



HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 38347 of 2025

Reserved

Amar Singh and 14 others

.....Applicant(s)

Versus

State of U.P. and 2 others

.....Opposite Party(s)

Counsel for Applicant(s)	: Bharat Singh
Counsel for Opposite Party(s)	: Arvind Kumar Mishra, Devendra Mishra, G.A., Pradeep Kumar, Saurabh Mishra

Alongwith APPLICATION U/S 528 BNSS No. - 27193 of 2025

Nem Singh and another

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Ritesh Singh, Saurabh Mishra, Suresh Singh
Counsel for Opposite Party(s)	: Pradeep Kumar, Arvind Kumar Mishra, Devendra Mishra, G.A.

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. Heard Shri Bharat Singh, learned Counsel for the applicants, Shri Arvind Kumar Mishra, learned Counsel for opposite party no.2 and Shri

Rajiv Pandey, learned A.G.A for the State and perused the material on record.

2. These applications under Section 528 Bhartiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') has been filed by the applicants to quash the entire proceeding and cognizance/summoning order dated 24.06.2025 passed by Special Judge Dacoity Affected Area, Budaun in Sessions Trial No. 42 of 2006 (State Vs. Amar Singh and Others), arising out of Case Crime No. 114 of 2005, under Section- 396 IPC, Police Station- Dhanari, District- Budaun.

3. By the impugned order the trial court has allowed the application dated 27.05.2025 of the prosecution and has ordered to frame additional charge against the applicants and other co-accused under Section 396 IPC.

4. Brief facts of the prosecution case are that opposite party no. 2 Urman Singh lodged an FIR on 11.11.2005 against named accused and others under Sections 395 and 397 IPC, with the allegation that the named accused came in the market armed with license and illegal weapons, *farsa* and *lathis* and committed loot with the shopkeepers and others, the first informant and his brothers also committed *maarpeet* as a result Ram Rahees Rameshwari, Bhanu Prakash sustained severe injuries and fractures. The miscreants also filed to deter the public to come forward and one of the shot by the miscreants hit another miscreant Harveer, as a result he died. The accused also looted the motorcycle and money from the shopkeepers and ransacked the entire market, which used to open on Wednesday's and Sunday's. Upon this information the FIR was lodged and after investigation charge-sheet was filed under Sections- 395 and 397 IPC. The accused appeared before the court and charges were framed against them to which they denied. The prosecution examined witnesses and thereafter, the application, dated 27.05.2025, was moved for framing of additional charge under Section 396 IPC. The above application was allowed by the impugned order and the case was

fixed for framing of charge under Section- 396 IPC against the applicants and other accused.

5. It is submitted by learned Counsel for the applicants that P.W. 1 Urman did not support the prosecution case and has been declared hostile. P.W.3 Ram Rahees has moved this application for framing of charge under additional Section 396 IPC. Objection was filed against it. It is stated that all the witnesses are the interested witnesses and they are accused in the case lodged by applicant Amar Singh, under Section 302 IPC. The trial is pending since last 20 years and seven witnesses have been examined by the prosecution and the complainant has tried to delay the proceeding of the case. The witnesses who have appeared in the court have not supported the prosecution story. From the evidence, offence under Section 396 IPC is not made out, and therefore, the impugned order is liable to be quashed.

6. Per contra, learned Counsel for opposite no.3 and learned A.G.A. on behalf of the State have opposed and submitted that from the evidence collected and also from the statement recorded before the court, offence under Section 396 IPC is made out against the applicants. It is also submitted that there is a cross-case pending with regard to the same incident against Ram Rahees and others. It is also submitted that in the same incident, Harveer died due to firearm injuries, therefore, there is sufficient evidence to frame charge under Section 396 IPC against the applicants and other co-accused and it would be seen only at the time of final disposal of this case whether the deceased sustained firearm injuries from the side of applicants or from opposite party. Therefore, this application has no force and is liable to be dismissed.

7. In view of the submissions of learned Counsel for both the parties and upon perusal of record, it is clear that upon application moved on behalf of prosecution side, the impugned order has been passed for framing of additional charge under Section 396 IPC, against the applicants and other co-accused, at the fag end of the prosecution evidence. The material fact is that there is a cross-case with regard to the

same incident which was lodged by applicant no.1 under Section 302 IPC against P.W.3 Ram Rahees and others.

8. The impugned order has been passed under Section 216 Cr.P.C. (corresponding Section 239 BNSS) which provides that any court may alter or add any charge at any time before the judgment is pronounced.

9. Therefore, in view of the above provision, the trial court was competent to add or alter the charge before judgment is pronounced. It is not in dispute, that the application was moved on behalf of the prosecution after the prosecution witnesses were examined. The submissions on behalf of the applicants is that any party to a case whether it is a prosecution side or the accused side, have no right to move such an application under Section 216 Cr.P.C. It is the sole discretion of the court that if it deems sufficient, it can add or alter charge at any stage of the case. It is also argued that the above provision is enabling in nature and thus, does not give any right to any party to move application under this section to the court to invoke such power, as contained in the section.

10. On the other hand the learned Counsel for opposite party no.2 has opposed and submitted that the prosecution was competent to file such an application.

11. In view of submissions made by both the parties and upon a perusal of record, it appears that this revision has been filed against order dated 10.06.2026 by which, the application of the informant filed under Section 216 Cr.P.C has been rejected. Section 216 Cr.P.C. enables the court to add or alter any charge at any time before the judgment is pronounced. With regard to the ambit and scope of Section 216 Cr.P.C., the Hon'ble Supreme Court in the case of **Thakur Ram and others Vs. State of Bihar, AIR (1966) SC 911**, has held 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 provision. It is also held that no party can seek such addition or alteration 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 trial. It is to be noted that the power of invocation of Section 216 Cr.P.C. is exclusively confined with the court as an enabling power for the purpose of alteration or addition of any charge at any time before the pronouncement of judgment. Thus, there is no right in any party, neither the *de facto* complainant nor accused nor prosecution to seek such addition or alteration by filing an application as a matter of right. In such circumstances, when the application preferred by the prosecution, itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass order under Section 216 Cr.P.C. Therefore, the whole proceeding initiated at the instance of prosecution was not maintainable and it was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court. It is to be clarified that if there was an omission in the framing of charge and it comes to the knowledge of the court trying to offence, the power is always vested in the court, as proved 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.

12. In another decision of Hon'ble Supreme Court in **Nallapareddy Sridhar Reddy Vs. State of A.P., (2020) 12 SCC 467**, the scope of powers under Section 216 Cr.P.C. was elaborated. It was stated that the power under this provision to alter or change 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. If the court is of the opinion that there was 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.

13. In view of the above legal position, if we look into the present case, then the application preferred by the revisionist itself was not maintainable before the Trial Court and it was not incumbent upon the Trial Court to pass an order under Section 216 Cr.P.C. If such a course to be adopted by the party 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. It is only the court concerned, which has exclusive power under Section 216 Cr.P.C. to add or alter charge at any time before the judgment is pronounced and there is no right in any party to seek for addition or alteration by filing any application as a matter of right.

14. In view of the above, it is clear that the prosecution was not competent to file application under Section 216 Cr.P.C. for addition of section, therefore, the application filed on behalf of the prosecution was not maintainable. A perusal of the impugned order shows that the court proceeded to frame charge under Section 396 IPC only on the basis of the application filed on behalf of the prosecution. It does not disclose that the court on its own, after perusing the evidence, reached at the conclusion to frame additional charge against the applicants and other co-accused. Therefore, in view of the above, the impugned order suffers from material irregularity and illegality and as the application on behalf of the prosecution was not maintainable, therefore, the impugned order for framing additional charge under Section 396 IPC is not sustainable in the eye of law. So far as the continuation of proceeding is concerned, there does not seem any reason to quash the same.

15. In view of the above, the applications under Section 528 B.N.S.S. No.38347 of 2025 and Application under Section 528 B.N.S.S. No.27193 of 2025, are **partly allowed** and the impugned order dated 24.06.2025 for framing additional charge under Section 396 IPC, in Sessions Trial No. 42 of 2006 (State Vs. Amar Singh and Others), arising out of Case Crime No.114 of 2005, under Section- 396 IPC, Police Station- Dhanari, District- Budaun, pending before the Chief Judicial Magistrate, Budaun is, hereby, is **set aside**.

(Sanjiv Kumar,J.)

August 13, 2026
AdityaG