



CRR-229-2025(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(207)

CRR-229-2025(O&M)
Reserved on: 10.07.2026
Pronounced on: 22.07.2026
Uploaded on: 24.07.2026

Jaspal Singh and others

....Petitioners

Versus

State of Punjab and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present : Mr. Nakul Sharma, Advocate
for the petitioners.

Mr. Navreet Kaur, AAG, Punjab.

Mr. Sunil Sihag, Advocate
for the Respondent No.2.

VIRINDER AGGARWAL, J. (ORAL)

1. The present criminal revision has been preferred under Section 401 read with Section 397 Cr.P.C. (corresponding provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023) assailing the order dated 09.01.2025 passed by the learned Additional Sessions Judge, Ferozepur whereby an application filed by respondent No.2 seeking alteration of charge under Section 216 of the Code of Criminal Procedure has been allowed and additional charges under Section 302, 307, 148, 149 IPC and Section 25/27 of Arms Act have been framed against the present petitioners.

BRIEF FACTS

2. The prosecution emanates from FIR No.55 dated 02.05.2017 registered at Police Station Kulgarhi, District Ferozepur, under Sections 302, 307, 506, 336, 148 and 149 of the Indian Penal Code, 1860 and Sections 25 and 27 of the



Arms Act, 1959. Upon completion of investigation by a Special Investigation Team constituted during the course of investigation, the final report under Section 173 Cr.P.C. came to be presented and charges were framed against the petitioners for offences other than Section 302, 307, 148, 149 IPC and Section 25/27 of Arms Act. During the pendency of the trial, respondent No.2 initially moved an application seeking alteration of charge, which did not culminate in alteration of the charges at that stage. Subsequently, after the examination of material prosecution witnesses and upon the emergence of evidence during trial, respondent No.2 again invoked the jurisdiction of the Trial Court under Section 216 Cr.P.C. seeking alteration of charge. The learned Trial Court, upon consideration of the evidence then available on record, allowed the said application vide the impugned order and consequently framed an additional charge under Section 302, 307, 148, 149 IPC and Section 25/27 of Arms Act against the petitioners and other co-accused. Aggrieved by the aforesaid order, the petitioners have invoked the revisional jurisdiction of this Court.

CONTENTIONS

3. Learned counsel for the petitioners has assailed the impugned order by contending that the same is legally unsustainable and suffers from a manifest misapplication of the provisions of Section 216 Cr.P.C. It is submitted, in the first instance, that the jurisdiction contemplated under Section 216 Cr.P.C. is vested exclusively in the criminal Court and, therefore, neither the prosecution nor the complainant possesses any legal right to seek alteration or addition of charge by way of an independent application. According to the learned counsel, the learned Trial Court committed a jurisdictional error in entertaining the application itself. It is further argued that an earlier application seeking substantially the same relief had already been considered and declined and,



therefore, entertaining a subsequent application amounted to an impermissible review of the earlier judicial determination, a course of action unknown to the Code of Criminal Procedure. It is contended that the subsequent application did not disclose any legally sustainable ground warranting reconsideration of the issue. Lastly, it is argued that the petitioners had faced the trial for a considerable period on the basis of the charges originally framed and, at the advanced stage of the proceedings, addition of the charge under Section 302, 307, 148, 149 IPC and Section 25/27 of Arms Act has caused serious prejudice to the defence and has adversely affected their valuable right to effectively conduct the trial. On the strength of the aforesaid submissions, learned counsel prays that the impugned order be set aside and the revision petition be allowed. Reliance in this regard is placed on the judgements in ***P.Katrikalakshmi vs. Sri Ganesh, 2017(3) SCC 347, Dr.Nallapareddy Sridhar Reddy v. State of Andhra Pradesh and others, 2020 SCC Online SC 60*** and ***judgement*** by coordinate bench of this court in ***Raminder Pal Singh Khurana v. State of Punjab (CRM-M-8380-2023)***.

4. Per contra, learned State counsel as well as learned counsel appearing for respondent No.2 have supported the impugned order by submitting that the learned Trial Court has exercised the jurisdiction vested in it under Section 216 Cr.P.C. strictly in accordance with law. It is argued that the power to alter or add a charge is of the widest amplitude and may be exercised by the Court at any stage before pronouncement of judgment if the evidence available on record so warrants. It is further submitted that the subsequent application was founded upon evidence which surfaced during the course of trial and, therefore, did not amount to seeking review of the earlier order. It is lastly contended that the Code itself contains adequate safeguards under Sections 216 and 217 Cr.P.C. to



obviate any prejudice to the accused and, therefore, no interference with the impugned order is called for in exercise of revisional jurisdiction.

OBSERVATIONS AND FINDINGS

5. Having heard learned counsel for the parties and after perusing the record, this Court proposes to examine the controversy under the following heads:-

(i) Whether an application under Section 216 Cr.P.C. is maintainable at the instance of a party or whether the power can be exercised only suo motu by the Court?

(ii) Whether a subsequent application under Section 216 Cr.P.C., founded upon evidence which came on record after rejection of an earlier application, is legally maintainable?

(iii) Whether alteration of charge in the facts of the present case causes prejudice to the petitioners and, if so, to what extent?

Issue No.1

6. The principal submission advanced on behalf of the petitioners, relying upon the decisions in ***P.Katrikalakshmi (Supra)***, ***Dr.Nallapareddy Sridhar Reddy (Supra)*** and ***Raminder Pal Singh Khurana v. State of Punjab (Supra)*** is that Section 216 Cr.P.C. confers power exclusively upon the Court and, therefore, neither the prosecution nor the complainant possesses any right to invoke the said provision by filing an application. According to learned counsel, the learned Trial Court committed a jurisdictional error in entertaining the application itself. The submission, though attractive at first blush, does not withstand judicial scrutiny.

7. At this juncture, it is necessary to reproduce the relevant provision of the Code of Criminal Procedure, which is extracted below:



Section 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 discret 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 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 wh 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.

8. Section 216 Cr.P.C. undoubtedly provides that "Any Court may alter or add to any charge at any time before judgment is pronounced." The legislative emphasis is upon the expression "Court may", thereby making it abundantly clear that the authority to alter or amend the charge vests exclusively in the Court. The power to alter or add a charge is of the widest amplitude and remains available till pronouncement of judgement. The ultimate judicial satisfaction regarding necessity of alteration can neither be delegated nor dictated by either of the parties. The object of the provision is to ensure that the accused is tried for the real offence disclosed from the material available before



the Court and that the criminal trial is not defeated on account of an erroneous or incomplete charge.

9. This Court is in respectful agreement with the aforesaid principle. To hold that the Court cannot even entertain an application pointing out an apparent omission in the charge would virtually amount to introducing a prohibition which the legislature has consciously not enacted. However, there exists a fundamental distinction between “the source of power” and “the source of information”. While the jurisdiction under Section 216 is exclusively judicial and belongs only to the Court, the statute nowhere prohibits either the prosecution, the complainant or even the accused from inviting the attention of the Court to any omission, defect or inadequacy in the charge already framed. Such an application merely furnishes information to the Court; it does not and cannot compel the Court to exercise its jurisdiction in any particular manner.

10. The misconception appears to have arisen because the observations made by the Hon'ble Supreme Court in *P.Katrikalakshmi (Supra)* and the decision of the Andhra Pradesh High Court in *Dr.Nallapareddy Sridhar Reddy (Supra)* have occasionally been read to suggest that no application under Section 216 is maintainable. In the considered opinion of this Court, such an interpretation travels far beyond what has actually been held therein. Those decisions merely reiterate that the power of alteration belongs exclusively to the Court. They do not lay down, either expressly or by necessary implication, that the parties are prohibited from bringing relevant facts or subsequent evidence to the notice of the Court. The criminal Court is not expected to remain oblivious to an apparent defect in the charge merely because the deficiency has been pointed out by one of the parties. It is not reasonable to hold that, if any defect in the charge framed is brought to the notice of the Court by any party, the



Court would decline to exercise the power conferred upon it under Section 216 of the Cr.P.C. and instead hold that it would exercise such power only if the defect came to its own notice, and not when it was brought to its notice by any party to the proceedings. Such an interpretation would amount to a violation of Article 21 of the Constitution of India, as the fundamental right of the accused to a fair trial would stand compromised. Acceptance of such an argument would defeat the very object underlying Section 216 Cr.P.C.

11. The Hon'ble Supreme Court in ***Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374***, authoritatively held that a criminal Court is not merely a passive umpire between two adversaries. The Court bears an affirmative duty to discover the truth and possesses wide powers to ensure that justice is neither defeated by technicalities nor by procedural lapses. It was observed that if the situation so demands, the Court may exercise every lawful power available to it for arriving at the truth, for "the object of the criminal trial is to search for the truth." The principle flowing from ***Zahira (supra)*** equally governs the exercise of jurisdiction under Section 216 Cr.P.C. If evidence recorded during trial indicates that the charge framed does not truly reflect the offence emerging from the material on record, the Court would be failing in its duty if it refuses to examine the issue merely because its attention has been invited by one of the parties. What remains impermissible is not the filing of the application but any insistence that the Court is bound to allow it.

12. Viewed from the aforesaid perspective, this Court is unable to accept the contention that the very filing of an application under Section 216 Cr.P.C. is legally impermissible. The application merely serves as a vehicle through which the Court's attention is invited to a perceived omission. Whether such omission actually warrants alteration of charge remains entirely within the judicial



discretion of the Court. The source of information can emanate from either side; the source of power, however, always remains the Court alone. Consequently, the first submission raised on behalf of the petitioners deserves to be rejected.

Issue No.2

13. The second limb of challenge advanced on behalf of the petitioners is that an earlier application seeking alteration of charge had already been considered by the learned Trial Court. Consequently, according to the petitioners, the subsequent application was not maintainable and the impugned order virtually amounts to review of the earlier judicial order, which is impermissible in criminal jurisprudence. The submission, though attractive on its face, does not merit acceptance.

14. The determinative factor is whether the subsequent application is founded upon the very same factual foundation and material which existed when the earlier order was passed, or whether it is based upon fresh circumstances which subsequently emerged during the course of trial. The doctrine prohibiting review cannot be stretched to such an extent that the Court becomes powerless to take note of subsequent developments which materially alter the factual complexion of the case. A subsequent judicial determination founded upon new evidence cannot be equated with reconsideration of an earlier order on identical material.

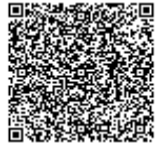
15. In the present case, the record reveals that the earlier application seeking alteration of charge came to be considered at a stage when the prosecution evidence, which subsequently came on record, was not available before the learned Trial Court. Thereafter, during the course of trial, material witnesses entered the witness box and their testimonies became part of the judicial record. The subsequent application under Section 216 Cr.P.C. was



founded upon such evidence recorded during trial and not merely upon the allegations contained in the police report or the earlier material. Thus, the factual foundation on which the subsequent application rested stood substantially altered. The Court was therefore called upon to examine an entirely different evidentiary scenario than the one which existed while deciding the earlier application.

16. Moreover, the power under Section 216 Cr.P.C. itself manifests the legislative intent that the Court should not remain fettered by an earlier opinion if subsequent evidence demonstrates that the charge framed no longer reflects the offences emerging from the material available before the Court. Significantly, the legislature has consciously employed the expression "at any time before judgment is pronounced." The width of the expression is indicative of the legislative intention that the power continues throughout the trial and may be exercised whenever the Court considers it necessary in light of the evidence then available. The distinction between review and exercise of jurisdiction upon subsequent material is well recognised. A review presupposes reconsideration of an earlier decision on the same material, seeking merely a different conclusion. Conversely, where fresh evidence or subsequent circumstances emerge after the earlier order, requiring the Court to exercise a statutory power afresh, the exercise cannot be characterised as review. In such circumstances, the trial Court is not revisiting its earlier conclusion but is adjudicating upon an altogether different factual matrix. The present case clearly falls within the latter category.

17. The deposition of prosecution witnesses during trial constituted substantive evidence which was not available at the time when the earlier application was decided. Such evidence undoubtedly entitled the Court to

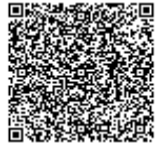


independently assess whether the charge already framed continued to represent the offences disclosed by the material available on record. The petitioners have been unable to demonstrate that the subsequent application was founded upon identical material which had already been considered and rejected by the learned Trial Court. Mere similarity in the relief sought cannot attract the bar against review if the foundation itself has undergone material change. Further, The contention also overlooks the true nature of proceedings under Section 216 Cr.P.C. The provision is not intended to confer any vested right upon either party. Rather, it preserves the continuing supervisory jurisdiction of the Court over the correctness of the charge until the pronouncement of judgement. Consequently, whenever subsequent evidence discloses commission of an offence different from or in addition to the one already charged, the Court not only possesses the jurisdiction but, where justice so demands, is duty-bound to exercise such power.

18. This Court is, therefore, of the considered opinion that the impugned order does not amount to review of the earlier order. Rather, it represents a fresh exercise of jurisdiction under Section 216 Cr.P.C. on the basis of evidence that subsequently surfaced during trial. Such exercise is fully consistent with the language of the statute and the settled principles governing criminal adjudication. Accordingly, the second contention raised on behalf of the petitioners also deserves to be rejected.

Issue No.3

19. The last submission advanced on behalf of the petitioners is that by virtue of the impugned order they, who were initially facing trial for comparatively lesser offences, have now been directed to face trial for the offence punishable under Section 302, 307, 148, 149 IPC and Section 25/27 of



Arms Act. According to learned counsel, such alteration of charge at the fag end of the trial causes serious prejudice to the defence and consequently vitiates the impugned order. The submission deserves to be examined in the light of the statutory safeguards incorporated by the legislature itself.

20. The scheme of Sections 216 and 217 Cr.P.C. leaves no manner of doubt that while the legislature has conferred an extremely wide power upon the Court to alter or add to any charge at any stage before pronouncement of judgment, it has simultaneously ensured that such alteration does not operate to the prejudice of either the accused or the prosecution. Section 216(3) Cr.P.C. specifically contemplates that where alteration or addition to the charge is not likely to prejudice the accused or the prosecutor in the conduct of the case, the Court may proceed with the trial as if the altered charge had originally been framed. However, where the Court is of the opinion that such alteration is likely to prejudice either side, Section 216(4) expressly empowers the Court either to direct a fresh trial or to adjourn the trial for such period as may be necessary in the interests of justice. The legislative concern regarding possible prejudice is further reinforced by Section 217 Cr.P.C., which confers a valuable statutory right upon both the prosecution as well as the accused to recall or re-summon any witness already examined and also to examine additional witnesses with reference to the altered charge. Thus, the Code itself provides a complete mechanism to neutralise every possible prejudice which may arise because of alteration of charge.

21. The concept of prejudice under criminal jurisprudence cannot be presumed merely because a graver offence has been added. Prejudice must be real, substantial and demonstrable. Unless the accused establishes that alteration of charge has deprived him of a fair opportunity of defending himself, mere



addition of a more serious offence cannot by itself render the order illegal. In the present case, although the petitioners were initially facing trial for lesser offences under Sections 323, 342, 506 IPC, by virtue of the impugned order they have also been charged under Section 302, 307, 148, 149 IPC and Section 25/27 of Arms Act and the proceedings have not culminated in conviction. The trial is still at a stage where the statutory safeguards contemplated under Sections 216 and 217 Cr.P.C. remain fully available.

22. This Court finds no reason to presume that the learned Trial Court would deny the petitioners the benefit of the safeguards expressly incorporated by Parliament. Rather, once the charge has been altered, it becomes obligatory upon the Trial Court to ensure that the accused is afforded an effective and meaningful opportunity to defend the altered charge. Such opportunity necessarily includes permitting the accused, if so desired, to:-

- (i) recall and further cross-examine any prosecution witness already examined;*
- (ii) seek summoning or examination of any additional witness whose evidence has become relevant because of the altered charge;*
- (iii) lead additional defence evidence, if considered necessary; and*
- (iv) seek such reasonable adjournment as may be required for effectively meeting the altered charge.*

23. These statutory protections adequately answer the grievance regarding alleged prejudice. The procedural law is intended to advance the cause of justice and not to thwart it. Consequently, where the Code itself provides sufficient safeguards to protect the accused against any possible prejudice, the



mere possibility of inconvenience cannot be elevated to a ground for setting aside an otherwise lawful order passed under Section 216 Cr.P.C.

24. The argument advanced on behalf of the petitioners proceeds upon the assumption that once a charge under Section 302, 307, 148, 149 IPC and Section 25/27 of Arms Act has been framed, the accused automatically suffers irreversible prejudice. Such an assumption overlooks the express language of Sections 216 and 217 Cr.P.C., which have been enacted precisely to balance two equally important considerations, namely, the duty of the Court to ensure that the correct charge is tried and the equally valuable right of the accused to have a fair opportunity of defence. Fair trial is the cornerstone of criminal jurisprudence. Equally settled, however, is the principle that fairness is not confined to the rights of the accused alone. Fairness extends equally to the victim, the prosecution and, above all, to the administration of criminal justice itself. The Court is duty-bound to maintain this delicate balance. The object of alteration of charge is not to surprise the accused but to ensure that the ultimate adjudication proceeds upon the correct legal foundation emerging from the evidence on record. Once adequate opportunity is afforded to the accused to meet the altered charge, no prejudice can legitimately be said to survive.

25. Accordingly, this Court is of the considered opinion that the apprehension expressed by the petitioners regarding prejudice is adequately taken care of by the statutory safeguards contained in Sections 216 and 217 Cr.P.C. However, to ensure complete fairness in the proceedings, it is considered appropriate to observe that if the petitioners move an application before the learned Trial Court seeking recall of any prosecution witness, summoning of any additional witness or permission to adduce further defence evidence on account of the altered charge, the same shall be considered strictly



in accordance with Sections 216 and 217 Cr.P.C., uninfluenced by any observation made in the present judgment.

26. Therefore, the alteration of charge by itself does not vitiate the trial unless actual failure of justice or demonstrable prejudice is established. Where adequate opportunity is afforded to the accused to meet the altered charge, the trial cannot be said to have been rendered illegal merely because an additional or graver charge has subsequently been framed. The statutory safeguard contained in Section 217 Cr.P.C. is a complete answer to the apprehension expressed by the petitioners. Once liberty is reserved in favour of the accused to recall prosecution witnesses, further cross-examine them, examine additional witnesses and adduce further defence evidence, the possibility of prejudice stands substantially neutralized.

27. Applying the aforesaid principles to the factual matrix of the present case, this Court finds no substance in the challenge laid to the impugned order. The record reveals that pursuant to the registration of FIR (Supra), investigation was entrusted to a Special Investigation Team constituted by the Director General of Police, Punjab. Upon completion of investigation, the final report under Section 173 Cr.P.C. was presented before the competent Court and charges were framed against the present petitioners for offences under Sections 323, 341, 342, 506, 148 and 149 IPC. The trial thereafter commenced and the prosecution proceeded to adduce its evidence.

28. It is evident from the record that respondent No.2 had questioned the adequacy of the charges already framed and sought alteration thereof under Section 216 Cr.P.C. However, the learned Trial Court, vide order dated 24.07.2024 (Annexure P-12), noticed that the correctness of the order framing charge was already engaging the attention of this Court in CRR No.481 of



2020. Consequently, instead of recording any final adjudication on the merits of the prayer for alteration of charge, the learned Trial Court considered it appropriate to defer its consideration till the decision of the revision pending before this Court. Thus, the said order cannot be construed as a final rejection of the prayer for alteration of charge on merits. The record further discloses that CRR No.481 of 2020 ultimately came to be withdrawn on 14.10.2024 (Annexure P-13). During this period, the prosecution had examined material witnesses including PW-1 Savinder Kaur, PW-2 Balwinder Singh, PW-3 Dr. Ranjit Singh Narula, PW-4 Shawinder Kaur, whose depositions became part of the evidence before the learned Trial Court. Thereafter, prosecution evidence was closed on 17.12.2024 (Annexure P-14). It was only after the withdrawal of the earlier revision petition and after the aforesaid evidence had come on record that the learned Trial Court examined the question of alteration of charge and, upon consideration of the material then available, passed the impugned order dated 09.01.2025 (Annexure P-16).

29. The above chronology completely answers the principal contention raised by the petitioners. The exercise undertaken by the learned Trial Court cannot be characterised as a review of any earlier judicial determination. Firstly, there was no final adjudication declining alteration of charge on merits. Secondly, and more importantly, by the time the impugned order came to be passed, the evidentiary record had materially expanded with the examination of several prosecution witnesses whose testimonies constituted substantive evidence before the Court. The subsequent consideration of the matter was, therefore, based upon an altogether different factual foundation than the one existing earlier. Consequently, the impugned exercise cannot, by any stretch of imagination, be construed as an impermissible review of an earlier judicial



determination but is clearly an exercise of jurisdiction founded upon subsequent developments during trial, which Section 216 Cr.P.C. expressly permits. Such exercise is fully consistent with the legislative mandate permitting alteration of charge "at any time before judgment is pronounced."

30. The contention that the learned Trial Court lacked jurisdiction to entertain the prayer merely because it had been brought to its notice by respondent No.2 is equally misconceived. A careful reading of the impugned order demonstrates that the learned Trial Court did not proceed on the premise that the complainant possessed any enforceable right to seek alteration of charge. Rather, the learned Court independently scrutinized the final report submitted by the Investigation team and evidence that had surfaced during trial and, upon its own judicial satisfaction, formed a prima facie opinion that the existing charge did not adequately reflect the offences disclosed from the material available on record. The application merely invited the attention of the Court to the subsequent evidence; the decision to alter the charge remained exclusively that of the Court. The ultimate decision unmistakably remained the result of the Court's independent judicial satisfaction, which alone is the requirement of Section 216 Cr.P.C.

31. Moreover, the plea of prejudice also deserves to be rejected in the factual backdrop of the case. Although an additional charge has been framed by virtue of the impugned order, it is an admitted position that the impugned order was passed before the commencement of defence evidence and prior to the pronouncement of judgment. Therefore, the statutory safeguards embodied in Sections 216(3), 216(4) and 217 Cr.P.C. continued to remain fully available to the petitioners. The record does not disclose that the petitioners have either been



denied an opportunity to seek recall of any prosecution witnesses, to further cross-examine the witnesses already examined or to lead additional defence evidence consequent upon the altered charge. In the absence of any demonstrable failure of justice, the allegation of prejudice remains merely an apprehension and not a legally sustainable ground to invalidate the exercise of jurisdiction under Section 216 Cr.P.C.

32. Viewed holistically, the sequence of events unmistakably establishes that the learned Trial Court exercised its jurisdiction only after the impediment arising from the pendency of the earlier revision petition had ceased to exist, after material evidence had been recorded during trial and after independently assessing the evidentiary record then available. Therefore, this Court is considered opinion that the impugned order does not suffer from patent illegality, jurisdictional error,, perversity or material irregularity in the impugned order dated 09.01.2025 warranting interference warranting interference in exercise of revisional jurisdiction under Sections 397 and 401 Cr.P.C. The learned Trial court has exercised the jurisdiction vested in it under Section 216 Cr.P.C. in accordance with the settled principles of law and this court finds no justiciable ground to take a different view.

34. Accordingly, the present revision petition, being devoid of the merits, is **dismissed**.

35. Pending miscellaneous application(s), if any, shall also stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

22.07.2026

S. Pathania

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>