



2026:AHC:106407

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 25601 of 2025

AFR

Reserved On : 17.4.2026

Delivered on : 08.5.2026

Praveen Pal

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)

: Arun Kumar Singh, Himanshu Singh

Counsel for Opposite Party(s)

: Dipak Srivastava, G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Arun Kumar Singh, learned counsel for the applicant, Sri Deepak Srivastava, learned counsel appearing for the opposite party no. 2 and Sri Mohd. Afzal, learned counsel appearing for the State.

2. Present application under Section 528 B.N.S.S. has been filed for quashing the orders dated 19.5.2025 and 5.4.2023 passed by Additional District and Session Judge / Special Judge (POCSO Act), Court No. 13, Kanpur Dehat in S.T. No. 459 of 2022 (State vs. Praveen Pal) arising out of Case Crime No. 57 of 2022, under Sections 376(3) IPC and Section 3/4(2) of POCSO Act, Police Station Shivli, District Kanpur Dehat.

3. In brief, the facts of the case are that the first information report was lodged by the opposite party no. 2 on 15.2.2022 under Sections 376, 313, 354, 452, 323, 506 IPC and Section 3/4 of POCSO Act. The date of incident was not mentioned in the aforesaid first information report, registered as Case Crime No. 57 of 2022 at Police Station Shivli, District Kanpur Dehat. It is alleged in the first information report that the victim was subjected to rape by the applicant 6-7 years ago. The victim, in the first information report, claimed that she was aged about 16 years at the time of the alleged incident. Her obscene video was made by the applicant and she was being blackmailed by the applicant. Later the victim conceived, however, the applicant gave a medicine to the victim /

informant and after the administration of medicine, she suffered miscarriage. Several other allegations were levelled in the first information report. The Investigating Officer recorded statement of the victim, wherein she claimed to be aged about 22 years and stated that the incident took place 5-6 years ago. In her statement, recorded under Section 164 Cr.P.C. on 18.2.2022, the victim claimed herself to be aged about 25 years and stated that the incident took place 6-7 years ago. The Investigating Officer after due investigation submitted charge-sheet in this case on 17.4.2022 under Sections 376, 313, 354, 452, 323, 506 IPC read with Section 3/4 of POCSO Act.

4. It is further submitted by the learned counsel for the applicant that as per high-school certificate, the date of birth of the victim / informant was 17.7.1997, therefore, she was more than 24 years of age at the time of lodging of first information report. The applicant claimed discharge under Section 227 Cr.P.C., however, his discharge application was rejected by the learned trial court vide order dated 27.3.2023 and charges were framed against the applicant on 5.4.2023 under Sections 376(3), 506 IPC and Section 3/4(2) of POCSO Act. The applicant pleaded not guilty and claimed to be tried.

5. It is further submitted that the victim / informant was examined in the trial court on 23.6.2023, 11.3.2024 and 3.4.2024. In her examination in chief, she stated that the incident took place on 13.3.2016. As per her high-school certificate, her date of birth was 17.7.1997. Therefore, as per statement of the victim, her age was 18 years, 7 months and 26 days at the time of the alleged incident and at the time of lodging of first information report, her age was 24 years 6 months and 28 days. The victim was a major girl at the time of alleged incident and that, as per her medical report, she was aged about 25 years. The provisions of POCSO Act would not be applicable in this case and charge under Section 376(3) IPC is liable to be altered. Therefore, an application under Section 216 Cr.P.C. / 239 B.N.S.S. was moved by the applicant on 10.3.2025 and it was prayed that charge be altered but the same application was wrongly and illegally rejected by the learned trial court vide order dated 19.5.2025. It is also submitted that the age of the victim would be determined as per Section 94 of Juvenile Justice Act, 2015.

6. In support of his submissions learned counsel for the applicant has placed reliance on a judgment of Hon'ble Supreme Court in the case of **P. Yuvaprakash vs. State Rep. By Inspector of Police (Criminal Appeal No. 1898 of 2023)** decided on 18.7.2023.

7. Per contra, learned A.G.A. as well as learned counsel appearing for the opposite party no. 2 vehemently opposed the prayer made by the learned counsel for the applicant and submitted that the victim was a minor girl at the time of alleged incident and the applicant moved discharge application under Section 227 Cr.P.C., which was rightly rejected by the learned trial court vide order dated 27.3.2023 and charges were framed. Now, the applicant is raising the same plea, which was taken by him at the time of discharge. The present application is not maintainable. It is further submitted that the applicant has no right to seek such addition or alteration by filing any application as a matter of right. It is the court only, who may exercise its power under Section 216 Cr.P.C. / 239 B.N.S.S. for addition or alteration of the charges. To buttress his submission, learned counsel appearing for the opposite party no. 2 has placed reliance on a judgment of Hon'ble Supreme Court in the case of **P. Kartikalakshmi vs. Sri Ganesh and another (2017) 3 SCC 347**.

8. I have heard the rival submissions of learned counsel for the parties and have perused the record.

9. The question arises here as to whether, after the charges are framed by the trial court, the accused could be discharged or his charges could be altered through an application filed by the accused under Section 216 Cr.P.C. or 239 B.N.S.S. To understand it, Section 216 Cr.P.C. and 239 B.N.S.S. are reproduced hereunder:-

"216 Cr.P.C.

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 has 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."

239 B.N.S.S.

"239. 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."

10. The Hon'ble Supreme Court, in its recent judgement dated April 17, 2025 passed in **Criminal Appeal No. 1319 of 2013 with Criminal Appeal No. 272 of 2014 (Director of Revenue Intelligence Vs. Raj Kumar Arora and others)** has elucidated the scope of Section 216

CrPC, as follows:

143. Under this provision, any Court is empowered to alter or add to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

144. The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court suo moto as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.

145. This Court in *Anant Prakash Sinha v. State of Haryana and Another* reported in (2016) 6 SCC 105 summarised the principles as regards Section 216 CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under Sections 498-A and 323 IPC. During the pendency of the matter, the informant wife had filed an application under Section 216 CrPC for framing an additional charge under Section 406 IPC

against both the husband and the mother-in-law on the ground that there was an express complaint with regard to the misappropriation of her entire Stridhan and other articles. Hence, it was contended that the accused persons had committed criminal breach of trust, however, a charge sheet was not filed in respect of the said offence. The application was allowed by the Trial Court and subsequently, the Revisional Court upheld the framing of charge under Section 216 CrPC IPC only against the appellant-husband. This Court while agreeing with the High Court summarised the principles underlying Section 216 CrPC as follows:

- i. First, the test for exercise of power under Section 216 CrPC is that it must be founded on the material available on record and therefore, it can be on the basis of the complaint or the FIR, or other accompanying documents or materials brought on record during the course of the trial. The charge which has been framed by the Trial Court must therefore be in accord with the materials available before him.
- ii. Secondly, the power must not be construed in a restricted manner to mean that unless evidence has been let in, the charges that have already been framed cannot be altered. The Court is empowered to change or alter the charge framed, if it finds that there is a defect or that something has been left out in the order framing charge.
- iii. Thirdly, it is obligatory for the Court to ensure that no prejudice is caused to the accused due to the addition or alteration of charge. The accused must be informed and made aware of the new charge as also the case against him so that he can understand the defence that can be led on his behalf.

The relevant observations are reproduced hereinbelow:

“18. From the aforesaid, it is graphic 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. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, 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 CrPC. 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. It has been held in *Amar Singh v. State of Haryana* [*Amar Singh v. State of Haryana*, (1974) 3 SCC 81 : that the accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused.

(Emphasis supplied)

146. In another decision of this Court in *Nallapareddy Sridhar Reddy v. State of A.P.* reported in (2020) 12 SCC 467, the scope of powers under Section 216 was elaborated. It was stated that the power under this provision to alter a charge is an exclusive and

wide-ranging power and this is clear from the fact that it may be exercised at any time before the judgment is pronounced, meaning also at a stage wherein the evidence and arguments are completed and the judgment is reserved. It was further stated that if the Court is of the opinion that there was an omission in the framing of charge or if the existence of the factual ingredients constituting another offence is also inferred from a prima facie examination of the material brought on record, the alteration or addition of a charge can be done. Such material brought on record must have a direct nexus with the ingredients of the alleged offence. This Court cautioned that the power under this provision must be exercised judiciously and observed as follows:

“21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice

likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.”

(Emphasis supplied)

11. The Hon'ble Supreme Court in the case of **P. Kartikalakshmi (supra)** has elucidated the power of the Court under Section 216 Cr.P.C. and held that power under Section 216 Cr.P.C., vested in the Court, is exclusive to the Court and there is no right in any party neither de facto complainant nor accused nor prosecution to seek such addition or alteration by filing an application as a matter of right. Relevant paragraph nos. 6 to 8 of the said judgment are quoted herein below :-

"6. Having heard learned counsel for the respective parties, we find force in the submission of learned senior counsel for respondent no.1. Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

7. We were taken through Sections 221 and 222 CrPC in this

context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.

8. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available under Section 216 CrPC. To that extent, having clarified the legal position, we make it clear that the whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court. As rightly pointed out by the learned Senior Counsel for Respondent 1, such a course adopted by the appellant and entertained by the court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the court below."

12. In a recent decision of Hon'ble Supreme Court in **K. Ravi vs. State of Tamil Nadu and another** reported in **2024 SCC OnLine SC 2283**, Hon'ble Supreme Court had categorically observed that Section 216 Cr.P.C. does not give any right to the accused to file a fresh application

seeking discharge after the charge has been framed by the Court. In the above case, several accused persons were charge-sheeted under Sections 147, 148, 323, 324, 307 and 302 of the IPC respectively. The respondent no. 2 - accused filed an application for discharge under Section 227 Cr.P.C. which was dismissed by the Sessions Court. After charges were framed, the respondent no.2 along with the other accused then filed an application under Section 216 Cr.P.C. seeking alteration of charge, which was also dismissed. In revision, the High Court, however, set aside the charge framed against the respondent no. 2, while holding that an accused cannot seek a discharge under the garb of modification/alteration of charge through Section 216 Cr.P.C. application. Hon'ble Supreme Court also highlighted that it has become routine practice for the accused to file an application under Section 216 Cr.P.C. after their application for discharge under Section 227 Cr.P.C. is dismissed, sometimes in ignorance of the law but also on other occasions with the sole intent of derailing the trial. The relevant observations are as thus:

“7. From the above conspectus of events, it clearly transpires that the Respondent No. 2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr. P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No. 2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr. P.C. The High Court in its unusual impugned order, discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. [...]

xxx xxx xxx

11. It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained

therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts.”

(Emphasis supplied)

13. In the opinion of this Court, Section 216 Cr.P.C. empowers the court to alter or add any charge at any time before the judgment is pronounced. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the court, the power is always vested in the court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced. It is an enabling provision for the court to exercise its power under certain contingencies, which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition, when the final decision is rendered, it will be open for the parties to work-out their remedies, in accordance with law.

14. The Hon'ble Supreme Court had held in **Thakur Ram and others vs. State of Bihar**, reported in **AIR 1966 SC 911**; that the power available under Section 216 Cr.P.C. can be exercised only by the court on its own and no party has any right to seek for passing any order under the said provisions.

15. In the above judgments, the Hon'ble Supreme Court has held that the court may alter or add any charge under Section 216 Cr.P.C. and no party can seek such addition or alteration of the charge as a matter of right by filing an application. It is the trial court which would decide whether an appropriate charge has been framed or not, at the appropriate stage of the trial. On a consideration of broad probabilities of the case, the total effect

of the evidence and documents adduced, the trial court must satisfy itself that the exercise of power under Section 216 Cr.P.C. / 239 B.N.S.S. is necessary. The provision has been enacted with the solitary object to ensure a fair and full trial to the accused in each case.

16. If there was an omission in framing of the charge and it comes to the knowledge of the court trying the offence, power is always vested in the court, as provided under Section 216 Cr.P.C. / 239 B.N.S.S. to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced. The application preferred by the applicant-accused before the trial court was rightly rejected since it was not incumbent upon the trial court to pass an order under Section 216 Cr.P.C. / 239 B.N.S.S. on the application moved by the applicant-accused.

17. The learned trial court has not committed any illegality, perversity or ambiguity in rejecting the application dated 10.3.2025 filed on behalf of the applicant-accused under Section 216 Cr.P.C. / 239 B.N.S.S.

18. Resultantly, the instant application filed under Section 528 B.N.S.S., being misconceived and devoid of merits, is dismissed. No order as to costs.

(Vivek Kumar Singh,J.)

May 8, 2026
Lalit Shukla