

Allahabad High Court

Date on 22 December, 2023

Bench: Dinesh Pathak

APPLICATION U/S 482 No. - 17003 of 2023

Om Prakash @ Jani

vs

State Of U.P

Legislation and Rules:

Section 482 of the Cr.P.C.

Sections 372, 373, 376 I.P.C.

Sections 3, 4, 5, 6, 9 of the Immoral Traffic (Prevention) Act, 1956

Section 319, 173(8), 216, 161 Cr.P.C.

Section 13(2) of the Immoral Traffic (Prevention) Act, 1956

Subject:

Challenge to the order allowing additional charges under Section 376 I.P.C. against the applicant in a case involving Immoral Traffic (Prevention) Act and I.P.C. provisions.

Headnotes:

Invocation of Section 482 Cr.P.C. – Challenge to the order dated 23.11.2022 by Additional District & Sessions Judge for additional charges under Section 376 I.P.C. against the applicant. [Para 3, 4]

Re-investigation and Supplementary Charge Sheet – Re-investigation under Section 173(8) Cr.P.C. leading to a supplementary charge sheet against the applicant for offences under the Immoral Traffic (Prevention) Act and Sections 372, 373 I.P.C. [Para 4]

Addition of Charge under Section 376 I.P.C. – Prosecution’s application for adding charge under Section 376 I.P.C., allowed by trial court, challenged on grounds of maintainability, lack of material, and procedural irregularities. [Para 5, 18, 19]

Court’s Analysis on Section 216 Cr.P.C. – Discussion on the court’s power to alter charges, and the role of prosecution and court in ensuring correct charges are framed. [Paras 10-16, 17]

Dismissal of Application – Applicant’s contentions regarding procedural irregularities and lack of material for additional charge under Section 376 I.P.C. found unfounded. The court upheld the trial court's decision to frame additional charges. [Paras 18-21]

Referred Cases:

- P. Kartikalakshmi Vs. Sri Ganesh and Another (2017) 3 SCC 347
- Sushil Dhameja and Another Vs. State of U.P. and Another (Application U/s 482 Cr.P.C. No. 12344 of 2023)
- Kuldeep Vs. State of U.P. (2019 2 ACR 1947)
- Krishnammal Vs. The Revenue Divisional Officer and others (2008) 0 CrLJ 2845
- Delhi Administration Vs. Ram Singh (1962) 0 AIR (SC) 63
- Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana and Another (2016) 6 SCC 105
- Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh and Others (2020) 12 SCC 467
- Soundarajan Vs. State Rep. by Inspector of Vigilance Anti Corruption Dindigul, 2023 SCC Online SC 242

Representing Advocates:

- Chandrakesh Mishra, Abhishek Kumar Mishra for the applicant

- G.A., Raj Kumar Kesari for the opposite party

Hon'ble Dinesh Pathak,J.

1. Heard Sri Daya Shankar Mishra, learned Senior Counsel assisted by Sri Abhishek Kumar Mishra, learned counsel for applicant and Sri Raj Kumar Kesari learned counsel for opposite party No.2 as well as learned AGA for the State.

2. Learned counsel for opposite party No.2 has refused to file any counter affidavit in the instant matter, therefore, present application is being decided on merits with the consent of learned counsel for the parties.

3. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. assailing the order dated 23.11.2022 passed by Additional District & Sessions Judge, Court No.3, Varanasi in Sessions Trial No. 651 of 2020 arising out of Case Crime No. 300 of 2005, under Sections 372, 373 I.P.C. and Sections 3, 4, 5, 6, 9 of Immoral Traffic (Prevention) Act, 1956, Police Station Manduwadih, District Varanasi.

4. An FIR, being Case Crime No. 300 of 2005, under Sections 373, 373 I.P.C. and under Sections 3,4, 5, 6, and 9 of Immoral Traffick (Prevention) Act, 1956 has been lodged by the Police Inspector. Some young girls have been recovered from two different places. Charge sheet has been submitted against two accused persons, however, present applicant was neither named in the FIR nor arraigned in the charge sheet as an accused. Ultimately, Sessions Trial No. 161 of 2006 was concluded convicting both accused and the same was affirmed by this Court in Crl. Appeal No. 5583 of 2016 vide order dated 05.08.2019. During this period an application dated 22.06.2010 (Annexure-2) has been moved under Section 319 Cr.P.C. to call upon the eight persons including present applicant as an accused for trial together with other co-accused. The said application was rejected by the trial court vide order dated 24.05.2021. High Court, on application being filed under Section 482 Cr.P.C. No. 29267 of 2011, has relegated the parties before the trial court with a direction to reconsider the application under Section 319 Cr.P.C., vide order dated 14.09.2011. Learned trial court, after remand, has passed the order dated 07.01.2012 with a direction that the matter may be reinvestigated under Section 173(8) Cr.P.C. In pursuance thereof, after due investigation, Investigating Officer has submitted the supplementary charge sheet dated 17.07.2020 (Annexure No.22) arraigning the present applicant under Sections 3, 4, 5, 6 and 9 of Immoral Traffic (Prevention) Act, 1956 and under sections 372 and 373 I.P.C. Considering the supplementary charge sheet dated 17.07.2020, learned trial court has framed the charges against the present applicant vide order dated 20.10.2020 (Annexure No.15). At later stage, prosecution has moved an application dated 12.03.2021 (Paper No.10 Kha) (Annexure-20) beseeching frame one additional charge under Section 376 I.P.C. against the present applicant. Learned trial court, vide order impugned dated 23.11.2022 (Anneuxre-21), has allowed the aforesaid

application (Paper No.10 Kha) and fix next date 18.12.2022 for framing of additional charge against the present applicant. On the pointed query raised to the learned counsel for the parties they have stated that till date charge has not been framed under Section 376 I.P.C. Having been aggrieved, with order dated 23.11.2022, allowing the application (Paper No.10 Kha), applicant (accused) has invoked the inherent jurisdiction of this Court by moving the present application.

5. Learned counsel for the applicant has advanced three fold submissions before this Court. First relating to the maintainability of the application dated 12.03.2021 (Paper No.10 Kha) on the ground that the prosecution or any other interested persons have no locus standi to move any application before the court concerned for alteration or addition of charges under Section 216 Cr.P.C. In support of this submission, learned counsel for the applicant placed reliance upon the judgment of Hon'ble Supreme Court in the case of P. Kartiklakshmi Vs. Sri Ganesh and Another reported in (2017) 3 SCC 347, Sushil Dhameja and Another Vs. State of U.P. and Another decided by co-ordinate Bench of this Court vide order dated 18.04.2023 passed in Application U/s 482 Cr.P.C. No. 12344 of 2023 and Kuldeep Vs. State of U.P. decided by co-ordinate Bench of this Court reported in 2019 2 ACR 1947. He has placed reliance as well upon the judgment of Madras High Court in the case of Krishnammal Vs. The Revenue Divisional Officer and others reported in (2008) 0 CrLJ2845. Second submission raised by learned counsel for applicant is that no additional material is available on record to frame additional charge indicting the present applicant under Section 376 I.P.C. Thirdly, learned counsel for the applicant has tried to challenge the sanctity and genuineness of statement made by victim u/s 161 Cr.P.C. during re-investigation and submits that the statement of victim under Section 161 Cr.P.C. as referred in the order dated 23.11.2022 was not recorded, in accordance with law, during re-investigation. It is further submitted that from perusal of the record, prima facie, it appears that alleged statement of victim was got recorded by some lady Constable namely, Poonam Verma. It was not recorded by Investigating Officer, therefore, same cannot be treated to be part of the re-investigation. It is next submitted that under Section 13(2) of Immoral Traffic (Prevention) Act, 1956, the Special Police Officer shall not be below the rank of an Inspector of Police, whereas instant matter statement was get recorded by the police constable which has got no sanctity in the eye of law. In support of his submission learned counsel for applicant has cited the case of Delhi Administration Vs. Ram Singh 1962 0 AIR (SC) 63. It is further

submitted that learned trial court has illegally made an observation in its order dated 23.11.2022 that the victim in her statement recorded under Section 161 Cr.P.C. has made allegations of rape against the present applicant. However, in her initial statement recorded under Section 164 Cr.P.C. no such allegation was made by the victim against the present applicant. Lastly, it is submitted that the order dated 23.11.2022 passed by learned trial court is liable to be quashed being illegal, unwarranted under the law and tainted with irregularities.

6. Per contra, learned counsel for the respondent no. 2 has contended that in present application, applicant has not challenged the entire criminal proceeding except an order impugned dated 23.11.2022 by which application (Paper No. 10Kha) has been allowed for the purposes of indicting the accused under Section 376 I.P.C. It is further contended that the application (Paper No. 10Kha) cannot be treated to be an independent application rather it is a piece of information given to the court concerned for the irregularity in the proceedings wherein statement under Section 161 Cr.P.C. has not properly been appraised by the the Court concerned, consequently offence under Section 376 I.P.C. has been left out to be considered. It is further contended that the victim/ prosecutrix being a lady has to be examined by the lady officer, therefore, her statement has rightly been recorded by lady constable namely, Poonam Verma on the instructions of the Investigating Officer. Learned counsel for the respondent has drawn attention of the Court towards the second proviso to sub-section 3 of Section 161 Cr.P.C. wherein lady police officer has been entrusted to record the statement of a woman against whom offence under several sections of I.P.C. including Section 376 I.P.C. has been committed. He has also placed reliance on the provisions as enunciated under Section 15, sub-Section 6-A, of the Immoral Traffic Act wherein victim is required to be interrogated by the woman police officer. Lastly it is contended that learned trial court has rightly passed order impugned dated 23.11.2022, which does not warrant any indulgence of this Court in exercise of inherent jurisdiction under Section 482 Cr.P.C., therefore, the instant application is liable to be rejected being misconceived and devoid of merits.

7. In reply, learned counsel for the applicant submits that the copy of statement of victim under section 161 Cr.P.C., as referred in the order impugned, has not been supplied/given to the present applicant (accused), therefore, he was not in a position to go through the aforesaid statement. He

has further submitted that it appears that alleged statement under Section 161 Cr.P.C. dated

05.02.2020, as referred by the respondents in his impleadment application has been planted subsequently for the purpose of framing additional charge u/s 376 I.P.C. It is further submitted that for the purposes of investigation under the Immoral Traffic Act a Special Police Officer not below the rank of Inspector of Police is authorised to investigate or record the statement of the victim, therefore, in the instant matter statement recorded by the concerned lady constable vitiates the process of the entire statement under Section 161 Cr.P.C.

8. Having considered the rival submissions advanced by learned counsel for parties and perusal of record, it manifested that the name of the present applicant was emerged during re-investigation under Section 173(8) Cr.P.C. and he has been arraigned in the supplementary charge sheet dated 17.07.2020. During re-investigation victim has made her statement under Section 161 Cr.P.C. which is evident from the copy of the supplementary charge sheet (Annexure No.5) wherein name of victim has find placed at serial No.2. Having considered the material on record filed along with the subsequent charge sheet dated 17.07.2020, learned trial court has framed as many as seven charges, vide order dated 20.10.2020, against the present applicant. At later stage, prosecution has moved a miscellaneous application to frame additional charge under Section 376 I.P.C. inasmuch as same has been left to be considered whereas specific allegations has been made by the victim in her statement under Section 161 Cr.P.C. in this regard.

9. Learned counsel for the applicant in his first submission has raised question qua maintainability of the application (Paper No.10 Kha) moved on behalf of the prosecution with a submission that there is no provision under the law to move such application before the trial court who himself competent to subtract or addition of charges in exercise of power under Section 216 Cr.P.C. On the contrary learned counsel for opposite party No.2 has contended that application (Paper No. 10 Kha) under Section 216 Cr.P.C. moved by the prosecution was nothing but a piece of information to bring the relevant fact in the notice of learned trial court, which has been over cited by the concerned court, to eliminate defect in framing of the charge.

10. For analyzing the divergent submissions made by the counsel for the rival parties it would bebefitting to consider the scope of Section 216 Cr.P.C.,

which is quoted herein below :"(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 had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

11. Bare perusal of Section 216 Cr.P.C. clearly denotes that the court is empowered to alter charges at any stage of trial before the delivery of judgment. Question with respect to the maintainability of miscellaneous application (Paper No. Kha) moved by prosecution or any other party for framing of additional charges under Section 216 Cr.P.C. is relevant for the purposes of deciding the instant matter. In the case of P. Kartikalakshmi (Supra) Hon'ble Supreme Court has expounded that there is no right to any party to seek for a subtraction or addition of charges by filing any miscellaneous application as a matter of right. The relevant paragraph Nos. 6 and 7 of the judgment is quoted herein below :-

"6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent No.1. Section 216 Cr.P.C. 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 Cr.P.C. 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.

7. We were taken through Sections 221 and 222 Cr.P.C. in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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."

12. Hon'ble Supreme Court has further clarified in the case of Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana and Another (2016) 6 SCC 105 that it is obligatory at the part of the court to see that no prejudiced cause to the accused and he is allowed to have a fair trial and court can change or alter the charges if there is no defect or something is left out. Relevant paragraph No.18 of the aforesaid judgment is quoted herein below :-

"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."

13. In the aforesaid judgment Hon'ble Supreme Court has also examined the maintainability of the application moved by the private party for alteration of charge. Parting with the matter Hon'ble Supreme Court has expounded that by way of application relevant fact has brought to the knowledge of learned Magistrate about the defect in framing the charges, therefore, Magistrate has not committed any error in entertaining the said application. Relevant paragraph Nos. 21 and 22 of the aforesaid judgment is quoted herein below :-

"21. Presently to the second aspect. Submission of Mr. Sharan is that the learned Magistrate could not have entertained the application preferred by the informant, for such an application is incompetent because it has to be filed by the public prosecutor. In this regard, he has laid stress on the decision in Shiv Kumar v. Jukam Chand and another²³. In the said case, the grievance of the appellant was that counsel engaged by him was not allowed by the High Court to conduct the prosecution in spite of obtaining a consent from the concerned Public Prosecutor. The trial court had passed an order to the extent that the advocate engaged by the informant shall conduct the case under the supervision, guidance and control of the Public Prosecutor. He had further directed that the Public Prosecutor shall retain with himself the control over the proceedings. The said order was challenged before the High Court and the learned single Judge allowing the revision had directed that the lawyer appointed by the complainant or private person shall act under the directions

from the Public Prosecutor and may with the permission of the court submit written arguments after evidence is closed and the Public Prosecutor in-charge of the case shall conduct the prosecution. This Court referred to Sections 301, 302(2), 225 CrPC and various other provisions and came to hold as follows:- "

"13. From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor.

14. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact that he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter."

22. Being of this view, this Court upheld the order passed by the High Court. The said decision in Shiv Kumar v. Jukam Chand and another²³ is, in our opinion, is distinguishable on facts. The instant case does not pertain to trial

or any area by which a private lawyer takes control of the proceedings. As is evident, an application was filed by the informant to add a charge under Section 406 IPC as there were allegations against the husband about the criminal breach of trust as far as her stridhan is concerned. It was, in a way, bringing to the notice of the learned Magistrate about the defect in framing of the charge. The court could have done it suo motu. In such a situation, we do not find any fault on the part of learned Magistrate in entertaining the said application. It may be stated that the learned Magistrate has referred to the materials and recorded his prima facie satisfaction. There is no error in the said prima facie view. We also do not perceive any error in the revisional order by which it has set aside the charge framed against the mother-in-law. Accordingly, we affirm the order of the High Court in expressing its disinclination to interfere with the order passed in revision. We may clarify that the entire scrutiny is only for the purpose of framing of charge and nothing else. The learned Magistrate will proceed with the trial and decide the matter as per the evidence brought on record and shall not be influenced by any observations made as the same have to be restricted for the purpose of testing the legal defensibility of the impugned order."

14. Discussing the wide power of the trial court under Section 216 Cr.P.C. Hon'ble Supreme Court has held in the matter of Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh and Others (2020) 12 SCC 467, that the court has immense power to change or altering the charges at any stage. The relevant paragraph No.21 of the aforesaid judgment is quoted herein below :-

"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."

15. Learned counsel for the applicant has emphasized the judgment passed by coordinate Bench of this Court in the matter of Sushil Dhameja and Another (Supra) wherein this Court has quashed order passed by the trial court by which miscellaneous application u/s 216 Cr.P.C. moved on behalf of the prosecution has been entertained and allowed. While passing the order, coordinate Bench of this Court has referred the dictum of Hon'ble Supreme Court in the matter of P. Kartikalakshmi (Supra) and in the light of the said judgment quashed the order passed by the court below and granted liberty to the trial court to pass fresh order in the light of the provisions as enunciated under Section 216 Cr.P.C. Learned counsel for applicant has also placed reliance upon the case of Kuldeep (Supra) decided by coordinate Bench of this Court. The facts of the cited case are distinguishable in the given circumstances of the present case. In the cited case application to alter the charges was moved on 30.01.2018 under Section 216 Cr.P.C. and the same was kept pending which lead to file an application under Section 482 Cr.P.C. for a direction to expeditious disposal of the said application. Hon'ble Judge has dismissed the application with an observation that separate application under Section 216 Cr.P.C. for subtraction or addition of charges is not maintainable in the eye of law, accordingly, refused to issue direction for expeditious disposal of said application. In the recent judgment of Soundarajan Vs. State Rep. by Inspector of Vigilance Anti Corruption Dindigul, 2023 SCC Online SC 242. Hon'ble Supreme Court has expounded that even a public prosecutor has a duty to be vigilant and if a proper charge is not framed it is his duty to apply to the court to frame an appropriate charge. Relevant paragraph No.16 of the said judgment is quoted herein below :-

"We find that, in this case, the charge has been framed very casually. The Trial Courts ought to be very meticulous Criminal Appeal No.1592 of 2022 when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub-section (2) of Section 464 of CrPC.

Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge."

16. Having considered the matter in hand, in light of the guidelines of Hon'ble Supreme Court as discussed above, I am of the considered opinion that learned trial court has rightly entertained the Misc. Application (Paper No.10Kha) as a piece of information moved on behalf of prosecution. While deciding the said application, learned trial court has specifically considered the allegation of forceful sexual assault made by victim which was left to be noticed at the time of framing charges. In her statement u/s 161 Cr.P.C. she has made specific allegation, as highlighted by learned trial court, of rape. Statement of victim under Section 161 Cr.P.C. was recorded by the Investigating Officer during re-investigation under Section 173(8) Cr.P.C. The right of accused to have a fair trial and no prejudiced beget to him while conducting the trial is an obligatory at the part of the court, however, said right of the accused cannot be seen in isolation and same would be considered in conjunction with the provisions as enunciated under Section 216 Cr.P.C., Therefore, any defect in framing charges which begot due to lack of proper consideration of the material on record can be rectified at any stage of trial even before the delivery of judgment in exercise of power under Section 216 Cr.P.C. It might possible that court misled in framing of charges, the Public Prosecutor has a duty to be vigilant and apprise the court qua correct facts of the case in the light of the material on record and, accordingly, take an appropriate steps for subtraction or addition of charges under the provisions of law as enunciated under Section 216 Cr.P.C. In this respect Hon'ble Supreme Court has clearly held in the matter Soundarajan (Supra) that the Public Prosecutor is entrusted with duty to apprise the court qua defect, if any, in framing charges. In the matter in hand, ADGC (Public Prosecutor) has moved application dated 15.03.2021 (Paper No.10Kha) to frame additional charge under Section 376 I.P.C. against the present applicant. Learned trial court, vide order impugned dated 10.11.2022, has entertained the said application as a piece of information and acknowledg the defect in framing of charges, wherein allegation of rape made by the victim under Section 161 Cr.P.C. has been left to be considered. Learned trial court by order impugned has simply allowed the application and deferred the hearing of the case for the next date to frame additional charge and, accordingly, accused has been directed to be present on the next date. It is admitted position to both the parties that till date additional charge under Section 376 I.P.C. has not been

framed by the trial court in pursuance of the order impugned dated 23.11.2022.

17. As discussed above, there is no iota of doubt qua wide power of the courts for subtraction or addition of charges under Section 216 Cr.P.C. Miscellaneous application dated 12.3.2021 (Paper no.10Kha) moved on behalf of the prosecution cannot be treated to be an independent initiation rather than a piece of information which is pious duty of the prosecution (Public Prosecutor) to bring the correct fact to the notice of the court concerned so that correct charges could be framed for the purposes of fair trial sans begetting prejudiced to any party. Even assuming for the sake of argument, as raised by learned counsel for the applicant, that no party has vested right to seek any addition or alteration of charge by moving an application, the power vested in the court would not be affected owing to entertaining such application as a piece of information to alter the charges, in case, there is any omission or defect in framing of charges due to ignorance of the relevant event which is already on the record. Once the defect has been brought to the knowledge of the court it would not be befitting for him oblivious to the allegation as levelled by the victim against the present applicant. Even otherwise, having considered the material on record learned court is competent enough to pass an order suo moto to subtract or addition of the charges. Therefore, in my considered opinion learned trial court has not committed any error in entertaining the application (Paper No.10Kha) and fixed dated for framing of charge in the light of the fact which has been brought to his knowledge in the said application.

18. Second submission raised by learned counsel for the applicant questioning the availability of inadequate material for framing of additional charge u/s 376 I.P.C. is unfounded at this stage. Statement of victim u/s 161 Cr.P.C., prima facie, is sufficient to alter the charges in exercise of jurisdiction u/s 216 Cr.P.C. Trial court by order impugned has simply allowed the application acknowledging the relevant fact for the purposes of framing of charge, however, he has deferred the matter for framing of charge on the next date fixed. Therefore, in my opinion opportunity is still open for the applicant to raise question qua adequate material on record with respect to the framing of additional charge, if any.

19. Third submission raised by learned counsel for the applicant questioning the genuineness and sanctity of the statement dated 05.02.2020

made by victim under Section 161 Cr.P.C. is unfounded as well. At this juncture, wherein trial commenced after framing of charges vide order dated 20.10.2020 and, at later stage, next date fixed for addition of charge under Section 376 I.P.C. it would not be befitting for this Court to examine the sanctity, genuineness and correctness of the statement made by the victim under Section 161 Cr.P.C. during reinvestigation, whereas same can be examined by the trial court at the appropriate stage of trial. So far as the allegation made by the applicant in his rejoinder affidavit that the statement made by victim under Section 161 Cr.P.C. during reinvestigation has not been supplied to him, same can be raised before the trial court as well at the relevant stage. At this stage of trial, for the procedural glitch, if any, this Court cannot assume inherent jurisdiction to quash the proceedings. Genuineness and sanctity of the statement made by victim under Section 161 Cr.P.C. in the light of the provision as enunciated under Section 13(2) Immoral Traffic (Prevention) Act, 1956 and not recording her statement by the authority competent, as pointed out by learned counsel for the applicant, is a matter of scrutiny which can more appropriately be adjudicated upon by the trial court while examining the relevance and admissibility of the evidence during trial. At this juncture, this Court, in exercise of its inherent jurisdiction, cannot assume the power to examine the correctness and validity of the statement of witness under Section 161 Cr.P.C. in the light of procedural glitch, if any, more particularly for want of recording the statement by authority competent as allegedly required under the Immoral Traffic (Prevention) Act, 1956.

20. In this conspectus, as above, I do not find any justifiable ground to entertain the instant application at this juncture. There is no illegality, perversity, ambiguity or infirmity in the order under challenge. I found neither any abuse of process of court in the order impugned dated 23.11.2022 nor is there any valid ground to interfere in said order to secure the ends of justice. There is nothing on record to demonstrate as to how present applicant is prejudiced, or if there is any likelihood of causing miscarriage of justice to him, owing to the order under challenge by which application u/s 216 Cr.P.C. for framing additional charge has simply been allowed acknowledging the relevant fact which has been left to be considered at the time of framing of charges.

21. Resultantly, instant application being, misconceived and devoid of merits is dismissed with no order as to costs.

***Disclaimer: Always compare with the original copy of judgment from the official website.**