

COURT No. 5

IN THE COURT OF ANJALI SINHA J.M.F.C (W) MUZAFFARPUR

P.S.- Sahebganj Case No.- 45/2017, G.R. No.- 388/2017

Sujeet Kumar

V/s

Ramchandra Rai and others

Date of Order proceeding	Order with the signature of the Court	Office action taken with date.
<u>15-01-2026</u>	The record is today put up for order on petition dated 11-03-2025 filed by the Ld. APO on behalf of state U/s 216 of the Cr.P.C., the rejoinder to which has been filed on 18-03-2025. The Ld. APO for the state vide this petition has submitted that the accused persons have been facing trail u/s- 427/504 of IPC. From the evidence available on record it is required that the accused persons should be tried U/s- 147/447/504/323/379/341 of IPC. For the just and proper decision of this case and also for the interest of justice it is necessary that charges are added. If the charges U/s- 447/323/379/341/147/504 of IPC are not added then it would cause injustice to the petitioner. The Ld. counsel on behalf of the defence vide rejoinder dated 18-03-2025 has submitted that the para no. 1 of prosecution under reply is correct. The para no. 2, 3 and 4 are incorrect and is not maintainable as well as justified and is able to reject out right. The prosecution has filed this petition only to waste the valuable time of ld. court as well as lingering this case as the prosecution has	

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filed the petition for uttering of charge on the date fixed for Judgement. The police has after thorough investigation the case found true U/s- 427/504 of IPC and accordingly the Ld. court took cognizance under same sections on 24/12/2018. The prosecution evidence closed on 16.11.2022 but the petition of prosecution under section 311 Cr.P.C. allowed. The compromise petition was already filed on 31.04.2021 but informant with a view to get illegal benefit he did not adduce his evidence in light of compromise. After direction of Ld. court only two witnesses have been examined. From the perusal of P.W.-1 namely Sangeeta Devi and informant Sujeet Kumar no any sections is attracted because both witnesses are husband and wife and o any other witnesses has been produced on behalf of prosecution to support the case and even between each other and rest points will argue at the time of hearing of this petition.

I have heard both the parties.

On perusal of the record, it is evident that Sahebganj P.S. case No. 45 of 2017 was registered U/s 341/323/427/504/506/34 of the IPC on the basis of written information of Sujeet Kumar. After investigation in to the information given by the informant, the prosecution has

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filed the charge-sheet for the non- cognizable offence punishable U/s 427/504 of the IPC, accordingly cognizance has been taken on 24-01-2018 against the all 05 named accused persons and after securing the attendance of the accused persons, substance of accusation was explained on 21-06-2019 under the sections mentioned supra by my ld. predecessor Magistrate. The record in course of transfer came to my personal file on 20-07-2023. Thereafter, the case was fixed for hearing of petition U/s- 311 of the Cr.P.C filed by the Ld. APO for the state which was allowed vide order dated 22-01-2025 with condition to conclude the prosecution evidence within two consecutive dates. However, only one witness was produced by prosecution before the court for evidence in the given time. In this case, only two witnesses have been examined by the prosecution 1. Sangeeta Devi as PW-1, and 2. Sujeet Kumar (Informant) as PW-2 in support of its case. After that the prosecution evidence was closed on 18-02-2025 and the record was fixed for statement of the accused persons. Meanwhile, a petition U/s 216 of the Cr.P.C was filed by the prosecution/informant for framing of additional charge U/s 147/323/341/379/447 of the IPC.

The point for determination before this court is

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	whether or not the petition U/s 216 of the Cr.P.C needs to be allowed? Whether the prosecution is entitled to seek for inclusion of such an offence as an additional charge?	
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	In the present case, when we analyse the evidence available on record, only two witnesses have been examined by the prosecution as PW-1 and PW-2 while there are four witnesses mentioned in the case diary. Thus, this court is in opinion that the petition filed by the Ld. APO on behalf of the informant at the very late stage for the reason better known to them.	
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	In addition to the above, Madras High Court, in series of decisions, has categorically held that neither the prosecution nor the accused have any right to seek for alteration or adding of a charge already framed by the court. Section 216 of the Cr.P.C, specifically provides as follows –	
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	<i>“(1) Any court may alter or add to any charge at any time before judgement is pronounced.</i>	
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	<i>(2) Every such alteration or addition shall be read and explained to the accused.</i>	
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	<i>(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</i>	
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	<i>the altered or added charge had been the original charge.</i> <i>(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.</i> <i>(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.”</i> It is evident from section 216 of the Cr.P.C, that alteration or amendment or addition of a charge can be done only by the court and the trial court alone got such power. This position is reiterated in the decision rendered by this Court in the case of Krishnammal vs. The Revenue Divisional Officer and others; reported in 2008 Criminal Law Journal 2845 wherein it was held that: <i>" From the conjoint reading of the provisions of the said Sections, it is pellucid that only the Court is having power to frame charge or alter it or add new charges at any time before judgment is pronounced. Neither the prosecution nor the person interested has right to file petition by invoking either of the said Sections so as to delete the existing charges or add new charges. In short, either the prosecution or the person interested has no right to ask the Court either to alter the existing charges or to add new charges." This view is reiterated in the decision of Madras High Court in case of R. Soairaj vs The State on 31 March, 2022.</i>	
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	Yet Section 216 of the Cr.P.C does not contemplate any application being filed either by the prosecution or by any witness including the informant. It simply states the power of the Court to alter the charge or add any charge to the charge already framed. The stage at which such alteration or addition to charge can be made is also indicated thereon. Such an alteration or addition can be made at any time before judgment is pronounced. The Section also provides for the follow up action to be taken in the case the alteration or addition to the charges is made after considerable progress in the trial of the case. This view is reiterated in the decision of Madras High Court in the case of (H.A. Hurul Firdhouse, represented by her power agent H.A. Abdul Jabbar vs. State, represented by Inspector of Police, W-22, All Women Police Station, Mylapore, Chennai - 2 and others) reported in 2010 (3) Madras Weekly Notes (Crl.) 368. Again, in the decision in the case of (P. Krithikalakshmi vs. Sri Ganesh and others) 2013 (3) Madras Weekly Notes (Crl) 521 the Madras High Court has reiterated the legal position that <i>“neither the prosecution nor an accused has a right to file a petition under Section 216 of CrPC requiring the Court to frame additional charge. It is within the domain of Court to frame additional charge or alter an existing charge.”</i> Thus, the legal position emanates from the above decisions it that neither the prosecution nor the informant or anyone interested in the criminal case is entitled to file an application under Section 216 of Cr.P.C to frame an additional charge or alter the existing charge and it is only for the Trial Court to decide about framing of	
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	an additional charge or alter an existing charge upon arriving at a subjective satisfaction after completion of evidence, and before pronouncing the judgment. Therefore, keeping in the view of all the facts and circumstances, this court is in considered opinion that it is too late for the prosecution to have filed the petition under Section 216 of Cr.P.C for inclusion of the charge U/s-147/323/341/379/447 of the IPC. In fact, the prosecution has made faint attempt to dictate the court as to frame charges as per the sections mentioned supra. Since the petition itself is not legally maintainable, it is hereby dismissed. Sd/- J.M.F.C (W) MUZAFFARPUR 15-01-2026	
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