(emphasis supplied by us)

30. Now coming to the issue of absence of any injury on the person of prosecutrix and its effect, we would like to refer to a judgment rendered by Hon'ble the Supreme Court in **Sheikh Zakir vs. State of Bihar3** wherein Hon'ble the Supreme Court has held that the absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved. In this situation the non-production of a medical report would not be of much consequence if the other evidence on record is believable.

31. In the aforesaid background, we do not find any factual or legal infirmity in the judgment impugned, which does not suffer from any material irregularity also.

32. The appeal, which is bereft of merit, stands **dismissed.**

33. As the appellants have already served out the sentence awarded to them and the fine imposed has already been deposited by them, therefore, in such a situation, they are not required to surrender

34. Let a copy of this judgment be sent to learned trial court concerned alongwith trial court record for its information and necessary compliance forthwith.

(2025) 5 ILRA 813
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.05.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Criminal Appeal No. 1014 of 2025

Radhey Lal ...Appellant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Appellant:
Mohammad Alam

Counsel for the Opposite Parties:
G.A.

A. Criminal Law - Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sectionss 147 & 323 - The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(X) -BNSS,2023-Section 239 (216 Crpc)-The appellant challenged the order dated 19.11.2024 passed by special judge, SC/ST-The challenge was specifically against the dismissal of his application u/s 239 of BNSS (formerly section 216 Crpc) seeking alteration of charges framed u/s 3(1)(X) of the SC/ST Act- -The appellant filed an application for alteration of charges under SC/ST Act as he belongs to Schedule Caste and section 3(1)X) which applies only to non – SC/ST persons, cannot be invoked against him-The Special Judge SC/ST rejected the application-Held-Only courts have the authority to alter charges under BNSS not the parties-SC/ST Act provisions cannot be invoked against SC/ST persons, and courts must rectify such legal errors even if brought up by the accused-The trial court is at liberty to suo motu consider the application and if convinced, correct the erroneous charges.(Para 1 to 26)

The appeal was dismissed. (E-6)

List of Cases cited:

1. Anant Prakash Sinha Vs St. of Har.(2016) 6 SCC 105

2. P. Kartikalakshmi Vs Sri Ganesh & anr. (2017) 3 SCC 347

3. Dr. Nallapareddy Sridhar Reddy Vs St. of A.P. (2020) 12 SCC 467

4. K. Ravi Vs St. of T.N. & anr. (2024) SCC OnLine SC 2283

5. Bharat Parikh Vs CBI & anr. (2008) 10 SCC 109

6. Ratilal Bhanji Mithani Vs St. of Mah. & ors. (1979) SCC Cri. 405

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mohammad Alam, learned counsel for the appellant and Mr. Nirmal Kumar Pandey and Sri Mayank Sinha learned A.G.A. for the State.

2. The present appeal is directed against the order dated 19.11.2024 passed by Special Judge, SC/ST Act, Lucknow in Session Case No.858 of 2015 (State Vs. Radhey Lal and another) arising out of Case Crime No.99 of 2010, under Sections 147, 323, I.P.C. and Section 3(1)(X) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act 1989'), Police Station G.R.P. Charbagh, District Lucknow whereby the application of the appellant under Section 239 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS') (Section 216 Criminal Procedure Code) has been dismissed.

3. The factual matrix of the prosecution story is that an F.I.R. was lodged on 20.3.2010 in Police Station G.R.P. Charbagh by the informant Avinash Kumar Gautam, alleging that the informant while posting as Senior Ticket Examiner, was leading the duty of open squad on 20.3.2010 who came from Train No.2232 on LKO/STN and was checking tickets. After completing duty at about 10:15, he went for urination in toilet of general compartment of Train No.2232 and when he was coming back, the appellant, namely, Radhey Lal, who was sitting beside the door while stretching his legs declined him for exit and had pushed him and once he resisted, the appellant became more annoyed and scuffled with him and again pushed him down at platform no.3 and when he called O.N. Dwivedi, STE/LKO from the window, he tried to put the things normal and thereafter, he escaped himself and informed the incident to his senior on his mobile and he was instructed to lodge the F.I.R. In between co-accused Pradeep Khanna entered into the room along with 60-80 other unknown persons in aggressive state of mind and asked that who is Avinash Gupta and as soon as he told his name, on the instigation of Pradeep Khanna, he was cornered and several persons started beating him, upon which, intervention was made by Narendra Pratap Singh, Senior Ticket Collector, Mrs. Meera Mishra, Mrs. Deepa Joshi, Pradeep Dixit, Rajnish Pandey, Sunil Kumar Bajpayee and they tried to keep the things cool down but the crowd became more aggressive and the persons named above, who came for rescue of him, were also beaten by Pradeep Khanna and unknown persons, who were in the form of crowd and they also outraged the modesty of lady colleagues. It is also alleged that Senior Ticket Examiner ran to the G.R.P. office and intimated the incident and thereafter, the Sub Inspector R.P.F. along with one Mr. Dixit came to the Ticket Collector office and anyhow they took the informant out from the T.C. office, even thereafter, about more than hundred persons remained over there for 2 to 3 hours, as a result, the applicant was panic and against and thereafter informing the higher officers, he lodged the present F.I.R.

4. The matter was investigated and the charge sheet was filed on 14.7.2010 and the Magistrate took cognizance on 7.9.2010. The charge sheet, against the appellant, is filed under Section 147/323 I.P.C. read with Section 3(1)(X) SC/ST Act. The case was committed on 30.10.2015 and was registered before the District Sessions Court, Lucknow.

5. It is an admitted fact that after committal of the case to the Sessions Court, the charges were framed under Section 323 read with Section 34 I.P.C. and Section 3(1)(X) of the SC/ST Act, vide order dated 30.11.2015, in Sessions Trial No.0000858 of 2015, State Vs. Radhey Lal and others. The order dated 30.11.2015 is reproduced as under:-

"आरोप

मै, एस0ए0एच0 रिजवी, विशेष न्यायाधीश, एस0सी0/एस0टी0एक्ट लखनऊ एतद्द्वारा आप **1. राधे लाल व 2. प्रदीप खन्ना** को निम्नलिखित आरोप से आरोपित करता हूँ:–

1. यह कि दिनांक 20.08.2010 को समय करीब 10.30 बजे दिन स्थान टी0सी0 आफिस, प्लेटफार्म नं0 1. रेलवे स्टेशन चारबाग थाना क्षेत्र जी0आर0पी0 जिला लखनऊ में आप ने अपने अन्य साथियों के साथ मिलकर सामान्य आशय की पूर्ति में वादी मुकदमा अवनीश कुमार गौतम जो अनुसूचित जाति का सदस्य है, को मारने पीटने के आशय से विधि विरूद्व मजमा नाजायज कायम किया, इस प्रकार से उसके द्वारा आप लोगो ने एक ऐसा अपराध कारित किया जो कि भा0दं0सं0 की धारा 147 के अधीन दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

2. यह कि उपरोक्त दिनांक समय एवं स्थान पर आप लोगो ने अपने सामान्य आशय की पूर्ति में वादी मुकदमा अवनीश कुमार गौतम को अपने अन्य साथियो के साथ मिलकर लात घूसों से मारपीट कर साधारण प्रकृति की चोटे पहुंचायी और इस प्रकार आप लोगो ने उसके द्वारा एक ऐसा अपराध कारित किया जो कि भा0द0सं0 की धारा 323 सपठित धारा 34 के अन्तर्गत दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

3. यह कि उपरोक्त दिनांक, समय एवं स्थान पर आप लोगो ने वादी मुकदमा अवनीश कुमार गौतम को यह जानते हुए कि वह अनुसूचित जाति का सदस्य है, को विधि विरूद्व मजमा नाजायज कायम कर मारपीट कर साधारण चोटे पहुंचायी व जाति सूचक शब्दो से अपमानित किया। इस प्रकार से उसके द्वारा आप लोगो ने एक ऐसा अपराध कारित किया जो कि धारा 3(1) 10 एस0सी0/एस0टी0 एक्ट के अधीन दंडनीय अपराध है और इस न्यायालय के प्रंसज्ञान में है।

एतद्द्वारा आपको निर्देशित किया जाता है कि उपरोक्त आरोप हेतु आप लोगो का विचारण इस न्यायालय द्वारा किया जायेगा।"

6. It is the case of the appellant that in Parcha No. 18 prepared by the Investigating Officer, dated 15.5.2010, the statement of the accused-appellant was recorded but the caste of the accused-appellant is not mentioned while the accused-appellant had told the Investigating Officer that he belongs to sub caste 'Paasi' of the Scheduled Caste and was working as class IV, in the railway department.

Further once the charge was framed under Section 3(1) (X) SC/ST Act, the accused-appellant moved an application under Section 239 BNSS on 19.1.2024 wherein it is stated that while submitting application for bail on 2.4.2010 before the A.C.J.M. (N.R.), Lucknow, he has also mentioned his caste and further in para 8 of the application, it was prayed that the applicant belongs to scheduled caste and therefore, charge under Section 3(1)(X) of SC/ST Act cannot be framed against him and therefore, the charges of aforesaid offence may be altered/deleted.

7. The provision of Section 3(1)(X) SC/ST Act is reproduced as under:-

"3 (1) (X). intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

8. From perusal of the aforesaid provision, it transpires that the punishment for offences of atrocities against Scheduled Caste and Scheduled Tribes prescribed under Section 3 of the Act, 1989, starts with the wordings, 'Whoever not being a member of a Scheduled Caste or Scheduled Tribe...' shall be punishable for imprisonment which shall not be lesser than six months but may extend to five years with fine. This provision is in clarity on its own that this offence under the aforesaid provision would be chargeable against a person who is not a member of Scheduled Caste or Scheduled Tribe.

9. The accused-appellant has also appended a copy of the caste certificate wherein he has been shown of sub caste 'Paasi' of Schedulced Caste.

10. Apparently, the application of the accused appellant is not happily worded though he is aggrieved with the order of framing of charges against him under Section 3(1) (X) of SC/ST Act. The application was moved under Section 239 of BNSS (216 Cr.P.C.). The provision of Section 239 of BNSS reads as under:-

"239. 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."

11. Undoubtedly, the provision under Section 239 of BNSS provides that the Court has exhaustive and wide ranging power to change or alter any charge whereas framing of charges is very crucial step in criminal proceedings as this subserves the purpose like the information to the accused for specific offence for which he is charged along with details of allegation so that he would be aware of the nature of the accusation. Further, it is the basic foundation for a trial to proceed and in that way, the accused can come with his defence and, thus, in such process, he is provided wide and fair chance to defend him during the course of trial.

12. The moot question enunciated in the present case is that whether the

power under Section 239 BNSS (216 Cr.P.C.) is an exclusive power attributed to the court or there is any right to any party to seek addition or alteration by filing any application as a matter of right. From a bare reading of Section 239 BNSS, it is apparent that the provision starts from the wordings 'any court may alter or add to any charge', thus, it is abundantly clear that no party is given any right to seek addition or alteration by moving any application. Time and again, the Apex Court has elaborated this issue.

13. I may refer the case of **Anant Prakash Sinha Vs. State of Haryana** reported in **(2016) 6 SCC 105,** wherein Hon'ble Apex Court has held that a court can change or alter charge if there is a defect or something is left out. Relevant paras 21 & 22 of the Judgment aforesaid are reproduced as under:-

"21. Presently to the second aspect. The submission of Mr Sharan is that the learned Magistrate could not have entertained the application preferred by the informant, for such an application is incompetent because it has to be filed by the Public Prosecutor. In this regard, he has laid stress on the decision in Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467 ; 1999 (Cri) 1277. In the said case, the grievance of the appellant was that the counsel engaged by him was not allowed by the High Court to conduct the prosecution in spite of obtaining a consent from the Public Prosecutor concerned. The trial court had passed an order to the extent that the advocate engaged by the informant shall conduct the case under the supervision, guidance and control of the Public Prosecutor. He had further directed that the Public Prosecutor shall retain with himself the control over the proceedings. The said order was challenged before the High Court and the learned Single Judge allowing the revision had directed that the lawyer appointed by the complainant or private person shall act under the directions from the Public Prosecutor and may with the permission of the court submit written arguments after evidence is closed and the Public Prosecutor in charge of the case shall conduct the prosecution. This Court referred to Sections 301. 302(2), 225 CrPC and various other provisions and came to hold as follows: (Shiv Kumar case, SCC p. 472, paras 13 and 14)

"13. From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted.

That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor

14. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact that he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate f in Section 225 of the Code a dead letter."

22. Being of this view, this Court upheld the order passed by the High Court. The said decision in Shiv Kumar case23 is, in our opinion, is distinguishable on facts. The instant case does not pertain to trial or any area by which a private lawyer takes control of the proceedings. As is evident, an application was filed by the informant to add a charge under Section 406 IPC as there were allegations against the husband about the criminal breach of trust as far as her stridhan is concerned. It was, in a way, bringing to the notice of the learned Magistrate about the defect in framing of the charge. The court could have done it suo motu. In such a situation, we do not find any fault on the part of the learned Magistrate in entertaining the said application. It may be stated that the learned Magistrate has referred to the materials and recorded his prima facie satisfaction. There is no error in the said prima facie view. We also do a not perceive any error in the revisional order by which the revisional court has set aside the charge framed against the mother-in-law. Accordingly, we affirm the order of the High Court in expressing its disinclination to interfere with the order passed in revision. We may clarify that the entire scrutiny is only for the purpose of framing of charge and nothing else. The learned Magistrate will proceed with the trial and decide the matter as per the evidence brought on record and shall not be influenced by any observations made as the same have to be restricted for the purpose of testing the legal defensibility of the impugned order."

14. The Apex Court in the case **of P. Kartikalakshmi Vs. Sri Ganesh & another** reported in **(2017) 3 SCC 347,** has held in paras 6, 7 & 8 of the Judgement, which read as under:-

"6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. 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 trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC 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 to 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.

7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. 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 CrPC 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 CrPC. 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 jeopardised.

8. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available under Section 216 CrPC. To that extent, having clarified the legal position, we make it clear that the whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court. As rightly pointed g out by the learned Senior Counsel for Respondent 1, such a course adopted by the appellant and entertained by the court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the court below."

15. The test has very categorically been provided that charge must be founded on material available on record and if subsequent evidence comes on record, after the charge is framed, the same can be altered or changed and in fact it is obligatory on the part of the court to see that no prejudice is caused to the accused so that he could have a fair trial. In fact, it is trite that the purpose of framing charges or to get know the formal accusation of an individual regarding the offence committed by him and further, even the provisions of contents of the charge has also been prescribed under Section 234 of BNSS, so that the accused could know the specific charges against him to defend himself, appropriately.

16. Further Hon'ble Supreme Court, in the case of **Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh reported in 2020 (12) SCC 467,**

has held in para 16 of the Judgement as under:-

"16. Section 216 appears in Chapter XVII CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase "add to any charge" in sub-section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done "at any time before judgment is pronounced". Sub-section (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the prosecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial."

17. It has been held that Section 239 BNSS is an exclusive power of the court to alter or change any charge and further a mode of test regarding addition or alteration of charge is also clarified therein that if there is a material brought on records, have a direct link or nexus with the ingredients of the alleged offence, the same can be taken for consideration regarding additional or alteration of charges.

18. In the case of **K.Ravi Vs. State of Tamil Nadu and another,** reported in **2024 SCC OnLine SC 2283**, it has held in para 7 of the Judgment, as under:-

"7. From the above conspectus of events, it clearly transpires that the Respondent No. 2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr. P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No. 2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr. P.C. The High Court in its unusual impugned order. discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. The High Court utterly failed to realise that the order impugned against it was the order passed by the Sessions Court rejecting the application of the Respondent No. 2 seeking modification of the charge framed against him under Section 216 of Cr. P.C., and the said order was an order of interlocutory in nature."

19. It is said in so many words that filing of any application by any of the parties for addition or alteration cannot be claimed as a matter of right as the power vested in the court for the same is exclusive.

20. As far as the present case is concerned, prima facie, it seems that the learned trial court has framed the charge under Section 3(1)(X) SC/ST Act including other offences under I.P.C., against the appellant whereas the appellant himself belongs to the SC/ST caste. Bare reading of Section 3 of the SC/ST Act, it is apparent on its face that the same cannot be charged on a person of the SC/ST caste.

21. In fact, on 19.1.2024, an application was moved by the appellant while praying that charges framed against him under the SC/ST Act should be struck off. Learned Trial Court considering the application, passed the order on 19.11.2024 and rejected the application on the premises that since the charges have already been framed by his predecessor under the SC/ST Act and, therefore, at the subsequent stage, the same cannot be altered/changed by him, whereas it has also been noted that the appellant is of scheduled caste. In support of the aforesaid finding, he considered the law laid down in the cases of **Bharat Parikh Vs. Central Bureau of Investigation and another** reported in (**2008) 10 SCC 109** and **Ratilal Bhanji Mithani Vs. State Maharashtra and others**, reported in **1979 SCC (Cri) 405**. The ratio of the Judgments in the aforesaid cases seems to be on different factual matrix as the ratio which has been taken into consideration by the learned trial court is that once charge has been framed the accused cannot be discharged under Section 216 Cr.P.C. In fact, the application of the appellant was not with respect to discharge rather it was for dropping/striking off of the charges framed by the learned trial court under SC/ST Act.

22. Further, the learned trial court applied its mind as if the order of framing of charges is to be recalled whereas it is apparent from the bare reading of Section 239 BNSS (216 Cr.P.C.) that the same is with respect to the alteration in the charges. Both the above Judgments, which are cited in the order impugned dated 9.11.2024 seems to be on different factual matrix. This Court is aware that if there is slight difference in the factual matrix of the case, the ratio of the said Judgement would not apply. In the present matter, the issue is with regard to the alteration of charges and it is trite that the charges can be altered at any stage prior to pronouncement of Judgment.

23. At this stage, the question crops up that if there is omission or for any reason whatsoever the alteration needed and it does not come into the knowledge of the court concerned, which is trying the offences, whether parties would have no right to bring the same in the knowledge of the court concerned. The law settled in P. Kartikalakshmi **(supra)** is that there is exclusive power of the court to alter the charge and no power vests in any party to seek alteration/change. The intent of legislature seems to be clear regarding not opening the way to any of the parties for filing any application for alteration in the charges as it may cause delay in the trial proceedings but whether for this reason alone, the party should be stopped even to bring the error or omission in the charges before the learned trial court.

24. It is apt to say that law is settled in the case of P. Kartikalakshmi **(supra)** and Anant Prakash Sinha **(supra)** that no claim can be made by the parties for alteration of charge as a matter of right but there seems to be no restriction or obstacle to move application for bringing the omission or error in framing of the charges

before the trial court and in this event, this should be upto the wisdom of such trial court to be aware of the error or omission, if any, and if required, it may invoke suo motu power to alter such charges.

25. In view of the aforesaid submission and discussion, the order of rejection cannot be approved to the extent of considering ratio of the Judgment rendered in the case of Bharat Parikh **(supra)** and Ratilal Bhanji Mithani **(supra),** but so far as the application filed by applicant seeking alteration in the charges as a matter of right, the same has rightly been rejected by learned trial court.

26. Resultantly, the Criminal Appeal is hereby **dismissed**.

27. However, the learned trial court can take the reference of the application to the effect of correcting the defect, if any, suo motu.

28. Interim order stands vacated.

29. Office shall communicate this order to the trial court concerned forthwith.

(2025) 5 ILRA 822
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.05.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 1231 of 2023

Heera Kol ...Appellant
Versus
State of U.P.& Ors. ...Opposite Parties

Counsel for the Appellant:
Sri Anil Kumar Ojha, Sri Sanjeev Kumar Asthana

Counsel for the Opposite Parties:
G.A.

A. Criminal Law - Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Section 376(2)(i) & Section 5/6 of POCSO Act-Challenge to – Conviction-Appellant was convicted for allegedly committing penetrative sexual assault on a 6 year old girl-The FIR and eyewitness testimony did not mention any act indicating penetration-The victim's statement u/s 164 Crpc lacked clarity and consistency-medical evidence /(PW-6) showed no injuries- A chance witness (PW-7) could not identify the victim in court-At trial the victim's version were improved and not corroborated by other evidence-The court held that the prosecution only proved an act of "aggravated sexual assault" u/s 7/9(m) of the POCSO Act, not penetrative sexual assault-The sentence was accordingly reduced from life imprisonment to 7 years rigorous imprisonment u/s 10 of the POCSO Act-Since the appellant had already spent over 8 years in jail, the Court ordered his immediate release, subject to payment of fine.(Para 1 to 43)

The appeal is partly allowed. (E-6)

List of Cases cited:

Monu Vs St. of U.P. ,Neutral Citation No.-2025: AHC-14721-DB

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Sandeep Jain, J.)

1. Heard Anil Kumar Ojha, learned counsel for the appellant, Sri Nagendra Kumar Srivastava, learned A.G.A. for the State and perused the records.