

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			C482 No.2403 of 2023 <u>Hon'ble Rakesh Thapliyal, J.</u> 1. Mr. Amar Murti Shukla, learned counsel for the applicant. 2. Mr. Saurabh Pandey, learned Brief Holder with Mrs. Meenakshi Sharma, learned Brief Holder for the State. 3. By the instant application preferred under Section 482 of Cr.P.C. the applicant is challenging the order dated 24.06.2023 passed by the Additional Chief Judicial Magistrate, Kotdwar, Pauri Garhwal in Criminal Case No.2597 of 2022 State vs. Vivek Sehgal and others. 4. The facts of the case are that a First Information Report was lodged by respondent no.2 on 25.07.2022 at P.S. Kotwali, Kotdwar, District Pauri Garhwal against four persons, namely, Vivek Sehgal, Chandramohan Sehgal, Smt. Asha Sehgal and Tamanna Sehgal in respect of the offences punishable under Section 498-A IPC read with 3/4 of Dowry Prohibition Act. 5. After the investigation is over the chargesheet was filed on 27.09.2022 wherein the cognizance was taken by the learned Additional Chief Judicial Magistrate on 09.12.2022 in respect of the offences

		punishable under Section 498-A IPC read with Section 3/4 of Dowry Prohibition Act. After taking cognizance the summons were issued, after issuing the notice under Section 41-A of the Cr.P.C. Thereafter by subsequent order dated 24.06.2023 learned Additional Chief Judicial Magistrate on the basis of oral statement of the prosecution take further cognizance for the offence punishable under Section 354-A of IPC. 6. Learned counsel for the applicant submits that this is not the stage when any penal section can be added since by order dated 09.12.2022 the court already took cognizance in respect of the offences punishable under Section 498-A of IPC read with Section 3/4 of Dowry Prohibition Act. 7. It is further contended that the order impugned is nothing but a subsequent cognizance and summoning order, which is wholly impermissible and once the cognizance has been taken and summons were issued only after framing charge any alteration or addition into the charge is permissible under Section 216 of Cr.P.C. It is further submitted that even at the time of framing of charge any additional charge can be added but before framing charge it is not permissible to add or alter any penal provision. 8. It is further contended by learned counsel for the applicant that even otherwise the order
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		impugned is based only upon the oral statement of prosecution that itself shows that there was no any material available with the prosecution for the purposes of taking cognizance in respect of the offence punishable under Section 354-A of IPC. 9. Per contra, learned Brief Holder for the State Mr. Saurabh Pandey, fairly submits that charge can be altered either at the time framing of charge or after that but before that once the cognizance has been taken and summons have been issued, there is no scope for taking further cognizance in respect of any penal provision. 10. Issue notice to respondent no.2. 11. Learned counsel for the applicant shall take steps to serve respondent no.2 by registered post. 12. Let the respondents may file their counter affidavits. 13. List this C482 application on 15.02.2024. 14. Having heard learned counsel for the parties, as an interim measure, it is directed that till the next date of listing further proceedings of Criminal Case No.2597 of 2022 State vs. Vivek Sehgal and others pending in the court of Additional Chief Judicial Magistrate, Kotdwar, Pauri Garhwal shall remain stayed only in respect of the offence punishable under Section 354-A of IPC., however, this order will not come in the way of trial court to proceed with the trial in respect of the offences for which the
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			cognizance has already been taken on 09.12.2022. 15. Thus the trial court may proceed in respect of the offences punishable under Section 498-A and 3/4 of Dowry Prohibition Act against the applicants. (Rakesh Thapliyal, J.) 14.12.2023 Arti
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