

Court No. - 52

Case :- APPLICATION U/S 482 No. - 40463 of 2024

Applicant :- Neeraj And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Brijendra Mishra, Jalaj Kumar Tripathi

Counsel for Opposite Party :- G.A., Upendra Kumar Singh

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Brijendra Mishra, learned counsel for the applicants, Mr. Upendra Kumar Singh, learned counsel for the applicants as well as Mr. Mayank Awasthi, learned AGA for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed with the following prayer :-

"It is, therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to quash the revisional order dt. 29.10.2024 passed by Additional Session Judge (Rape & POCSO Act), Court No.2 Pilibhit District Pilibhit in Criminal Revision No. 112 of 2024 as well as quashed the order Dt. 06.06.2024 passed by learned Additional Civil Judge (J.D.) J.M., Court No.4 Pilibhit District Pilibhit in Criminal Case No.3190/2018 (Case Crime No.669/2016), State Vs. Ram Lal and others U/S 498A, 323, 504, 506 IPC & U/S 3/4 Dowry Prohibition Act, Police Station Neoria District Pilibhit by which the learned Additional Civil Judge (J.D.) J.M., Court No.4 Pilibhit District Pilibhit reject discharge application of the Applicants."

3. Learned counsel for the applicants submits that the present FIR has been lodged with false and frivolous allegations due to ulterior motive. He further submits that the impugned orders have been passed without application of judicial mind and without considering the fact that no offence under the relevant sections is made out against the applicants, therefore, the same may be set aside. He further prays that the matter may be referred to the mediation centre as there are chances of amicable settlement between the parties.

4. Learned A.G.A. for the State as well as learned counsel for opposite party no.2 submit that the FIR has been lodged in the year 2016 wherein the charge sheet has been submitted on 23.12.2016. Though the applicants have been enlarged on bail but they are avoiding facing

trial which is evident from the fact that one or the other application is being moved in order to linger on the trial, therefore, the discharge as moved at a latter stage has rightly been rejected.

5. They further submit that there is no illegality in the order as the technical objections regarding names of the applicants and signatures of the Investigating Officer doubting the documents are just a tactics to exert pressure upon the applicants and effect the merit of the case. Learned counsel for opposite party no.2 also submits that the opposite party no.2 is not ready and willing to enter into mediation proceedings and objects the prayer as made by learned counsel for the applicants, therefore, no interference is required by this Court.

6. Heard counsels for the parties and perused the record.

7. It would be appropriate to place the relevant sections before proceeding with the merits of the case.

8. Section 227 Cr.P.C. reads as follows:-

***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.*

9. Thus, if the judge opines that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. Thus, in case of discharge of an accused it is mandatory for the Court to record its reasons.

10. Section 228 Cr.P.C. reads as follows:-

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

11. The extent of scrutiny permissible when an application for discharge is being considered has attracted attention of the Court on number of occasions. It is appropriate to take note of leading precedings on the subject. The Apex Court in the case of **Ajoy Kumar Ghose vs. State of Jharkhand**, reported in (2009) 14 SCC 115 while dealing with Section 245 Cr.P.C. has observed as follows:-

"15. The extent of scrutiny permissible when an application for discharge is being considered has attracted this Court's attention on a number of occasions. It is appropriate to take note of the leading precedents on the subject. Insofar as Section 245, CrPC is concerned, the decision of this Court in Ajoy Kumar Ghose v. State of Jharkhand [Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115 : (2010) 1 SCC (Cri) 1301] is instructive : (SCC pp. 124-25 & 127-28, paras 19-20, 22-25 & 36-37)

"19. The essential difference of procedure in the trial of warrant case on the basis of a police report and that instituted otherwise than on the police report is particularly marked in Sections 238 and 239CrPC on one side and Sections 244 and 245CrPC on the other. Under Section 238, when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like the police report, FIR, statements recorded under sub-section (3) of Section 161CrPC of all the witnesses proposed to be examined by the prosecution, as also the confessions and statements recorded under Section 164 and any other documents which have been forwarded by the prosecuting agency to the court.

20. After that, comes the stage of discharge, for which it is provided in Section 239CrPC that the Magistrate has to consider the police report and the documents sent with it under Section 173CrPC and if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of the aforementioned documents, he

comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is then that the charge is framed under Section 240CrPC and the trial proceeds for recording the evidence. Thus, in such trial prosecution has only one opportunity to lead evidence and that too comes only after the charge is framed.

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22 . : Para 22 was corrected vide Official Corrigendum F.3/Ed.B.J./124/2009 issued on 22-8-2009 by the Court.] . In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the framing of the charge. Of course, under Section 245(2)CrPC, a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.

23. Essentially, the applicable sections are Sections 244 and 245CrPC since this is a warrant trial instituted otherwise than on police report. There had to be an opportunity for the prosecution to lead evidence under Section 244(1)CrPC or to summon its witnesses under Section 244(2)CrPC. This did not happen and instead, the accused proceeded to file an application under Section 245(2)CrPC on the ground that the charge was groundless.

24. Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1)CrPC.

25. The situation under Section 245(2)CrPC is, however, different. There, under sub-section (2), the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2)CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244CrPC. The words appearing in Section 245(2)CrPC "at any previous stage of the case", clearly bring out this position.

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36. The Magistrate has the power to discharge the accused under Section 245(2)CrPC at any previous stage i.e. before the evidence

is recorded under Section 244(1)CrPC, which seems to be the established law, particularly in view of the decision in Cricket Assn. of Bengal v. State of W.B. [Cricket Assn. of Bengal v. State of W.B., (1971) 3 SCC 239 : 1971 SCC (Cri) 446] , as also the subsequent decision of the Bombay High Court in Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar [Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar, 1983 SCC OnLine Bom 323] . The same decision was followed by Kerala High Court in Manmohan Malhotra v. P.M. Abdul Salam [Manmohan Malhotra v. P.M. Abdul Salam, 1994 SCC OnLine Ker 5] and Hon'ble Justice K.T. Thomas, as the learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2)CrPC to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in Mohd. Sheriff Sahib v. Abdul Karim Sahib [Mohd. Sheriff Sahib v. Abdul Karim Sahib, 1927 SCC OnLine Mad 137 : AIR 1928 Mad 129 (1)] , as also the judgment of the Himachal Pradesh High Court in Gopal Chauhan v. Satya [Gopal Chauhan v. Satya, 1978 SCC OnLine HP 33] .

37. We are convinced that under Section 245(2)CrPC the Magistrate can discharge the accused at any previous stage i.e. even before any evidence is recorded under Section 244(1)CrPC. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty."

12. While dealing with Sections 239-240 Cr.P.C., the Apex Court in the case of **Minakshi Bala vs. Sudhir Kumar**, reported in **(1994) 4 SCC 142** has held as follows :-

"6. Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance taken, were triable as a warrant case the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173CrPC and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240CrPC.

7. If charges are framed in accordance with Section 240CrPC on a finding that a prima facie case has been made out — as has been done in the instant case — the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or

the Sessions Judge to contend that the charge-sheet submitted under Section 173CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. *To put it differently, once charges are framed under Section 240CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.*

8. Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, *we further find that instead of advertg to and confining its attention to the documents referred to in Sections 239 and 240CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order [Sudhir Kumar v. State of Punjab, 1992 SCC OnLine P&H 663] . The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case."*

13. In **Rumi Dhar vs. State of West Bengal**, reported in (2009) 6 SCC 364 the Apex Court has held that the Judge concerned with an application under Section 239CrPC has to:

"17. ... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law."

14. In **State of T.N. vs. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan**, reported in (2014) 11 SCC 709, it was observed notwithstanding the difference in language of Sections 227 and 239CrPC, the approach of the Court concerned is to be common under both provisions. While making such an observation, the Apex Court in the aforesaid case has held as follows :-

"29. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in

order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

15. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

16. In **P. Vijayan vs State of Kerala**, reported in 2010 CrLR 177, the Apex Court has laid down that scope and ambit of Section 227 which was considered again by the Apex Court in **Niranjan Singh K.S. Punjabi vs Jitendra Bhimraj Bijjaya**, reported in 1990 (4) SCC 76. It has been held as follows :-

"13). The scope and ambit of Section 227 was again considered in Niranjan Singh K.S. Punjabi vs. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76, in para 6, this Court held that:

"Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the

charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence.

14). In a recent decision, in the case of Soma Chakravarty vs. State through CBI, (2007) 5 SCC 403, this Court has held that the settled legal position is that if on the basis of 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. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. 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. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be

directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge."

17. Thus, at the time of framing of charge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

18. The Apex Court in the case of **State of Orissa Vs. Debendra Nath Padhi**, reported in (2005) 1 SCC 568 has held as under:-

"What is to the meaning of the expression 'the record of the case' as used in Section 227 of the Code. Though the word 'case' is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit 'the case' to the Court of Session and send to that court 'the record of the case' and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial."

19. The Apex Court again in the case of **State of Maharashtra Vs. Som Nath Thapa**, reported in AIR 1996 SC 1774 has observed that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

20. In the present case, the charge sheet has been submitted after investigation and on the basis of materials on record as well as the grounds taken in the discharge application which can be taken as the defence of the accused, if any, cannot be looked into by the Court at the time of framing of charge as the Court has only to look into the papers submitted by the Investigating Officer along with his report and to see whether *prima facie* offence is made out or not.

21. It shall be advantageous to refer to the observations made by the Hon'ble Apex Court in the case of **State of Bihar vs. Ramesh Singh**, reported in **1977 (4) SCC 39** where the Apex Court has expatiated upon the legal approach to be adopted at the time of framing of the charge or at the time of deciding whether the accused ought to be discharged, which as follows :-

"4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and State by what evidence he proposes to prove the guilt of the accused. Thereafter, comes at the initial stage, the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s. 227 or u/s. 228 of the Code. If "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", so enjoined by s. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

(b) in exclusively triable by the court, he shall frame in writing a charge against the accused," as provided in S. 228.

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under s. 227 and 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region

of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence, if any, cannot show that the accused committed the offence, there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227."

22. Aforesaid case was again referred to in another Apex Court's decision **Superintendent and Remembrancer of Legal Affairs, West Bengal Versus Anil Kumar Bhunja; AIR 1980 (SC) 52** and the Apex Court proceeded to observe as follows:-

*"18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in **State of Bihar v. Ramesh Singh; AIR 1977 SC 2018**, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence."*

23. In yet another case of **Palwinder Singh Vs. Balvinder Singh**; AIR 2009 SC 887, the Apex Court had the occasion to reflect upon the scope of adjudication and its ambit at the time of framing of the charge and also about the scope to consider the material produced by the accused at that stage. Following extract may be profitably quoted to clarify the situation :-

*"12. Having heard learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in **State of Orissa v. Debendra Nath Padhi**, (2005) 1 SCC 568 wherein it was held as under :-*

"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's Case holding that the trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

24. The following observations made by the Hon'ble Supreme Court in the case of **Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary**; AIR 2009 SC 9 also reiterated the same position of law :-

"10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a prima facie case to be applied.

11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by the learned counsel for the appellants, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed."

25. In a judgment passed in the case of **M.E. Shivalingamurthy vs. Central Bureau of Investigation** reported in (2020) 2 SCC 768,

Hon'ble Supreme Court has considered the judgment of **P. Vijayan vs. State of Kerala, (2010) 2 SCC 398** and reproduced the principle laid down in aforesaid judgment. Relevant paragraph nos. 17, 18, 28, 29, 30 and 31 are being quoted below: -

"17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., P. Vijayan v. State of Kerala and another² and discern the following principles:

17.1 If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

17.2 The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

17.3 The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

17.4 If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".

17.5 It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6 The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

17.7 At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8 There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused."

"18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.P.C. The expression, "the record of the case", used in Section 227 of the Cr.P.C, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the

charge, the submission of the accused is to be confined to the material produced by the Police."

28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 of the Cr.PC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the Trial Court to discharge the accused."

29. It is not open to the accused to rely on material by way of defence and persuade the court to discharge him.

30. However, what is the meaning of the expression "materials on the basis of which grave suspicion is aroused in the mind of the court's", which is not explained away? Can the accused explain away the material only with reference to the materials produced by the prosecution? Can the accused rely upon material which he chooses to produce at the stage?

31. In view of the decisions of this Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him."

26. A three Judge Bench in the case of **Tarun Jit Tejpal v. State of Goa**, reported in **(2020) 17 SCC 556** has held that :-

"(i) The test to determine prima facie case would depend on the fact of each case while considering the prima facie case at the stage of framing of charge under Section 227 Cr.P.C. 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. Thus while considering the question of framing of charge under Section 227 Cr.P.C. the Court has 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.

(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."

27. In a recent judgment viz. **State of Gujarat vs. Dilipsinh Kishorshinh Rao, 2023 INSC 894** this Court held :-

"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material

there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence allege.

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at

the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

28. The Hon'ble Apex Court in the case of **Union of India vs. Prafulla K Samal**, reported in (1979) 3 SCC 4 after considering **State of Bihar vs. Ramesh Singh**, (1977) 4 SCC 39, **K.P. Raghavan vs. M.H. Abbas**, AIR 1967 SC 740 and **Almohan Das vs. State of West Benhal**, (1969) 2 SCR 520 has held the following principles :-

"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."

29. The submissions made by the applicants' learned counsel calls for adjudication on pure questions of fact which may adequately be adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it

proper, and, therefore, cannot be persuaded to have a pre-trial before the actual trial begins.

30. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, the summoning order and also all other the material available on record makes out a *prima facie* case against the accused at this stage and this Court does not find any justifiable ground to set aside the impugned order refusing the discharge of the accused. This court has not been able to persuade itself to hold that no case against the accused has been made out or to hold that the charge is groundless.

31. The prayer for quashing or setting aside the revisional order dated 29.10.2024 as well as order dated 06.06.2024 is refused as I do not see any illegality, impropriety and incorrectness in the impugned orders or the proceedings under challenge. There is absolutely no abuse of court's process perceptible in the same. The present matter also does not fall in any of the categories recognized by the Supreme Court which might justify interference by this Court in order to upset or quash them.

32. The present application lacks merit and is, accordingly, **dismissed**.

Order Date :- 17.2.2025

Kalp Nath Singh