

KAMS010008062018



**IN THE COURT OF THE IV ADDITIONAL DISTRICT  
AND SESSIONS JUDGE, MYSURU**

Dated this the 11<sup>th</sup> day of October, 2022

:: PRESENT ::

**Sri S.T. Devaraja, B.Sc., LL.B.,**  
IV Addl. District & Sessions Judge,  
Mysuru.

SC/34/2018

**Complainant :**

The State by  
Udayagiri  
Police Station,  
Mysuru.

(By **Public Prosecutor**)

Vs

**Accused :**

Abeed Pasha @ Bayya  
@ Ibrahim @ Usman  
and others

(By Sri **M.A.**, Adv.)

**ORDER ON I.A. DATED 25.08.2021**

**Stage:** Further evidence of prosecution

Heard.

Vide application under Sec.216 of Cr.P.C. the Prosecution prayed to frame additional charge for the offence punishable under Sec.120(B) of I.P.C. It is the contention of the Prosecution, after due investigation the charge-sheet came to be filed against the Accused persons for the offences punishable under Sec.302, 201 & 120(B) R/w Sec.34 of IPC., and narrated the case of the Prosecution. It is the contention of the Prosecution, charges for the offences punishable under Sec.302 & 201 R/w Sec.34 of I.P.C. came to be framed and no charges framed against the accused persons for the offence punishable under Sec.120(B) R/w Sec.34 of IPC. It is the contention of the Prosecution, the charge-sheet reveals the prima-facie case and material for the offence punishable under Sec.120(B) of IPC., and there is necessity to frame the additional charge for the offence punishable under Sec.120(B) of IPC., and with all other grounds prayed to allow the application.

2. The Accused persons have filed a common objection and contended the application filed by the Prosecution is not maintainable in criminal law. It is the objection, the reading of entire charge-sheet does not bring home prima-facie case for the alleged proposed offence under Sec.120(B) of IPC. It is also the objection, absence of ingredient of a particular section to which the Accused persons are to be charged is not found in the charge-sheet, it is deemed that prima-facie for the

alleged offence is not made out, hence the Accused persons cannot be charged for the alleged section.

3. It is the objection, to constitute an offence under Sec,120(B) of IPC, there must be an agreement between the Accused persons for the commission of the offence and the said agreement is not found, hence, prima-facie material to bring home the guilt of the accused under Sec.120(B) of IPC is not made out. It is the objection, the Courts should not frame charges merely that a section is inserted by the law enforcing authority but has to look the entire report with caution and care and if the essential materials are available the charges can be framed and in the case on hand the Investigation Officer has failed to put forth essentials to substantiate the charge under Sec.120(B) of IPC., and with all other grounds, prayed to reject the application.

4. Heard. Perused the entire record and the decision.

5. The only point that arises for my consideration is;

(1) Whether the application filed by the Prosecution under Sec.216 of Cr.P.C. deserves to be allowed?

(2) What Order?

6. My findings on the above points are as hereunder;

Point No.1: **In the Affirmative**

Point No.2: **As per final order  
for the following;**

**REASONS**

7. **POINT No.1:-** By referring to the contents of the complaint, charge-sheet as well as the statement of the witnesses, it was the submission of the learned P.P. the charge-sheet came to be filed against the accused persons for the offences punishable under Sec.302, 201 & 120(B) R/w Sec.34 of IPC., and sufficient material is available to frame additional charge for the offence punishable under Sec.120(B) of IPC. It was the submission, it is the duty of the Court to frame necessary and respective charges based on the materials available on record even in the absence of any application by the Prosecution, accordingly contended either by oversight or by inadvertence the charges for the offence punishable under Sec.120(B) of IPC., not framed. In support of the submission, the learned PP has referred to and relied upon the Judgment of CrI.A.No.1709/2014 and by referring to the observations and the principles laid down in the said decision, the learned PP prayed to allow the application.

8. As against the said submission and by referring to the objections, it was the submission of the learned defence Counsel there was no nexus between the accused persons as they are the resident of different area and there was no occasion of meeting of mind. It was the submission, particular witnesses turned hostile and there is no question of agreement and the same does not constitute conspiracy, hence, Sec.120(B) of IPC does not attract as no material is available on record and there is no question of loss of sight and oversight to exclude Sec.120(B) of IPC. The learned defence Counsel has also referred to deposition of Sri Raju recorded in SC.No.109/2012 c/w SC.No.1027/2012 and c/w SC.No.109/2014 and also referred to Sec.27 of the Evidence Act. It was the submission, absolutely there was no conspiracy and no material evidence for Sec.120(B) of IPC. With all other grounds, the learned defence Counsel prayed to reject the application.

9. On consideration of the materials available on record reveals, after due investigation charge-sheet is filed against the accused persons for the offences punishable under Sec.302, 201 & 120(B) R/w Sec.34 of I.P.C. After framing of charge for the offences punishable under Sec.302 and 201 R/w Sec.34 of IPC, the Prosecution has examined in all 24 witnesses and at the stage of further evidence the application came to be filed. Admittedly, no charges framed for the offence punishable under Sec.120(B) R/w Sec.34 of IPC. On consideration,

the contents of the charge sheet reveals sufficient prima-facie material for the offence punishable under Sec.120(B) of IPC.

10. As pointed out by the learned PP, it is the duty of the Court to frame proper charges based on the available material and prima-facie case even in the absence of any application by the Prosecution. Under the said circumstances, the objection of the accused persons and the submission made on their behalf is not sustainable. It is made clear even in the absence of application by the Prosecution if it is brought to the notice of the Court or came to the knowledge of the Court, at any stage and at any point of time the additional charges can be framed and the charges already framed can also be altered. The deposition and the statements as referred to by the learned defence Counsel is not helpful to reject the application.

11. In a decision i.e., **Criminal Appeal No.1709/2014**, it has been laid down to the following effect;

**"Section 216 Cr.P.C.** 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 Sec.216 Cr.P.C. 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 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."

12. By taking into consideration of the facts and circumstances of the case on hand as well as the contents of the charge-sheet and also the contents of the observations laid down in the referred decision, this Court is of the opinion no such grounds have been made out by the Accused persons to reject the application as there is prima-facie case and material is placed on record to frame additional charge for the offence punishable under Sec.120(B) R/w Sec.34 of IPC and the application under consideration is with full of merit and deserves to

allowed. Accordingly, I answer the Point No.1 in the **Affirmative.**

13. **POINT No.2:-** In the result, I proceed to pass the following;

**ORDER**

The I.A. dated 25.08.2021 filed by the Prosecution under Sec.216 of Cr.P.C. is hereby **ALLOWED.**

The matter stand posted for framing of additional charges for the offence punishable under Sec.120(B) R/w Sec.34 of IPC.

[Dictated to the Stenographer directly on computer, corrected, and signed by me and then pronounced in the Open Court, on this the **11<sup>th</sup> day of October, 2022**].

**(S.T.DEVARAJA)**

IV Addl. District & Sessions Judge,  
Mysuru.