

(2019) 10 KAR CK 0007

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1058, 1059, 1060 Of 2019

Central Bureau Of Investigation

APPELLANT

Vs

Galli Janardhan Reddy

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Code Of Criminal Procedure, 1973 — Section 216, 224, 397(2)

Indian Penal Code, 1860 — Section 120B, 379, 405, 409, 411, 420, 447

Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Mines And Minerals (Development And Regulation) Act, 1957 — Section 4(1), 4(1)(A),
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Karnataka Forest Act, 1963 — Section 24

Citation : (2019) 10 KAR CK 0007

Hon'ble Judges : B.A.Patil, J

Bench : Single Bench

Advocate : P.Prasanna Kumar, Sandesh J. Chouta, Chandrashekar R.P.

Final Decision : Disposed Of

Judgement

1. Heard the learned counsel appearing for the parties on IA No.1/2019 filed under Section 5 of the Limitation Act, in all the petitions. They are accompanied with affidavit of the Inspector of Police, CBI. The learned Senior Counsel appearing for the respondent-accused has no objection.

By accepting the cause shown therein, IA No.1/2019 in all the petitions are allowed. Delay is condoned.

2. These petitions are filed by CBI Bengaluru challenging the orders passed by LXXXI Additional City Civil and Sessions Judge, Bengaluru, (Special Court exclusively deal with criminal cases related to elected MPs/MLAs in the State of Karnataka), on Interlocutory Applications filed by respondent-accused in these petitions under Section 216 of Cr.P.C. in Special C.C.Nos.135/2013, 21/2014 and 6/2014 dated 15.9.2018, 18.09.2018, 17.09.2018 respectively.

3. I have heard Sri.P.Prasanna Kumar, Special Public Prosecutor for the petitioner and Sri Sandesh J.Chouta learned Senior Counsel for the respondent- accused.

4. The factual matrix of the case are that a case was registered against M/s. S.B.Logistics and others for having committed the offences punishable under Sections 120B 420, 379, 411 and 447 of IPC and also under Section 13(1)(d) r/w. Section 13(2) of Prevention of Corruption Act ('PC Act' for short) and also under Section 21 r/w. Section 4(1), 4(1)(A) and Section 23 of MMDR Act, 1957 and also under Section 24 of Karnataka Forest Act. 1963. After completion of investigation, CBI filed the charge sheet against accused persons.

5. It is the case of the prosecution that accused No.1 being the Minister of Bellary District, accused No.2 being the Deputy Conservator of Forests, accused No.3 Deputy Director of Mines and Geology Department, accused No.4 who is working as Personal Assistant to accused No.1, accused No.5 being the Director of the Company under the name and style of M/S.Swastik Steels Pvt. Ltd. and accused No.6 being the Partner of M/s.Swastik Steels, Hospet, accused No.7 being the then Conservator of Forests, Bellary, entered into criminal conspiracy in Bellary District for the period from 1.1.2009 to 31.5.2010. They excavated iron ore illegally from various mines and forest area surrounding Bellary District and sold the same to M/s. Eagle Traders and Logistics and others and illegally transported to Belekeri port to export the same and thereby they have committed criminal breach of trust, cheating, mischief by destroying or moving the landmark fixed by the public authority, criminal trespass, forgery for the purpose of cheating, using forged documents as genuine documents and misuse of the official position and power and thereby they have committed alleged offences.

6. The trial Court secured the presence of the accused and after hearing, charge was framed against all the accused persons. Accused pleaded not guilty, they claims to be tried and they started facing the trial. So far prosecution has got examined several witnesses in all the cases. When that being the case, respondent-accused who has been shown as accused Nos.1, 6 and 2 filed applications under Section 216 of Cr.P.C. to drop charge under Section 409 of IPC as the basic ingredients of Section 405 of IPC are not made out as against him. The said application was seriously contested by CBI by filing its objections and after hearing the counsel appearing for the parties the said application was allowed and the proceedings under Section 409 were dropped against the respondent-accused. Challenging the same, the petitioners are before this Court.

7. The main contentions raised by the learned counsel for the petitioner-CBI are that the order passed by the Special Court is contrary to law, facts and material placed on record. The said order has resulted into miscarriage of justice. It is his further submission that Section 216 of Cr.P.C. empowers criminal Court to alter or add to any charge at any time before the judgment is pronounced. Though a wide power has been given to the Court, when already the charge has been framed and several witnesses have been examined, then under such

circumstances there was no question of dropping of the charge under Section 409 of IPC. It is his further submission that alteration or addition as mentioned in Section 216 does not include dropping or exclusion of the said charge. The order of the trial Court is amounting to nothing but discharging of the accused for the said offence which is not sustainable in law. It is his further submission that the expression mentioned under Section 216 of Cr.P.C. means adding to any charge is addition of a new charge and meaning of alteration of a charge is changing or variation of an existing charge. It also includes addition to and alteration of a charge or charges which means one or more existing charge or charges. In order to substantiate his contention he relied upon the decision in the case of T.J.Edward Vs. C.A.Victor Immanuel and another reported in 2002 Cr.LJ 1670. It is his further submission that Section 216 Cr.P.C. has been enumerated and it ensures a fair trial and such alteration or addition to any charge must be on the basis of some evidence on record. It is not addition of a few words or corrections of the charge. In order to substantiate his argument he relied upon the decision in the case of Rocky Benediek and another Vs. State of Sikkim reported in 2003 SCC OnLine Sikk 12. It is his further submission that Section 216 does not contemplate discharge of an accused or termination of the trial in respect of any accused. In order to substantiate his said contention he relied upon the decision in the case of Tapati Bag Vs. Patitpaban Ghosh and Others reported in 1993(2) RCR (Criminal) 652 and it is his further submission that when there is a deep rooted conspiracy between the accused to extract the iron ore illegally, then under such circumstances the offence under Section 409 of IPC is going to be proved. While considering the material, the Court has to consider the entire final report and if the findings were given by taking out some of the Sections, it is going to defeat the rights of the accused as well as the prosecution. Discharge is different than the addition and alteration of the charge. It is his further submission that if an accused is discharged and subsequently an application for alteration or addition of a charge is filed, it is not maintainable. In order to substantiate his argument, he relied upon the decision in the case of Sohan Lal and others Vs. State of Rajasthan reported in (1990) 4 SCC 580. Relying upon the same decision he further submitted that the same analogy is applicable to the present facts of the case. When the charge has been already framed, under the guise of alteration or addition of the charge, deletion or discharge orders cannot be made. Alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court, then only the Court can exercise the power under Section 216 of Cr.P.C. for alteration or addition of the charge. In order to substantiate his argument he relied upon the decision in the case of Central Bureau of Investigation Vs. Karimullah Osan Khan reported in (2014) 11 SCC 538. It is his further submission that during the course of trial if Courts decides the rights and liabilities in respect of their involvement in the case, and substantially affects the rights of the accused or decides certain rights of the parties, then under such circumstances it cannot be held to be an interlocutory order and the bar under Section 397(2) of Cr.P.C. does not attracts and a revision will lie. In order to substantiate his arguments

he relied upon the decision in the case of Mohit Alias Sonu and Another Vs. State of Uttar Pradesh and Another reported in (2013) 7 SCC 789. On these grounds he prayed to allow the petition and to set aside the impugned order.

8. Per contra, the learned Senior counsel by substantiating the objection filed submitted that the revision petitions filed by the petitioners are not maintainable as the order passed by the court below is interlocutory order and no revision lies under Section 397 (2) of Cr.P.C. against an interlocutory order. In order to substantiate his contention he relied upon the decision in the case of Amar Nath and Others Vs. State of Haryana and Another reported in (1977) 4 SCC 137, another decision in the case of Madhu Limaye Vs. The State of Maharashtra reported in (1977) 4 SCC 551, another decision in the case of V.C.Shukla Vs. State through C.B.I. reported in 1980 Supp.SCC 92, another decision in the case of Haryana Land Reclamation and Development Corporation Ltd. Vs. State of Haryana and another reported in (1990) 3 SCC 588, and another decision in the case of Krishena Kumar Vs. Union of India and Others reported in (1990) 4 SCC 207, another decision in the case of Rajendra Kumar Sitaram Pande and Others Vs. Uttam and another reported in (1999) 3 SCC 134, another decision in the case of K.K. Patel and another Vs. State of Gujarat and another reported in 2000 CrLJ 4592 (SC), another decision in the case of Bhaskar Industries Ltd. Vs. Bhiwani Denim and Apparels Ltd. and Others reported in (2001) 7 SCC 401 and another decision in the case of Poonam Chand Jain and another Vs. Fazru reported in (2004)13 SCC 269.

9. It is his further submission that applications were came to be filed under Section 216 Cr.P.C. by accused persons, the order passed against the respondent herein the said orders have been challenged, but one accused has been left out and that order has not been challenged for the reasons best known to the CBI. It is his further submission that First Information Report is of the year 2012, there is nothing to show about the entrustment to accused Nos.2, 3 and 7. It is his further submission that accused wanted to know what are the charges and in order to get a clarification he filed an application under Section 216 of Cr.P.C. and the Court below after taking into consideration the material placed on record allowed the application. It is his further submission that accused No.1 is not having any domain over the property. In order to clarify the said facts, the said application has been filed. It is his further submission that though several witnesses were examined, Section 216 of Cr.P.C., contemplates that an application can be filed at any point of time and the charge can be altered and added. It is his further submission that the decision taken on the Interlocutory Application is not going to be culminated the proceedings and as such it is not a revisable order at any time. It is his further submission that no prejudice is going to be caused to the prosecution by virtue of alteration or adding of the charge. If at all the Court comes to the conclusion that there is a material, then under such circumstances it can convict the accused by re-altering the charge. On these grounds he prayed to dismiss the petitions.

10. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and I have given my anxious consideration to the decisions quoted by the learned counsel appearing for the parties.

11. The first and foremost contention taken up by the learned Senior Counsel for the respondent-accused is with regard to maintainability of the present revision petitions. It is his contention that the petitions are hit by Section 397(2) of Cr.P.C. as they are against the Interlocutory Application. In order to substantiate the said contention, he relied upon the Full Bench decision in the case of Madhu Limaye (cited supra). In the said decision, it has been observed with reference to the meaning of interlocutory order that there may be orders which are neither final nor interlocutory, they are inter- mediate orders. In order to have a harmonious construction of the said provision, if it is inter-mediate order, then the revision will lie or where the rights of the parties are going to be decided finally, then under such circumstances revision lies. Even in the subsequent decisions of the Hon'ble Apex Court, till date the same view has been continued. Keeping in view the facts and circumstances of the case, admittedly an application came to be filed under Section 216 of Cr.P.C. for alteration of the charge, but the prayer and other materials if they are looked into, with reference to the order of the trial Court, it has come to the conclusion that the said Court has framed the charge as against respondent-accused in all the cases inadvertently for the offence punishable under Section 409 of IPC though the said section is not applicable to the accused and has also expressed that there is no entrustment or domain over the forest area and the wordings used indicates that it is not alteration of the charge but it is nothing but deletion of charge. Under such circumstances, the respondent- accused acquitted for the charge for the offence punishable under Section 409 of IPC. If that aspect is taken into consideration, then under such circumstances, the contention of the learned Senior Counsel for the respondent-accused that the order passed is interlocutory order, the revision petitions are not maintainable, is not having any force and the same is liable to be rejected.

12. It is well settled proposition of law that once charge is framed the case will either result in acquittal or conviction in accordance with the provisions of the trials prescribed under Cr.P.C. Under the guise of alteration or addition of the charge, there should not be any deletion of charge, it is not permissible. If at all the charge can be withdrawn, the Court can do it only after the judgment that too by exercising the power under Section 224 of Cr.P.C. If there is no material, then under such circumstances, the Court cannot go back to the original stage of hearing before charge and discharge the accused that too, after recording the evidence of witnesses. Discharge or deletion gives a liberty to the accused and he will be set at liberty in a criminal case only at the time of hearing before charge or subsequently after the trial is concluded. In the instant case, under the guise of alteration and addition of the charge the Court has actually discharged the accused for the alleged offence.

13. Though during the course of arguments, the learned senior counsel for the accused submitted that the entire charge sheet material does not constitute the offence under Section 409 IPC, there is no entrustment or domain over the property by the accused and as he was working only as an administrative of the said district. But when he has also been included as a conspirator then under such circumstance it cannot be held that there is no evidence as against the accused-respondent. Framing of charge is a first major step in a criminal trial where the court is expected to apply its mind to the entire records and documents placed before the Court. It requires application of mind and framing of charge is a major event and at that time, the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face the trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In case of conspiracy an agreement will be between two persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of the conspiracy. Finally when the ultimate offence consists of a chain of action, it would not be necessary for the prosecution to establish to bring home the charge of conspiracy that each of the conspirator had the knowledge of what the collaborator would do. In that light, if the entire material is looked into it clearly goes to show that the accused persons have conspired with each other to do illegal act of mining and transporting by excavation from the forest area. Under such circumstances, consideration of Section 409 of IPC alone to accused is bad in law, that too when the accused have been charged under section 120B of IPC. This proposition of law has been laid down by the Hon'ble Apex Court in the case of State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava, reported in (2017) 15 SCC 560. For the purpose of brevity, I quote paragraphs 25 and 26 & 27 which read thus:-

25. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In

such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.

26. Similarly, the law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.

27. At this stage, it would be appropriate to quote a decision of this Court in *CBI v. K. Narayana Rao* wherein it was held as under: (SCC p. 530, para 24)

"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

14. The object under Section 216 Cr.P.C. is to ensure a fair trial and the Court has to see as to whether alteration or addition to any charge is required. Word 'Add to' means addition of a new charge and not addition of a few words or corrections and that an erroneous or improper charge may be corrected by reframing it properly or by adding to it or altering it for an offence provable by the evidence taken by the trial Court. If basic ingredients are present in the prosecution case and if the trial is held and ultimately if the Court comes to the conclusion that there is no case to proceed to convict the accused for the offence punishable under Section 409 of IPC, then it can acquit him, no prejudice is going to be caused or handicapped in the defence of the accused. How the Court

has to proceed in case of alteration and addition of the charge under Section 216 of Cr.P.C. the Hon'ble Apex Court in the case of Central Bureau of Investigation Vs. Karimullah Osan Khan (cited supra) at paragraph 18 it has been observed as under:-

"18. Section 216 Cr.P.C. confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 Cr.P.C. only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (See Harihar Chakravarty Vs. State of W.B.). Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 Cr.P.C. and other related provisions."

15. Keeping in view the aforesaid facts and circumstances, and with reference to the ratio laid down in the decisions quoted supra, I am of the considered opinion that the Special Court without looking into the seriousness of the case involved and has been swayed away by the submissions made by the learned counsel appearing for the accused and has not properly looked into the law and has passed the impugned order as if the accused are discharged for the offence punishable under Section 409 of IPC, which act ought to have been done at the time of framing of charge. The trial Court has put the cart before the horse and proceeded to pass the impugned order that too after recording evidence of several witnesses.

16. Taking into consideration the fact that natural resources have been extracted which is in the custody of representatives of the people and the concerned official. If the persons who are duty bound to protect the public properties involve in such illegal act, it appears to be very serious and it cannot be held that ingredients of Sections 405 and 409 of IPC are not existing. The case of the prosecution should not be read in isolation but has to read as a whole. By taking into consideration entire charge sheet material and conduct of the accused, charge has been framed by the trial Court. Subsequently, it cannot go back and pass the order like one which is challenged before this Court. As discussed above after framing the charge and recording of the evidence, Court becomes functus officio and it cannot alter the earlier order of framing of the charge. In that light also learned trial Judge has erred in passing the impugned order, as such it has to be interfered with.

17. I have carefully and cautiously gone through the impugned order. The trial Court without keeping in view the above said proposition of law has passed illegal order, as such the same is liable to be set aside.

18. In the light of the discussion held by me above, petitions are allowed. The impugned orders passed by LXXXI Additional City Civil and Sessions Judge, Bengaluru (CCH.82) on Interlocutory Application filed under Section 216 of Cr.P.C. dated 15.9.2018, 18.09.2018, 17.09.2018 in Special C.C.Nos.135/2013, 21/2014 and 6/2014 respectively are set aside.

In view of disposal of the main petitions, IA No.2/2019 in Criminal Revision Petition Nos.1058/2019 and 1060/2019 does not survive for consideration and the same are accordingly disposed of.