



**ORDER PASSED BELOW EXHIBIT NO.42**  
**IN RCC No.03/2021**

This application is made by informant under section 216 of Code of Criminal Procedure for additional charge under sec. 395, 354 and 354B of Indian Penal Code against accused. Accused filed their say at Exhibit No.45.

02) Read the say of accused and heard learned APP and learned Advocate of accused.

03) Learned APP submitted that, on perusal of report of informant, informant stated that, accused No.1 Anil Daki snatched her golden chain weighted 05 tola 300 gram from her neck as well as tried to release her sari and used obscene and vulgar words. So, she prayed for additional charge under sec. 395, 354 and 354 B of IPC. Per contra, Learned advocate for accused submitted that, as in relation to the incident the sections quoted by the informant are not applicable, so also, for that purpose there is no any prima facie evidence filed on record. He further submitted that, as the offence under section 395 of the IPC, triable by the Hon'ble Session court, only to harass the accused filed this application. Accordingly, prayed for rejection of the same.

04) Considering the submissions of both the parties, it is necessary to go through the Section 216 of Cr.P.C., read as-

*“216. Court may alter charge.—(1) Any court may alter or add to any charge at any time before judgment is pronounced.*

*(2) Every such alteration or addition shall be read and explained to the accused.*

*(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 the altered or added charge had been the original charge.*

*(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.*

*(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.” Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced.*

05) Section (3) provides that, if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the persecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. In *Anant Prakash Sinha v State of Haryana*, Hon'ble Apex Court in para No.19 held that, in addition to what we have stated herein above, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that, no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 Cr.PC. It is the duty of the trial court to bear in mind that, no prejudice is caused to the accused as that has the potentiality to affect a fair trial...”

06) I have gone through the whole record. It is settled law that, the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. So far as considering this case, for attracting charge under section 395 of IPC there is no material on record. Further, to attract the charge under section 354 and 354B of IPC, intention of accused to outrage of modesty of that woman is necessary. In that regard evidence of informant is necessary. Record shows that evidence of PW.No.1 Shivmurti is completed and evidence of informant is yet to be start. Moreover, the offence under section 395 of IPC is exclusively triable by Hon'ble session court, so possibility to harass the accused by filing this types of application can

not be ruled out. Considering all above facts and circumstances, application at this stage deserves to be rejected. Hence, I pass the following order.

**-:ORDER:-**

Application below Exh. 42 is hereby rejected.

Sd/-

Pali

( **Meena W. Jadhav**)

Date :- 17/02/2024.

Judicial Magistrate F.C. Pali.