

-: ORDER BELOW EXHIBIT – 06 :-

1. The present application has been filed under Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) by the accused for discharging him from the present chargesheet filed for the offences registered under Sections 318(4), 336, and 340(2) of the Bharatiya Nyaya Sanhita, 2023 (B.N.S.).
2. The application is made on the ground that *no prima facie case has been made out against the applicant-accused*. It is submitted that the case is fabricated and false. The accused has raised the below contentions:
 - 1) There has been no actual supply of goods between the parties.
 - 2) The dispute is entirely of a commercial and civil nature arising out of business transactions, which has been falsely shown to be a criminal offence to harass the applicant.
 - 3) There has been no explanation of delay in filing the complaint from the date of alleged discovery of offence.
 - 4) The offence has been discovered after a period of more than a year; and thus, it is contended that in the ordinary course of business, such discrepancies should have been discovered much earlier during the filing of taxes for the relevant assessment year.
3. The Learned Assistant Public Prosecutor opposed the application, submitting that there is sufficient material collected during the investigation, including documentary evidence i.e. bank account statements, screenshots, statements of witnesses under Section 180 B.N.S.S., which clearly establishes the active involvement of the present applicant. It is further argued that the allegations include forgery and the use of forged documents, which are distinct criminal offences independent of any civil liability.
4. Heard the arguments and perused the record. The Court has also taken into consideration the relevant provisions for discharge. Chapter XX of B.N.S.S. deals with the trial of warrant cases by the Magistrates. **Section 262** of B.N.S.S. enumerates when the accused shall be discharged. In this context, this Court relies upon the judgment of the Hon'ble Supreme Court in the case of *State Through Deputy Superintendent Of Police (S) v. R. Soundirarasu Etc. (S)*, 2022 INSC 915 (Sep 5, 2022) wherein it has been held:

“61. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

...

63. Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word ‘groundless’, in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word ‘groundless’ used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.

64. The learned author Shri Sarkar in his Criminal P.C., 5th Edition, on page 427, has opined as:— “The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S. 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all.”

65. In short, it means that if no prima facie case regarding the commission of any offence is made out, it would amount to a charge being groundless.

...

72. The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if un rebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials

relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

...

75. The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be “groundless”. The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.

76. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution-the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be “groundless”.

*77. The word “ground” according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word “**groundless**” would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever.”*

Though the judgment discusses Section 239 of the Cr.P.C., the principles apply squarely to the corresponding Section 262 of the B.N.S.S. In view of the above ratio, it is well-settled that *when the Magistrate considers the charge against the accused to be groundless which means without any basis or foundation, the accused can be discharged.* For arriving at such a conclusion, the Court has to consider the police report and the documents sent with it under Section 193 of B.N.S.S. Opportunity of hearing has to be provided to both the prosecution and the accused at that stage. The truth, veracity and effect of the materials

proposed to be adduced by the prosecution during trial are not to be meticulously adjudged. The likelihood of the accused in succeeding to establish his probable defence cannot be a ground for his discharge. The object of discharge under Section 262 of B.N.S.S. is to save the accused from unnecessary and prolonged harassment. When the material at the time of consideration for framing the charge are of such a nature that if unrebutted, it would make out no case whatsoever, the accused should be discharged.

Thus, the core issue for determination is whether, upon consideration of the police report and documents submitted therewith, the charges against the accused appear to be ‘groundless’ under Section 262 of the B.N.S.S., warranting a discharge.

5. This Court has carefully perused the entire record, including the complaint, statements of witnesses, documents and the chargesheet submitted under Section 193 B.N.S.S. The Court has also heard both the parties. The applicant-accused has emphasised that there is no *prima facie* case against him. Herein, it is the case of the applicant that the complaint is false and fabricated and the accused is innocent.

As per the facts of the complaint, this Court would like to point out the following facts:

- 1) The present charge is that of fabrication of payment screenshots for supply of goods from the complainant’s firm over a period of 1.5 years. As such, the matter contains a list of hundreds of screenshots over this time and amounting to approximately Rs.58 Lakhs.
 - Thus, at this juncture, the accused’s contention that ‘no goods were supplied’ is a pure question of fact and constitutes the defence of the accused. Whether goods were supplied or whether documents were forged to simulate such a supply is a matter of trial.
 - Similarly, the Complainant’s tax records are also a subject matter of trial and cannot be considered to adjudicate this application at this preliminary stage.

It is trite law that when an application for discharge is filed, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on the basis of the charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced which *prima facie* reveal suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. Accepting the accused’s defence regarding the non-supply of goods or weighing the exact evidentiary impact of the delay

at this juncture would amount to conducting a ‘mini-trial’, which is legally impermissible. Hence, this Court cannot appreciate evidentiary disputes at this stage.

- 2) The charge being that of fabrication of payment proofs which involves *mens rea* (criminal intent), it is indeed a criminal charge and cannot be regarded as a civil or commercial matter between parties.

- The Supreme Court in the case of *M/s Technofab Engineering Limited and another vs. Bengal Mills Stores Supply Company and Another 2016 Criminal L.R. 887* has held that – *where the dispute between the parties was purely of civil nature involving breach of contract and no prima facie case for initiating criminal proceedings against the accused is found, then the same can be quashed. It has also been held that a given set of facts may make out; (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction on a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

Therefore, the contention by the applicant-accused that the dispute is purely of a civil and commercial nature cannot be accepted at this preliminary stage. While the genesis of the relationship between the parties may lie in commercial transactions, the specific allegations of creating multiple forged payment screenshots to systematically deceive the complainant constitute distinct criminal acts.

- 3) Going through the complaint (F.I.R.), it is mentioned that the complainant was contacting and communicating with the accused for the recovery of money before filing of complaint.

- “... આમ કુદ્દે રૂપિયા ૫૮,૧૯,૭૦૨/- મને મળેલ નહીં હોવાનું જણાય આવેલ જેથી મે તેને આ ચહેલુસિંહ રામસિંહ રાઠોડ નાઓએ સંતોષકારક જવાબ આપેલ નહીં જેથી આજદીન સુધી મારા તેની પાસે રૂપિયા વારંવાર માંગવા છતાં તેઓએ મને આજદીન સુધી આપેલ ન હોય...”.

As the complainant has provided a reasonable explanation regarding ongoing, good-faith attempts to recover the money prior to initiating criminal proceedings, the delay in filing the complaint does not render the prosecution's case baseless.

- In *Dildar v. State of Punjab (2006) 10 SCC 531*, the Hon'ble Apex Court has held that – *delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution's case and discarding the same merely on the ground of delay in lodging the FIR.*
- The Hon'ble Supreme Court in the case of *Skoda Auto Volkswagen (India) Private Limited. v. State of U.P. and others (2021) 5 SCC 795* has held that – *the mere delay on the part of complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. The Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in FIR or in complaint and criminal proceedings ought not to be scuttled at initial stage.*

Thus, at this threshold stage, mere delay in lodging the FIR cannot be a sole ground for discharge; the reasons for delay and its impact on the prosecution's case are matters of evidence and trial.

In light of these facts, it is the opinion of this Court that **the complaint does have grounds to proceed against the accused and cannot be regarded as groundless.**

6. In light of the above ratio, this Court is of the considered opinion that the applicant has not established the charge against him as groundless under Section 262 of the B.N.S.S. The documentary evidence, including the allegedly fabricated screenshots, and the witness statements annexed with the police report under Section 193 of the B.N.S.S., when taken at face value, give rise to a grave suspicion. These materials form a sufficient presumptive basis to indicate that the factual ingredients of the offences under Sections 318(4), 336(2), 336(3), and 340(2) of the B.N.S. exist.

As mandated by the Hon'ble Supreme Court, this Court is not required to weigh the evidence in golden scales or meticulously examine the accused's probable defences at the stage of discharge. Because the materials relied upon by the prosecution, if unrebutted, clearly make out a prima facie case against the accused, the threshold for discharge is not met. Hence, the grounds urged for discharge are not sustainable within the limited scope of Section 262, B.N.S.S.

Thus, in such a scenario, this Court passes the final order:

-:: ORDER ::-

- The application to discharge the applicant-accused is hereby **rejected**.

Order signed and pronounced in the open Court today on **28th February, 2026**.

Date: 28/02/2026

Place: Vapi

(Mrs. Kirti S. Soni)

Additional Judicial Magistrate

First Class, Vapi

J.O. Code – GJ01649