**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 7TH DAY OF FEBRUARY, 2024**

R

**BEFORE**

**THE HON'BLE MR JUSTICE S.VISHWAJITH SHETTY**

**CRIMINAL REVISION PETITION NO. 100280 OF 2022 (397)**

**BETWEEN:**

SRI SHIVAPPA
S/O. ARJUN HADIMANI @ PANCHAGAON,
AGE: 38 YEARS, OCC. AGRICULTURE,
R/O. SALAHALLI, TAL. RAMADURG,
DIST. BELAGAVI-590001.

...PETITIONER

(BY SRI SRINAND A. PACHHAPURE, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA
   BY KATAKOL POLICE STATION,
   NOW REP . BY ITS STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA, DHARWAD,
   BENCH AT DHARWAD.

2. SMT. HANAMAVVA D/O. YAMANAPPA MADAR,
   AGE: 73 YEARS, OCC. COOLIE,
   R/O. AMBEDKAR NAGAR,
   SALAHALLI-590001, TAL. RAMDURG,
   DIST. BELAGAVI.

...RESPONDENTS

(BY SMT. GIRIJA S. HIREMATH, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397(1) R/W SECTION 401 OF CR.P.C., SEEKING TO CALL FOR THE RECORDS IN SPL.CASE NO.77/2014 AND SET ASIDE THE ORDER DATED 11.07.2022 PASSED BY THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, BELAGAVI ON AN APPLICATION FILED U/S 216 OF CR.P.C. IN SPL.CASE NO.77/214, MARKED AT ANNEXURE-A, AND SET ASIDE THE ORDER/CHARGE DATED

20.07.2022 FRAMED BY THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, BELAGAVI IN SPL.CASE NO.77/2014 MARKED AT ANNEXURE-A1, FOR THE OFFENCE PUNISHABLE U/S 135(1) (a) OF ELECTRICITY ACT 2003 AND 304(II) AND 201 R/W 34 OF IPC.

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

**ORDER**

This criminal revision petition under Section 397 (1) read with Section 401 of the Criminal Procedure Code, (for short, 'the Cr.P.C') is filed by the accused No.1 with a prayer to set aside the order dated 11.07.2022 passed by the Court of I Additional District and Session Judge, Belagavi, in Spl.Case.No.77/2014, wherein the application filed by the prosecution under Section 216 of the Cr.P.C. was allowed.

2. Heard the learned counsel for the parties.

3. Petitioner herein was charge sheeted along with accused No.2 for the offences punishable under Sections 304A and 201 read with Section 34 of the Indian Penal

Code (for short, 'the IPC') and Section 135(1)A Karnataka Electricity Act (for short,' the K.E.Act'). The trial Court after taking cognizance of the charge sheeted offences had issued summons to the accused. Since accused claimed to be tried, the case was posted for recording the evidence on behalf of the prosecution. At the fag end of the trial, prosecution had filed an application under Section 216 of the Cr.P.C with a prayer to alter the charge for the offence punishable under Section 304 Part II instead of offence punishable under Section 304A. The said application was opposed by the accused. The trial Court vide impugned order had allowed the said application. Being aggrieved by the same, accused No.1 is before this Court.

4. Learned counsel for the petitioner submits that from a reading of Section 216 of Cr.P.C., it is very clear that it is only the trial Court that can exercise power under the said provision. He submits that unless sufficient material is available on record during the course of trial,

the power under Section 216 cannot be exercised. He accordingly prays to allow the petition.

5. Per contra, learned High Court Government Pleader has opposed the petition. She submits that the plain reading of the Section 216 of the Cr.P.C would go to show that at any stage the trial Court can alter or add any charge if it finds that there is sufficient material for exercising powers under Section 216 Cr.P.C. She also submits that the accused are not prejudiced since they have a right to recall the witnesses. Accordingly, she prays to dismiss the petition.

6. Undisputed facts in the present case are, charge sheet was filed against the accused for the offences punishable under Section 304A and 201 read with Section 34 of the IPC and Section 135(1)(A) K.E.Act and charges were framed against the accused by the trial Court only for the aforesaid offences. After the charges were framed the trial Court had proceeded with the trial of the case and at the stage of recording the evidence of P.W.20, prosecution

had filed an application under Section 216 Cr.P.C with a prayer to alter the charges.

7. Sections 216 and 217 of Cr.P.C. reads as under:

> *"Section 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 had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.*

*Section 217. Recall of witnesses when charge altered.- Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-*

*(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;*

*(b) also to call any further witness whom the Court may think to be material."*

8. From a reading of Sections 216 and 217 of Cr.P.C., it can be said that it is only the trial Court which can *su moto* exercise power under this provision of law and power under this provision of law cannot be exercised at the instance of accused or the complainant. If the provision

of law does not provide any specific right to the parties, such a right should not be read into the provision of law by the courts, unless the court is of the view that if such a right is not conferred on the parties, there is likelihood of failure of justice. Abuse of legal procedure is one of the major factors for delay in disposal of cases. Unless the Courts dispense with such procedures which are totally unnecessary and causes no prejudice to the parties if they are dispensed with, it would not be possible for the Courts to take effective steps for speedy disposal of the cases. Providing Fast Track Court and use of Alternate Dispute Resolution, is not sufficient to reduce the burden of the Courts. The courts have to be proactive and they are not only required to dispense with unnecessary procedures but are also required to ensure that legal procedures are not abused.

9. Section 216 of Cr.P.C. provides that Courts can alter or add any charge at any time before the judgement is pronounced. Section 217 of Cr.P.C. provides that

whenever a charge is altered or added to by the Courts, after commencement of trial, the prosecution and the accused shall be allowed to recall or re-summon and examine the witness with reference to the said alteration or addition of charge and also call any other further witnesses whom the Court may think to be material. Therefore, in the event the Court alters or adds to any charge at any time before the judgment is pronounced, the prosecution as well as the accused gets a right under Section 217 of Cr.P.C. to recall or re-summon the witnesses and in addition to the same, even further witnesses may be summoned whom the Court may think to be material after the trial is commenced. In the event the Court exercises its power under Section 216 of Cr.P.C., then under the normal circumstance the trial is likely to be delayed for the reason that the accused and the prosecution are likely to exercise their rights provided under Section 217 of Cr.P.C. Therefore the Courts should be very conscious of this aspect of the matter and unless the Court is satisfied that the material evidence placed before it warrants exercise of power under

Section 216, the powers under Section 216 of Cr.P.C. should not be exercised.

10. A reading of Section 216 of Cr.P.C. makes it clear that legislature has not provided any right for the party to make an application under this provision of law. The Hon'ble Supreme Court in the case of ***P.Kartikalakshmi Vs.Sri.Ganesh and Another*** reported in ***(2017) 3 SCC 347*** wherein application was filed by the defacto-complainant under Section 216 of the Cr.P.C to frame an additional charge, in paragraphs No. 6 and 7 has observed 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 factor 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."*

11. The judgment in the case of ***P.KARTIKALAKSHMI*** has been relied upon the Hon'ble Supreme Court in the case of ***DR.NALLAPPAREDDY SRIDHAR REDDY VS. STATE OF ANDRA PRADESH AND ANOTHER*** reported in ***(2020) 12 SCC 467***, wherein paragraph 21 of the order the Hon'ble Supreme Court has observed as follows:

> *"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."*

12. This Court in the case of ***K.MUNIVAHINI V.K.CHAKRAPANI*** reported in ***AIR ONLINE 2023 KAR 255***, placed reliance on the judgment of the Hon'ble Supreme Court in ***P.KARTIKALAKSHMI's*** case and has held that the application filed by the accused under Section 216 of the Cr.P.C is not maintainable. In K.Munivahini's case, this Court has also held that the trial Court while exercising its power under Section 216 of Cr.P.C. cannot delete a charge already framed by it and it has no power to do so.

13. In the present case, undisputedly the application is filed by the prosecution to alter the charges. In view of the judgment of the Hon'ble Supreme Court in

the case of ***P.KARTIKALAKSHMI*** the said application was not maintainable and therefore, the trial Court could not have entertained the same and passed the impugned order. On this short ground the order impugned is liable to be set aside. Accordingly, the following:

**ORDER**

The criminal revision petition is allowed.

The order dated 11.07.2022 passed by the Court of I Additional District and Sessions Judge, Belagavi, in Spl.C.No.77/2014, is set aside.

**Sd/-**
**JUDGE**

ACC/KGK
List No.: 1 Sl No.: 43