

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3230 of 2024

Basudeb Gorain, aged about 47 years, s/o Ranjit Gorain, r/o Village-
Kushbedia, P.O. & P.S.-Mihijam, Dist.-Jamtara

.... Petitioner

Versus

1. The State of Jharkhand
2. Madan Gorain, s/o late Debu Gorain
3. Gopinath Goain, s/o Madan Gorain
4. Baidyanath Gorain, s/o Madan Gorain
5. Sanjay Gorain, s/o Mantu Gorain
6. Ganesh Gorain, s/o Basudeb Gorain

2 to 6 are r/o Village- Kushbedia, P.O. & P.S.-Mihijam, Dist.-
Jamtara

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Ashutosh Pd. Joshi, Advocate
For the State	: Mr. Manoj Kr. Mishra, Addl. P.P.
For the O.P. Nos.2 to 6	: None

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash the order dated 18.09.2023 passed in Criminal Revision No. 38 of 2023 by the learned Sessions Judge, Jamtara whereby and where under, learned Sessions Judge, Jamtara has set aside the order dated 21.06.2023 passed by the learned S.D.J.M., Jamtara in connection with Mihijam P.S. Case No. 02 of

2020, corresponding to G.R. No. 84 of 2020 whereby the learned S.D.J.M., Jamtara has altered the charge by adding the offence punishable under Section 307 of the Indian Penal Code.

3. Though notice has validly been served upon the opposite party nos.2 to 6 but no one turns up on behalf of the opposite party nos. 2 to 6 in-spite of repeated calls.
4. The brief fact of the case is that the learned S.D.J.M., Jamtara on 25.02.2022 framed charge for the offence punishable under Sections 341, 323, 325, 504, 506/34 of the Indian Penal Code in G.R. No. 84 of 2020. Thereafter, the informant filed a petition on 25.08.2022 to alter the charge as the offence punishable under Section 307 of the Indian Penal Code is made out. It was urged upon by the informant that there are materials available in the record to frame charge for the offence punishable under Section 307 of the Indian Penal Code also. Learned S.D.J.M., Jamtara considered that from perusal of the statements of witnesses and doctor's medical report, it is evident that the informant received grievous injury. The witnesses in their statement to police have supported the fact that accused person did hit on the head of the informant resulting in grievous injury to the informant. The learned S.D.J.M., Jamtara relying upon the judgment of the Hon'ble Supreme Court of India in the case of **CBI vs. Karimullah Osan Khan** reported in **(2014) 11 SCC 538** wherein, the Hon'ble Supreme Court of India dealt with the Section 216 of Code of Criminal Procedure and came to the conclusion that there is no

bar to alter the charge before any evidence is recorded based on the materials in the record. Learned S.D.J.M., Jamtara considered that the power under Section 216 of the Code of Criminal Procedure can be exercised *suo moto* and thus, on being satisfied that there exists materials in the record where the offence punishable under Section 307 of the Indian Penal Code ought to have been added in the charge, allowed the petition in part and formed an opinion that the offence punishable under Section 307 of the Indian Penal Code triable by the court of Sessions is made out and ordered for putting the case for committal of the case.

5. Being aggrieved by the order dated 21.06.2023 passed by the learned S.D.J.M., Jamtara in G.R. No. 84 of 2020 arising out of Mihijam P.S. Case No. 02 of 2020, the accused persons of the case filed Criminal Revision No. 38 of 2023.
6. The learned Sessions Judge, Jamtara considered that the alteration or addition of the charge must be for an offence made out by the evidence recorded during the trial before the Court and finding fault with the learned S.D.J.M., for the reason that the learned S.D.J.M., Jamtara applied its judicial mind and proceeded with the case when no fresh material came on the record in the course of the trial and set aside the said order.
7. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Shoyeb Raja vs. State of Madhya Pradesh & Ors.**

reported in **2024 SCC OnLine SC 2624**, paragraph nos. 13 and 14 of which reads as under:-

“13. It is well recognized that intention may not always be proved by hard evidence and instead may be required to be inferred from the facts and circumstances of the case. If the doctor who conducted the examination posits the possibility of throttling, then under what circumstances, without rigorous cross-examination, could it be concluded that the injuries sustained were simple? That apart, even if the injuries were taken as simple, the extent of the injuries, as observed supra in Hari Mohan Mondal, are not relevant, if the intent is present. We are not in agreement with the learned Courts below that intent was absent, as the Doctor's report itself records throttling to be reasonably suspected.

14. The third criterion as in Kashirao (supra) could also arguably be met. Whether or not it is met, is a matter of determination at trial. The question of intention to kill or the knowledge of death in terms of Section 307, IPC is a question of fact and not one of law.”

that the revisional court committed a grave illegality by going into the minutest details about the intention at it being a settled principle of law that whether or not intention was there for commission of attempt to murder is the subject matter of trial.

8. It is next submitted by the learned counsel for the petitioner that the purpose of Section 216 of the Code of Criminal Procedure is to set right the errors, if any, in the charge framed by the court concerned and the same has to be done in the earliest available opportunity and having rightly done so by the learned S.D.J.M., Jamtara, the learned Sessions Judge, Jamtara has exceeded its jurisdiction by introducing the condition precedent that there has to be some evidence before the power of Section 216 of the Code of Criminal Procedure is exercised and which condition has not

been provided for in the Code of Criminal Procedure. Hence it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

9. Learned Addl. P.P. on the other hand opposes the prayer and submits that there is no illegality in the order passed by the learned Sessions Judge, Jamtara. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the verbatim of Section 216 (1) of the Code of Criminal Procedure which reads as under:-

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

makes it abundantly clear that charge can be altered at any stage, the same has been reiterated by the Hon’ble Supreme Court of India in the case of **Ishwarchand Amichand Govadia and Others v. State of Maharashtra and Another** reported in (2006) 10 SCC 322, paragraph no.7 of which reads as under:-

“7. There is no quarrel with the proposition that the charge can be altered at any stage. But the question is whether in view of the order passed on the same date the order relating to alteration of charge has been passed by the trial court. It is to be noted that the trial court itself noted that as per the first certificate the cause of death was cardio-respiratory failure due to acute respiratory failure. It, however, noted that some chemicals were noted in the viscera. The effect of the presence of those chemicals has necessarily to be considered in the background of both the subsequent certificates, in case the latter certificate is

taken on record. That being so, it would be proper for the trial court to defer the question of framing charge under Section 304-B after examination of Dr. R.M. Dhotre and relevance of the subsequent certificate and its acceptability."

11. It is needless to mention here that Section 216 of the Code of Criminal Procedure is intended to apply to the alterations or additions to the charge during the course of the trial.
12. In the case of **State of Maharashtra vs. Salman Salim Khan** reported in **AIR 2004 SC 1189**, the Hon'ble Supreme Court of India had gone to consider the scope of Section 216 of the Code of Criminal Procedure and it went to hold that if the trial is being held before a Court of Magistrate, it is open to that court at any stage of trial, if it comes to the conclusion that the material on record indicates the commission of an offence. which requires to be tried by a superior court, it can always do so by committing such case for further trial to a superior court, as contemplated in the Code of Criminal Procedure but on the contrary, if the trial is being conducted in a superior court like the Sessions Court and if that court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that court based on evidence to convict such accused for a lesser offence.
13. Now coming to the facts of the case, since the legislature in its wisdom has not introduced the condition precedent for exercising power under Section 216 of the Code of Criminal Procedure, of examination of some of the witnesses before exercise of the power

under Section under Section 216 of the Code of Criminal Procedure by a court; the introduction of such condition precedent by the learned Sessions Judge, Jamtara as made in the impugned order; in the considered opinion of this Court is not in accordance of law.

14. The learned Sessions Judge, Jamtara has also committed an illegality by delving deep into the merits of the case regarding intention which is not to be considered at the stage of framing of charge.
15. Accordingly, this Court is of the considered view that the order dated 18.09.2023 passed in Criminal Revision No. 38 of 2023 passed by the learned Sessions Judge, Jamtara is not sustainable in law and the same is quashed and set aside.
16. The order dated 21.06.2023 passed by the learned S.D.J.M., Jamtara in connection with Mihijam P.S. Case No. 02 of 2020, corresponding to G.R. No. 84 of 2020 is restored.
17. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 26th November, 2025
AFR/Sonu-Gunjan/-

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