

ORDERS ON AN APPLICATION FILED
UNDER SECTION 216 OF Cr.P.C.

The Prosecution has filed this application for framing additional charge for the offence punishable under section 273 of IPC in addition to sections 32, 34, 38(A) of Karnataka Excise Act.

2. In the application, Learned APP contented that in the present case the I.O. has filed charge sheet against the accused for the offences punishable under sections 32, 34, 38(A) of Karnataka Excise Act and this court has framed charge against the accused for the above said offences. But in the report of chemical analysis submitted by the chief Chemical Expert, which is filed along with the charge sheet, he has stated that in the bottles seized in this case Ethyl Alcohol and Gasi are found, which are not for human consumption as such the same is covered under section 273 of the IPC. Hence, prayed to frame the additional charge against accused for the said offence punishable under section 273 of IPC along with charge for the offences punishable under sections 32, 34, 38(A) of Karnataka Excise Act.

3. On the other hand the learned counsel for the accused in his objection stated that, application filed by the learned APP is not maintainable in the eyes of law. The I.O has registered false case against the accused. The accused is no connection with the offences levelled against them and the concerned Excise Inspector has filed this false suit against the accused persons just for statistics purpose. Hence, prayed to dismiss the application.

4. Perused the application, case records and heard on application

5. The points that would arise for consideration of this court are as follows.

POINTS

1. Whether the prosecution has made out grounds for allowing the present application filed under Section 216 of Cr.P.C?

2. What Order?

6. Having perusal of the case records, my answers to the above points are as under

Point No-1 : In the Affirmative

Point No-2 : As per final order

REASONS

7. **POINT NO-1:** The accused persons are facing trial for the offences punishable

under Sections 32, 34, 38(A) of Karnataka Excise Act. Here in this case the Prosecution has filed this application for framing additional charge, to add Section 273 of IPC for the reasons stated in the application.

8. I have made my reference to Section 216 Cr.P.C. Section 216(1) of Cr.P.C. It contemplates that-

“Any Court may alter or add to any charge at any time before judgment is pronounced”

On plain reading of the provision referred above, it is clear that the court may alter or add any charge at any time before judgment is pronounced, if it deems fit.

9. I have carefully gone through the submission made by the prosecution in the application, in which it is stated that in the report of chemical analysis submitted by the chief Chemical Expert, which is filed along with the charge-sheet, he has stated that in the bottles seized in this case Ethyl Alcohol and Gasi are found, which are not for human consumption and the same is an offence punishable under Section 273 of the IPC. Hence, prays to frame the charge against accused for the offence punishable under

section 273 of IPC along with charge for the offences punishable under sections 32, 34, 38(A) of Karnataka Excise Act. So far as objection taken by counsel for accused is concerned he states that, false case is lodged against the accused persons without any grounds, just for the purpose of showing the numbers and to harass the accused persons mentally and physically and the application is not maintainable in the eyes of law but the said objections cannot be considered at this stage as the same is the matter of trial. The accused will get every opportunity to defend the present case.

10. To constitute offence under section 273 of IPC, any article sold or offered for sale as food or drink, if rendered or has become noxious or is in state unfit for food or drink knowing or having reason to believe that same is noxious food or drink shall be punishable offence. Since, it is the allegation of prosecution that as per report of chemical expert the content of bottles seized are unfit for human consumption, the ingredients of offence under section 273 of IPC are attracted in this case. Therefore in my opinion the prosecution has made out grounds to allow this application. By considering the nature of

the offence this court proceeds to answer Point No-1 in the **Affirmative.**

11. **POINT NO.2:** In view of above findings, the following order is passed.

ORDER

An application filed under Section 216 of Cr.P.C. by the prosecution is hereby allowed.

Posted for additional charge.

Call on 07.11.2024.

Sd/-

**I Addl Civil Judge and JMFC,
Kanakapura.**