IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10390 of 2016

Arising Out of PS.Case No. -127 Year- 2008 Thana -KISHANGANJ District- KISANGANJ

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Sikandar Singh, S/o Late Parmeshwar Singh, resident of Mohalla-Dharamganj, P.S.:- Kishanganj, Town & District:- Kishanganj.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Rajeev Lochan
For the Opposite Party/s : Mr. Ambika Bhagat(Spl.App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 12-04-2017 Heard learned counsel for the petitioner and Mr. J.N. Thakur, learned counsel for the State.

The present application has been filed for quashing the order dated 02.02.2016, passed by learned Additional Sessions Judge-I, Kishanganj in Sessions Trial No. 152 of 2013, arising out of Kishanganj P.S. Case No. 127 of 2008, whereby and whereunder the petitioner's application for discharge under Section 227 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been rejected. Subsequently, I.A. No. 2229 of 2016 has been filed for amendment of the prayer for further quashing the order dated 11.03.2016, passed by learned Additional District & Sessions Judge, Kishanganj in Sessions Trial

No. 152 of 2013, whereby charges have been framed against the petitioner under Sections 323, 341, 353, 419 of the Indian Penal Code and Section 3(1)(X) of the SC & ST (Prevention of Atrocities) Act.

The prosecution case would unveil that Kishanganj P.S. Case No. 127 of 2008 was lodged by the clerk of DTO, Kishanganj on 14.5.2008, under sections 341,323,353,419 and 379 of the Indian Penal Code against the petitioner and bodyguard of his wife, namely, Sweety Singh who is Chairman of Kishanganj Zila Parishad, with the accusation that on 14.5.2008, the DTO, Kishanganj was checking the vehicles, during the course of which he seized six vehicles, out of which four vehicles were sent to the police station. In the meantime, the petitioner came on a Marshal vehicle with red beacon light and he along with the bodyguard of his wife demanded the papers of his vehicle and when the informant asked him to talk to the DTO who was checking the vehicles, then they assaulted the informant and snatched the documents of the vehicle. In the meantime, the DTO also came there, but the accused persons indulged in heated arguments with him also. Consequently, the F.I.R was lodged for unauthorized use of beacon light and for obstruction in discharge of official duty.

The FIR was initially lodged under sections 341,323,353,419 and 379 of the Indian Penal Code but subsequently, vide order dated 16.05.2008, Section 3(1)(X) of the SC & ST (Prevention of Atrocities) Act was also added.

On conclusion of investigation, final report (chargesheet) was submitted under sections 341,323,358,419 and 384 of the Indian Penal Code and section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. Consequently, the case was committed to the Court of Sessions. The petitioner filed an application for discharge under section 227 of the Code on 2.5.2013 on the ground that the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act was added after two days of the occurrence. The wife of the petitioner was Chairman of Kishanganj Zila Parishad and since the DTO and others were collecting money on the road and the petitioner being Ex- MLA of the area objected, hence this case was lodged against him.

Learned Additional Sessions Judge Ist, Kishanganj, vide order dated 2.2.2016, rejected the petition for discharge on the ground that at the stage of considering the application for discharge, the court has only to see whether a prima facie case is made out and the materials available on record suggests that prima facie case is made out against the petitioner.

Learned counsel for the petitioner submits that the case was maliciously lodged and the petitioner being Ex-MLA could not have acted in the manner as is alleged in the FIR. Even assuming the accusations to be true, no offence under sections 341,323,353,419 and 379 of the Indian Penal Code is made out. Since the petitioner had only protested against the illegal activities of the DTO and his clerk, hence a malicious prosecution has been launched against him.

Learned APP, however, submits that at the stage of considering discharge application, the court has only to see that there are sufficient materials to proceed with the trial. Moreover, charges have been framed more than a year ago and there is nothing on record to suggest the present stage of the case.

Having considered the rival submissions of the parties, it is relevant to refer to the relevant provisions under Chapter XVIII of the Code, which deals with the trial before the Court of Sessions. Section 226 stipulates the opening of the prosecution when the accused appears or is brought before the court in pursuance to commitment of the case and the prosecutor shall describe the charge brought against the accused by stating the evidence on which he proposes to prove the case. Sections 227 and 228 deal with the discharge and framing of charge which read as follows:

> "Section 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.
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> Section 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-
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> (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[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;
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> (b) is exclusively triable by the Court, he shall frame in writing a charge against the

> accused.
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> (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."

From perusal of the aforementioned provisions, it appears that at the stage of section 227 of the code, the Court has to consider the records of the case, documents submitted along with the police report under section 173(2) and after hearing the submissions of the prosecution and the accused, if the court considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record the reasons for doing so. The scope of sufficient ground has been considered by the Apex Court in several judgments and it was found that sufficient ground means prima facie case, as has been held in the case of Chandra Deo Singh Vs. Prokash Chandra Bose alias Chabi Bose and Anr., AIR 1963 Supreme Court 1430, where the Apex Court held with reference to the similar provision contained in sections 203 and 204 of the Code of Criminal Procedure, 1898, that sufficient ground means the prima facie case. Similar is the view of Apex Court in the case of Nirmaljit Singh Hoon Vs. The

State of West Bengal and Anr., (1973) 3 Supreme Court Cases 753. Paragraph 22 reads as follows:

> "22 Under Section 190 of the CrPC, a magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him, he can Under Section 200 take cognizance of the offence made out therein and has then to examine the complainant and his witnesses. The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding. Under Section 202, a magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under Section 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, Under Section 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground' used also in Section 209 have been construed to mean the satisfaction that a prima facie

case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. [see R. G. Ruia v. Bombay. In Vadilal Panchal v. Ghadigaonkar this Court considered the scheme of sections 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. In Chandra Deo Singh v. Prokash Chandra Bose where dismissal of a complaint by the Magistrate at the stage of Section 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a re-vision against such a refusal, the High Court also has to apply the same test. The question, therefore, is whether while applying this test the Chief Presidency Magistrate was right in refusing process and the High Court in revision could confirm such a refusal."

The scope of sections 227 and 228 of the Code has also been considered in the case of R.S. Mishra Vs. State of Orissa (2011) 2 Supreme Court Cases 689. Paragraph 21 reads as follows:

"21. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If after such consideration". Thus, these words in

> Section 228 refer to the `consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed `after such consideration' and therefore, that consideration must be reflected in the order."

In the case of the State of Maharastra Vs. Somnath Thapa (1996) 4 Supreme Court Cases 659, the Apex Court elaborated the scope of section 227 of the Code. Paragraph 32 reads as follows:

> "32. The aforesaid shows 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."

In yet another case, while considering the scope of section 227 and 228 of the Code in the case of Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 Supreme Court Cases 368, the Apex Court laid down certain parameters for exercise of such jurisdictions. Paragraph 21 reads as follows:

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

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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 discloses 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."

In the case of Union of India Vs. Prafulla Kumar Samal & Anr. (1979) 3 Supreme Court Cases 4, the Apex Court laid down four parameters for exercise of jurisdiction under section 227 of the Code. Paragraph 10 reads as follows:

> "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:
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> (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 largo 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 Judge cannot act merely as a Post Office or a mouth-piece 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.”

The Apex Court in the case of State of Tamil Nadu Vs. N. Suresh Rajan & Ors. (2014) 11 Supreme court Cases 709, while considering the comparative provisions for discharge in sessions triable cases under section 227, in warrant cases under section 239 and in complaint case under section 245 of the Code has held that at this stage of considering discharge the court cannot make a roving enquiry of the pros and cons of the matter and the way as if it was conducting trial. Paragraph 31 reads as follows:

> "31. Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than

on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31.1 Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction".

31.2 Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3Thus, there is difference in the

language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716. The same reads as follows:

"43……Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial court is satisfied that a prima facie case is made out, charge has to be framed."

While examining the scope of section 227, the Apex Court in the case of P. Vijayan Vs. State of Kerala & Anr. (2010) 2 Supreme Court Cases 398 has held that if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the judge is empowered to discharge the accused and at this stage he would not see that the trial will end in conviction or acquittal. Relevant part of Paragraph 10 reads as follows:

> "……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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office……"

The Apex Court in the case of State of Bihar Vs. Ramesh Singh (1977) 4 Supreme Court Cases 39 has held that mere suspicion cannot take the place of proof and hence the charges can only be framed when only grave suspicion is there on record. Paragraph 4 reads as follows:

> "Under Section 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 under Section 227 or Section 228 of the Code. If "the Judge consider that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 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) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxta position, 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 the stage of deciding the matter under Section 227 or Section 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 evidence, if any, cannot show that the accused committed the offence, then 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 Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

In the case of Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijjaya & Ors (1990) 4 Supreme Court Cases 76 has held that at the stage of section 227 of the Code, the court has only to decide whether or not there exists sufficient ground for framing charge, hence, enquiry must be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. Paragraph 6 reads as follows:

> "The next question is what is the scope and ambit of the 'consideration' by the trial court

at that stage. 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 F 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. After considering the case law on the subject, this Court deduced as under: (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 adduced 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 of Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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."

The Apex Court in the case of Soma Chakraborty Vs. State through CBI (2007)5 Supreme Court Cases 403 has held that if the court on the basis of materials on record forms an opinion that the accused might have committed the offence, it can frame charge. Paragraph 10 reads as follows:

"It may be mentioned that the settled legal position, as mentioned in the above decisions, 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 at that stage. Before framing a charge the court must

> apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

Hence, the consideration at the stage of 227 is only for the limited purpose to see that prima facie case is made out against the accused or not as has been held in the case of State of M.P. Vs. Mohanlal Soni (2000)6 Supreme Court Cases 338. Paragraph 7 reads as follows:

> "The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

At the stage of section 227, the court has only to see whether the accusation constitutes offence or not to reach to a conclusion that prima facie case is made out as has been held in the case of Onkar Nath Mishra & Ors. Vs.

State (NCT of Delhi) & Anr. (2008) 2 Supreme Court Cases 561. Paragraph 11 reads as follows:

> "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 therefrom, 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."

The purpose of considering discharge at the threshold of the commencement of the trial has been elaborated by the Supreme Court in the case of P. Vijayan (supra. Paragraph 25 reads as follows:

> "As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure."

The Apex Court, in the case of Amit Kapoor Vs. Ramesh Chander & Anr. (2012) 9 Supreme Court Cases 460 has laid down the parameters for exercise of power under section 482 of the Code for quashing the order passed under section 227 of the Code refusing to discharge or for quashing the order passed under section 228 of the Code framing charge where it has been held that power for quashing criminal proceeding, particularly, charge framed in terms of section 228 should be exercised very sparingly with circumspection and that too in rarest of the rare cases. Paragraph Nos. 27.1, 27.9, 27.10, 27.12, 27.13, and 27.14 read as follows:

> "27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
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> ....
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> 27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
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> 27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

……………………………

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge."

In view of the discussion made above, adverting to the present case, this court finds that there is specific accusation against the petitioner in the FIR. On conclusion of investigation, charge sheet was submitted, cognizance was taken and finding the material on record and after hearing counsels for the parties, the court rejected the application for discharge of the petitioner and thereafter, framed the charges. The charges were framed by the learned trial court vide order dated 2.2.2016, but for quashing of the same, I.A. was filed on 28.11.2016. The matter was heard after more than a year of framing charge and there is nothing on record to suggest the present stage of the trial nor does this court find this case as rarest of the rare case where the order framing of charge can be quashed.

So far as the petitioner's plea that he was protesting against the misuse of official power by the DTO and his clerk and it was not expected from the petitioner to commit such offence being Ex-MLA, are concerned, it is well settled view that the defence of the accused cannot be looked into at the stage of discharge, as has been held in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph Nos. 18 and 23 read as follows:

> "18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207 (A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is

impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

23. As a result of 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 accused may produce at the stage of Section 227 of the Code has not been correctly decided."

The above view has further been reiterated by the Apex Court in the case of Rukmini Narvekar Vs. Vijaya Satardekar & Ors. (2008) 14 Supreme Court Cases 1. Paragraph 38 reads as follows:

"In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording of Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred."

In view of the discussions made above, this court finds no infirmity in the order impugned. This application is, accordingly, dismissed.

However, any observations made in the present order is limited only for the purpose of deciding the issue of rejecting the discharge application and framing of charge by learned trial Court. Hence, any observation made in this order may not prejudice the case of either party at the trial.

(Dinesh Kumar Singh, J)

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