



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRL.R.P. NO. 919 OF 2022

BETWEEN:

...PETITIONER

(BY SRI MURTHY D NAIK, SR. COUNSEL A/W
SRI PRASANNA KUMAR S, ADV.)

AND:

1.

2. STATE OF KARNATAKA
BY BOMMANAHALLI POLICE
STATION, BENGALURU
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENTS

(BY MRS. PADMAVATHI N, ADV., FOR R-1;
MRS. RASHMI JADHAV, HCGP FOR R-2)

THIS CRL.R.P. IS FILED U/S. 397 R/W 401 CR.P.C PRAYING TO
QUASH THE ALTERED CHARGES DULY FRAMED DATED 16.06.2022
FOR THE OFFENCE P/U/S 498(A),354(A)(IV), 354(C) OF IPC ALONG
WITH SEC.11 AND 12 OF POCSO ACT, 2012.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE
COURT MADE THE FOLLOWING:





ORDER

This Criminal Revision Petition under Section 397 R/w 401 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C') has been filed by the defacto complainant challenging the order dated 16.06.2022 passed by the Additional City Civil & Sessions Judge, FTSC-III, Bengaluru (for short, the 'Trial Court').

2. Heard the learned Senior Counsel for the petitioner, learned counsel for respondent no.1 and the learned High Court Government Pleader for respondent no.2-State.

3. Brief facts as revealed from the records that may be necessary for the purpose of disposal of this revision petition are, on the complaint of petitioner, a case was registered against the respondent no.1, who is her husband, in Crime no.47/2021 by Bommanahalli Police Station, Bengaluru for the offences punishable under Sections 498(A), 354(A), 354(C), 376(2)(f) of IPC and under Section 4 & 6(N) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The police after investigation had filed a charge sheet against the respondent no.1 for the aforesaid offences and the case was numbered as Spl.C.C.No.649/2021 before the Special Court. In the said case an application was filed by the



respondent no.1 - accused under Section 227 of Cr.P.C seeking discharge. The said application was dismissed by the Trial Court by order dated 14.02.2022. Thereafter, charges were framed against the respondent no.1 for the aforesaid offences. After framing of charges, the respondent filed an application under Section 216 of Cr.P.C, for altering the charges and a prayer was made to delete the charges framed by the Trial Court for the offences punishable under Sections 376(2)(f) of IPC and Section 4 & 6(N) of the POCSO Act. The prosecution had not seriously opposed the said application before the Trial Court and the Trial Court by the order impugned dated 16.06.2022 had allowed the said application and being aggrieved by the same, the defacto complainant who is the mother of victim girl has approached this Court in this revision petition.

4. Learned Senior Counsel appearing on behalf of the petitioner submits that the accused has no right to maintain the application under Section 216 of Cr.P.C, He submits that mere reading of Section 216 of Cr.P.C, would go to show that the Court has no power to delete any offence from the charge once the charges are framed against the accused. He submits that under Section 216 of Cr.P.C the Court can either alter or



add to the charge which is already framed and there cannot be any deletion as such. He submits that by allowing application filed under Section 216 of Cr.P.C, the Trial Court has acquitted the respondent for the offences punishable under Section 376(2)(f) of IPC and Section 4 & 6(N) of the POCSO Act which it could not have done having rejected the respondent's application under Section 227 of Cr.P.C, In support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **P.KARTIKALAKSHMI V SRI GANESH AND ANOTHER - (2017) 3 SCC 347** and the judgment of this Court in the case of **CENTRAL BUREAU OF INVESTIGATION V** passed in **CRIMINAL REVISION PETITION NO.1058/2019 & CONNECTED MATTERS** disposed of on 18.10.2019.

5. *Per contra*, learned counsel for respondent no.1 submits that while passing orders on the application filed by the respondent under Section 227 of Cr.P.C, the Trial Court had clearly observed that there is no material to proceed against the respondent - accused for the offences punishable under Section 376(2)(f) of IPC and Section 4 & 6(N) of the POCSO Act. By filing an application under Section 216 of Cr.P.C, the



accused has prayed to alter the charges accordingly and considering the same, the Trial Court has allowed the same. She submits that if any mistake is committed while framing charge, the Court can always correct the same. She has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **ANANT PRAKASH SINHA ALIAS ANANT SINHA V STATE OF HARYANA AND ANOTHER - (2016) 6 SCC 105** in support of her arguments and submits that error in framing of charge can be brought to the notice of the Court by anybody including accused. Accordingly, she prays to dismiss the petition.

6. I have carefully considered the arguments addressed on both the sides and also perused the material available on record.

7. Undisputed facts of the case are that after the Trial Court dismissed the application filed by respondent no.1 under Section 227 of Cr.P.C, charges were framed against him by Trial Court for all the offences for which he was charge sheeted which is inclusive of offences punishable under Section of 376(2)(f) of IPC and Section 4 & 6(N) of the POCSO Act. Though the application under Section 216 of Cr.P.C, was filed by the respondent with a prayer to alter the charge. Though



prayer made in the application was to alter the charge, reading of the averments made in the application would go to show that virtually a prayer was made for deleting the charges in respect of offence punishable under Section of 376(2)(f) of IPC and Section 4 & 6(N) of the POCSO Act on the ground that the Trial Court while disposing of the application under Section 227 of Cr.P.C, had made an observation that there are no sufficient material to proceed against the respondent for the aforesaid offences. The Trial Court considering the said application and also appreciating the observation made by it while passing the orders on the application filed by the respondent under Section 227 of Cr.P.C, had allowed the said application.

8. The Hon'ble Supreme Court in the case of **P.KARTIKALAKSHMI** (supra) at paragraph nos.7 and 8 has observed as follows:-

"7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before



pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.

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."*

9. In the case of **SRI GALII JANARDHAN REDDY** (supra), the co-ordinate bench of this Court while considering the power of the Trial Court under Section 216 of Cr.P.C, has observed as follows:-

"12. Under the guise of alteration or addition of the charge, there should not be any deletion of charge, it is not permissible. If at all the charge can be withdrawn, the Court can do it only after the judgment that too by exercising the power under Section 224 of Cr.P.C. If there is no material, then under such circumstance, the Court cannot go back to the original stage of hearing before charge and discharge the accused that too, after recording the evidence of witnesses. Discharge or deletion gives a liberty to the accused and he will be set at liberty in a criminal case only at the time of hearing before charge or subsequently after the trial is concluded. In the instant case, under the guise of



alteration and addition of the charge the Court has actually discharge the accused for the alleged offence."

10. On perusal of aforesaid judgments and also after plain reading of Section 216 of Cr.P.C, I am of the considered view that the power of the Trial Court under Section 216 of Cr.P.C, is limited only to alter the charge or add to the charge which is already framed and in the guise of exercising its power under Section 216 of Cr.P.C, the Trial Court cannot delete a charge which has been already framed by it, such a power is not conferred on it under Section 216 of Cr.P.C,. If a charge is framed by the Trial Court for an offence which is not made out by the prosecution by producing sufficient material during the course of the trial, the Court can always acquit the accused for the said offence or the Court can punish the accused for lesser offences but after framing of charge before pronouncement of final judgment, the Court has no power to delete any charge which is framed by it.

11. The judgments on which reliance is placed by the learned counsel for respondent no.1 is of no assistance to her case and in the said judgment, the Hon'ble Supreme Court has not dealt with question of maintainability of the application by



the accused under Section 216 of Cr.P.C. In the said case, the application for framing an additional charge was filed by the informant and the Hon'ble Supreme Court considering the same has held that if the material on record would go to show that framing of additional charges is necessary it is always open for any party to bring the same to the notice of the Court though primary duty is cast on the Court suomotu to exercise such power. The said judgment therefore cannot be made applicable to the facts and circumstances of the present case, wherein the application has been filed by the respondent - accused under Section 216 of Cr.P.C, virtually seeking deletion of certain offences for which he has been charged by the Trial Court.

12. Merely for the reason that the Trial Court while passing an order on the application filed by the respondent under Section 227 of Cr.P.C had made an observation that there was no sufficient material to proceed against the accused persons for certain offences, the Trial Court in exercise of its powers under Section 216 of Cr.P.C cannot delete the charges framed by it for the said offences as the criminal procedure code does not confer such a power on the Court. Under the circumstances, I am of the considered view that the Trial Court



has erred in allowing the application filed by the accused under Section 216 of Cr.P.C., which was not at all maintainable in view of law laid down by the Hon'ble Supreme Court in the case of **P.KARTIKALAKSHMI** (supra). Under the circumstances, the impugned order cannot be sustained. Accordingly, the following:-

::ORDER::

Criminal Revision Petition is allowed.

The order dated 16.06.2022 passed by the Additional City Civil & Sessions Judge, FTSC-III, Bengaluru on application filed by the respondent - accused under Section 216 of Cr.P.C., is set aside and if the Trial Court has proceeded further and altered the charges pursuant to the orders passed by it on application filed by the accused under Section 216 of Cr.P.C., even the same stands set-aside.

**Sd/-
JUDGE**