2025:AHC:208818

AFR

Reserved on : November 04, 2025
Delivered on : November 21, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1202 of 2025

Satyam Sharma

.....Revisionist(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Ajeet Kumar Madhesia
Counsel for Opposite Party(s)	:	G.A.

Court No. - 91

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Ajeet Kumar Madhesia, the learned counsel for revisionist and learned AGA for the State. None is present for opposite party Nos.2 and 3, despite sufficient service.

2. Satyam Sharma, the revisionist, has filed the present criminal revision being aggrieved by the order dated 21.2.2025, passed by Additional District Judge/FTC-II (for trying-cases of crime against women) at Varanasi in Session Case No.1150 of 2021 titled State vs. Satyam Sharma, arising out of Case Crime No.99 of 2021 under Sections 376, 506 IPC and Section 66 of Information Technology Act, 2000, Police Station-Chetganj, District-Varanasi.

3. Learned counsel for the revisionist has submitted that an application under Section 216 Cr.P.C. (12-Ka) has been filed by the complainant of the case, namely, Munna Lal Goswami and seeks the permission that the charges against the POCSO Act shall be altered against the accused Satyam Sharma. The revisionist has submitted that he had filed objection 16-Kha before the learned trial court and took this plea that the charge-sheet has been filed and the evidence, in the case, is already complete. The applications filed by the complainant under Section 216 Cr.P.C. is not maintainable. The marriage between victim and accused took place on

31.1.2020 at Shitla Mata Mandir and it was further registered at court on 27.2.2020.

4. The revisionist has further submitted that the learned trial court has completely committed legal error. The revisionist has further submitted that the learned trial court failed to appreciate the law propounded by the Hon'ble Supreme Court, that the law does not permit either of the parties of the case to move an application under Section 216 Cr.P.C.

5. He further submits that the statement of the victim was recorded under Section 161 Cr.P.C. on 7.7.2021, where on the reply of this specific question to the victim when accused had entered the physical relationship with him. The victim specifically replied that the accused make physical relationship with her for the last three months. When the question was asked about her date of birth and its certificate, she specifically replied that my date of birth is 27.2.2002; I'm submitting my copy of Aadhaar-card and photostat copy of my class-VIII at junior high-school.

6. He further submitted that the medical-examination of the victim took place and 'no-injury' was found on her body and her hymen was found ruptured. In the medical-examination of the victim dated 7.7.2021, it is mentioned that the incident of offence is one year before. He further submits that at the time of reporting of the incident before the concerned police station, the victim was more than 19 years. He further submits that the FIR was registered on 7.7.2021 and there is no date, time of occurrence of offence is mentioned in the FIR, which was lodged by father of the victim. He further submits that Investigating Officer of the case during the course investigation prepared the Parcha No.2 dated 10.7.2021, where he mentioned that as per marks-sheet of the victim, the statement recorded under Section 161 Cr.P.C., the age of victim is 19 years 4 months, therefore, the offence punishable under Section 3/4 of POCSO Act, 2012 had been omitted. During the further course of investigation, the Investigating Officer recorded the second statement, in which the first informant/father of the victim himself contradicted and not supported his earlier version recorded under Section 161 Cr.P.C.

7. In the additional statement of first informant/father of the victim, where

the question was asked him about the pistol then he replied that it is made of plastic, which is used as 'toy'. When the specific question was asked, whether his daughter is having any knowledge about the pistol that which is right and which is wrong, then the answer is 'silence'. When further question was asked, whether any other persons are having any knowledge about the pistol, so its veracity could be determined then the reply of father of the victim is 'silence'. He further submits that the victim is a major-girl and due to love-affection with the revisionist, she got married at Shitla Mata Mandir, Varanasi on 31.1.2020 in the presence of their family-members and also solemnized her marriage with the revisionist on 27.2.2020 by way of notarial marriage agreement. The date of notarial marriage dated 27.2.2020 is very much relevant, which corroborates the awareness and maturity of the victim that the notarized marriage agreement was took place between the revisionist and the victim at court on 27.2.2020 where she reached her age of 18 years, as she herself disclosed her date of birth as 27.2.2002. The FIR is dated 7.7.2021. The victim admitted the relationship, if any, which persists for last three months.

8. Learned counsel for the revisionist has further submitted that he is confining his argument up to the limit that neither parties are having the legal-right as per provisions of law to move an application under Section 216 Cr.P.C. Section 216 Cr.P.C. is as follows:

> *"**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."

9. He further submitted that the power of invocation of Section 216 Cr.P.C. is exclusively confined to the Court as enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment. No party, neither complainant nor accused has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 Cr.P.C. He further submitted that in the objection (16-Kha) dated 3.2.2025, he has specifically took this plea that the application under Section 216 Cr.P.C. is not maintainable. His, this contention was not considered by the learned trial court and passed the impugned order dated 21.2.2025, which is illegal and without any provisions of law. It is liable to be set aside. The criminal revision is entitled to be allowed.

10. Learned AGA for State-opposite party No.1 has filed the statement of the victim recorded under Section 164 Cr.P.C. by means of counter affidavit. This statement was recorded on 22.7.2021, where it is deposed that she knows victim for the last three years. Three years ago, he threatened her that you should go, where he desire, otherwise he will kill my brother. On the same day, he took myself on an auto and shown gun, he took me in hotel and made physical-relationship with myself. Hence, it appears that all happens on the first day. These all happened to be very

first day of meeting, as stated by the victim; it is appeared to be improbable. In the second page of her statement under Section 164 Cr.P.C., she stated that one inspector of Police Station-Chetganj took my sign on blank-paper and he threatened me that she should told '3-months', instead of '3 years'; the said incident was happened to me.

11. This entire statements under Section 164 Cr.P.C. and particularly the last four lines of her statements had to be appreciated and analyzed by the learned trial court at the time of appreciation of evidence, as learned counsel for the revisionist has confined his argument on the legal-questions, that neither prosecution nor accused is having any right of law to file an application under Section 216 Cr.P.C. It is only the concerned trial court, which is having the force of law. 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.

12. 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 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.

13. The Hon'ble Supreme Court held on August 12, 2014 in Criminal Appeal No.1709 of 2014 titled **P.Kartikalakshmi vs. Sri Ganesh and another** that the power of invocation of Section 216 Cr.P.C. 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 Cr.P.C. 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 jeopardized.

14. Hence the impugned order dated 21.2.2025 is hereby set aside.

15. The Criminal Revision is **allowed**, accordingly.

(Abdul Shahid,J.)

November 21, 2025
LN Tripathi

Digitally signed by :-
LALIT TRIPATHI
High Court of Judicature at Allahabad