IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.471 of 2023

Arising Out of PS. Case No.-64 Year-2011 Thana- WARISLIGANJ District- Nawada

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Md. Makbool Alam, Son of Late Noor Mohammad, Resident of Village-Kadirganj, PS- Nawada Town (Kadirganj O.P.), Dist- Nawada

... ... Petitioner

Versus

1. The State of Bihar
2. Ayasha Khatoon, D/o- Mansur Alam, Wife of Late Md. Sajjad Alam, R/o-Maphi Gali, PS- Warisaliganj Dist- Nawada

... ... Respondents

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Appearance :
For the Petitioner : Mr. Satyapal Singh, Advocate
Mr. Om Prakash Srivastava, Advocate
For the State : Md. Zainul Abedin, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 27-06-2025

The present criminal revision petition has been preferred by the petitioner against impugned order dated 14.03.2023, whereby learned Additional Sessions Judge-XII, Nawada passed in Sessions Trial No. 323 of 2023/C.I.S. No. 3285 of 2014, arising out of Warisliganj P.S. Case No. 64 of 2011 has rejected the application.

Factual Background of the Case

2. The application under Section 216 Cr.PC was filed by the prosecution at the stage of final argument when statement of the accused-Ayasha Khatoon was recorded under Section 313 Cr.PC after recording of prosecution evidence. The accused-

Ayasha Khatoon, who is O.P. No.2 herein, was facing charge under Section 306 of the Indian Penal Code. However, as per the application of the prosecution, sufficient evidence had come on record in the evidence of P.W.-1, P.W.-5 and P.W.-8 to frame additional charge under Section 302 of the Indian Penal Code. However, the application filed by the prosecution was opposed by the accused submitting that there was no sufficient material to frame additional charge under Section 302 of the Indian Penal Code against the accused. However, after hearing both the parties and perusal of the evidence on record, learned Trial Court has dismissed the application of the prosecution for framing additional charge under Section 302 of the Indian Penal Code, holding that there is no substance or merit in the application of the prosecution. Learned Trial Court has exhaustively dealt with evidence of all the prosecution witnesses including the injury report and the Doctor to find there is no sufficient material to frame additional charge under Section 302 of the Indian Penal Code against the accused-Ayasha Khatoon for facing the trial.

3. Hence, being aggrieved by such order, the petitioner has preferred the present criminal revision petition.

4. The case is at the stage of admission.

5. I heard learned counsel for the petitioner and learned APP for the State.

6. Learned counsel for the petitioner submits that learned Trial Court has rejected the application filed on behalf of the prosecution arbitrarily and erroneously. There has been sufficient material in the evidence of prosecution witnesses to add charge under Section 302 of the Indian Penal Code against the respondent No.2. Hence, the impugned order is not sustainable in the eye of law.

7. However, *per contra*, learned APP for the State vehemently opposes the prayer of the petitioner, submitting that there is no illegality or infirmity in the impugned order. He further submits that it is discretionary power of the Trial Court to add any additional charge during trial as per the material on record. He also submits that under revisional jurisdiction, this Court has limited jurisdiction to interfere in the impugned order. He also submits that it is settled principle of law that if two views are possible as per the material on record and the Trial Court has taken one reasonable and plausible view after appreciation of evidence/material on record, the same cannot be interfered under revisional jurisdiction, because the revisional Court is not required to re-appreciate the material or evidence

on record to come to its own conclusion and supplant the view of Trial Court by its own. Hence, the petition filed by the petitioner is shorn of any merit liable to be dismissed in *limine*.

Extent and Scope of Revisional Jurisdiction of the High Court

8. Before I proceed to consider the rival submissions of the parties, it is desirable to see the extent and scope of revisional jurisdiction of High Court.

9. As per the statutory provisions and judicial precedents, it is settled principle of law that the revisional jurisdiction conferred upon the High Court is a kind of paternal or supervisory jurisdiction under Section 397 read with Section 401 Cr.PC in order to correct the miscarriage of justice, arising out of judgment, order, sentence or finding of subordinate Courts by looking into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts and as to the regularity of any proceeding of such inferior Courts.

10. However, the exercise of revisional jurisdiction by the High Court is discretionary in nature to be applied judiciously in the interest of justice.

11. Under revisional jurisdiction, the High Court is not entitled to re-appreciate the evidence for itself as if it is

acting as a Court of appeal, because revisional power cannot be equated with the power of an Appellate Court, nor can it be treated even as a second appellate jurisdiction. Hence, ordinarily, it is not appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Trial and Appellate Court, unless there are exceptional situations like glaring error of law or procedure and perversity of finding, causing flagrant miscarriage of justice, brought to the notice of the High Court. Such exceptional situations have been enumerated by Hon'ble Apex Court on several occasions which are as follows:-

(i) when it is found that the trial court has no jurisdiction to try the case or;

(ii) when it is found that the order under revision suffers from glaring illegality or;

(iii) where the trial court has illegally shut out the evidence which otherwise ought to have been considered or;

(iv) where the judgment/order is based on inadmissible evidence, or;

(v) where the material evidence which clinches the issue has been overlooked either by the Trial Court or the Appellate Court or;

(vi) where the finding recorded is based on no evidence or;

(vii) where there is perverse appreciation of evidence or;

(viii) where the judicial discretion is exercised arbitrarily or capriciously or;

(ix) where the acquittal is based on a compounding of the offence, which is invalid under the law.

12. However, it has been cautioned by Hon'ble Supreme Court that the aforesaid kinds of situations are illustrative and not exhaustive.

13. In regard to revisional jurisdiction, one may refer to the following judicial precedents:

(i) Akalu Ahir and Ors. vs Ramdeo Ram
(1973) 2 SCC 583
(ii) K. Chinnaswami Reddy vs State of A.P.
1962 SCC Online SC 32
(iii) Duli Chand Vs Delhi Administration
(1975) 4 SCC 649
(iv) Janta Dal Vs H.S. Chowdhary & Ors.
(1992) 4 SCC 305
(v) Vimal Singh Vs Khuman Singh & Anr.
(1998) 7 SCC 323
(vi) State of Kerala Vs. Puttumana I. J. Namboodiri
(1999) 2 SCC 452
(vii) Thankappan Nada & Ors. Vs. Gopala Krishnan
(2002) 9 SCC 393
(viii) Jagannath Chaudhary Vs. Ramayan Singh
(2002) 5 SCC 659
(ix) Bindeshwari Prasad Singh @ B.P. Singh & Ors.
Vs. State of Bihar (Now Jharkhand) & Anr.
(2002) 6 SCC 650
(x) Manju Ram Kalita v. State of Assam
(2009) 13 SCC 330
(xi) Amit Kapoor v. Ramesh Chander
(2012) 9 SCC 460

(xii) Ganesha Vs. Sharanappa & Anr.
(2014) 1 SCC 87
(xiii) Shlok Bhardwaj v. Runika Bhardwaj & Ors.
(2015) 2 SCC 721
(xiv) Sanjaysinh R. Chavan Vs. D. G. Phalke
(2015) 3 SCC 123
(xv) Malkeet Singh Gill v. State of Chhattisgarh
(2022) 8 SCC 204

14. Here it would be also profitable to refer to **Ashish Chadha Vs. Asha Kumari & Another** as report in (**2012) 1 SCC 680** wherein Hon'ble Supreme Court was dealing with revisional jurisdiction of High Court in the matter of framing of charge. In that case, learned Trial Court had framed charge against the accused, whereas High Court, after re-appreciation/re-appraisal of material on record, set aside the order of the Trial Court finding no *prima facie* case against the accused. In this context, Hon'ble Apex Court in para-20 of the judgment held that High Court should not have done it in its revisional jurisdiction because it is the Trial Court which has to decide whether evidence on record is sufficient to make out a *prima facie* case against the accused so as to frame charge against him.

15. Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, as reported in (2015) 3 SCC 123, may be also referred to profitably. Here, Hon'ble Apex Court was dealing with a situation where the concerned Judicial Magistrate

had accepted the closure report filed by the police with the reference to the accused closing the criminal proceeding against him. This order passed by learned Magistrate was challenged by the Complainant before the High Court in Criminal Revision and the High Court had set aside the order passed by learned Magistrate. Here, Hon'ble Apex Court held that learned Magistrate had gone through the entire record of the case, not limiting to the report filed by the police and had passed a reasoned order holding that it was not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate was perverse or the view taken by the court was wholly unreasonable or there was non-consideration of any relevant material or there was palpable misreading of records, the Revisional Court was not justified in setting aside the order, merely because another view is possible.

Present Case

16. Coming to the case on hand, I find that the prosecution has filed one application under Section 216 Cr.PC for framing of additional charge under Section 302 IPC. However, learned Trial Court has found, after perusal of the evidence on record, that there is no sufficient material to frame charge against the accused under Section 302 IPC, and hence,

the application filed by the prosecution for framing additional charge was dismissed.

Meaning and Import of Section 216 Cr.PC

17. For better consideration of the matter, it would be imperative to know the meaning and the import of Section 216 Cr.PC which reads 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 has 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."

18. Here, it would be profitable to refer to **Jasvinder Saini v. State (NCT of Delhi), (2013) 7 SCC 256,** wherein **Hon'ble Supreme Court,** after adverting to Section 216 Cr.PC, has held as follows:

> "11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment

> is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court."
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> (Emphasis Supplied)

19. In **Sohan Lal v. State of Rajasthan, (1990) 4 SCC 580, Hon'ble Apex Court** explaining the meaning of the phrase "alter or to add any charge" has held as follows:

> "12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges. When the appellants Vijya Bai and Jiya Bai were discharged of all the charges and no charge existed against them, naturally an application under Section 216 CrPC was not maintainable in their case. In cases of appellants Sohan Lal, Padam Chand and Vishnu against whom the charge under Section 427 IPC was already in existence there of course could arise the question of addition to or alteration of the charge. The learned Magistrate therefore while disposing of the application under Section 216 CrPC only had no jurisdiction to frame charges against the appellants Vijya Bai and Jiya Bai. .....
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> 13. As regards the other three appellants, namely, Sohan Lal, Padam Chand and Vishnu they were already accused in the case. Section 216 CrPC envisages the accused and the additions to the alterations of charge may be done at any time before judgment is pronounced. The learned Magistrate on the basis of the evidence on record was satisfied that charges ought also to be framed under the

other sections with which they were charged in the charge-sheet.....”

(Emphasis Supplied)

20. In **CBI v. Karimullah Osan Khan, (2014) 11 SCC 538, Hon’ble Apex Court** has held as follows:

“**17.** Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions “at any time” and before the “judgment is pronounced” would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court.”

(Emphasis Supplied)

21. In **Anant Prakash Sinha v. State of Haryana (2016) 6 SCC 105, Hon’ble Apex Court** has held as follows:

“**18**. … the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord

with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial."

(Emphasis Supplied)

22. In **P. Kartikalakshmi v. Sri Ganesh, (2017) 3 SCC 347, Hon'ble Supreme Court** has held as follows:

"**6.** ……

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..”
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> (Emphasis supplied)

23. In **Nallapareddy Sridhar Reddy v. State of A.P., (2020) 12 SCC 467,** Hon’ble Supreme Court was dealing with the situation, where application of the prosecution under Section 216 Cr.PC to add additional charge under Sections 406 and 420 of IPC was rejected by learned Trial Court. However, on revision, High Court had set aside the Trial Court’s order, holding that the Trial Court had not disclosed the reasons for concluding that ingredients of Sections 406 and 420 IPC were not attracted, and hence, the High Court had directed framing of additional charge under Sections 420 and 406 IPC evaluating the statement of witnesses brought on record.

24. After discussing the judicial precedents including **P. Kartiklakshmi case** (supra), Hon’ble Supreme Court in **Nallapareddy Sridhar Reddy case** (supra) has held as follows:

> “**21.** From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the

> opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."
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> (Emphasis Supplied)

25. In **Soundarajan v. State, (2023) 16 SCC 141, Hon'ble Apex Court** in paragraph no.16 of the judgment has held as follows:

> "17. We find that, in this case, the charge has been framed very casually. The trial courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub-section (2) of Section 464CrPC. Apart from the duty of the trial court, even the Public Prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the court to frame an appropriate charge."
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> (Emphasis supplied)

26. Hon'ble Supreme Court in the latest judgment of **Directorate of Revenue Intelligence Vs. Raj Kumar Arora & Ors**. as reported in **2025 SCC OnLine SC 819,** has elaborately discussed the extent and mandate of Section 216 Cr.PC referring to various judicial precedents and has held as

follows**:**

> "**143.** Under this provision, any Court is empowered to "alter" or "add" to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.
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> **144.** The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court *suo moto* as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application. It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.
>
> **149.** Therefore, to alter a charge would be to vary an existing charge and make a different charge. Hence, when the Court exercises its power under Section 216, either on its own motion or on an application made by the parties, and "alters" a charge, it would be necessary that the existing charge be varied and a new charge be made.....
>
> **151.** Section 216 CrPC provides the Court with the power to do two things - *One*, alter a charge and *two*, add to a charge. Nowhere, does the provision expressly or by necessary implication lead to an inference that a charge could be deleted altogether. No doubt, the Court is given an expansive and wide-ranging power. However, that must not mean that the powers conferred are without any limits."
>
> (Emphasis Supplied)

27. As such, it emerges from the statutory provisions of Section 216 Cr.PC and the relevant judicial precedents that Section 216 Cr.PC empowers the Court to alter or add to any charge already framed against the accused, at any time subsequent to framing of charge, but before pronouncement of the judgment.

28. The occasion for such alteration of or addition to the charge already framed arises in two situations, firstly, when the Court finds the charge already framed to be defective for any reason or when the Court considers addition to charge necessary, having regard to the evidence which has come before it during trial.

29. An alteration of a charge means change or variation of an additional charge or making of a different charge. However, altercation of charge does not permit discharge of the accused by deletion of charge, because after framing of charge, trial results only in acquittal or conviction. In the midst of the trial, the accused who is facing the charge, can not be discharged. If the accused is aggrieved by framing of charge against him, he has remedy in higher Court by way of appropriate proceeding against the order framing charge, but Section 216 Cr.PC cannot be invoked by the Court to discharge

the accused or delete the charge already framed against the accused.

30. It also emerges that in case an accused is already discharged, or no charge exists against an accused, Section 216 Cr.PC cannot be invoked by the Court to frame charge against him, because Court cannot go back to the previous stage of framing of charge.

31. It also emerges that Section 216 Cr.PC can be invoked by the Court *suo motu* or on an application by the parties concerned. However, the power under Section 216 Cr.PC is exclusive to the concerned Court and no party can seek such an addition or alteration of the charge, as a matter of right by filing an application.

32. It also emerges that exercise of power under Section 216 Cr.PC by the Court should not be arbitrary, but based on relevant material on record in the form of material collected during investigation or the evidence brought on record during the trial.

33. It also emerges that the Court invoking power under Section 216 Cr.PC has also duty to ensure that no prejudice is caused to the accused or the prosecution by addition or alteration of charge.

34. Now coming back to the case on hand, I find that the accused Ayasha Khatoon who is opposite party No.2 herein was facing charge under Section 306 of the Indian Penal Code. The prosecution evidence was recorded and the statement of the accused was also recorded under Section 313 Cr.PC and thereafter the matter was fixed for final argument. However, at this stage, the application was filed by the prosecution under Section 216 Cr.PC for adding charge under Section 302 of the Indian Penal Code, pleading that there was sufficient evidence on record. However, from the impugned order, it transpires that learned Trial Court perused the whole materials on record and elaborately appraised the evidence of the prosecution witnesses and came to the finding that there was no sufficient material to add charge under Section 302 of the Indian Penal Code.

35. I have already discussed the extent and scope of revisional jurisdiction of this Court. I find that no ground is made out by the petitioner for interference by this Court in the impugned order. The only submission of the petitioner is that as per the evidence on record brought during the trial, the additional charge under Section 302 of the Indian Penal Code should have been framed by the learned Trial Court, but I find that learned Trial Court has elaborately appraised the whole

prosecution evidence on record and came to the finding that there is no sufficient material to frame additional charge under Section 302 of the Indian Penal Code. The impugned order is a reasoned order, with no perversity or arbitrariness in appreciation of evidence on record. The view formed by learned Trial Court is possible and plausible one and even if any other view is possible on the basis of the evidence on record, the view taken by the learned Trial Court cannot be interfered under revisional jurisdiction, for want of any perversity or arbitrariness in the finding.

36. Hence, the present petition is liable to be dismissed for want of any merit in the petition. Accordingly, the present revision petition is dismissed *in limine*.

(Jitendra Kumar, J.)

Ravishankar/-

AFR/NAFR	A.F.R.
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