IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2614 of 2019

Ghanashyam Adhikary

Vs

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Jayanta Narayan Chatterjee, Miss. Moumita Pandit, Miss. Ritushree Banerjee.
For the State	:	Mr. Prasun Kumar Dutta, Ms. Zareen N. Khan, Md. Kutubuddin.
Heard on	:	09.01.2023
Judgment on	:	02.02.2023

Shampa Dutt (Paul), J.:

The present revision has been filed praying for quashing of proceedings being S.T. No. 8 of 2019 corresponding to G.R. Case No. 1584 of 2018 arising out Amta Police Station Case No. 283/18 dated 04.07.2018 under Sections 498A/304B/302 of the Indian Penal Code , 1860 read with Sections 3 and 4 of the Dowry Prohibition Act, 1961 pending before the Court of the Learned Additional Sessions Judge, 1st Court, Uluberia at Howrah and all Orders passed therein including Order dated 02.10.2018 passed by the Learned Additional Chief Judicial Magistrate at Uluberia thereby taking cognizance of the offences punishable under Sections 498A/304B/34 of the Indian Penal Code, 1860 against the petitioner herein.

The petitioner's case is that he being the elder brother-in-law (bhasur) of the deceased has been made one of the accused persons in Amta Police Station Case No. 283 of 2018 dated 04.07.2018 under Sections 498A/304B/302/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act, which was initiated on the basis of a written complaint lodged by one Nomita Nanda inter alia alleging that :-

The daughter of the defacto complainant namely Sangita Nanda was married to Shyamal Adhikary on 08.12.2011. It is alleged that the de-facto complainant gave Rs. 1,00,000/- (Rupees One Lakh), 5 bhori gold, gold ring and furniture to the petitioner as dowry. It is further alleged that Shyamal Adhikary, who was married to Sangita Nanda told her to bring more money from her parental house. It is also alleged that they would ask her to hand over her salary, from her job as a para teacher, to them. It is also alleged that during Sangita Nanda's stay in her matrimonial house she would be harassed and tortured. On 04.07.2018 the de-facto complainant tried calling (over phone) her daughter but as there was no response, at about 11.30 a.m. the de-facto complainant visited the matrimonial house of her daughter, Sangita Nanda, wherein she found her daughter hanging lifeless in the kitchen.

That pursuant to the aforesaid complainant, a case under Sections 498A/304B/302/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition, Act was initiated against the petitioner and 2 others being Amta Police Station Case No. 283 of 2018 dated 04.07.2018.

Upon completion of the purported investigation, Charge Sheet was submitted by the investigating agency being Charge Sheet no. 380 of 2018 under Sections 498A/304B/34 of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act, 1961 against the petitioner and two others.

The petitioner is the brother-in-law of the deceased as his brother namely Shyamal Adhikary was married to Sangita Adhikary on 19.11.2007.

The Learned Additional Chief Judicial Magistrate at Uluberia vide impugned Order dated 02.10.2018 had been pleased to take cognizance of the offences under Sections 498A/304B/34 of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act, 1961 against the petitioner and two others being completely oblivious of the settled principles of law.

The Learned Additional Chief Judicial Magistrate at Uluberia vide impugned order dated 04.12.2018 had thereafter been pleased to commit the instant case to the Court of the Learned Additional Sessions Judge, 1st Court, Uluberia, Howrah.

Mr. Jayanta Narayan Chatterjee, Learned Advocate for the petitioner has submitted that the petitioner is an approved Assistant Teacher of a Secondary School and has been living separately with his own family and that there would be very less or no communication or contact with the deceased or her family members.

The First Information Report as well as the materials clearly fail to disclose any ingredient of torture perpetrated upon the deceased by the present petitioner who even remotely did not instigate the factum of suicide as alleged.

That in order to rope in an accused under Section 304B of Indian Penal Code, 1860 it must necessarily be established that the death of a woman caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage. **In the instant case the marriage was solemnized between the parties on 2007 (copy of Marriage Certificate attached) while the lady allegedly died on 04.07.2018 which after about 11 years from the date of marriage** and as such the petitioner cannot be implicated in the present case owing to the legal bar engrafted under the provision itself.

In case the petitioner is tried for offence punishable under Section 304B of Indian Penal Code, 1860, he shall be severely prejudiced in as much as the presumption under Section 113B of the Indian Evidence Act, 1872 shall be made applicable upon him without any justifiable cause.

The written complaint, Charge Sheet as well as the materials collected in the course of the investigation failed to disclose the commission of any offence punishable under sections 498A/304B/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act.

There is no legally admissible evidence to prove the charge punishable under Sections 498A/304B/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act against the petitioner.

The allegations made in the FIR and the statements recorded are palpably improbable, absurd and vague.

The petitioner cannot be implicated in the present case by taking aid of Section 304B of Indian Penal Code, 1860 owing to the legal bar as the time gap between the date of marriage between the deceased and the relative of the present petitioner and the alleged unnatural death of the deceased was much more than 7 years.

The petitioner was having almost no connection with the deceased and the tendency of the de-facto complainant to rope in as many family members of the husband warrants to be deprecated by this Hon'ble Court for the ends of justice.

That the chances of conviction of the present petitioner on the basis of the materials available are bleak and the petitioner may be saved of the rigors of criminal trial for the interest of justice.

That the continuation of the impugned proceedings shall amount to an abuse of the process of the Court and it is expedient in the interest of justice that the impugned proceedings and all orders passed therein be quashed and/or set aside in order to prevent the abuse of the process of Court or otherwise to secure the ends of justice.

The impugned proceeding and all orders passed therein are otherwise bad in law and are liable to be set aside and/or quashed.

Mr. Prasun Kumar Dutta, Learned Advocate for the state has produced the case diary and has submitted that the de-facto complainant could not produce the Marriage Certificate. It is further submitted that in the FIR it has been stated that the marriage between the parties took place on 8th December, 2011 and as such the death of the victim took place within 7 years of marriage and the Charge Sheet filed is in accordance with law and as such the revision is liable to be dismissed.

The Certificate of Marriage is not objected to by the prosecution/state.

The date of marriage as per the Marriage Certificate is 19th November, 2007 and the date of death is 4th July, 2018 which is after about 11 years of marriage.

Section 304B of the Indian Penal Code, lays down:-

> *"**304B. Dowry death.** -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Essential ingredients so as to attract Section 304B.- *In order to convict an accused for the offence punishable under Section 304B IPC, the following essentials must be satisfied:*

(i) *The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;*
(ii) *Such death must have occurred within seven years of her marriage;*
(iii) *Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;*
(iv) *Such cruelty or harassment must be for, or in connection with, demand for dowry."*

The petitioner has further submitted that the case has been fixed for framing of charge before the Court of Learned Additional District and Sessions Judge, 1st Court, Uluberia, Howrah.

Chapter xviii of the code of criminal procedure relates to the commencement of trial before a court of session. As such at the time of consideration and framing charge under Section 228 of the Cr.P.C., the Learned Sessions Judge is empowered to consider the materials on record and the case diary and frame charge. Both the parties including the prosecution is heard by the court. All documents is to be placed before the court framing charge at the time of hearing and consideration of charge even though cognizance has been taken. Charge is framed only in respect of the offences which is prima facie seen from the case diary and other materials on record. The parties are given an opportunity of hearing at the time of consideration of charge.

The prayer that “Section 304B” is not applicable in the present case has been discussed earlier, considering the date of marriage as seen from the certificate of marriage.

This matter has to be considered by the Learned Sessions Judge and on considering the materials on record appropriate charge has to be framed by the Learned Sessions Judge according to the materials before it.

The copy of the Marriage Certificate filed before this court be produced by the petitioner before the Session Judge for due consideration at the time of framing of charge with notice to the Learned Prosecutor.

In **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey & Ors., (Criminal Appeal no. - of 2022) arising out of SLP (Criminal) No. 4599 of 2021, on July 26, 2022**, the Supreme Court held that:-

*“**Position of Law***

15. *Section 226 of the CrPC corresponds to sub-section (1) of the old Section 286 with verbal changes owing to the abolition of the jury. Section 286 of the 1898 Code reads as under:-*

> *“**286.** (1) In a case triable by jury, when the jurors have been in chosen or, in any other case, when the Judge is ready to hear the case, the prosecutor shall open his case by reading from the Indian Penal or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.*
>
> *(2) The prosecutor shall then examine his witnesses.”*

Section 226 of the 1973 Code reads thus:

> *“**226. Opening case for prosecution.—** When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.”*

Section 226 of the CrPC permits the prosecution to make the first impression regards a case, one which might be difficult to dispel. In not insisting upon its right under Section 226 of the CrPC, the prosecution would be doing itself a disfavour. If the accused is to contend that the case against him has not been explained owing to the non-compliance with Section 226 of the CrPC, the answer would be that the Section 173(2) of the CrPC report in the case would give a fair idea thereof, and that the stage of framing of charges under Section 228 of the CrPC is reached after crossing the stage of Section 227 of the CrPC, which affords both the prosecution and accused a fair opportunity to put forward their rival contentions.

16. *Section 227 of the CrPC reads thus:*

*"**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."

17. *Section 228 of the CrPC reads thus:*

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

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 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 claimsto be tried."

18. *The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial. [See: decision of a Four Judge Bench of this Court in **V.C. Shukla v. State through***

C.B.I. *reported in1980 Supp SCC 92: 1980 SCC (Cri) 695).*

19. *The case may be a sessions case, a warrant case, or a summons case, the point is that a prima facie case must be made out before a charge can be framed. Basically, there are three pairs of sections in the CrPC. Those are Sections 227 and 228 relating to the sessions trial; Section 239 and 240 relatable to trial of warrant cases, and Sections 245(1) and (2) with respect to trial of summons case.*

20. *Section 226 of the CrPC, over a period of time has gone, inoblivion. Our understanding of the provision of Section 226 of the CrPC is that before the Court proceeds to frame the charge against the accused, the Public Prosecutor owes a duty to give a fair idea to the Court as regards the case of the prosecution.*

21. *This Court in the case of* ***Union of India v. Prafulla Kumar Samal and another****, (1979) 3 SCC 4, considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, this Court, in paragraph 10 of the judgment, laid down the following principles:-*

> *"(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 disclosegrave 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 wouldnaturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge*

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

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced 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."

22. *There are several other judgments of this Court delineating the scope of Court's powers in respect of the framing of charges in a criminal case, one of those being* ***Dipakbhai Jagdishchndra Patel v. State of Gujarat****, (2019) 16 SCC 547, wherein the law relating to the framing of charge and discharge is discussed elaborately in paragraphs 15 and 23 resply and the same are reproduced as under:*

"15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

"4…..Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and 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.... 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."*

"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 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."

23. *In* ***Sajjan Kumar v. CBI*** *[(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under: (SCC pp. 376-77)*

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
>
> *(i) The Judge while considering the question offraming the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
> *(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
> *(iii) The court cannot act merely as a post office or amouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents 9 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, thecourt 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 courtis required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
> *(vii) If two views are possible and one of them givesrise 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."*

24. *The exposition of law on the subject has been further considered by this Court in* ***State v. S. Selvi,*** *(2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710, followed in* ***Vikram Johar v. State of Uttar Pradesh****, (2019) 14 SCC 207 : 2019 SCC OnLine SC 609 : (2019) 6 Scale 794.*

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 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, adverting 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)

*

*

*

*

32. *We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not* *been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.*

33. *Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the chargesheet. Such approach of the trial court at times may prove to be more rationale and prudent."*

In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022),** the Supreme Court held:-

*"**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal*

proceedings in ***Vineet Kumar and Others vs. State of Uttar Pradesh and Another**, **(2017) 13 SCC 369*** *decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to

be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in* ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** *as under :*

*"**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.

(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."*
>
> ***17.*** *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in* ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315****."*

The case before the trial court is at the stage of framing of charge. In the Present case though prima facie the offence under Section 304B IPC is not made out the proceedings in this case is "NOT" a case, where no offence is made out against the accused/petitioner and for the conduct of the investigating

agency, in submitting charge sheet under the wrong provision of law, the complainant cannot be left without any remedy in law.

Accordingly to prevent an abuse of process of law and in the interest of Justice and also considering the relevant provisions of law, **the Criminal revision is disposed of with the direction that the petitioner will be at liberty to agitate the point taken in this revision at the time of framing of charge before the trial court or at the appropriate stage as deemed fit by the trial Court.**

CRR 2614 of 2019 is accordingly disposed of.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)