
(2018) 03 GAU CK 0089

GAUHATI HIGH COURT

Case No: Criminal Petition No. 904 of 2015

CENTRAL BUREAU
OF INVESTIGATION

APPELLANT

Vs

JIBAN SINGH A-1.

RESPONDENT

Date of Decision: March 23, 2018

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 216, 216(2), (5), 217, 401, 482
- Indian Penal Code, 1860 - Section 120B, 409, 420, 477A
- Prevention of Corruption Act, 1988 - Section 13(1)(c), 13(1)(d)

Hon'ble Judges: HITESH KUMAR SARMA

Bench: Single Bench

Final Decision: Disposed Of

Judgement

1.This petition, under Section 482/401 of the Code of Criminal Procedure, has been filed by the Central Bureau of Investigation, Economic Offences

Wing, Kolkata against the respondents Sri Jiban Singh, Paresh Chandra Neog, Indra Kanta Gogoi, Hare Krishna Medhi, Keshab Kalita, Narakanta

Koch, Hirendra Nath Sarmah, Akshay Saikia, Lakheswar Choudhury, Tapan Kumar Das, Paresh Das, Manuj Kumar Roy, Lila Boro, Indra Kumar

Chetia, Ataur Rahman Sarkar and Madhab Chandra Borah with respect to the order, dated 9.10.2014, passed by the Court of learned Special Judge,

CBI, Additional Court No. 3, whereby the Court did not frame charges against the respondents so far as offences under section 409/420/477A IPC

are concerned. The case of the petitioner may be briefly stated as follows:

2. That one Nirmalendu Bhattacharya lodged an FIR, with the Officer in Charge, CID Police Station, stating inter alia that the pay and allowance of

10th APBn were fraudulently withdrawn to the tune of Rs 18,89,57,335/- much in excess than the actual dues and that the respondents were co-

conspirators in the alleged excess withdrawals. On completion of investigation, a chargesheet was laid against the respondents for the offences under

Section 120B/420/409/477A of Indian Penal Code read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner

further contends that by the impugned order, dated 9.10.2014, the learned trial Court framed charges against the respondents only for the offences

under Section 120B IPC read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 and did not frame charges for the

offences under section 409/420/477A IPC despite there being sufficient materials on record to frame charges for the offences under section

409/420/477A IPC.

3. I have heard Mr. SC Keyal, learned counsel appearing for the petitioner/CBI. I have also heard Mr. T Deuri, learned counsel appearing for the

respondent Nos. 3, 9, 10, 11, 13 & 16 and learned counsel Mr. P Kataki, Mr. D Talukder and Mr. NJ Das, for the remaining respondents.

4. Having heard the learned Counsel for both sides and having perused the records, this Court is of the view that no interference with the impugned

order is called for at this stage in view of the fact there is ample scope for addition or alteration of charges even during the course of trial. A thorough

reading of the materials on record would have been necessitated had the respondents been completely discharged from all the offences.

5. In this regard Section 216 of the Code of Criminal Procedure deals with alteration or addition of any charge and empowers the court to do so at any

time before the judgment is pronounced. The section runs 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.

6. In *Jasvinder Saini v. State (Govt. of NCT of Delhi)*, (2013) 7 SCC 256 the Hon'ble Supreme Court held that a plain reading of Section 216

CrPC 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.

7. In view of the above, if in the course of trial, materials for the offences under section 409/420/477A IPC come out, the petitioner would be at liberty

to move the Court for addition of such charges.

8. This Criminal petition is, thus, disposed of with the observation made above.