A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 2556 of 2023
Applicant :- Nanhey Bhaiya @ Nanhan Singh And 2 Others
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another
Counsel for Applicant :- Sanjay Singh Chauhan,Alok Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard learned counsel for the applicants, Sri Alok Saran, learned A.G.A. for the State and perused the entire record.

In view of the order, which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

The instant application under Section 482 Cr.P.C. has been filed by the accused/ applicants praying inter alia following relief:-

> "*(i) To quash the impugned order dated 29.09.2022 passed in Case No. 2032/2015 arising out of Crime No.-144/1998 U/s-498A/304B IPC & 3/4 D.P. Act P.S. Behta Gokul District Hardoi and the order dated 03.02.2023 by which revision petition of the petitioners has been rejected in Criminal Revision No. 209/2022 contained here with as Annexure No.2 & 3 to this affidavit.*"

Learned counsel for the applicants has submitted that the impugned order dated 29.09.2022, whereby the learned trial court has held that the case under Section 304B I.P.C. is also made out against the present applicants, has been passed by the learned trial court in exercise of power vested in it by virtue of Section 216 Cr.P.C., which is evident from the impugned order dated 29.09.2022 itself. However, he submits that the same has been passed on an application moved either by the accused or the complainant/ first informant.

His next submission is that the impugned order dated

29.09.2022, in respect of addition of Section 304B I.P.C. against the present applicant on the basis of an application moved by the first informant of this case, is not maintainable. Therefore, the impugned order dated 29.09.2022 is patently illegal and against the law rendered by the Hon'ble Supreme Court in **P. Kartikalakshmi vs. Sri Ganesh and another** reported in **(2017) 3 SCC 347.**

His further submission is that the applicants have preferred a criminal revision bearing No.209 of 2022 against the impugned order dated 29.09.2022, which has been rejected by the learned revisional court without appreciating the aforesaid facts vide impugned order dated 03.02.2023, which is also an abuse of process of this Court. Therefore, the impugned orders dated 29.09.2022 and 03.02.2023 are liable to be quashed.

Per contra, learned A.G.A. for the State has vehemently opposed the prayer made by learned counsel for the applicants. However, he has been unable to dispute the aforesaid factual submissions advanced by the learned counsel for the applicants.

Having heard the learned counsel for the applicants, learned A.G.A. for the State and upon perusal of record, it transpires that the impugned order dated 29.09.2022 came to be passed on an application moved by the first informant, Sushil Kumar Singh, under Section 216 Cr.P.C. Thereafter, the applicants preferred a criminal revision bearing No.209 of 2022 against the impugned order dated 29.09.2022, which has also been rejected by the learned revisional court.

In **Hasanbhai Valibhai Qureshi vs. State of Gujarat and others** reported in **(2004) 5 SCC 347**, the Hon'ble Supreme Court, while dealing with scope of Section 216 Cr.P.C., in

paragraph No.10 has held as under:-

> "***10.*** *Therefore, 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.*"

Recently, the Hon'ble Supreme Court in **P. Kartikalakshmi's case (supra)** 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.*
>
> ***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. 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."

(emphasis supplied)

Having regard to aforesaid settled legal position, the impugned orders dated 29.09.2022 and 03.02.2023 are unsustainable as the same are abuse of process of this Court, which deserve to be quashed and the same are hereby quashed.

It is made clear that the learned trial court concerned shall be at liberty to pass appropriate order keeping in view the provisions contained in Section 216 Cr.P.C., on its own instance and also keeping in view the observations made herein above after affording opportunity of hearing to all concerned parties.

With the aforesaid observations/ directions, the instant application under Section 482 Cr.P.C. stands **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 31.3.2023
cks/-