



2026:AHC:24921

[A.F.R.]

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 348 of 2026

Siraj Ali Alias Babu

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Irfan Chaudhary, Srijan Pandey
Counsel for Respondent(s)	:	G.A.

Court No. - 51

HON'BLE ANIL KUMAR-X, J.

1. Heard Sri Srijan Pandey, learned counsel for the appellant, and Sri R.K. Singh, learned AGA for the State.

2. This criminal appeal under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been preferred by the appellant against the order dated 18.11.2025 passed by the learned Additional Sessions Judge, Court No.2/Special Court (SC/ST Act), Farrukhabad, allowing the application u/s 216 Cr.P.C. preferred on behalf of the State in Special Sessions Trial No.44 of 2016 arising out of Case Crime No.436 of 2013, at Police Station Kayamganj, District Farrukhabad.

3. Learned counsel for the appellant has submitted that the order of the learned Trial Court in allowing the application under Section 216 Cr.P.C. filed by the prosecution is illegal. He further submitted that the Hon'ble Supreme Court in *P. Kartikalakshmi Vs. Ganesh and Ors., (2017) 3 SCC 347* held that no party, neither the 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 of the Code of Criminal Procedure. The Hon'ble Supreme Court also observed that if such a course is adopted by the parties, then it will be well nigh impossible for the Criminal Court to conclude its proceedings and the concept of speedy trial will get jeopardized.

4. He submitted that the charges in this case were framed against the appellant on 24.11.2023 under Sections 323, 324, 506, 506 IPC and Sections 3(1)(10), 3(1)(Da) and 3(1)(Dha) of the SC/ST Act. However, an application under Section 216 Cr.P.C. was moved by the prosecution after partial

examination of PW-1. There was no occasion for the learned Trial Court to allow the application filed on behalf of the prosecution.

5. It was further submitted that initially the FIR against the appellant and others was lodged under Section 307 IPC, wherein the respondent/informant alleged that co-accused Waseem Ali Khan fired upon respondent no.2, Devki Nandan alias Pintu. Respondent no.2, Devki Nandan alias Pintu, was brought before Dr. Rajeev Kumar at Samudayik Swasthya Kendra, Kayamganj, District Farrukhabad, for medical examination. The doctor found a lacerated wound measuring 0.4×0.4 cm on the right elbow and also advised an X-ray examination. The said doctor opined that the nature of the injury did not suggest that it was caused by a firearm. On the basis of the X-ray report, the doctor also observed that it appeared that two pellets were placed on the side of the injury in order to establish a firearm injury.

6. The Investigating Officer also concluded during investigation that the injury report suggested that all injuries were caused by hard and blunt objects. Hence, there was no indication to suggest that the injured sustained any firearm injury. The Investigating Officer further mentioned that the criminal prosecution was initiated due to prior enmity and that there was no motive on the part of the accused persons to cause injury to the injured.

7. Learned counsel for the appellant submitted that the appellant-accused was prejudiced by the step taken by the learned Trial Court in allowing the application under Section 216 Cr.P.C. after partial cross-examination of PW-1. The counsel for the accused had prepared himself to cross-examine the prosecution witness on the basis of the charge framed under Section 324 IPC, and such cross-examination was also partially completed. If the application under Section 216 Cr.P.C. is allowed to remain in force, then the right to effectively cross-examine the prosecution witness with respect to the allegation under Section 307 IPC would never occur. Therefore, the impugned order allowing the application under Section 216 Cr.P.C. at the behest of the prosecution is perverse and illegal, and is liable to be set aside.

8. Per contra, Sri R.K. Singh, learned AGA for the State, submitted that the prosecution story from the very inception was that the appellant caught hold of the injured and co-accused Waseem Ali Khan fired upon him. The X-ray report of the injured also indicates the presence of two pellets on the injured side. Therefore, the impugned order altering the charge from Section 324 to Section 307 IPC does not suffer from any illegality.

9. Heard learned counsel for the parties and perused the impugned order.

10 The FIR in this case was lodged in the year 2013, wherein the

informant/injured, Devki Nandan alias Pintu, stated that he was caught hold of by the appellant, accused Waseem Ali Khan, and one unknown person on 21.12.2013. They assaulted and abused him, and accused Waseem Ali Khan fired upon him, as a result of which the bullet hit his elbow. The X-ray report indicates the presence of two pellets on the injured side.

11. It would be pertinent to mention that initially the charges against the appellant were framed under Section 324 IPC. After partial examination of PW-1, an application under Section 216 Cr.P.C. was filed by the prosecution, which was allowed by the learned Trial Court vide its order dated 18.11.2025. In its order, the learned Trial Court also discussed the judgment of **P. Kartikalakshmi (supra)**, relied upon by the appellant. The learned Trial Court held that the judgment of **P. Kartikalakshmi (supra)** only prohibits the contesting parties, including the prosecution, from filing an application under Section 216 Cr.P.C., but does not prohibit the Court from passing orders *suo motu* under Section 216 Cr.P.C. Therefore, the Supreme Court has not restricted a Trial Court from exercising its discretion under Section 216 Cr.P.C.

12. Apart from this, the learned Trial Court also discussed the injury report of the injured/informant, Devki Nandan alias Pintu, along with the X-ray report. The said X-ray report suggests the presence of two pellets on the injured side as well as injury to the bone on that side. The Trial Court also relied upon the statement of PW-1 recorded during trial, wherein the witness stated that he was fired upon by the accused persons, causing injuries to his right elbow.

13. The finding recorded by the learned Trial Court to alter the charge from Section 324 to Section 307 IPC does not suffer from any infirmity. The evidence available on record is sufficient to establish that the allegations and the evidence collected during investigation and trial are consistent on the point that the appellant, along with other accused, in furtherance of their common intention, fired upon the injured, resulting in a gunshot injury to the right elbow of the injured. The conclusion drawn by the doctor and I.O. in relation to the injury sustained by the injured will not prevail over the statement of injured witnesses, particularly at the stage of framing charges. It is trite law that charges can be framed if there exists strong suspicion. Hence, the learned Trial Court did not commit any error in altering the charge from Section 324 to 307 IPC. This Court is of the view that had the Court not altered the charge, that would have been prejudicial to the prosecution.

14. Learned counsel for the appellant has very much emphasized the

judgment of the Hon'ble Supreme Court in ***P. Kartikalakshmi (supra)***. It will be appropriate to refer to the relevant paragraph of the judgment, which reads as follows:-

"We were taken through Sections 221 & 222 of the Cr.P.C. in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. 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 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."

15. If the observation of the Hon'ble Court is read carefully, it will appear that it did not prohibit the Trial Court from entertaining applications under Section 216 CrPC only because the application was filed by either party or the prosecutor. The Supreme Court, in this paragraph, only wanted to explain how Section 216 CrPC works. It clarified that the power to add or change a charge belongs only to the Court. Section 216 is an enabling provision, which means the Court can use this power whenever it feels necessary before judgment. The Court did not say that an application filed by a complainant, accused, or prosecutor is not maintainable. What it clearly said is that no party has a legal right to demand addition or alteration of charges. A party cannot insist that charges must be changed simply because it has filed an application. The real concern of the Supreme Court was that if parties are allowed to repeatedly seek change of charges as a matter of right, criminal trials will never end and the right to a speedy trial will be defeated. Therefore, the restriction is on the right of the parties, not on the power of the Court. It becomes manifest from a careful reading of the judgment that even if an application is filed, the Court is free to consider it and pass an order under Section 216 CrPC, provided the Court applies its own mind and finds that change of charge is required. The application only brings facts to the notice of the Court; the final decision must always be taken by the Court itself.

16. In order to bring home the above point, there are some clear examples from the Cr.P.C. where power is primarily with the Court (often suo motu),

yet parties are not barred from filing applications. Here are some examples:-

(i) Section 319 CrPC – Summoning Additional Accused: Court can summon a person not named as accused suo motu if evidence shows his involvement in the offence. But there is no bar for complainants, accused, or prosecution to file an application under Section 319. The same proposition has been laid down by the Hon'ble Supreme Court in *Guriya @ Tabassum Tauquir and Others v. State of Bihar and Another*, AIR 2008 SC 95, wherein it was held as under:

"14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone, including an accused already before it, if it is satisfied that any person other than the accused has committed an offence and he is to be tried together with the accused."

(ii) Section 311 CrPC – Power to Summon or Recall Witness: Court may summon, recall, or re-examine any witness at any stage on its own if necessary for justice. There is no restriction for either prosecution or accused to move an application. The same proposition has been laid down by the Hon'ble Supreme Court in *Sethuraman vs Rajamanikam*, (2009) 5 S C C 153, wherein it was held as under:

"4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C."

(iii) Section 156(3) CrPC – Power of Magistrate to direct Investigation: Magistrate is empowered to direct investigation by police on his own satisfaction. But usually he exercises his power only after an application is submitted by a complainant.

(iv) Section 227 / 239 CrPC – Discharge of Accused: Court is empowered to discharge accused if no sufficient ground exists. But the said power is usually invoked by Courts after the accused files a discharge application before it.

17. From the foregoing discussion, it becomes evident that power to pass order upon any application rests with the Court. But if any application is filed by any party, it is only meant to place facts before the Court. It is also true that no party has a vested right to demand an order upon any application moved by it. The Court alone is empowered to take a decision on any application after applying its own independent mind. In simple terms, the law gives power to the Court, but filing an application does not give any

right to the parties. Any party who files any application only draws the Court's attention, and the final decision always depends on the Court's own satisfaction. Hence, if the Court passes an order after independently applying its mind, merely because such order was passed on an application filed by a party and not suo motu, the same cannot be set aside on that ground alone.

18. In view of the aforesaid facts and legal position, this Court finds no illegality or infirmity in the impugned order dated 18.11.2025 passed by the learned Additional Sessions Judge/Special Court (SC/ST Act), Farrukhabad, allowing the application under Section 216 Cr.P.C. and altering the charge. The learned Trial Court has exercised its jurisdiction after due application of mind and on the basis of material available on record.

19. Accordingly, the present criminal appeal lacks merit and is, hereby, dismissed. The impugned order is affirmed.

February 3, 2026
Mukesh

(Anil Kumar-X,J.)