

District & Additional Sessions Judge 2nd, Jamui

S.Tr. 135/2025

CIS No. 135/2025

15.05.2025

Present- Sudhir Sinha

Police Station – Jamui 265 of 2016

Under Section- 498(A), 307, 325, 504, 506/34 I.P.C

Fakira Sao & Ors. V. State

ORDER

The record is today put up for order on petition dated 11.04.2025 filed on behalf of accused persons Fakira Sao, Dinesh Sao, Satish Kumar Sah, Rupam Devi and Priyanka Kumari for discharge u/s 227 of the Cr.P.C., the rejoinder to which has been filed on 15.05.2025.

Sri Dhiraj Kumar Singh, the Id. Counsel for the accused persons has stated that entire allegation are false and no occurrence to place as is mentioned in F.I.R. From perusal of the case diary para- 10, 11, 12, 25 it appears that Baby Devi herself put fire in her body with a view to put pressure to grab the room of Fakira Sao (Father- in-law). The accused Satish Kumar Sah and Priyanka Kumari were not present at the PO and in the chargesheet they were not sent up. The Chargesheet was submitted u/s 498(A)/325/504/506/34 I.P.C and not u/s 307 IPC. There is no allegation of demand of dowry or mental harassment against the accused persons prior to this case. The petitioners have also filed quashing petition against the cognizance order before the Hon'ble High Court, Patna. The Id. Counsel under the circumstances prayed to discharge the accused persons u/s 227 of the Cr.P.C.

The Id. Addl. PP Sh. Manoj Kumar Singh vide rejoinder dated 15.05.2025 has opposed the petition of discharge and has submitted that as per order dated 06.05.2019 the cognizance of offence u/s 498(A)/ 307/ 325/ 504/ 506/34 I.P.C was taken against all the accused persons. There is specific allegation against each of the accused person and their complicity is clear from the fardbayan of the informant. It is further submitted that witnesses in CD paras- 4, 5, 6, 10, 11, 12 and 20 have fully supported the incident making specific

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allegation against each of the accused persons. The injury report shows the act done by the accused persons against the informant. The petition dated 11.04.2025 contains no reason at all for the court to consider provision u/s 227 of the Cr.P.C. The petition is not maintainable and has been filed to delay the framing of charge only. In such view the ld. prosecutor prayed to dismiss the discharge petition dated 11.04.2025.

Heard both the parties.

The provision **u/s 227** reads as "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". For the purpose of determining whether there is sufficient ground for proceeding against an accused the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible (**State of Karnataka V. L. Muniswamy, AIR 1977 SC 1489,1494 (1977) 2SCC 699, 1977 Cr.L.J.**). Only prima facie case is to be seen, whether case is beyond reasonable doubt is not to be seen at this stage (**State Bank of India Balagir Branch V. Satyanarayan Sarangi, 1922 Cr.L.J 2635**). If the Court comes to the conclusion that the commission of offence is a probable consequence, a case for framing charge exists, at the stage of framing charge, probative value of materials on record cannot be gone into (**State of Maharashtra V. Somnath Thapa, AIR 1996 SC 1744**). If the evidence discloses prima facie commission of alleged offence, Court has to frame charge against the accused (**Prem Kumar V. State of Karnataka, 1994 Cr.L.J 3641**). Only sufficiency of ground for presuming commission of offence has to be seen at the time of framing charge (**Ansaruddin V. State of M.P, 1997**). The Court at

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the time of framing charge has to consider the broad probabilities of the case and the total effect of the material collected by the prosecution (**Pradeep Kumar V. State 1994 (1) Crimes 552, 554**). The Court can peruse the Case Diary. Appreciation of evidence on record at this stage is impermissible. At this stage the statements of the witnesses are to be accepted as they are. The papers of investigation should be read as they are. The standard of test, proof and judgment which is needed for finding of a guilt or otherwise is not necessary for framing of charge at this stage and even a strong suspicion founded upon materials before the Court may justify framing of charge. The Court can shift and weigh evidence for the purpose of finding out whether prima facie case against the accused has been made out. The word "ground" has been used in these two sections in the context of putting an accused on trial. It is in the trial, that the guilt or the innocence of the accused will be determined and not at the time of framing charge. No detailed evaluation of materials or meticulous examination of possible defence need be undertaken at this stage. The exercise of weighing materials in golden scale is certainly not to be undertaken at this stage and has to be postponed to a later date. Where there is prima facie material to frame charge against the accused, charge cannot be said to have not sufficient ground for framing of charge (**J. Prem V. State, 2000-Cr.L.J. 619-622-623 (Mad)**). If there ground for presuming that the accused has committed the offence, presumption therein is always rebut-table by the accused for which there must be opportunity of participation in the trial (**State of Tamilnadu V. Jayalatitha, 2000 (2) Crimes 292-302**). In **Sajjan Kumar Vs. Central Bureau of Investigation**, the Apex Court had an occasion to consider the scope of Section 227 and 228 Cr.PC. The principles which emerged therefrom have been taken note of in para 21 as under: **(i)** The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether

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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 disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, shift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. **(vii)** If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal." **In Shri. Chandramohan vs The State Of Karnataka on 6 November, 2020** it has been held that, In all the

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cases the principles laid down by the Court is same. Therefore the requirement under law is the fundamental requirement under the provision as to whether prima facie case has been made out by accused to show that there is no ground to proceed against him to frame charge and if so, then he deserves to be discharged. This Court would not want to go in detail of said pros and cons of the matter in the interest of accused as this Court is only deciding the application under section 227 of Cr.P.C. for discharge of accused at the pre-trial stage as it may lead to pre-judging the case before trial. On careful examination of order passed by trial Court, it is seen that trial Court has rightly come to the conclusion that while deciding the application for discharge under section 227 of Cr.P.C., the Court has to merely look into prima facie material and it is not expected to go into merits of evidence which is placed before the Court and it has further come to a conclusion that there are sufficient grounds to proceed against accused to frame charge. No doubt trial Court has held that the aspects indicated by accused are yet to be established by a detailed trial. But at the junction of pre-trial stage, prima facie material and evidence placed before the Court by prosecution cannot be overruled. On the basis of above discussion and on perusal of the record the Court does not find that it is a case where there is not sufficient ground for framing of charge. There are sufficient material in the police report to frame charge against the accused persons in case diary paras- 4, 5, 6, 10, 11, 12 and 20 for offence u/s 498(A)/ 307/ 325/ 504/ 506/34 I.P.C. The plea raised by the defence shall be taken up for consideration during trial of this case where the defence shall have every opportunity to rebut the allegations against them as well as to cross examine the prosecution evidences adduced against the accused persons. Accordingly the petition dated 11.04.2025 filed u/s 227 of the Cr.P.C on behalf of the accused persons is hereby **rejected**. The accused persons are directed to remain physically present on **30.05.2025** for framing of charge.

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D.A.S.J. II
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