01.06.2024, whereby the Additional District and Session Judge, Court No.03, Gonda, (in short "trial Court"), deleted/changed the charge under Section 306 IPC, framed on

11.05.2023 and framed the charge under Section 302 IPC. Relevant portion of the order dated 01.06.2024 is extracted hereinunder:-

" 23 -216
-306 -302
-302
10-06-2024 "

4. A perusal of order dated 01.06.2024, quoted above, indicates that based upon statement of Arun Kumar/PW-1 and Dileep Kumar Tiwari/PW-2 an application was preferred on 23.04.2024 under Section 216 Cr.P.C. with the prayer that Charge under Section 306 IPC be altered to Section 302 IPC.

5. Brief facts of the case, which are relevant, as appears from the record, are to the effect that an FIR bearing No. 198 of 2022 was lodged on 01.09.2022 under Section 302 and 201 IPC. As per this FIR, the deceased is the wife of the applicant and the applicant is the main accused and he committed the alleged crime (murdered the deceased) on account of illicit relationship with her brother-in-law.

6. After lodging of FIR, the investigation was carried out and Investigating Officer, based upon the evidence collected during investigation, filed the Charge Sheet No.1, dated 08.01.2023 under Section 306 IPC.

7. Thereafter, the trial Court framed the charges under Section 306 IPC against the applicant and upon being denied by the applicant, he was put to trial. To establish its case, the prosecution examined namely Arun Kumar/PW-1 and Dileep Kumar Tiwari/PW-2 as witnesses of the fact. These witnesses in their statements before trial Court levelled specific allegations against the applicant, according to which, applicant had committed the crime.

8. Based upon the statements of Arun Kumar/PW-1 and Dileep Kumar Tiwari/PW-2 the application under Section 216 CrPC was preferred by the prosecution and the trial Court based upon the deposition/statement of PW-1 altered/framed the charge against the accused-applicant under Section 302 IPC.

9. Challenging the impugned order dated 01.06.2024, learned counsel for the applicant submitted that no doubt in exercise of power under Section 216 CrPC the trial Court can alter or add the charge at any stage of proceedings including while dictating the final judgment, but in exercise of power under Section 216 CrPC, the trial Court can't delete the charge. The charge can only be altered or added. In the instant case, the charge under Section 306 IPC, earlier framed, has been deleted and the charge under Section 302 IPC has been framed. As such, interference of this Court is required in the order dated 01.06.2024.

10. Learned counsel for the applicant in support of his contention placed reliance on the judgment dated 20.07.2023 passed by this Court in **Criminal Revision No. 1026 of 2023 (Dev Narain vs. State of U.P. and Another)**.

11. Learned AGA opposed the prayer, sought in the instant application. He stated that order of trial Court is not liable to be interfered with on the sole ground pressed that it has no power to delete the Charge. It is for the reason that after order dated 01.06.2024 the trial would proceed against the applicant under Section 302 IPC and it is trite law that after appreciation of evidence if it is found that an offence under Section 302 IPC is not made out and that the offence under Section 306 IPC is made out then in that event an accused can be convicted for offence under Section 306 IPC and if on appreciation of evidence no offence is made out, the accused can be acquitted. He also stated that this ground would be sustainable if on account of deletion of charge an accused would be discharged and trial comes to an end.

12. Considered the aforesaid and perused the record.

13. In order to decide the present matter, it would be appropriate to take note of some relevant provision(s) and the pronouncement(s) related to the subject matter of the present case.

14. Section 216 CrPC is extracted hereinunder:-

"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 222 CrPC, 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 authorise 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."

16. Section 224 CrPC, reads as under:-

"224. Withdrawal of remaining charges on conviction on one of several charges.—When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn."

17. The Hon'ble Apex Court in the case of Sohan Lal and Others vs. State of Rajasthan, (1990) 4 SCC 580; held that the accused-appellants namely Vijya Bai and Jiya Bai (appellants No. 4 and 5 therein) could be dealt with neither under Section 216 CrPC nor under Section 319 CrPC. In this case, these accused-appellants were discharged and thereafter in exercise of power under Section 216 and 319 CrPC the Magistrate summoned these accused alongwith others and the order of Magistrate was affirmed by the High Court of Rajasthan. Relevant paras, to the view of this Court, are extracted hereinunder:-

"3. On April 21, 1980 one Shanti Lal lodged a report at Bikaner Police Station stating therein that the appellants and two others namely Uttam Chand and Hanuman Chand at about 2 p.m. that day were pelting stones at the informant's house causing damage

to it and that Durgabai, Tara and Sunita who at the relevant time were sitting at the chowk of the house were injured. After recording FIR No. 22 dated April 21, 1980 and on completion of investigation police framed charges under Sections 147, 323, 325, 336 and 427 IPC and the charge-sheet was forwarded to the Judicial Magistrate No. 2 Bikaner under Section 173 CrPC. After taking cognizance and after hearing the arguments, the Judicial Magistrate, Bikaner by his order dated October 3, 1980 in Criminal Case No. 165 of 1980 had been pleased to discharge appellants 4 and 5, namely, Vijya Bai and Jiya Bai of all the charges levelled against them. Appellants 1, 2 and 3, namely, Sohan Lal, Padam Chand and Vishnu were ordered to be charged only under Section 427 IPC on the basis of site inspection and injury report.

4. On February 25, 1982 the Assistant Public Prosecutor submitted an application to the Magistrate under Section 216 CrPC signed by Durga Bai stating:

"The accused have been charged under Section 427 IPC, whereas from the entire evidence and the medical evidence prima facie case under various sections i.e. 147, 325 and 336 IPC is made out. Hence it is prayed that accused be charged in accordance with the evidence and the charge be amended in the light of the evidence."

5. After recording the plea of the accused persons, prosecution led evidence and examined PW 1 Shanti Lal, PW 2 Sampat Lal, PW 3 Chagan Lal on May 12, 1982 and PW 4 Durga Bai on July 8, 1982.

6. The learned Magistrate on September 8, 1982 after referring to the aforesaid application submitted by APP dated February 25, 1982 and hearing the APP and the learned advocate for the accused and discussing the evidence and observing that if any accused was discharged of any charge under any section then there would be no bar for taking fresh cognizance and reconsideration against him according to Section 216 CrPC and that the provision of Section 319 CrPC was also clear in that connection, recorded the following order:

"Hence cognizance for offences under Sections 147, 427, 336, 323, 325 IPC is taken against accused Sohan Lal, Padam Chand, Smt. Vijya Bai, Jiya Bai, Vishnu, Hanuman Chand and Uttam Chand. Orders for framing the charges against accused Sohan Lal, Padam Chand, Vishnu under the aforesaid sections are passed and accused Smt. Jiya Bai, Vijya Bai, Uttam Chand and Hanuman Chand be summoned throughailable warrants in the sum of Rs 500 each. File to come on October 20, 1982 for framing the amended charge against the accused present. Exemption from appearance of accused Vishnu Chand and Padam Chand is cancelled until further order. The advocate for the accused shall present the said accused in the court in future."

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12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges. When the appellants Vijya Bai and Jiya Bai were discharged of all the charges and no charge existed against them, naturally an application under Section 216 CrPC was not maintainable in their case. In cases of appellants Sohan Lal, Padam Chand and Vishnu against whom the charge under Section 427 IPC was already in existence there of course could arise the question of addition to or alteration of the charge. The learned Magistrate therefore while disposing of the application under Section 216 CrPC only had no jurisdiction to frame charges against the appellants Vijya Bai and Jiya Bai. In his order the learned Magistrate did not say that he was proceeding suo motu against Vijya Bai and Jiya Bai though he said that Section 319 CrPC was also clear in this connection.

13. As regards the other three appellants, namely, Sohan Lal, Padam Chand and Vishnu they were already accused in the case. Section 216 CrPC envisages the accused and the additions to the alterations of charge may be done at any time before judgment is pronounced. The learned Magistrate on the basis of the evidence on record was satisfied that charges ought also to be framed under the other sections with which they were charged in the charge-sheet. That was also the prayer in the APP's application. However the learned Magistrate invoked his jurisdiction under Section 319 CrPC which says:

“319. Power to proceed against other persons appearing to be guilty of offence.— (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

14. The crucial words in the section are, 'any person not being the accused'. This section empowers the court to proceed against persons not being the accused appearing to be guilty of offence. Sub-sections (1) and

(2) of this section provide for a situation when a court hearing a case against certain accused person finds from the evidence that some person or persons, other than the accused before it is or are also connected in this very offence or any connected offence; and it empowers the court to proceed against such person or persons for the offence which he or they appears or appear to have committed and issue process for the purpose. It provides that the cognizance against newly added accused is deemed to have been taken in the same manner in which cognizance was first taken of the offence against the earlier accused. It naturally deals with a matter arising from the course of the proceeding already initiated. The scope of the section is wide enough to include cases instituted on private complaint.

15. There could be no doubt that the appellants 1, 2 and 3 were the accused in the case at the time of passing the impugned order by the Magistrate and as such Section 319 CrPC would not cover them. Could appellants 4 and 5 be brought under that section? Were they accused in the case? Precisely when a person can be called the accused?

16. Generally speaking, to accuse means to allege whether the person is really guilty of the crime or not. Accusation according to Black's Law Dictionary means a formal charge against a person, to the effect that he is guilty of a punishable offence laid before a court or Magistrate having jurisdiction to inquire into the alleged crime. In this sense accusation may be said to be equivalent of information at common law which is mere allegation of prosecuting officer by whom it is preferred.

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28. In the instant case, Vijiya Bai and Jiya Bai were discharged by the Magistrate of all the charges and the three other appellants were discharged of the sections other than Section 427 IPC. After the police submitted charge-sheet against them the order of discharge, according to Mr B.D. Sharma, could not be taken to be one under Section 203 but under Section

245 which is included in Chapter XIX and deals with trial of warrant cases by the Magistrates. This submission has not been refuted. That section says:

"245. When accused shall be discharged.—(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would

warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

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30. The question therefore is whether the necessity of making a further inquiry as envisaged in Section 398 could be obviated or circumvented by taking resort to Section 319. As has already been held by this Court, there is need for caution in resorting to Section 319. Once a person was an accused in the case he would be out of reach of this section. The word “discharge” in Section 398 means discharge of an offence relating to the charge within the meaning of Sections 227, 239, 245 and 249. Refusing to proceed further after issue of process is discharge. The discharge has to be in substance and effect though there is no formal order. The language of the section does not indicate that the word “discharge” should be given a restricted meaning in the sense of absolute discharge where the accused is set at liberty after examination of the whole case. The cases of appellants 4 and 5 would be one of total discharge. But it could not be said that they were not some of the accused in the case, or that cognizance was not taken of the offences against them. A person may be accused of several offences and he may be discharged of some offences and proceeded against for trial in respect of other offences. This was the proposition regarding appellants 1, 2 and 3, who were partially discharged. XXX

33. The above views have to yield to what is laid down by this Court in the decisions above referred to. The provisions of Section 319 had to be read in consonance with the provisions of Section 398 of the Code. Once a person is found to have been the accused in the case he goes out of the reach of Section 319. Whether he can be dealt with under any other provisions of the Code is a different question. In the case of the accused who has been discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision under Section 398 of the Code may not be lost sight of. This should be so because the complainant's desire for vengeance has to be tampered (sic tempered) with though it may be, as Sir James Stephen says: “The criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite.” (General View of the Criminal Law of England, p. 99). The APP's application under Section 216, insofar as the appellants 1 to 3 were concerned, could be dealt with under Section 216. Appellants 4 and 5 could be dealt with neither under Section 216 nor under Section 319. In that view of the matter the impugned order of the Magistrate as

well as that of the High Court insofar as the appellants 4 and 5, namely, Vijya Bai and Jiya Bai are concerned, have to be set aside which we hereby do. The appeals are allowed to that extent."

18. It would be apt to indicate that the Hon'ble Apex Court held in **Sohan Lal** (Supra) after considering Section 216 CrPC observed as under:-

"12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges."

19. In the case of **Vibhuti Narayan Chaubey @ Lala Chaubey and others vs. State of U.P., 2002 SCC OnLine All 1413**, considered by this Court while passing the judgment in the case of Dev Narain (Supra) (relied upon by the learned counsel for the applicant), this Court after considering Section 216 CrPC and the judgment passed in the case of Sohan Lal (Supra), concluded as under:-

"1. The applicants are accused in S.T. No. 74 of 2001 pending in the Court of Additional Sessions Judge, Court No. 15, Varanasi. In this case the charges for offences under Sections 323/34, 307/34, 504, 506, I.P.C. were framed on 16-7-2001. Thereafter the statement of PW 1, Rajendra Prasad was recorded. The applicants then moved an application to alter the charge under Section 307/34, I.P.C. to 324/34 I.P.C. on the basis of his statement. The application has been rejected by the impugned order dated 6-7-2002. Aggrieved by it, the present petition has been filed.

2. Learned counsel for the applicant has relied on clause (1) of Section 216, Cr. P.C. of which is as follows:

"Any Court may alter or added to any charge at any time before judgment is pronounced."

3. However, this clause does not provide for deletion of the charge and the charge for offence under Section 307/34, I.P.C. cannot be deleted. The word "delete" has intentionally been not used by the legislature.

4. However, learned counsel for the appellants, Sri Vinod Prasad has argued that this request is for alteration of the charge and not for deletion of any charge.

5. The argument is totally misleading and perverse. The charge framed under Section 307/34, I.P.C. can not be struck off and in its place charge under Section 324/34, I.P.C. cannot be substituted. The real request, therefore, is to delete the charge under Sec. 307/34, I.P.C. and to frame the charge under Section 324/34,

I.P.C. The application is therefore, not for alteration of the charge.

6. What is alteration of charge can be explained by one example. If the charge is framed with the help of Section 34, I.P.C. the charge may be altered as simpliciter. The word alteration has not been used in the above Section and therefore, the charge once framed cannot be deleted. This will also appear from the perusal of the provisions of Section 224, Cr. P.C. which provides for withdrawal of the remaining charges on conviction on some of the charges where the charges are for more than one heads. Therefore, once the charge is framed the case will result, other in acquittal or in conviction in accordance with the provisions of trials prescribed under the Chapters 18, 19 and 20 of the Cr. P.C. The charge can be withdrawn under Section 224, Cr. P.C. only after judgment and it cannot be deleted.

7. Sri Vinod Prasad, learned counsel for the applicant has also referred to the decision of the Apex Court in Sohan Lal v. State of Rajasthan, 1990 SCC (Cri) 650 : ((1990) 4 SCC 580 : AIR 1990 SC 2158). This case is mainly on Section 319, Cr. P.C. Regarding Section 219, Cr. P.C. the only observation is that "add to any charge means the addition of a new charge. An alteration of a charge means hanging or variation of an existing charge or making of a different charge." This decision is of no help to the applicants and does not provide for deletion of charge.

8. The petition is totally misconceived. The application was rightly rejected.

9. The petition is dismissed.

10. Petition dismissed."

20. From a conjoint reading of paras 1, 2, 3 and 5, of the judgment passed in the case of **Vibhuti Narayan Chaubey @ Lala Chaubey (Supra)**, it is evident that, after taking note of the charged framed for an offence under Section 307/34 IPC and prayer of the accused in the application preferred by him under Section 216 CrPC, this Court observed that the real/actual request is to delete the charge under Section 307/34 IPC and to frame the charge under Section 324/34 IPC and thereafter, dismissed the petition filed by the accused.

21. It would be apt at this stage to indicate that the judgment passed in the case of Dev Narain (Supra) would not be applicable in the instant case. It is for the following reason(s):-

(i) From a bare perusal of the judgment, it is evident that on 28.07.2015 an application seeking discharge by the accused Dev Narain was rejected and thereafter he approached this Court by preferring an application under Section 482 CrPC and this Court, after considering the facts of the case, dismissed the said application with

observation that "it is open to applicant to move an application for alteration of charge under Section 216 CrPC before the trial Court".

(ii) Pursuant to the aforesaid observation of this Court, the accused Dev Narain, devar (brother-in-law) of the deceased, filed an application under Section 216 CrPC and the same was rejected vide order dated 23.01.2023, which was challenged before this Court by means of the Criminal Revision No. 1026 of 2023.

(iii) Considering the facts as stated, in brief, hereinbefore, this Court dismissed the said revision after observing that essence of the prayer sought in the application under Section 216 CrPC is for discharge.

(iv) The relevant portion of the judgment passed in the case of Dev Narain (Supra) reads as under:-

"Accused Dev Narain, who is brother-in-law of the deceased moved an application for discharge before trial court, which was rejected by order dated 28.7.2017 and case was fixed for prosecution evidence. The accused Dev Narain, who filed a petition under Section 482 Cr.P.C. against rejection of his discharge application before this Court, which was dismissed by this Court with observation that "it is open to the applicant to move an application for alteration of charge under Section 216 Cr.P.C. before trial court". Pursuant to the observation of this Court, the sole accused Dev Narain, who is devar of deceased has filed an application under Section 216 Cr.P.C., wherein he has stated that he has moved this application pursuant to the observation of Hon'ble High Court vide order dated 9.6.2017. The factum of death of husband of deceased Kamal Kishor @ Satyanarain and recovery of his dead body from railway track was entered in GD Entry No.21, time 15:10 hours on 26.5.2016, police station Manikpur. There is no specific allegation of demand of dowry or subjecting the deceased to matrimonial cruelty is made by any witness examined by the Investigating Officer against the applicant. On the basis evidence collected during investigation. This appears that deceased Rashmi and her husband were residing in separate house and he was working in railway and they used to pickup quarrel on some issue. The key of house where dead body of deceased was lying was recovered from the pocket of cloths worn by the Kamal Kishore on recovery of his dead body. The deceased and her husband were residing separately from the revisionist and other family members and they were not concerned with daily affairs of each other. The revisionist could not be beneficiary of any demand of dowry allegedly made by husband of the deceased from deceased and her family members. There is no evidence that she was subjected to matrimonial cruelty soon or before her death. The ingredients of charges under Sections 498-A, 304-B and 323 IPC and Section 3/4 DP Act are not made out against the applicant. Therefore, the said charges are

liable to be quashed and the applicant may be discharged from the charges. This application has been dismissed by the court below. Learned court below while rejecting the application has observed that on the basis of evidence on record, no error is found in charges made against the applicant on 6.9.2016, therefore, there is no question of alteration of charge. The evidence of PW-1- the informant has been recorded during trial in which he has supported his FIR version and he has stated in cross-examination also that in matter of killing of his sister, the complicity of her husband (late) and brothers -in-law Sri Narain, Dev Narain and other relatives is involved and these persons killed her.

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11. From perusal of prayer made in application under Section 216 Cr.P.C., it appears in essence that this is a prayer for discharge as the revisionist has stated that he may be discharged from charged penal sections and the charges levelled against him be quashed. The trial court in exercise of its powers under Section 216 Cr.P.C. cannot delete the charges framed by it for the said offences as the criminal procedure code does not confers such powers on the court. The trial court can only alter to a charge or to add to a charge, which has already framed. The discharge application moved by the revisionist has already been dismissed and said order has attained finality.

12. This Court in Application U/S 482 No.2556 of 2023 (Nanhey Bhaiya @ Nanhan Singh And 2 others vs State Of U.P. Thru. Prin. Secy.) on 31.3.2023 held that the power of the Court under Section 216 Cr.P.C. to alter or add any charge at any time before the judgment is pronounced is exclusively confined to Court and no party has any vested right to seek any addition or alteration of charge.

13. Recently, the Hon'ble Supreme Court in P. Kartikalakshmi Versus Sri Ganesh and another reported in (2017) 3 SCC 347, in paragraphs No.6, 7 and 8 has held as under:-

"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.

14. This Court in the case of **Vibhuti Narayan Chaubey Alias .. vs State Of U.P, 2003 CrLJ 196** held that Section 216 of the code did not provide for deletion of a charge and that the word "delete" had intentionally not being used by the legislature. I am in agreement with this conclusion. The petitioner is seeking the deletion of a charge of conspiracy altogether that is not permissible under Section 216 of the Code. The charge once framed must lead to either acquittal or conviction at the conclusion of trial. Section 216 of the Code does not permit the deletion of the same. Subsequently, Delhi High Court in the case of **Verghese Stephen vs Central Bureau Of Investigation, 2007 Cr.L.J. 4080**, placed reliance on aforesaid judgement of this Court in the case of **Vibhuti Narayan Chaubey (supra)**.

15. Section 222 (2) of the Cr.P.C. provides that 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."

22. In the case of **Anant Prakash Sinha v. State of Haryana, (2016) 6 SCC 105** the Hon'ble Apex Court observed as under:-

"8. The controversy as raised rests on two aspects. The first aspect that has emanated for consideration is whether without evidence being adduced another charge could be added. In this context, we may usefully refer to Section 216 CrPC which reads as follows:

"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."

9. The aforesaid provision has been interpreted in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603 : (2004) 2 RCR (Cri) 463] wherein the Court has observed: (SCC p. 350, para 8)

"8. Section 228 of the Code in Chapter XVII and Section 240 in Chapter XIX deal with framing of the charge during trial before a Court of Session and trial of warrant cases by Magistrates respectively. There is a scope of alteration of the charge during trial on the basis of materials brought on record. Section 216 of the Code appearing in Chapter XVII clearly stipulates that any court may alter or add to any charge at any time before judgment is pronounced. Whenever such alteration or addition is made, the same is to be read out and informed to the accused."

10. In Hasanbhai Valibhai Qureshi case [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603 : (2004) 2 RCR (Cri) 463] , reference was made to Kantilal Chandulal Mehta v. State of Maharashtra [Kantilal Chandulal Mehta v. State of Maharashtra, (1969) 3 SCC 166 : 1970 SCC (Cri) 19] wherein it has been ruled that (SCC p. 350, para 9) the Code gives ample power to the courts to alter or amend a charge provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about the charge or in not giving him full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred against him. Placing reliance on the said decision, it has been opined that 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.

11. In Jasvinder Saini [Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256 : (2013) 3 SCC (Cri) 295] , the charge-sheet was filed before the jurisdictional Magistrate alleging commission of offences under Sections 498-A, 304-B, 406 and 34 IPC against Appellants 1 to 4 therein. A supplementary charge-sheet was filed in which Appellants 5 to 8 therein were implicated for the case to which Section 302 IPC was also added by the investigating officer. After the matter was committed to the Court of Session, the trial court came to the conclusion that there was no evidence or material on record to justify framing of a charge under

Section 302 IPC, as a result of which charges were framed only under Sections 498-A, 304-B read with Section 34 IPC. When the trial court was proceeding with the matter, this Court delivered the judgment in *Rajbir v. State of Haryana* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149] and directed that all the trial courts in India to ordinarily add Section 302 to the charge on Section 304-B IPC so that death sentences could be imposed in heinous and barbaric crimes against women. The trial court noted the direction in *Rajbir* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149] and being duty-bound, added the charge under Section 302 IPC to the one already framed against the appellant therein and further for doing so, it placed reliance on Section 216 CrPC. The said order was assailed before the High Court which opined [*Jasvinder Saini v. State*, 2011 SCC OnLine Del 4379 : (2012) 186 DLT 411] that the appearance of evidence at the trial was not essential for framing of an additional charge or altering a charge already framed, though it may be one of the grounds to do so. That apart, the High Court referred to the autopsy surgeon's report which, according to the High Court, provided prima facie evidence for framing the charge under Section 302 IPC. Being of this view, it declined to interfere with the order impugned.

12. This Court advertent to the facts held thus: (*Jasvinder Saini case* [*Jasvinder Saini v. State (Govt. of NCT of Delhi)*, (2013) 7 SCC 256 : (2013) 3 SCC (Cri) 295] , SCC p. 262, para 15)

“15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without advertent to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir case* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149] .

The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in Rajbir case [Rajbir v. State of Haryana, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149] , but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court.”

It is appropriate to note here, the Court further observed that the annulment of the order passed by the Court would not prevent the trial court from re-examining the question of framing a charge under Section 302 IPC against the appellant therein and passing an appropriate order if upon a prima facie appraisal of the evidence adduced before it, the trial court comes to the conclusion that there is any room for doing so. In that context, reference was made to Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603 : (2004) 2 RCR (Cri) 463] .

13. In Karimullah Osan Khan [CBI v. Karimullah Osan Khan, (2014) 11 SCC 538 : (2014) 3 SCC (Cri) 437] , the Court was concerned with the legality of the order passed by the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 for Bomb Blast Case, Greater Bombay rejecting the application filed by the Central Bureau of Investigation (for short “CBI”) under Section 216 CrPC for addition of the charges punishable under Section 302 and other charges under the Penal Code and the Explosives Act read with Section 120-B IPC and also under Section 3(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The Designated Court framed charges in respect of certain offences and when CBI filed an application for addition of the charge under Section 302 IPC and other offences, the Designated Court rejected the application as has been indicated earlier. In the said context, the Court proceeded to interpret the scope of Section 216 CrPC. Reference was made to the decisions in Jasvinder Saini [Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256 : (2013) 3 SCC (Cri) 295] and Thakur Shah v. King Emperor [Thakur Shah v. King Emperor, 1943 SCC OnLine PC 26 : (1942-43) 70 IA 196 : (1943) 56 LW 706 : AIR 1943 PC 192] . Proceeding further, it has been ruled thus: (Karimullah Osan Khan case [CBI v. Karimullah Osan Khan, (2014) 11 SCC 538 : (2014) 3 SCC (Cri) 437] , SCC p. 546, paras 17-18)

“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. (See *Harihar Chakravarty v. State of W.B.* [*Harihar Chakravarty v. State of W.B.*, (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724]) Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in Section 216 CrPC and other related provisions.”

14. At this juncture, we have to appropriately recapitulate the principles stated in *Harihar Chakravarty* [*Harihar Chakravarty v. State of W.B.*, (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724] . In the said case, a complaint was filed charging the appellant and another for the offences punishable under Sections 409, 406, 477 and 114 IPC. The complainant and his witnesses were examined and on the basis of the said evidence, the learned Magistrate had framed a charge under Section 409 IPC against the appellant. The appellant entered upon his defence and after the trial, the Magistrate acquitted the appellant and the other accused under Section 409 IPC. The complainant filed a criminal revision before the High Court which set aside the order of acquittal and remanded the matter to the Magistrate for decision for amendment of the charge by examining appropriate evidence. The said order was the subject-matter of assail before this Court.

15. This Court, addressing to the merits of the case opined thus: (*Harihar Chakravarty* case [*Harihar Chakravarty v. State of W.B.*, (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724] , AIR pp. 267-68, paras 8-10)

“8. This was a private prosecution in which the complainant came forward with a story that he never ordered the appellant to purchase these shares and that therefore the shares did not belong to him, and he had no interest in them or title to them. In fact his case was that the shares were never purchased by the appellant under his instructions. All that was found to be false and it was found that he did order them to be purchased and that therefore the shares were his. The order which was made by the learned Judge in effect meant that the complainant should abandon his original story to lay claim to the shares and prosecute the appellant for another and distinct offence which could only arise on a different set of facts coming into existence after the purchase of the shares. The

appellant might or might not be guilty of this other offence, but he is certainly innocent of the offence with which he was charged and for which he was fully tried and therefore he is entitled to an acquittal and the learned Judge had no power to set aside that order so long as he agreed, as he did, that the appellant was not guilty of the offence with which he was charged. Once a charge is framed and the accused is found not guilty of that charge an acquittal must be recorded under Section 258(1) of the Criminal Procedure Code. There is no option in the matter and we are of the opinion therefore that the order setting aside the acquittal was in any event bad.

9. Next as regards the direction to alter the charge so as to include an offence for which the appellant was not originally charged, that could only be done if the trial court itself had taken action under Section 227 of the Criminal Procedure Code before it pronounced judgment. It could only have done so if there were materials before it either in the complaint or in the evidence to justify such action.

10. The complaint affords no material for any such case because it is based on the allegation that the shares did not belong to the complainant and that in fact they were never purchased. The learned Judge observed that the contention was that the shares belonged to the complainant and were dishonestly pledged by the appellant with the Nath Bank. We do not find even a word about this either in the complaint or in the examination of the complainant.”

(emphasis supplied)

16. After so stating, the Court in Harihar case [Harihar Chakravarty v. State of W.B., (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724] opined that there was no material on which the trial court could have amended the charge under Section 227 CrPC and the learned Judge therefore had no power to direct an amendment and a continuation of the same trial as he purported to do. The purpose of laying stress on the said authority is that the trial court could issue a direction for alteration of the charge if there were materials before it in the complaint or any evidence to justify such action. On the aforesaid three -Judge Bench decision [Harihar Chakravarty v. State of W.B., (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724] , it is quite vivid that if there are allegations in the complaint petition or for that matter in FIR or accompanying material, the court can alter the charge.

17. In Thakur Shah v. King Emperor [Thakur Shah v. King Emperor, 1943 SCC OnLine PC 26 : (1942-43) 70 IA 196 : (1943) 56 LW 706 : AIR 1943 PC 192] , what the Court has held is that 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. It does not necessarily mean that the alteration can be done only in a case where

evidence is adduced. We may hasten to clarify that there has been a reference to the decision rendered in Harihar Chakravarty [Harihar Chakravarty v. State of W.B., (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724] but the said reference has to be understood in the context. Section 216 CrPC, as is evincible, does not lay down that the court cannot alter the charge solely because it has framed the charge. In Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603 : (2004) 2 RCR (Cri) 463] , it has been stated there is scope for alteration of the charge during trial on the basis of material brought on record. In Jasvinder Saini [Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256 : (2013) 3 SCC (Cri) 295] , it has been held that circumstances in which addition or alteration of charge can be made have been stipulated in Section 216 CrPC and sub -sections (2) to (5) of Section 216 CrPC deal with the procedure to be followed once the court decides to alter or add any charge. It has been laid down therein that the question of any such addition or alteration 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. If the said decision is appositely understood, it clearly lays down the principle which is in consonance with Harihar Chakravarty [Harihar Chakravarty v. State of W.B., (1953) 2 SCC 409 : AIR 1954 SC 266 : 1954 Cri LJ 724] ."

23. The Hon'ble Apex Court in the case of **Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh And Others** (2020) 12 SCC 467, observed as under:-

18. In **Anant Prakash Sinha v. State of Haryana** [Anant Prakash Sinha v. State of Haryana, (2016) 6 SCC 105 : (2016) 2 SCC (Cri) 525] , a two-Judge Bench of this Court dealt with a situation where for commission of offences under Sections 498-A and 323 IPC, an application was filed for framing an additional charge under Section 406 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, Dipak Misra, J. (as the learned Chief Justice then was), held : (SCC p. 116, paras 18-19)

"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 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."

9. In CBI v. Karimullah Osan Khan [CBI v. Karimullah Osan Khan, (2014) 11 SCC 538 : (2014) 3 SCC (Cri) 437] , this Court dealt with a case where an application was filed under Section 216 CrPC during the course of trial for addition of charges against the appellant under various provisions of IPC, the Explosives Act, 1884 and the Terrorist and Disruptive Activities (Prevention) Act, 1987. K.S.P. Radhakrishnan, J. speaking for the Court, held thus : (SCC p. 546, paras 17-18)

"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."

20. In Jasvinder Saini v. State (NCT of Delhi) [Jasvinder Saini v. State (NCT of Delhi), (2013) 7 SCC 256 : (2013) 3 SCC (Cri) 295] , this Court dealt with the question whether the trial court was justified in adding a charge under Section 302 IPC against the accused persons who were charged under Section 304-B IPC. T.S. Thakur, J. (as he then was) speaking for the Court, held thus : (SCC pp. 260-61, para 11)

“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.”

21. 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 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.”

24. In the authorities referred above, after taking note of expression(s) 'alter' and 'add' used in Section 216 CrPC, for explaining the power of Court under Section 216 CrPC various expression(s) have been used viz. "alter", "add", "change", "modify", "amend", "alteration", "addition", "variation", "changing", "additional", "altering", "altered", "added", "modification", "amended", "modified".

25. In the context of instant case, expression 'alter' in Section 216 CrPC is to be taken note of. In this regard, in the authorities, referred above, the expression(s) **"change", "amend", "modify", "alteration", "variation", "changing", "modification", "altering", "amended", and "modified"**, have been used.

26. As per Legal Glossary 7th Edition, published by Legislative Department (Official Language Section), Ministry of Law and Justice, Government of India, in the year 2015, Hindi meaning of expression(s) 'alter' is ' ' ; 'amend' is ' ' , ' ; 'change' is ' ' , 'modify' is ' ' , ' and 'variation' is ' , , '.

27. According to above dictionary, the meaning of expression 'alter' is **'to make otherwise or different in some respect without changing the thing itself as also to modify'**.

28. As per Advanced Law Lexicon Dictionary, 3rd Edition, Volume 1, the meaning of expression 'change' is **'to exchange; to alter or make different'**. **'Change' means 'to make or become different, to transform or convert'**.

29. As per Legal Glossary 7th Edition, published in the year 2015, the meaning of expression **'change' is 'to exchange; to alter or make different'**.

30. As per Legal Glossary 7th Edition, published in the year 2015, the meaning of expression **'modify' is 'to make a modification; to alter without radical transformation'**.

31. As per Legal Glossary 7th Edition, published in the year 2015, the meaning of expression **'variation' is 'the act of varying; change in the form'**.

32. In the case of **Selvi J. Jayalalitha v. Additional Superintendent of Police, 2000 SCC OnLine Mad 1111**, while dealing with the issue/question 'whether the alteration of a charge includes deletion also?' took note of Section 216 CrPC and dictionary meaning of expression 'alter' as also the judgment passed in the case of Tapti Bag vs. Patitpaban Ghosh, 1993 CrI.L.J. 3932 and the judgment passed by the Hon'ble Apex Court in the case of Ratilal Bhanji Mithani vs. State of Maharashtra and Others, (1979) 2 SCC 179, which relates to Code of Criminal Procedure, 1898 and upon due consideration, the High Court of Madras, concluded as under:-

"3. Point No. (i). It would be useful to recall the provisions of Section 216 Cr.P.C. which recites 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 alternation 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;

4. In Black's Law Dictionary, the word 'alter' is defined as under:—

“Alter. To make a change in; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially, to change in one or more respects, but without destruction of existence or identify of the thing changed to increase or diminish”

5. The Concise Oxford Dictionary of Current English says as under:—

Alter 1 tr. & intr. make or become different; change.

2. tr. US & Austral, castrate or spay, alterable adj. alteration n.

6. In Webster's New Twentieth Century Dictionary, it is stated as under:—

Alter 1; altered pt, pp.; altering, ppr. (ML. alterare, to make other form L. alter, other).

1. to change; make different; modify; as snow altered the landscape; age had altered the singer's voice.

2. to castrate (Dial).

3. to resew parts of (a garment) for a better fit.”

7. In P. Ramanatha Aiyar's The Law Lexicon, it is stated as under:—

Alter. To make a change in to modify; to vary in some degree. See also 8 Bom 200.

The word 'alter' has merely to do with some change while maintaining the form, shape or figure. It has the shade of meaning similar to the word 'modify' and is opposed to such meanings constituted by such words like 'reserve' 'annual' or 'rescind'. *Fulo Singh v. State*, AIR 1956 Pat. 170, 173, (FB) (Criminal Procedure Code, 1898, Section 423(1)(0)).

.....

Alter, Change, Amend. "This term (alter) is to be distinguished from its synonyms "change" and "amend". To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject matter which continues objectively the same while modified in some particular. If a cheque is raised, in respect of its amount, it is altered; if a new cheque is put in its place, it is change. To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. An amendment always involves an alteration, but an alteration does not always amend". (Block).

8. A plain dictionary meaning of alteration would show that there can be peripheral modification without destroying the identity of the matter.

9. Apart from referring to these dictionary meanings, the learned Counsel for the petitioner cited the decision reported in *Kesavananda Bharati v. State of Kerala*¹. Their Lordships of the Supreme Court have referred to Section 291 of the Government of India Act, 1935 and stated as under:—

"Here, the word "amendment" has been expanded, it may be that there really is no expansion because every amendment may involve addition, variation or repeal of part of a provision".

10. But, that is a case relating to amendment of a statute, namely, the Constitution, where by way of amendment a provision can be repealed. It cannot be said that the sense in which the word 'amendment' is used, in that the decision would apply to alteration of a charge now sought for.

11. The Learned Counsel for the petitioner referred to various decisions to stress that alteration would include substitution, amendment, variation and repeal, etc. I consider that it is not necessary to refer to those decisions, because we have to find out the purport of usage the word of "alteration" in Section 216 Cr.P.C. in the proper perspective of the object for which the provision is made in the Code of Criminal Procedure.

12. Perusal of Code of Criminal Procedure would show that there is no provision in the Code of Criminal Procedure for deletion of a charge. Though Section 216 Cr.P.C. would give scope for alteration and addition, the only question is whether alteration would also include deletion. According to the learned Counsel for the petitioner, alteration would cover all the other aspects excepting addition which is specifically provided for in the Section.

13. The purpose of Section 216 Cr.P.C. is to have such an addition and alteration in furtherance of a trial and not such an addition or alteration which would negate the further trial. Therefore, by no stretch of imagination, it can be said that the alteration would include deletion or erasing of charge which would negate the further trial. Of course, it is left to the accused to prove that certain charge has not been proved. It can be done at the time of the trial by destroying the prosecution witnesses by cross-examination or letting in any defence evidence to nullify the probative value of the prosecution evidence or the accused may even rely on the admission made by the State, but the accused/petitioner herein cannot seek for the deletion of a charge in the guise of alteration which would negate the trial so far as that charge is concerned.

14. Why the word 'alteration' under Section 216 Cr.P.C. does not include deletion is answered in Tapti Bag v. Patitpaban Ghosh 2 wherein a single Judge of the Calcutta High Court pointed out as under:—

“The question whether the Court which has already framed a charge under Section 228, Cr.P.C. can thereafter reconsider the charge and discharge the accused under Section 227, Cr.P.C. has to be examined not in light of provisions of Section 362, Cr.P.C. which deals with only judgment and final order disposing of a case but in the background of the other provisions relevant in this connection”

15. Deletion of a charge would indirectly mean discharge. To state an example, if there is a single charge against the petitioner and if deletion of the single charge is allowed, it would virtually amount to discharge of the accused. Question of discharging the accused would arise at the time of framing of charges and not later. In fact in paragraph No. 5 of the decision cited in Tapati Bag. v. Patitpaban Ghosh², the Calcutta High Court has pointed out as under:—

“5. The learned Advocate for the petitioner attracted my attention to the provisions of Section 216, Cr.P.C. and argued that the said section empowers any Court to alter or add to any charge at any time before judgment is pronounced and this gives an implied power to discharge an accused at any state”...

16. Then after referring to Section 216 Cr.P.C. the Calcutta High Court has observed as under:—

"A plain reading of the said section would show that the alteration or addition referred to therein contemplates modification of or addition to charge but not discharging an accused in respect of a charge already framed so as to bring the trial itself to an end in respect of such accused. There maybe addition of a new charge or even substitution of a charge in an appropriate case but Section 216 does not contemplate discharge of an accused or the termination of the trial in respect of any accused. Sub -section (2) requires that every alteration or addition to a charge has to be read and explained to the accused. The question of reading and explaining such alteration or addition would be meaningless in a good number of cases if discharge is contemplated by such alteration or addition. Subsections. (3) and (4) speak of proceeding with the trial or of directing a new trial or adjourning the trial. This also is a clear indication that any alteration or addition to charge shall not be of such nature as to get the accused discharged and bring the trial to an end in respect of that accused. Sub-section (5) requires that where 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 on the same facts. Here also the sub-section contemplates of proceeding with the trial with fresh sanction, if necessary, and not ending the trial in respect of any accused by any obliteration of the charged. It is therefore evident that Section 216 does not empower the Court to discharge an accused and bring the trial itself to an end in respect of an accused against whom a charge has already been framed, without following the procedure prescribed in the Code regarding the trial of a Case. Of course there are certain independent provisions prescribed in the Code itself which when brought into play in any particular case may result in ending the trial at an intermediate stage, as for example, where the prosecution is withdrawn with the consent of the Court under Section 321 or when an offence is validly compounded during trial under Section 320, but Section 227 being designed for a particular stage of the judicial proceeding one ~::nnot revert to that position when that stage has already been crossed. I am therefore clearly of the opinion that the Court of Session has no power to discharge an accused under Section 227 once a charge under Section 228 has already been framed. The learned Additional Sessions Judge was, therefore, clearly in error in discharging the accused opposite party under Section 227, Cr.P.C. by his impugned order dated the 20th November, 1990 after charge had already been framed against the accused under Section 228, Cr.P.C. at any earlier stage"...

17. The Learned Public Prosecutor drew my attention to some pronouncements of the Supreme Court in this regard. In *Ratilal Bhanji v. State of Maharashtra*³ the Apex Court has held that once a charge is framed, the Magistrate has no power under Section 227 Cr.P.C. or by any other provision of the Code to cancel the

charge and revise the proceeding to the stage or Section 273 Cr.P.C. to discharge the accused. What has been stated regarding a warrant trial holds good for a Sessions trial also. It is thus evident that once a charge is framed, the natural course is to proceed with the trial and pronouncement of judgment either holding that the accused guilty or acquitting him if he is not guilty. But, after framing a charge, the Court cannot discharge the accused. That is why, the deletion is not included in Section 216 Cr.P.C.

18. The learned Counsel for the petitioner drew my attention to the decision reported in Dwarka Lai v. Mahadeo Rai⁴ wherein a Single Judge of the Allahabad High Court has referred to the act of Sessions Judge, who suo motu framed certain charges and at the time of the trial suo motu withdrew them. The learned Judge has observed "I think the word alter in Section 227 Cr.P.C. (old Provision) must be taken to include withdraw". With due reverence to the learned Single Judge. I could not persuade myself to subscribe my assent to that finding. I respectfully disagree with the learned Single Judge."

33. In the case of **Ratilal Bhanji Mithani** (Supra), on the issue involved in the instant case, the Hon'ble Apex Court observed as under:-

"24. At the outset, let us have a look at the relevant provisions of the Code of Criminal Procedure, 1898, which admittedly governed the pending proceedings in this case. The procedure for trial of warrant cases by Magistrates is given in Chapter XXI of that Code. The present case was instituted on a criminal complaint. Section 252 provides that in such a case, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence, as may be produced, in support of the prosecution. Sub-section (2) of that Section casts a duty on the Magistrate to ascertain the names of persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and to summon all such persons for evidence. Section 253 indicates when and in what circumstances an accused may be discharged: It says:

"253. (1) If, upon taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 254 indicates when and in what circumstances a charge should be framed. It reads:

“254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.”

Section 255 enjoins that the charge shall then be read over and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record that plea, and may convict him thereon.

25. Section 256 provides that if the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the next hearing whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has been taken, and if he says he so wants to cross-examine, the witnesses named by him shall be recalled and he will be allowed to further cross-examine them. “The evidence of any remaining witnesses for the prosecution shall next be taken” and thereafter the accused shall be called upon to enter upon and produce his defence.

26. Section 257 is not material. Section 258(1) provides that if in any case in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal. Sub-section (2) requires, where in any case under this chapter the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall, if he finds the accused guilty, pass sentence on him in accordance with law.

27. From the scheme of the provisions noticed above it is clear that in a warrant case instituted otherwise than on a police report, “discharge” or “acquittal” of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of “discharge” and “acquittal” are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in the light of the evidence, that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under Section

254 and frame charge against the accused. Section 254 shows that a charge can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case.

28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).

29. Excepting where the prosecution must fail for want of a fundamental defect, such as want of sanction, an order of acquittal must be based upon a "finding of not guilty" turning on the merits of the case and the appreciation of evidence at the conclusion of the trial.

30. If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, "discharges" the accused, such an acquittal, without trial, even if clothed as "discharge", will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962, framed charges against Mithani and two others. Subsequently, when on the disposal of the revision applications by Gokhale, J., the records were received back he arbitrarily deleted those charges and discharged the accused, without examining the "remaining witnesses" of the prosecution which he had in the order of framing charges, said, "will be examined after the charge"."

34. From the aforesaid, in the context of expression 'alter' used in Section 216 CrPC, the position which emerges out is as under:-

(i) Already framed charge can be altered/changed/varied/modified/substituted/amended at any stage before the judgment is pronounced. However, this should be done strictly in terms of law propounded by the Hon'ble Apex Court in this regard.

(ii) New/fresh charge in place of already framed charge can be framed if on appreciation of evidence the punishment/sentence could be given as per Section 222

CrPC for the charge earlier framed. For example, the Court, after considering the material on record can alter the charge by deleting the charge under Section 308 IPC and framing the charge under Section 307 IPC.

(iii) The Court can exercise the power under Section 216 CrPC, only when there exist some material/evidence before it, which has some connection or link with the charge(s) sought to be altered/modified/substituted/varied/amended/changed.

(vi) In given facts of a case, as observed in the case of Sohan Lal (Supra), an accused who was discharged could be dealt with neither under Section 216 CrPC nor under Section 319 CrPC.

(v) While considering the application under Section 216 CrPC the Court has to see the intention of preferring the application which includes real request/prayer sought therein.

(vi) On alteration of charge, in exercise of power under Section 216 CrPC, if an accused is discharged from the offence for which charge was initially framed or the trial comes to an end for the said accused for the charge initially framed against him or if on appreciation of evidence the accused cannot be punished in the light of Section 222 CrPC for the offence he was initially charged, then in that eventuality, to the view of this Court, it would come within the purview of expression 'deletion of charge'.

35. In the instant case, the charge against accused-applicant was framed under Section 306 CrPC and the trial Court, after taking note of the evidence recorded before it, on an application under Section 216 CrPC, altered/changed the charge by deleting charge under Section 306 and framing charge under Section 302 IPC and in this view of the matter, the accused has not been discharged nor the trial has come to an end and in view of the judgment passed by the Hon'ble Apex Court in the case of Dalbir Singh v. State of U.P., (2004) 5 SCC 334, the accused-applicant could still be punished/convicted for the offence under Section 306 IPC. As such, the submission of the learned counsel for the applicant that the charge cannot be deleted, has no force.

36. For the reasons aforesaid, the application is dismissed. No order as to costs.

37. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.