

ORDER PASSED BELOW EXH. 46 IN R.C.C. NO. 86/2016

The learned A.P.P. has filed an application by taking recourse to Section 216 of the Code of Criminal Procedure, 1973 vide Exh. 46. The application is filed to addition of additional charge under Section 430 of Indian Penal Code, 1860 against the accused person.

2. According to learned A.P.P. there is sufficient material on record to frame charge against the accused under Section 430 of the Indian Penal Code. The learned A.P.P. has pointed out statement of the witness and the report at Exh. 16 which goes shows that, the accused has affixed two connection to the water pipe line which provides water supply to the village Shemba. Therefore, considering the material on record the charge under Section 430 is required to be framed against the accused person. Hence, it is prayed to allow the application.

3. The learned advocate for the accused has strongly objected the application and filed say thereon. It is submitted that, the evidence of the witnesses has been completed. Further, it is submitted the statement of the accused under Section 313 Cr. P.C. is also recorded. The

case is fixed for the final arguments of both sides. Therefore, the application at Exh. 46 to addition of charge, at this stage, is not tenable in the eyes of law. Hence, it is prayed to reject the application.

4. Heard, perused and considered submissions of both sides. Considering the material placed on record, the following points arise for my consideration which are being answered on the basis of material on record.

Sr.	Points	Findings
1.	Whether the charge under Section 430 of the Indian Penal Code, 1860 is required to be framed against the accused Tanaji Supda Junare in view of section 216 of the Code of Criminal Procedure, 1973 ?	Yes.
2.	What order ?	As per final order.

AS TO POINT NO. 1 :-

5. It is important to note that, the present case is fixed for final arguments by both the sides. At this juncture the application for addition of charge under Section 216 has been filed.

6. The learned advocate for the accused has contended that, the application is not tenable since evidence of all the witnesses and statement under Section 313 Code of Criminal Procedure has been completed. In order to answer this contention I would like to refer section 216 (1) of Cr. P.C. which provide that, *the court may alter or add to any charge at any time before judgment is pronounced.* Considering the facts in hand the final judgment has not been pronounced therefore, the charge under Section 430 can be added against the accused. Therefore, I do not find any substance in the contentions put-forth by the accused.

7. I have perused the charge-sheet, statement of the witnesses namely Ganesh Bhatkar, Sangita Bhide, Uttam Diwnale, Vaishali Katkar, Shital Khondale, Prakash Chaudhari, Sharda Bhopale, Tayrabi Pathan, Vasudeo Bhide, Shrikrushna Khondale. I have also perused the report lodged by the informant. It clearly shows that, there was a pipe line laid from Nalganga Dam to the village Shemba for the purpose of providing water supply to the villagers. It also appears from the record that, the accused has diverted the said water supply to his own used by affixing water connection to that underground pipe line.

Here I would like to refer to section 430 of the Indian Penal Code which provides that, *Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.*

8. Therefore, considering facts in the present case, the essential ingredients of the aforesaid offence are attracted since the accused has diverted the water by affixing two water connections to the underground pipe line. Therefore, I am of the view that, the charge under Section 430 is required to be framed against the accused.

9. Further it is important to refer Section 215 of the Code of Criminal Procedure, 1973 which provides that, *No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.*

10. I have perused the record. It appears that the charge is framed under Section 379 of the Indian Penal Code, 1860 vide Exh. 11 against the accused. It clearly shows that the charge under section 430 of Indian Penal Code is not framed against the accused. It is also important to note that, now the matter is fixed for the final arguments. Since, there is omission to frame charge under section 430 Indian Penal Code against the accused, the accused was absolutely not having knowledge of the charge framed against him. Therefore, the accused was failed to adduced the evidence or deny the charge under Section 430 of the Indian Penal Code. This will definitely prejudice the accused to defend the himself from the defending the charge under Section 430 Indian Penal Code. Therefore, the opportunity must be given to the accused to recall all the witnesses examined in the case and to lead further evidence, if any, to defend himself against the charge under section 430 of Indian Penal Code.

11. In view of above discussion and reasoning, the charge under Section 430 of Indian Penal Code is required to be framed against the accused in view of *prima-facie* material placed on record against the accused. Hence, I have answered point No. 1 as **Yes**.

AS TO POINT NO. 2 :-

12. The prosecution has *prima-facie* established there is material to frame to charge under section 430 of the Indian Penal Code. Hence, following order -

ORDER

1. Application is allowed.
2. The accused is at liberty to re-call and re-examine the witnesses examined in the present case in view of section 217 of Code of Criminal Procedure, 1973.

Nandura
Date – 08/12/2023.

Sd/-
(R.A. Misal)
Judicial Magistrate F.C.,
Nandura.

- - - - -

“I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of the Steno :- Y. S. Muley.

Name of the Court :- Judicial Magistrate F.C., Nandura.

Date of Signature of :- 08/12/2023.
Presiding Officer

Date of Judgment :- 08/12/2023.
uploaded