

ORDER ON APPLICATION U/s.216 OF Cr.P.C.

The instant application is filed by the prosecution U/s.216 of Cr.P.C. on 10-01-2024 praying to frame the additional charge for the offence punishable U/s.355 of IPC.

2. In that application, the learned APP has stated that the present case has been registered against the accused for the offences punishable U/s.323, 324, 504 & 506 of IPC. The CW-1 examined as PW-1. During her chief-examination, she has deposed fact that the accused has assaulted through slipper, hence an offence punishable U/s.355 of IPC attracted to the accused. Hence, an additional charge has been framed for the alleged offence against the accused. Accordingly, she prayed to allow the application.

3. On the other hand, the counsel for the accused has filed an objection by denying the entire averments made in the application and contended that the complainant police have been submitted charge sheet against the accused for the offences punishable U/s.323, 324, 504 and 506 of IPC but at the time of lodging the complaint or at the time of filing charge sheet, the complainant has not alleged that the accused has assaulted to her through slipper. Now during her

cross-examination, she has created the said allegation to cause inconvenience to the accused. Hence there is no necessity to frame the charge for the alleged offence against the accused. Accordingly, he prayed to rejecte the application.

4. Heard on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as here under :

1. Whether the prosecution has made out sufficient grounds to frame the additional charge as sought for ?
2. What order ?

6. On perusal of entire records this court answers the above points are as here under :

Point No. 1 :- In the Affirmative

Point No. 2 :- As per final order

For the following ;

REASONS

7. **Point No. 1** :- As could be seen from the record, the present case has been registered against the accused for the alleged offences punishable U/s.323, 324, 504 and 506 of IPC. In response to the summons, the accused appeared through his counsel and enlarged on bail and he was pleaded not guilty and claims to be tried. Accordingly, the CW-1 and 2 were examined as PW-1 & 2 respectively. During the chief-examination, the CW-1 has deposed fact that the accused has assaulted the CW-2 through slipper. Further, the CW-2 also deposed that the accused has assaulted her through slipper but the said fact has not been disclosed by the CW-1/informant in the first information statement and also not discloses the said fact in the U/s.161 of Cr.P.C. statement. Now the question would arise that whether the evidence deposed by the witness is a material fact to be consider to frame the charge or alter the charge?

8. It is pertinent to note that *Sec.216 of Cr.P.C.* empowers the courts that *at any stage of the proceedings, before pronouncing of Judgment, the court may alter the charge or frame the additional charge*

against the accused. Herein, admittedly, the CW-1 & 2 have not disclosed the said allegation at the time of lodging the complaint or statement U/s.161 of Cr.P.C. but during their chief-examination, they have specifically alleged that the accused assaulted the CW-2 through slipper. Admittedly, the complainant police have not seized the alleged slipper. However, it is the burden of the prosecution to establish the said allegations against the accused by placing cogent and reliable evidence. If at all the prosecution is not permitted to prosecute the case for the alleged additional offence, the victim may be put irreparable loss and injury. On the other hand, the accused will not be put any irreparable loss and injury. So, under these circumstances, at this juncture, this court is of opinion that the prosecution has made out sufficient grounds to allow the application. Thus, point No.1 is answered in the 'Affirmative'.

9. Point No. 2 :- In the light of foregoing discussion, this court proceed to pass the following :

ORDER

The application filed by the prosecution U/s.216 of Cr.P.C. is hereby allowed.

C.C No.827/2018

For additional charge, call on 14-08-
2024.

(Deepu B.C.)
Prl. C.J. & JMFC,
Channarayapatna.