IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16967 of 2016

Arising Out of PS.Case No. -151 Year- 2011 Thana -CHAKIA District- EASTCHAMPARAN(MOTIHARI)

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1. Raju Singh @ Raj Kumar Singh, Son of Birendra Narayan Singh
2. Birendra Narayan Singh, Son of Late Ramsharaya Singh
3. Chandan Kumar, Son of Birendra Narayan Singh'
4. Lal Babu Sah, Son of Bana Sah
5. Kamlesh Singh @ Nanhe Singh @ Kamlesh Kumar Singh, Son of Late Gopal Singh
6. Mohan Singh, Son of Late Gopal Singh
7. Arvind Singh, Son of Late Puneodeo Singh
8. Vidya Thakur @ Vidya Sharma, Son of Ram Awadh Sharma
9. Vakil Singh, Son of Ramnath Singh all are resident of Village- Persauni Khem Tola Narkatiya P.S. Chakiya, District- East Champaran.
10. Sanjay Kumar Singh, Son of Lalan Singh
11. Perbhu Paswan, Son of sukhal Paswan
12. Chandeshwar Paswan, Son of Perbhu Paswan all are resident of Village- Parsauni Khem Tola Narkatiya, P.S. Chakiya District East Champaran
13. Parveen Kumar Shrivastava, Son of Narmdeshwar Sharan Shrivastava
14. Umakant Dubey, Son of Late Parma Nand Dubey both are resident of Village- Persauni Khem, P.S. Chakiya District- East Champaran.
15. Niraj Kumar Singh, Son of Lal Babu Singh
16. Tutu Kumar, Son of Uma Singh
17. Manish Kumar, Son of Thaga Singh
18. Dilip Kumar Singh, Son of Suresh Singh
19. Sandeep Kumar Singh @ Arun Singh, Son of Paras Singh
20. Arun Kumar Singh @ Arun Singh, Son of Paras Singh null
21. Niraj Kumar Singh, Son of Late Ramesh Singh
22. Sheo Kumar Sah, Son of Bhadai Sah all are resident of Village- Persauni Khem Tola Narkatiya, P.S. Chakiya District- East Champaran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Vijay Shankar Shrivastava
For the Opposite Party/s : Mr. Ram Shankar Das (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

3 23-05-2017 Heard learned counsels for the parties.

The present application has been filed for quashing the order dated 18.2.2016 passed by the learned Additional Sessions Judge Ist, East Champaran, Motihari in SC/ST Trial No. 16 of 2015 arising out of Chakia P.S. Case No. 151 of 2011, whereby the petitioners' application for discharge under section 227 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been rejected.

The factual matrix of the case would unveil that on 24.5.2011, the complainant Sishpal Paswan filed Complaint Case No. 956 of 2011, in the court of learned C.J.M., East Champaran, Motihari, which after being transferred under section 156(3) of the Code, came to be registered as Chakia P.S. Case No. 151 of 2011 on 16.6.2011, under sections 147,148,149,341,323 and 379 of the Indian Penal Code and section 3(1)(iii),(vii) and (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, with accusation that during Panchayat election, petitioner no. 2 being a candidate for the post of Panchayat Mukhia, was pressurizing the informant side to cast vote in his favour which was going to be held on 21.5.2011, whereas, the informant was willing to cast his vote in favour of rival candidate Brajesh Kumar Singh. It is further alleged that one day prior to the election, the petitioner no. 2 threatened the informant to cast his vote in his favour otherwise all the members of Dushadh community, to which the informant belongs, will be killed. On the alleged date of occurrence i.e. 21.5.2011, while the informant along with his neighbour were going to cast their vote, petitioner no. 2, Birendra Narayan Singh armed with revolver, petitioner no. 1 Raju Singh alias Raj Kumar Singh, armed with rifle and others variously armed, directed the informant not to cast vote and attacked the informant and his neighbours. The accused persons abused and assaulted the informant and others, with lathi and butt of rifle. When the witnesses came to rescue, they were also assaulted and humiliated. The accused persons took away money from the informant's pocket and on protest being made, petitioner nos. 1 and 2 resorted to firing upon the informant and the witnesses, but it did not cause any injury. The accused persons dragged the informant by a towel around his neck. Ultimately, on arrival of police, the accused persons fled away, after which the informant made a complain to the patrolling party, who helped the informant in casting his vote. Thereafter, the informant went to the police station on 22.5.2011, but the FIR was not registered and he ultimately filed Complaint Case no. 956 of 2011 on 24.5.2011.

For the alleged occurrence, the nephew of the informant of Chakia P.S. Case No. 151 of 2011, namely Santosh Paswan, lodged Chakia P.S. Case No. 107 of 2011 on 21.5.2011, against eleven accused including some of the petitioners with accusation under sections 147,148,149,323,504 and 307 of the Indian Penal Code and section 27 of the Arms Act for the same occurrence though with different version.

On conclusion of investigation, the petitioners were not sent up for trial as the case was found false, but differing with the final form, cognizance was taken in both the cases, vide order dated 25.5.2013 and 25.4.2013, respectively, passed by the learned C.J.M., East Champaran, Motihari. However, petitioner nos. 2 and 13 unsuccessfully challenged both the orders of cognizance before this Court vide Cr. Misc. Nos. 10762 of 2014 and 39525 of 2013. In the aforesaid two applications, this court refused to interfere but the same were disposed of with a direction to the learned Chief Judicial Magistrate to look into the records of the case and if it is found that both the cases are common, then, they shall be amalgamated. Consequently, the learned C.J.M., vide order dated 17.1.2015, amalgamated both the cases and accordingly both the cases were committed to the Court of Sessions on 26.2.2015.

Twenty four accused persons filed an application for discharge under section 227 of the Code on the ground that in the background of inimical litigated relationship, the accusation has

has been levelled, the petitioners were not sent up for trial and no material was collected during investigation to connect the accused persons with the alleged offence.

The learned Ist Additional Sessions Judge, East Champaran, Motihari, vide order dated 18.2.2016, passed in SC/ST Trial No. 16 of 2015, rejected the discharge application of the petitioners on the ground that there are materials in the case diary of both the cases, which supports the prosecution case and hence, there are sufficient materials on record to proceed against the petitioners. The said order is impugned in the present proceeding.

Learned counsel for the petitioners submits that in the background of litigated relationship, the accusation has been levelled and finding the case untrue, the petitioners were not sent up for trial. However, the learned counsel for the State submits that the impugned order reflects that the learned Additional Sessions Judge has found sufficient material by way of statements of several witnesses, who supported the prosecution case and hence, found sufficient material to proceed with the trial. It is further submitted that at this stage, the court has only to see the prima facie 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 deal with the trial before the Court of Sessions. Section 226 of the Code stipulates the opening of the case of prosecution, when the accused appears or is brought before the court in pursuance commitment of the case, when 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 of the Code 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;

(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."

From perusal of the aforementioned provisions, it appears that under the provision 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 21 reads as follows:

> 21. With respect to the High Court, the fact that the said 707 share certificates were initially with the Company was never in issue between the parties. The issue between them was whether on May 27, 1965 Jaffray and Rodewald had delivered them to Varma, and whether Varma in his turn had handed them over to Jaffray's personal custody to be returned to him later on that day. Therefore, the question as to how and in what circumstances the said share certificates were in possession of the Company was totally irrelevant. Equally irrelevant were the reasons why the indemnity bond was executed first by Varma and then by the appellant. In any case, the reasons for executing' it were not par to seek. The Company claimed a lien on those share certificates on account of its having satisfied the tax liabilities of Turner family as recited in the bond itself. As further recited in the bond, Mundra also claimed those shares by virtue of the said decree in his favour. According to the appellant, Jaffray and Rodewald, therefore, insisted that the liquidators of Hunger-ford should execute the said bond to cover the company against any risk arising from the said claims. Besides, there was no question of the appellant having to explain how the said share certificates were in possession of the company, for, on that aspect the parties were never at variance. So far as the bond was

> concerned, both the appellant and wit. Majumdar had deposed that it had been executed at the insistence of Jaffray and Rodewald. Therefore, these two circumstances, the failure to explain which the High Court characterised as the most unusual circumstances, were on record and since the parties were not at issue on the first and the bond itself recited the reasons for its execution, there was no question of the appellant and his witnesses having failed to explain them.

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:

> “4. 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 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."

In the case of Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja & 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:

> "6. 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 (sic.) 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."

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."

Hence, the consideration at the stage of 227 of the Code 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:

> "7. 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."

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."

At the stage of section 227 of the Code, 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:

> "11. 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."

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."

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."

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, on 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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> 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.

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 principles as discussed above, adverting to the present case, this Court finds that there is specific accusation against the petitioners in the FIR though they were not sent up for trial but differing with the same, cognizance was taken and this Court declined to interfere with the cognizance order. It appears from the impugned order that the learned Ist Additional Sessions Judge, after going through the case diaries of both the cases, has quoted several paragraphs which reflects that the learned court below came to the conclusion after hearing counsel for the parties that there are sufficient materials to proceed against the petitioners. Hence, this court finds no infirmity in the order impugned.

So far as the question of petitioners' plea that there were series of litigations between the parties and hence the accusation has maliciously been levelled is concerned, it is well settled view that section 227 of the Code does not permit the accused to file any material or documents at the stage of consideration of discharge or framing of charge. Though for the first time, a different view was taken in the case of Satish Mehra Vs. Delhi Administration and Anr. (1996) 9 Supreme Court Cases 766 where it was held that if the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, then such material can be considered. Paragraph Nos. 13 and 14 read as follows:

> "13. Similar situation arises under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two stages the code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Here the 'ground' may be any valid ground including insufficiency of evidence to prove charge.

> 14. The object of providing such an opportunity as is envisaged in Section 227 of the code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code."

The above said view was doubted and the matter was referred to a three Judges bench in the case of State of Orissa Vs. Debendra Nath Padhi (2005) 1 Supreme Court Cases 568 where the Apex Court has elaborated the meaning of expression 'the record of the case and the word 'case' used in Section 227 of the Code. Hence, no provision of the Code gives the accused right to file any material or document at the stage of framing of charge except the document and articles produced with the police report submitted under section 173(2) of the Code. Paragraphs 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 issue whether at the stage of exercise of jurisdiction under section 227 of the Code the Court can look into the defence material was further examined in the case of Rukmini

Narvekar Vs. Vijaya Satardekar & Ors. (2008) 14 Supreme Court Cases 1, where Justice Katju while reiterating the view laid in Debendra Nath Padhi (supra) had observed that in exceptional and rare cases the court can look into the material produced by the defence at the time of framing of charge provided such material convincingly demonstrate that the prosecution version is totally absurd or totally concocted. Paragraph 22 records the lead view of Justice Markendey Katju (as his lordship then was) which reads as follows:

> "22. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution

case is totally absurd or totally concocted."

However, Justice Altamas Kabir, as his Lordship then was, while writing concurrent judgment has held that at the stage of Section 227 of the Code, the trial court cannot consider the material produced by the defence, however, such material can be considered in exercise of power under section 482 of the Code. Paragraph Nos. 37 and 38 read as follows:

> " 37. The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned Counsel before the larger Bench and the same were negated as far as Section 227 Cr.P.C. is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.
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> 38. 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 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 merit in the application. It is accordingly dismissed. However, 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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