

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.661 of 2017

ORDER:

The revision petitioners are A.1 to A.3 in C.C.No.358 of 2012 on the file of I Additional Judicial Magistrate of First Class, Sattenapalle, Guntur District, for the offence punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act. The police originally filed the charge sheet for above penal provisions from registration of crime on the report of the defacto complainant, conducted further investigation with permission of Court under Section 173 (8) CrPC and filed additional charge sheet by including the offence under Sections 406 & 420 IPC. The trial Court framed charges at the post cognizance stage only on the original charge sheet accusation without specifically referring to the additional charge sheet it appears on 21.03.2016. It is on the charges for the offence punishable under Section 498-A IPC and Sections 3 & 4 DP Act with no charge for the offence under Sections 406 & 420 IPC, the accused faced trial. It is after completion of evidence, when the matter is at the fag-end and even arguments heard and matter reserved for judgment, there was application filed by the learned Public Prosecutor representing the State under Section 216 CrPC on 13.02.2017, stating that the charges under Sections 406 & 420 IPC were not framed originally though police filed additional charge sheet on said Sections on 17.04.2013 and non filing of the petition earlier is not willful and hence to frame additional charge invoking Section 216 Cr.P.C.

2. The counter of the accused before the lower Court in opposing the petition is in saying, charges were framed on

21.03.2016 after filing of the charge sheet and submission of additional charge sheet and after hearing and later trial was conducted and arguments of both sides were heard at length on 03.02.2017 and the matter is posted for judgment and at this stage, the present petition filed by the prosecution is nothing but abuse of process and if at all there was any necessity to frame charge, the prosecution could have been moved earlier and at this stage when the matter is posted for judgment, the petition filed to fill up the lacunas cannot be allowed and such a recourse is impermissible to the prejudice of the accused and sought for dismissal.

3. The impugned order of the lower Court shows that previously the learned Magistrate at the post cognizance stage while framing charges did not draw his attention to the additional charge sheet filed by police for the offence under Sections 406 & 420 IPC and the additional charge sheet filed by police was not even drawn attention of the present Judge earlier and the act of the Court shall prejudice no man apart from the power of the Court under Section 216 CrPC to alter or add or delete any charge at any time before pronouncement of judgment and the prosecution witnesses already examined and also they deposed to the offence under Sections 406 & 420 IPC and thereby the prosecution if not considered the request suffer loss and no prejudice is being caused to the accused in allowing the application to frame additional charge by invoking Section 216 CrPC.

4. The contentions in the grounds of revision are that charges framed after hearing both sides and later trial was completed and arguments of both sides were heard, including on 03.02.2017 elaborately and posted for judgment to 13.02.2017 and it is on that day of judgment the trial Judge suggested to the Assistant Public Prosecutor that there are no charges framed under Sections 406 & 420 IPC and thereby he is proceeding under Section 498-A IPC and Sections 3 & 4 DP Act and the prosecution to come up with any application to frame additional charges if so chooses. It was from such suggestion, the Assistant Public Prosecutor filed application on the date of Judgment. Even the trial Judge stated that judgment is ready to pronounce, instead of doing so passed over the matter and received the handwritten application of the Assistant Public Prosecutor under Section 216 CrPC and the same was opposed and counter filed and without pronouncing judgment, the matter was posted to 21.02.2017 and allowed the application which is contrary to law, unjust and unsustainable and the prosecution agency cannot fill up gaps much less by invoking Section 216 CrPC and lower Court ought not to have been adopted the said procedure supra, but for to pronounce the judgment, if not apart from there is no material to frame further charges under Sections 406 & 420 IPC of no criminal breach of trust or cheating arises and they were interpolated in the statements of LWs after charge sheet filed in the illegal and improper manner and there is no fresh investigation after original charge sheet filed to call as further investigation and there is no material to frame any additional charges under Sections 406 & 420 IPC and the so called further investigation material is created with

a malafide intention and the impugned order is liable to be set aside.

5. In the revision, the defacto complainant Dr. P.M.Reddy filed application to come on record as 2nd respondent and the same was allowed in Crl.R.C.M.P.No.1264 of 2017 and the learned Public Prosecutor representing the State as 1st respondent filed counter opposing the revision saying the father of the alleged victim written report dated 10.03.2011 was for the offence under Section 498-A IPC and Sections 3 & 4 of DP Act and the police after investigation filed charge sheet for the offences supra and later on additional information about offences under Sections 406 & 420 IPC, after obtaining permission of learned Magistrate from the further investigation, additional charge sheet was filed and during the hearing before charges only the 1st charge material was considered and by over sight the additional charge sheet material was ignored by the then officer and the witnesses deposed regarding the offences of criminal breach of trust and cheating committed by accused and accused were also examined under Section 313 CrPC with reference to that evidence and 2 witness who were not cited in the 1st charge sheet and cited in the 2nd charge sheet were also examined during trial and thereby on noticing, the prosecution filed an application that was allowed by lower Court and the revision is liable to be dismissed for nothing to interfere.

6. The accused filed counter against the said vacate petition of the defacto complainant saying the wife of A.1- the alleged victim did not present any report to the police in registering the crime

supra, but for by her father and it is a case to call for report of the learned Magistrate to know what is transpired of stated in the revision grounds. The 1st petitioner/A.1 earlier filed quash petition in this Court in Crl.P.No.4583 of 2014 and the same is pending and the revision to be heard along with it and another Crl.P.No.10985 of 2014. The impugned order of the learned Magistrate is unsustainable on facts and law and it is not the prerogative of the prosecution to invoke Section 216 CrPC, but for if at all by the Court subject to merits and thereby the contra contentions in the stay vacate petition or in the counter to the revision are unsustainable.

7. Heard both sides at length and perused the material on record.

8. Section 216 CrPC is no doubt an enabling provision subject to factual foundation and merits of the matter for the power of the Court to exercise to alter or add or delete any charge at any stage including after hearing arguments and before pronouncement of judgment. Once Section 216 CrPC is invoked, automatically the parties have to be given option for recall of any witnesses for further examination under Section 217 CrPC in all fairness. In fact the learned Magistrate did not do so. The prosecution agency or defacto complainant even not chosen to seek for alteration of charge at any stage during trial or even while submitting arguments and it is not the case that they were unaware of the additional investigation material. The Court in fact reserved the matter for judgment after full dressed trial and from hearing arguments at length. It was only pointed out on the date of

pronouncement of judgment by the trial court stating that judgment is even ready, there is a lacuna saying charges are not framed under Sections 406 & 420 IPC. If at all the Court wanted to do so, it could have been, at best by passing a reasoned order before pronouncement of judgment, within its power and that was not even done in this case. It was the learned Public Prosecutor at that stage was if not practically asked by court, at least permitted to file the application, which could not be. Thus but for at best to say said application is only to bring to the notice of the court the necessity to frame any additional charge, even taken same outcome from suggestion by court from any doubt on the need by the court. In fact the necessity if found by the Court and once such is the case if at all; there is no need for the court to ask the learned Public Prosecutor to file application from what is discussed supra.

9. Thereby entertaining the application from the prosecution agency for alteration of charge when the matter is posted for judgment instead of pronouncing judgment on that day and invoking power under Section 216 CrPC by the prosecution and on the request of the prosecution by the Court are per se unsustainable for the procedure is not properly adopted from what is contemplated by the provisions and as held in the expressions of the Apex Court in **Anant Prakash Sinha Vs. State of Haryana & Others**¹ and **P. Kartikalakshmi Vs. Sri Ganesh and Another**². It is also needful to refer what is laid down by the Apex Court in

¹ 2016 (6) SCC 105

² 2017 (3) SCC 347

Umesh Kumar Vs. State of Andhra Pradesh & Onother³ that from even partial quashing of chargesheet, there is no bar for trial court to invoke the power under Section 216 CrPC and holding otherwise would render Section 216 otiose.

10. Having regard to the above, the revision petition is allowed and impugned order of the lower Court allowing the application of the prosecution filed under Section 216 CrPC in Crl.M.P.No.378 of 2017 for framing additional charge under Sections 406 & 420 IPC is held unsustainable and the same is set aside and however it is left open to the learned Magistrate if at all there is any necessity of framing any additional charges subject to giving of reasons to do so only after hearing both sides within its powers and once chosen to do so under Section 216 CrPC, the trial Court is bound to recognize the right of parties under Section 217 CrPC to afford opportunity by recall of any witnesses for further examination if even orally required by either side, for duty bound by court to ask and permit by recall for further examination in respect of the altered charge/s.

11. Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.06.2017
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³ 2013 (100) SCC 591