

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev.P. No.34 of 2025

Sri Ranjit Barua (aged about 44 years),
Son of late Kunja Bihari Barua, resident of
Shyamnagar, Nuapara, P.O. Shyamnagar,
P.S. Jagaddal, District: North 24 Paragana,
West Bengal.

----Petitioner(s)

Versus

The State of Tripura

----Respondent(s)

For Petitioner(s)	:	Mr. Sankar Lodh, Adv.
For Respondent(s)	:	Mr. Rajib Saha, Addl. P.P.
Date of hearing and delivery of Judgment & Order	:	04.12.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

This criminal revision petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the order dated 16.05.2025 passed by Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur, in connection with Case No. S.T.(Type-2) 18 of 2024.

2. Heard Learned Counsel, Mr. Sankar Lodh appearing on behalf of the accused-petitioner. Also heard Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the State-respondent.

3. Taking part in the hearing, Learned Counsel, Mr. S. Lodh first of all drawn the attention of this Court the order dated 16.05.2025 and submitted that before the Learned Trial Court, the accused-petitioner filed an application under Section 227 of Cr.P.C. for discharging him from the charge of this case as during investigation, no material could be revealed against him. But, the Learned Trial Court did not consider the submission made by the accused-petitioner and framed charge under Section 120B of

IPC and Section 12 of IPP (Entry into India) Act, 1967 (for short, Passport Act, 1967). Referring Section 120B of IPC, Learned Counsel for the accused-petitioner submitted that from the materials on record, no evidence can be revealed against the accused-petitioner that he made any conspiracy for invoking the provision of the said Section. So, according to Learned Counsel, the charge framed by Learned Court below was misconceived and not supported by any cogent material evidence on record.

4. In respect of another charge framed under Section 12 of Passport Act, 1967, Learned Counsel submitted that on bare perusal of the said provision of Section 12 of the Passport Act, 1967, it will be transpired that for framing of charge under the said Section, sanction would be required as per Section 15 of the Passport Act 1967. But, here in the case at hand, prosecution could not produce any sanction for prosecuting the accused-petitioner before the Learned Trial Court and as such, the charge cannot be sustained against him.

Referring the provision of Section 12 of the Passport Act, 1967, Learned Counsel further submitted that Section 12 deals with offences and penalties. Learned Counsel also submitted that there is no evidence on record that the accused-petitioner has committed any offence punishable under Section 3 of the said Act. As such, according to Learned Counsel for the accused-petitioner, the said charge cannot be sustained in the eye of law against the accused-petitioner. Finally, Learned Counsel urged for discharging the accused-petitioner by setting aside the order dated 16.05.2025 delivered by Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur.

5. Learned Counsel for the accused-petitioner again drawn the attention of this court referring a citation of the Hon'ble Supreme Court of India in **Tuhin Kumar Biswas @ Bumba vs. The State of West Bengal** in **Criminal Appeal No. 5146 of 2025 (arising out of SLP (Crl.))**

No.3002/2024, wherein in para Nos. 28 and 29, Hon'ble the Apex Court observed as under:

"TENDENCY OF FILING CHARGESHEETS AND FRAMING CHARGES IN MATTERS WHERE NO STRONG SUSPICION IS MADE OUT CLOGS THE JUDICIAL SYSTEM"

28. Before parting with this case, this Court would like to emphasise that where there is a pending civil dispute between the parties, the Police and the Criminal Courts must be circumspect in filing a chargesheet and framing charges respectively. In a society governed by rule of law, the decision to file a chargesheet should be based on the Investigating Officer's determination of whether the evidence collected provides a reasonable prospect of conviction. The Police at the stage of filing of Chargesheet and the Criminal Court at the stage of framing of Charge must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. The tendency of filing chargesheets in matters where no strong suspicion is made out clogs the judicial system. It forces Judges, court staff, and prosecutors to spend time on trials that are likely to result in an acquittal. This diverts limited judicial resources from handling stronger, more serious cases, contributing to massive case backlogs. Undoubtedly, there can be no analysis at the charge framing stage as to whether the case would end in conviction or acquittal, but the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as it compromises the right to a fair process.

29. In the present case, the Police and the Trial Court should have been cognizant that as there was a pending civil dispute with regard to the property in question as well as a prior subsisting injunction order and the complainant had refused to make any judicial statement, strong suspicion founded on legally tenable material/evidence was absent."

Referring the same, Learned Counsel submitted that at the time of framing of charge, Criminal Court must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. However, here in the case at hand, in absence of any materials on record, Learned Trial Court framed charge against the accused-petitioner, which is liable to be set aside.

Learned Counsel also referred another citation of the Hon'ble Supreme Court of India in **Gauri Shankar Prasad vs. State of Bihar & Anr.**, reported in **(2000) 5 SCC 15**, wherein in para No.12 Hon'ble the Apex Court observed as under:

"12. In the case of State v. B.L. Verma [(1997) 10 SCC 772 : 1997 SCC (Cri) 1037] this Court held that since it is not

disputed that actions alleged against the public servant lay within the scope of his official duties or at any event were allegedly committed in the purported discharge of his duties as Director of Enforcement though it is canvassed that he had abused his official position while discharging his official duties that would not oust the necessity of sanction under Section 197 CrPC to take cognizance of the offence. This Court observed that the expression "no court shall take cognizance of such offence except with the previous sanction" occurring in Section 197 CrPC unmistakably shows that the bar on exercise of powers by the Court to take cognizance is mandatory and the previous sanction from the competent authority for prosecution of the public servant, who is accused of having committed an offence either in the execution of his duties or in the purported execution of his duties is essential to take cognizance. This Court confirmed the order of the High Court directing the dropping of proceedings against the public servant in the absence of such a sanction."

Referring the same, Learned Counsel submitted that in absence of sanction, there is no scope to proceed for trial against the accused-petitioner.

Reliance was placed upon another citation of the Hon'ble Supreme Court of India in **Kanchan Kumar vs. State of Bihar** reported in **(2022) 9 SCC 577**, wherein in para Nos.11, 12 and 13 Hon'ble the Apex Court observed as under:

"Issue

11. The short question arising for consideration is whether the appellant is entitled to be discharged of the proceedings initiated against him under the PC Act.

Legal provision and precedents

12. Section 227CrPC relating to discharge is as under:

"227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

13. The threshold of scrutiny required to adjudicate an application under Section 227CrPC, is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] it was noted that : (SCC p. 9, para 10)

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(emphasis supplied)”

Referring the same, Learned Counsel again submitted that in absence of material evidence on record, there was no scope to frame charge against the accused-petitioner.

Learned Counsel further relied upon another citation of the Hon'ble Supreme Court of India in **Dipakbhai Jagdishchandra Patel vs. State of Gujarat & Anr.**, reported in **AIR 2019 SC 3363**, wherein in Para Nos.16, 27, 28, 44, and 53, Hon'ble the Apex Court observed as under:

16. In Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609 : AIR 1979 SC 366] , after survey of case law, this is what the Court has laid down: (SCC p. 9, para 10)

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

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and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

27. Section 25 of the Evidence Act, 1872 (hereinafter referred to as "the Evidence Act", for short) renders inadmissible a confession made to a police officer. It declares in fact that no confession made to a police officer shall be proved as against a person accused of any offence.

28. Section 26 of the Evidence Act, on the other hand, reads as follows:

"26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)."

44. Such a person viz. person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned and the statement is taken by the police officer. A confession, which is made to a police officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible. A confession unless it fulfils the test laid down in *Pakala Narayana Swami* [*Pakala Narayana Swami v. King Emperor*, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66 : AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC.

53. We also notice the following statement in the judgment rendered by the Bench of seven learned Judges in *Haricharan Kurmi v. State of Bihar* [*Haricharan Kurmi v. State of Bihar*, AIR 1964 SC 1184 at p. 1188 : (1964) 2 Cri LJ 344] : (AIR p. 1184)

"As a result of the provisions contained in Section 30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it

has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. ... In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt."

Referring the same, Learned Counsel drawn the attention of the court that from the contents of the prosecution materials and based on the statement of the co-accused, no charge could be framed against him, but the Learned Trial Court committed serious error in framing of charge against the accused-petitioner. So, Learned Counsel urged for setting aside the impugned order.

In support of the sanction, Learned Counsel relied upon one citation of the Kerala High Court in **Noufal M.H. vs. State of Kerala** reported in **2017 SCC OnLine Ker 10002**, wherein in para Nos.2, 12, 13, 14, 16, 30 and 31 the Kerala High Court observed as under:

"2. Section 15 of the Passports Act runs as follows:

No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf.

12. Section 132(1) Cr.P.C. also creates a bar for institution of prosecution. It reads thus:

(1) No prosecution against any person for any act purporting to be done under Section 129, section 130 or section 131 shall be instituted in any Criminal Court except-

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

(2) Omitted

(3) Omitted

13. In State of Kerala v. T.T. Antony (2000 (2) KLT 90) a division bench of this court considered the question when a party can raise the defence of want of sanction contemplated by Section 132 Cr.P.C. The division bench held: "According to us, the benefit of S.132 can be availed

of only during the trial of the proceedings, if the charge is filed”.

14. A learned single judge of this court also took the same view in *M.K. Musthafa Haji v. Director, Central Bureau of Investigation, New Delhi* (2011 CrI.L.J. 3968). It was observed:

“Thus, under Section 132(1) Cr.P.C. there is a total embargo against the institution of a prosecution against any person for any act purporting to be done inter alia under Sec.129 Cr.P.C. except with the sanction of the appropriate Government. (In this case, it is the State Government which has to accord the sanction). Such sanction must precede the institution of the prosecution. Institution of a prosecution can ordinarily be either in the form of a complaint made to a Magistrate or in the form of a police report filed before the Magistrate”.

16. In view of the authoritative pronouncement of the three judge bench of the Supreme court in *Jamuna Singh v. Bhadai Shah* (AIR 1964 SC 1541) that institution of a case takes place only when cognizance is taken, which was followed by another three Judge bench in *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy* ((1976) 3 SCC 252 : AIR 1976 SC 1672) and two judge bench in *Ramesh Kumar Soni v. State of Madhya Pradesh* ((2013) 14 SCC 696 : AIR 2013 SC 1896) and the two judgment of this court referred to above, the decision in *Shymesh v. State of Kerala* (2014 KHC 3684) cannot be held to be good law.

30. To recapitulate, mere absence of declaration in a statute that an offence under it is cognizable is no reason to hold that that offence is non cognizable. The phrase ‘or under any law for the time being in force’ used in Section 2(c) Cr.P.C. refers to offences which are punishable with imprisonment for less than three years, but for which police have been empowered to arrest without warrant because all offences punishable with imprisonment for three years and above are cognizable offences as specified in list 2 in Schedule 1 Cr.P.C. Even if only a class of police officers has been empowered to arrest without warrant for an offence under an Act which is punishable with imprisonment for less than three years, it is a cognizable offence. The offence under Section 12(1)(b) of the Passports Act, or for that matter any offence under Section 12, is a cognizable offence because Section 13 of the Act empowers police officers of and above the rank of Sub Inspectors to arrest without warrant. For the purpose of Section 15 of the Act institution of prosecution takes place only when cognizance is taken by the court having jurisdiction. Sanction of the Central Government contemplated by the Section is necessary only at the time cognizance is taken. For registration of case or investigation sanction is not required.

31. In the result, this CrI.M.C. is dismissed.”

Referring the same, Learned Counsel for the accused-petitioner submitted that in absence of sanction, there is no scope to proceed against the accused. Even, there is bar to take cognizance of offense in absence of sanction. Finally, referring the relevant prosecution papers, Learned Counsel submitted that the impugned order passed by

Learned Addl. Sessions Judge suffers from infirmity and urged for setting aside the said order and also to discharge the accused-petitioner.

6. On the other hand, Learned Addl. P.P. appearing on behalf of the State-respondent fairly submitted that there are sufficient materials against the accused-petitioner for framing of charge under Section 120B of IPC read with section 12 of the Passport Act, 1967. Furthermore, in absence of sanction there is also scope to frame charge against the accused-petitioner which is a curable defects.

7. In support of his contention Learned Addl. P.P. relied upon one citation of the Hon'ble Supreme Court of India in **Sajjan Kumar vs. Central Bureau of Investigation** reported in **(2010) 9 SCC 368**, wherein in Para Nos. 17 and 21, Hon'ble the Apex Court observed as under:

"17. In Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] the scope of Section 227 CrPC was considered. After advertng to various decisions, this Court has enumerated the following principles: (SCC p. 9, para 10)

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

Referring the same, Learned Addl. P.P. submitted that Learned Trial Court, considering the materials on record, rightly framed charge against the accused-petitioner and there was no infirmity in the order passed by Learned Addl. Sessions Judge and finally, urged for dismissal of the present petition filed by the accused-petitioner.

8. I have heard both the sides at length and perused the relevant prosecution papers and also the order dated 16.05.2025 passed by Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur.

9. It is the admitted position that the present accused-petitioner moved an application before the Learned Trial Court under Section 227 of the Cr.P.C. for discharging him from the charge of the case. But, the Learned Trial Court, after hearing both the sides, by a reasoned order, dismissed the application filed by the accused-petitioner and on the same day, framed charge against him under Section 120B of IPC and Section 12 of Passport Act, 1967, which is presently under challenge before this Court.

10. In this case the prosecution was set into motion on the basis of an F.I.R./ *suo moto* complaint laid by one ASI Ajut Miah, Karbook PS to O/C, Karbook PS alleging *inter alia* that on 12.05.2024 morning at about 0745hrs based upon a secret information from reliable source of Chandra Hongsha Para that some unknown persons crossed border fencing from Bangladesh side into India through Chandra Hongsha Para area, he entered the fact in PS GD and rushed towards Chandra Hangsha Para near border road. The ASI i.e. the complainant found one suspected person proceeding towards Karbook side by an Auto-Rickshaw Bearing No. TR03-B-4128. Seeing that vehicle the complainant stopped the said Auto-Rickshaw and on being asked the said driver and passenger could not give any satisfactory reply regarding their identity as well as their presence near Indo-Bangladesh border. On spot preliminary interrogation, the suspect gave statement that he is an Indian National belonging to West Bengal, North 24 Pargona but, he could not give any satisfactory reply regarding his visit to Chandra Hangsha Para near bordering area and also could not produce any valid document. As such, it was strongly suspected that he entered into India from Bangladesh illegally, after crossing the Indo-Bangladesh fencing. Thereafter, ASI Ajut Miah (Complainant) detained the suspected person and the auto driver observing all legal formalities and brought them to Karbook PS for further interrogation. In course of checking the luggage, one Aadhar Card, Cash of Rs. 1220/-

(Indian Currency) and Rs. 5/- (five rupee) (Bangladesh Currency) and one Redmi mobile phone were found from the possession of the suspected Bangladeshi namely, Ranjit Barua and one Samsung mobile phone and Cash of Rs. 800/- (Indian Currency), one Auto Rickshaw vide B/R No. TR03-B-4128 along with its key was also found from the possession of Sri Bir Karna Jamatia @ Pulung Jamatia, which were seized accordingly. On the basis of the F.I.R., the case was registered. The I.O. on completion of investigation laid charge-sheet and accordingly, by order dated 07.10.2024, Learned SDJM, Amarpur, Gomati Tripura took cognizance of offence. After that, the case was committed to the Court of Sessions and then, the case was transferred to the Court of Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur who by the order dated 16.05.2025 framed charge against the present accused-petitioner.

11. I have also perused the charge-sheet very carefully.

12. In the charge-sheet, it was clearly written by the I.O. that during investigation it was revealed that the present accused-petitioner is an Indian national and he is an inhabitant of West Bengal. As already stated, in this case, formal charge under Section 120B of IPC read with Section 12 of the Passport Act, 1967 has been framed by the Learned Trial Court against the accused-petitioner.

Now, for the sake of convenience, I would like to refer herein below the relevant provisions of Section 120B of IPC and Section 12 of the Passport Act, 1967:

"Section 120B of IPC:

120B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 12 of Passport Act, 1967:

12. Offences and penalties.-(1) Whoever-

- (a) contravenes the provisions of section 3; or
- (b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or
- (c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or
- (d) knowingly uses a passport or travel document issued to another person; or
- (e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1A) Whoever, not being a citizen of India,-

- (a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or
- (b) holds a forged passport or any travel document,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence."

Section 120B of IPC deals with punishment of criminal conspiracy and Section 12 of Passports Act, 1967 deals with offences and penalties for contravention of provision of Section 3 of the Passport Act, 1967 and for some other purposes.

Now, for the sake of convenience, let us reproduce herein below the relevant provision of Section 3 of the Passport Act, 1967:

"3. Passport or travel document for departure from India.- No person shall depart from, or attempt to depart from

India, unless he holds in this behalf a valid passport or travel document.

Explanation.-For the purposes of this section,-

(a) "passport" includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;

(b) "travel document" includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed."

From the aforesaid provision it appears that if any person departs from India or attempts to depart from India in absence of any valid passport or travel document, then he is liable to be prosecuted under Section 12 of the Passport Act, 1967.

13. Here, in the case at hand, this is not the case of the prosecution that the present accused-petitioner departed India or attempted to depart India in absence of any valid passport or travel document. So, virtually there is no scope for application of Section 3 of Passport Act, 1967 against the accused-petitioner.

14. Now, from the other ingredients of Section 12 of the Passports Act, 1967, it appears that the allegation of the prosecution does not cover any of the ingredients as mentioned under Section 12 of the said Act against the present accused-petitioner.

Now, let us refer herein below the provision of Section 15 of the Passports Act, 1967:

"15. Previous sanction of Central Government necessary.- No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf."

From the aforesaid provision, it appears that in absence of any sanction of the Central Government, there is no scope to prosecute any person under any of the provisions of the Passports Act, 1967.

From the order of Learned Trial Court dated 16.05.2025, it appears that Learned Trial Court at the time of deciding the matter dealt

with the issue and came to the observation that the same may be considered during the period of trial. In this regard, I have also gone through the citations referred by Learned Counsel for the accused-petitioner in the afore-noted cases.

It appears that in absence of appropriate sanction issued by the authority, there is no scope to prosecute a person under Section 12 of the Passports Act, 1967, nor he could be prosecuted under Section 3 of the said Act. Here, in the case at hand, it is not the case of the prosecution that at the time of crossing Indo-Bangladesh border, the present accused-petitioner was detained by police or by BSF authority, rather from the relevant prosecution papers, it appears that he was detained inside the Indian Territory, at Karbook, when he was moving by an auto-rickshaw.

15. In course of hearing, Learned Addl. P.P. tried to draw the attention of the Court that from the statement/interrogation report of the co-accused, it is transpired that the present accused-petitioner entered into India from Bangladesh on that relevant day in absence of any travel document. But, in this regard, the prosecution, before the Learned Trial Court could not place any cogent materials on record that on that relevant day, the accused entered into India and he was detained at the time of crossing Indo-Bangladesh border. Rather, it is on record that he was detained inside the Indian Territory at Karbook when he was moving through an auto rickshaw. So, simply on the basis of the statement/interrogation report of the co-accused, there is no scope to believe that the accused-petitioner has committed any offence under Section 12 of the Passport Act, 1967. Furthermore, there is no legal bar for an Indian national to visit just nearby bordering areas.

So, in such a situation, in absence of specific evidence on record and also in absence of valid sanction as observed by the Hon'ble Supreme Court of India in the afore-noted cases, in the considered view of

this Court, there was no scope to prosecute the present accused-petitioner under Section 12 of the Passport Act, 1967. Further, on perusal of materials on record, I also do not find any sufficient material to prosecute the petitioner under Section 120B of the IPC in absence of any specific evidence.

16. Thus, in my considered opinion, the order dated 16.05.2025 passed by Learned Addl. Sessions Judge in respect of the present accused-petitioner suffers from infirmity and the same needs to be interfered with.

In the result, the order dated 16.05.2025 delivered by Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur in respect of the present petitioner stands interfered with in absence of cogent materials on record and valid sanction for prosecution as required under Section 15 of the Passport Act, 1967.

Accordingly, the present criminal revision petition filed by the present accused-petitioner is hereby allowed and thus, disposed of.

The order dated 16.05.2025 passed by Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur is hereby modified and the accused-petitioner is hereby discharged from the charge levelled against him under Section 120B of IPC read with Section 12 of the Passport Act, 1967, and his surety, if any, also accordingly stands discharged. Learned Trial Court shall proceed with the trial in respect of the rest of the accused persons.

Send down the record to the Learned Trial Court along with a copy of this judgment and order. Return back the CD to I.O. through Learned Addl. P.P. along with a copy of this judgment and order. A copy of this judgment and order also be supplied to Learned Counsel for the accused-petitioner for information.

JUDGE

Snigdha