

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55053 of 2023**

Arising Out of PS. Case No.-187 Year-2009 Thana- RIGA District- Sitamarhi

Rajan Singh S/O Paras Singh R/O Village- Ramnagra, P.S- Riga, Distt.-
Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Brij Kishore Singh S/O Yogi Singh R/O Village- Andarkhani, P.S- Parihar,
Distt.- Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashank Shekhar, Advocate
For the Opposite Party/s : Md. Ataur Rahman, APP
For the O.P. no. 2 : Mr. Virendra Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT**

Date : 07-05-2024

1. Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the opposite party no.

2.

2. The petitioner has filed the instant application
praying for quashing the order dated 2.5.2023 passed in
Sessions Trial no. 435 of 2010 (arising out of Riga P.S. Case no.
187 of 2009) whereby the learned Additional District and
Sessions Judge-II, Sitamarhi was pleased to allow the petition
dated 12.1.2023 filed on behalf of prosecution praying for
alteration of the charge against the petitioner from section 306



of the Indian Penal Code to section 304B and 201 of the Indian Penal Code.

3. Learned counsel for the petitioner submits that the petitioner was implicated in an F.I.R being Riga P.S. Case no. 187 of 2009 registered under sections 304B, 201 and 34 of the Indian Penal Code. It is submitted here that after investigation charge-sheet was submitted on 30.4.2010 under section 306 of the Indian Penal Code and cognizance was taken on 30.6.2010. Both the parties were heard by the learned trial Court on the point of framing of charge and finally by order dated 14.10.2011 charge was framed against the petitioner under section 306 of the Indian Penal Code. The trial commenced in altogether six witnesses were examined in between 13.2.2012 and 3.8.2019.

4. Learned counsel for the petitioner further submits that though the order dated 14.10.2011 framing charge against the petitioner under section 306 of the Indian Penal Code was not challenged by the prosecution, the prosecution filed a petition on 12.1.2023 under section 216 of the Cr.P.C stating therein that charge be altered from one under section 306 of the Indian Penal Code to that under section 304B and 201 of the Indian Penal Code. Rejoinder was filed on behalf of



petitioner on 30.1.2023. Having heard learned counsel for the parties, the learned trial Court by its order dated 2.5.2023 was pleased to allow the petition filed on behalf of the prosecution for alteration of charge and the charges were altered from one under section 306 of the Indian Penal Code to that under sections 304B and 201 of the Indian Penal Code. It is submitted that the order impugned having been passed on a petition filed on behalf of the prosecution is in teeth of judgment of the Hon'ble Supreme Court in case of **P. Kartika Lakshmi vs. Sri. Ganesh & Others [(2017) 3 SCC 347]**, is unsustainable and therefore, the same be set aside.

5. The application is opposed by learned APP for the State and also learned counsel for the opposite party no. 2. It is submitted by learned counsel appearing for the opposite party no. 2 that so far as the application filed on behalf of prosecution is concerned, the same is not under section 216 of the Cr.P.C. It is submitted that power to alter charge is available to the learned trial Court under section 216 of the Cr.P.C. Further reliance is placed by learned counsel for the opposite party no. 2 on judgment of the Hon'ble Supreme Court in the case of **Anant Prakash Sinha @ Anant Sinha vs. State of Haryana & Another [AIR 2016 SC 1197]** and more particularly paragraph



no. 6 thereof.

6. Having heard learned counsel for the parties and having perused the material on record, it transpires that the facts not in dispute herein are that the F.I.R of Riga P.S. Case no. 187 of 2009 from which the instant application arises was registered on 26.12.2009 under sections 304B, 201 and 34 of the Indian Penal Code. Charge-sheet was submitted under section 306 of the Indian Penal Code. After taking cognizance finally charge was framed in the learned trial Court on 20.5.2011 under section 306 of the Indian Penal Code. It was on the application filed on behalf of prosecution on 12.1.2023 (Annexure- P/3) that the same has been allowed and the order impugned has been passed altering the charge against the petitioner in the trial. The provision of alteration of charge is provided under section 216 of the Cr.P.C which provides that any Court may alter or add to any charge at any time before judgment is pronounced. The question as to whether charge could be altered on an application filed by the prosecution or any of the parties came up for consideration before the Hon'ble Supreme Court in the aforesaid case of **P. Kartika Lakshmi vs. Sri. Ganesh** (supra) where the Hon'ble Supreme Court held as follows:-

“ 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.

8. *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 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available under Section 216 CrPC. To that extent, having clarified the legal position, we make it clear that 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. As rightly pointed out by the learned Senior Counsel for Respondent 1, such a course adopted by the appellant and entertained by the court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the court below.”

7. It has clearly been held by the Hon'ble Supreme Court that so far as exercise of powers under section 216 of Cr.P.C to either alter or add charge is available with the Court, the same may be exercised at any time before the judgment is pronounced but no party has any right to seek for such addition or alteration by filing any application as a matter of right.

8. In view of the facts and circumstances of the case, the order impugned altering the charge having been passed on an application having been filed on behalf of prosecution, the order is clearly in teeth of the aforesaid judgment of the Hon'ble Supreme Court in the case of **P. Kartika Lakshmi vs. Sri. Ganesh** (supra) and the same is unsustainable. The order dated 2.5.2023 passed in Sessions Trial no. 435 of 2010 (arising out of Riga P.S. Case no. 187 of 2009) passed by the learned Additional District and Sessions Judge-II, Sitamarhi is hereby set aside.

9. The application is allowed.

10. It goes without saying that even though the order impugned dated 2.5.2023 has been set aside, the learned



trial Court will be at liberty to pass an order under section 216 of the Cr.P.C in accordance with the law laid down by the Hon'ble Supreme Court in the case of **P. Kartika Lakshmi vs. Sri. Ganesh** (supra).

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	
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