

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1252 of 2013

**Nurul Huda @ Mister
Vs
The State of West Bengal & Anr.**

For the Petitioner : Mr. Sourav Chatterjee
Mr. Soumya Nag

For the State : Mr. Madhusudan Sur
Mr. Manoranjan Mahata

Heard on : 17.02.2023

Judgment on : 03.07.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is preferred against an order dated 29.01.2013 passed by the Learned Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad in Sessions Serial No. 23 of 2010, pending before the Learned Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad, arising out of Nabagram Police Station Case No. 136 of 2007 dated 26.11.2007 under Sections 302/34 of the Indian Penal Code, thereby rejecting the discharge petition in connection with the aforesaid case.

2. The instant criminal revisional application precisely stated that the petitioner was not named in the First Information Report and had no role to play with regard to the commission of the offences as alleged or at all.
3. Upon conclusion of a purported investigation, the Investigating Agency submitted a charge-sheet being charge-sheet No.151/2008 dated 03.12.2008 under Sections 302/34 of the Indian Penal Code against 6 persons including the present petitioner.
4. The petitioner has been on bail in connection with the instant case.
5. The petitioner filed an application for discharge under Section 227 of the Code of Criminal Procedure before the Learned Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad.
6. By the impugned order dated 29.01.2013, the Learned Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad rejected the prayer for discharge of the petitioner and fixed 04.03.2013 as the next date for consideration of charge.
7. The Learned Judge while passing the impugned order dated 29.01.2013 failed to appreciate the absence of incriminating materials against the petitioner to prima facie constitute offences under Sections 302/34 of the Indian Penal Code, disregarding the fact that graver the offences alleged against, the greater must be the degree of proof to necessitate a person to stand a trial.
8. The Learned Advocate for the appellant submitted that the Learned Trial Judge in the impugned order dated 29.01.2013 himself recorded that the Learned Public Prosecutor candidly submitted there were no materials

available on record to justify framing of charge under Sections 302/34 of the Indian Penal Code against the petitioner. Notwithstanding the same, an opinion was conceived though there may not be any materials available against the petitioner under Sections 302/34 of the Indian Penal Code, still a charge may be framed against him under Sections 302/120B of the Indian Penal Code. Such finding indicated mechanical approach in deciding the discharge petition filed by the petitioner without appreciating that mere “suspicion” was not enough to frame charge against an accused but it should be a “grave suspicion” and the same was absent qua the petitioner in the instant case.

9. Presumptive opinion as to the existence of the factual ingredients constituting the offences either under Sections 302/34 of the Indian Penal Code or under Sections 302/120B of the Indian Penal Code is unjustified and therefore framing of charge against the present petitioner in respect of the commission of those offences is unsustainable.
10. It was further argued that in case of existence of two views and the evidence produced before the Learned Trial Judge gave rise to "suspicion" only as distinguished from "grave suspicion", the Learned Trial Judge ought to have discharged the accused and relied upon the decisions cited as follows:

In ***Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra***¹, the Hon'ble Supreme Court observed as follows :

“20. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or

¹ 2008 (10) SSC 394

(b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in Shivnarayan Laxminarayan Joshi Vs. State of Maharashtra a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

...

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.

....

27. From the material on record, it is manifestly clear that it was the family members of the appellant, one of their employees and a friend who had all allegedly entered into an agreement to eliminate the deceased. However, as noted above, Accused A-1, A-2, A-4, A-11 and A-12 already stand discharged from the charges framed against them under Sections 120-B and 302 I.P.C vide orders dated 7-7-2006 and 14-05-2007, passed by the High Court and the Sessions Judge respectively. While discharging the said accused, both the courts have come to the conclusion that there is no material on record to show that they had hatched a conspiracy to commit murder of Kunal. Thus, the stand of the prosecution to the effect that the parents, sister and friends of the appellant had entered into a criminal conspiracy stands rejected by virtue of the said orders of discharge. Furthermore, in its order dated 07-07-2006, the High Court has opined that the circumstances, relied upon by the prosecution, even if accepted in their entirety, only create a suspicion

of motive, which is not sufficient to bring home an offence of murder. As noted above, the State's petition for special leave against the said judgment has already been dismissed.

28. We are, therefore, of the view that in the light of the subsequent events, namely, the orders of the High Court dated 07-07-2006 in Criminal Writ petitions Nos. 1283-84 of 2006, discharging the appellant's mother, sister and two close associates, Accused 2,4, 11 and 12 respectively; order dated 30-04-2007 passed by this Court dismissing the special leave petition preferred by the State against order dated 07-07-2006 and order dated 14-05-2007 passed by the Sessions Judge, Satara, discharging the father (A-1) of the appellant, stated to be the mastermind behind the entire conspiracy, for offences under Sections 120-B and 302 I.P.C, on same set of circumstances and accusations, no sufficient ground survives to proceed against the appellant for the aforementioned offences."

In *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & Anr.*²,

the Hon'ble Supreme Court observed as follows :

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material

² 2019 (16) SCC 547

which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

...

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

....

51. A confession made to a police officer is clearly inadmissible. The statement relied on by the respondent is dated 11-04-1996 and the appellant was arrested on 11-04-1996. This is pursuant to the FIR registered on 10-04-1996. The statement dated 11-04-1996 is made to a police officer. This is clear from the statement as also the letter dated 10-08-1996 (Annexure R-6) produced by the respondent. It is clearly during the course of the investigation. Even if it does contain admissions by virtue of Section 162 and as interpreted by this Court in V.C. Shukla, such admissions are clearly inadmissible.

...

54. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and the appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the petition filed under Section 482 Cr.P.C. The order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged.”

In **Kanchan Kumar Vs. State of Bihar**³, the Hon’ble Supreme Court observed as follows :

“15. Summarising the principles on discharge under Section 227 Cr.P.C., in Dipakbhai Jagdishchandra Patel Vs. State of Gujarat, this Court recapitulated: (SCC p. 561, para 23)

³ 2022 (9) SCC 577

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”

....

21. The conclusions that we have drawn are based on materials placed before us, which are part of the case record. This is the same record that was available with the Special Judge (Vigilance) when the application under Section 227 Cr.P.C. was taken up. Despite that, the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge (Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a prima facie case is made out for the appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge (Vigilance).”

In **Vikramjit Kakati Vs. State of Assam**⁴, the Hon'ble Supreme Court observed as follows :

“10. Before we proceed to examine the matter on merits any further, it will be apposite to take note of the legal principles applicable seeking discharge, for which we may refer to a judgment of this Court in P. Vijayan v. State of Kerala, which has been further reiterated by this Court in the recent judgment in M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru and discerned 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

⁴ 2022 SCC OnLine SC 967

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.”

...

13. Regarding the allegation of destruction of evidence by the appellant along with the wife of the deceased (A-1), no material, oral/documentary, has been placed by the police in the Charge-Sheet, which, in any manner, connect the appellant with the destruction of evidence. To the contrary, as per the statement of the witnesses which are recorded, the fact that reveals is that the appellant accompanied the deceased to the hospital at Sivasagar and from there to Dibrugarh, where the deceased succumbed to the injuries and based on the information given by the appellant, the deceased's relatives, including the complainant, came to the hospital and from there his body was taken to his native place Tezpur for performing the last rites. Here, no other witnesses, whose statements were recorded, stated anything about the appellant visiting the house of the deceased either before or after the alleged destruction of evidence has taken place, except the complainant, who even in the FIR did not make any statement against the appellant, but later made a bald statement of her strong suspicion in her statement under Section 161 Cr. P. C.

14. So far as the conspiracy, as alleged, is concerned, some evidence ought to have emerged or the prosecution could have brought on record some prima facie material whereby the appellant along with the accused persons had prior meeting of mind to execute the alleged offence and in the given facts and circumstances, there is no justification for the appellant to undergo the agony of facing trial, to which the appellant is not even prima facie connected. Still the prosecution filed Charge-Sheet on 30th August, 2011 for offence implicating the appellant under Sections 302/120-B/201 IPC along with the wife of deceased (A-1) and mother of wife of the deceased (A-3).

15. There is no iota of evidence which, in any manner, connect the present appellant with the commission of crime and neither the Trial Court nor the High Court has even taken pains to look into the record as to whether there is any oral/documentary evidence which in any manner connect the appellant with the alleged incident of crime and,

in our considered view, in the absence of even a prima facie material, oral/documentary, being placed by the prosecution in the Charge-Sheet, the Trial Court as well as the High Court have committed serious error in framing charge against the appellant. Even the complainant also in the complaint has not named the appellant as the perpetrator of the offence, rather she stated that she suspects foul play.”

11. The Learned Advocate for the State submits presence of incriminating materials in the Case Diary to indict the petitioner and at such a preliminary stage to quash the proceedings will result in the process of abuse of law, accordingly the revisional application should be dismissed.
12. The name of the petitioner was not stated in the complaint or the First Information Report but emerged from the statement recorded under Section 161 of Criminal Procedure Code. The Learned Advocate for the petitioner argued that the statement recorded under Section 161 of Cr.P.C. as well as the statement of confession under Section 25 of the Indian Evidence Act before the police officer are inadmissible in evidence and therefore in absence of “suspicion” or “grave suspicion” the petitioner should have been discharged since the element of conspiracy to commit the offence cannot be proved on the basis of the documents on record or on mere presumption by the Learned Trial Court.
13. The accused if not named in the F.I.R. does not render the same to be negligible in the context of indictment of the accused. The informant may not be aware of the miniscule detail of the circumstances in which the offence may have been committed, the role and dynamism of the participants or perpetrators of the crime.

14. In the case of **State of U.P. vs. Naresh & Ors.**⁵, the Hon'ble Supreme Court observed as follows:

“It is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated.

The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. [Vide: Rohtash v. State of Rajasthan, (2006) 12 SCC 64; and Ranjit Singh & Ors. v. State of Madhya Pradesh, JT 2010 12 SC 167].”

15. In the case of **Superintendent of Police, C.B.I vs. Tapan Kr. Singh**⁶, the Hon'ble Supreme Court observed as follows:

“It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose

⁵ Criminal Appeal No. 674 of 2006

⁶ Appeal (Crl.) 938 of 1995

in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters

which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.”

16. In the case of **Motiram Padu Joshi and ors. vs. The State of Maharashtra**⁷, the Hon’ble Supreme Court observed as follows:

“14. Furthermore, as pointed out by the High Court, FIR is not an encyclopedia which should contain all the details of the incident. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution case about the occurrence appear. Omission as to the names of the assailants or the witnesses may not all the times be fatal to the prosecution, if the FIR is lodged without delay. Unless there are indications of fabrication, the court cannot reject the prosecution case as given in the FIR merely because of omission. In the present case, FIR was registered without delay and prompt registration of FIR itself lends assurance to the prosecution case. The object of the FIR is to set the law in motion. Omission to give the names of assailants or the names of witnesses in the FIR is not fatal to the prosecution case. The High Court was right in observing that non-mention of the names of eye witnesses in the FIR can hardly be fatal to the prosecution case.”

17. A preliminary information sets the process of investigation in motion whereby the statements recorded under Section 161 of Cr.P.C., even the confessional statements depending upon the peculiarity of individual cases create the linkages to form the edifice of investigation, burgeoning into a

⁷ Criminal Appeal No. 1479 of 2015

prima facie case to frame charges against the accused if not improbable, absurd and figmentary.

18. The Learned Magistrate is expected to assess the case diary substantively and can presume the involvement of an accused in an offence at the primary stage and lead to frame charge against the same based on his or her critical observation and judicial reasoning. The Learned Magistrate shall not absolutely rely on the contention of the Public Prosecutor and consider the same to be sacrosanct at the time of considering a petitioner for discharge if in the opinion of the Learned Magistrate substantial issues of justification are prevalent at the initial stage prior to the recording of evidence by the prosecution to initiate trial which upon conclusive determination may even acquit the accused.
19. In the case of **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey**⁸, the Hon'ble Supreme Court observed as follows:

“25. In the case of Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148, this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under:- “18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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

⁸ S.L.P (Criminal) No. 4599 of 2021

made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 2018(13) SCC 455 4 2019(6) SCALE 794 the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.” (emphasis supplied)

26. In the case of *State of Karnataka v. M.R. Hiremath*, reported in (2019) 7 SCC 515, this Court held as under:- “25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709, advertent to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29) “29. ... 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.”

27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See : Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217).

28. In Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, this Court observed in paragraph 30 that the Legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. There is an inbuilt element of presumption. It referred to its judgement rendered in the case of

State of Maharashtra v. Som Nath Thapa and others, (1996) 4 SCC 659, and to the meaning of the word “presume”, placing reliance upon Blacks’ Law Dictionary, where it was defined to mean “to believe or accept upon probable evidence”; “to take as true until evidence to the contrary is forthcoming”. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, incriminating material and evidences put to the accused in terms of Section 313 of the Code, and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgement.....” (emphasis supplied)”

20. In the case of **R. S. Nayak v. A.R. Antulay**⁹, the Hon’ble Supreme Court observed as follows:

“The Cr. P.C. contemplates discharge of the accused by the Court of Session under Section 227 in case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three Section 2s contain somewhat different provisions in regard to discharge of the accused. Under Section 227 the trial Judge is required to discharge the accused if he considers that there is not sufficient ground for proceeding against the accused. Obligation to discharge the accused under Section 239 arises 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 unrebutted, would warrant his conviction.... It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge

⁹ 1984 AIR 648

has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. 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 the 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. Section 2s, the legal position is that if the trial, Court is satisfied that a prima facie case is made out, charge has to be framed."

21. In the case of **State of Bihar v. Ramesh Singh**, the relevant portion in this judgment is as follows in para 4 at page 2019 (of AIR) : at p. 1607 of Cri LJ:

"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.... 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 pans 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.”

22. In the case of **Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja**, it was observed at page 55 (of AIR) : at p. 1339 of Cri LJ (para 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, 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 Cri. P.C 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.”

29. In the case of **State of Haryana and Others v. Bhajan Lal and Others**¹⁰

the Hon’ble Supreme Court has held as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

¹⁰ 1992 Supp (1) SCC 335

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

*The principles as laid down above have consistently been followed, as well as in the recent judgment of three Judge judgment of the Hon’ble Supreme Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others**¹¹.*”

23. The word “Suspicion” means “a feeling or thought that something is possible, likely, or true”. It can also mean “surmise” or “conjecture” or “speculation”.

¹¹ AIR 2021 SC 1918

“Grave suspicion” means *“something which arises on the basis of some acceptable material or evidence”* which is an event or situation i.e. serious important or worrisome. The disclosure of the name of the accused in the statement recorded under Section 161 Cr.P.C., his confession before the police under Section 25 of the Indian Evidence Act, his abscondence immediately after the alleged crime to have been committed, raise grave suspicion regarding the conduct of the petitioner which, however, does not prove him to be guilty at a nascent stage prior to the commencement of recording of evidence. However, in the later stage the accused might get acquitted based on the assessment of the evidence adduced.

24. In view of the above discussion and the decisions cited, the criminal revisional application is dismissed.
25. Accordingly, the instant criminal revisional application stands disposed of. Connected application if any is also disposed of accordingly.
26. There is no order as to cost.
27. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
28. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)