

Court: Additional District and Sessions Judge, Court No. 5, Mau.

P.O. Neelam Dhaka, H.J.S.

S.C. No. 717/2023

State

vs

Salvat Ali @ Mo. Amir

Crime No. 486/2022
U/s 3/7/25 Arms Act
PS – Muhammadabad
District- Mau

1. The present application under Section 227 Cr.P.C. has been filed seeking discharge of accused under Session Trial No 485/755/22. (State Vs. Sawlat Ali @ Amir) under Sections 41, 411, 413 IPC and under 3/7/25 Arms Act I.P.C. Police Station Mohammadabad, District Mau.

2. The procedure for trial before a court of session is provided under Chapter XVIII of the Cr.P.C. and Sections 227 and 228 which relate to discharge and framing of charges is----.

"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.

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 claims to be tried."

3. The tests and considerations to be applied by the Court while exercising the powers under Sections 227 and 228 of the Code, fell for consideration in the case of State of Bihar vs. Ramesh Singh, and it was held that the standard of test and judgement 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 228, and 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. While considering the tests to be applied by the Court for the purposes of discharge, it was held that reading Sections 227 and 228 together in juxtaposition, it would be clear that at the initial stage of the trial, the truth, veracity and effect of evidence, which the prosecutor proposes to adduce are not to be meticulously judged and the standard of test and judgement which is to be finally applied before recording a finding regarding guilt or otherwise of the accused is not required to be applied at this stage; the test would be whether there is sufficient ground for proceeding and/or whether there is sufficient ground for conviction. It was stated thus :-

"4. Under section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge consider that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming, that the accused has committed an offence which-

. (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the, initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the, trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

4. In *Nirmaljit Singh Hoon v. The State of West Bengal* - Shelat, J. delivering the judgment on behalf of the majority of the Court referred at page 79 of the report to the earlier decisions of the Court in *Chandra Deo Singh v. Prokash Chandra Bose* - where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused." Illustratively, Shelat J, further added "Unless, therefore, the

Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case".

5. The ambit and scope of the exercise of powers while passing an order of discharge under Section 227 of the Code was subject matter of consideration in *Union of India vs. Prafulla Kumar Samal And Another*, and it was held that the Court while exercising such powers is not to act as a trial judge but should weigh evidence and form opinion only on the limited question of whether a prima facie case is made out. The principles to be applied for the purpose were stated as follows :-

"7. Section 227 of the Code runs thus :

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.

The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

6. The scope of Section 227 of the Code was considered by Court in the case of *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39 where Untwalia, J. speaking for the Court observed as follows:-

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.

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.

7 In the case of *K. P. Raghavan v. M. H. Abbas* AIR 1967 SC 740, Court observed as follows :

No doubt a Magistrate enquiring into a case under Section 209, Cr. P.C. is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session.

8. To the same effect in the case of *Almohan Das v. State of West Bengal* (1969) 2 SCR 520, where Shah, J. speaking for the Court observed as follows :

"A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused : if there is some evidence on which a conviction may reasonably be based, he must commit the case.

In the aforesaid case Court was considering the scope and ambit of Section 209 of the Code of 1898.

9. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence 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 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 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."

10. In *Niranjan Singh Karam Singh Punjabi, Vs. Jitendra Bhimraj Bijjaya and others*, it was held that at the stage of Sections 227-228, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence and for this limited purpose, the court may sift the evidence. The observations made in the judgment in this regard are as follows :-

"4. ...The procedure for trial before a Court of Sessions is set out in Chapter XVIII of the Code. Section 225 places the public prosecutor in charge of the conduct of the prosecution. Section 226 requires him to open the prosecution case by describing the charge against the accused and stating by what evidence he proposes to bring home the guilt against the accused. Once that is done the Judge has to consider whether or not to frame a charge. Section 227 of the Code reads as under:

"227. 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.

Under this section a duty is cast on the judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing he is satisfied that a prima facie case is made out against the accused, he must proceed to frame a charge as required by Section 228 of the Code. Once the charge is framed the trial must ordinarily end in the conviction or acquittal of the accused. This is in brief the scheme of Sections 225 to 235 of the Code.

9. Section 227, confers a special power on the Judge to discharge an accused at the threshold if 'upon consideration' of the record and documents he considers 'that there is not sufficient ground' for proceeding against the accused. In other words his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused. If he comes to the conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not he will discharge the accused. It must be remembered that this section was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.

11. The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the *State of Bihar v. Ramesh Singh* 1977 CriLJ 1606 this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

In *Union of India v. Prafulla Kumar Samal and Anr.* 1979 CriLJ 154, this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post-office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face-value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code of Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

12. Again in *Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors.* 1979 CriLJ 1390 Court observed in paragraph 18 of the Judgment as under:

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 CrPC, 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 discharge against the accused in respect of the commission of that offence.

From the above discussion it seems well-settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there-from taken at their face-value disclose the existence of all the ingredients constituting the alleged offence. The Court may 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."

13. The prerequisites for framing of charge were subject matter of consideration in *Soma Chakravarty vs. State through CBI*, and it was held that the court can frame the charge if on the basis of material on record it can form an opinion that the commission of offence by the accused was possible. The question as to whether the accused committed the offence can only be decided in the trial, and at the stage of framing of charge the probative value of the material on record cannot be gone into and the said material has to be accepted as true. The observations made in the judgment in this regard are as follows :-

"9. Learned Counsel for the appellant relied on the decisions of the Court in *Union of India v. Major J.S. Khanna*, (1972) 3 SCC 873, *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 and *L. Chandraiah v. State of A.P.*, (2003) 12 SCC 670 and contended that before framing the charges the court must have some material on the basis of which it can come to the conclusion that there is a prima facie case against the accused. In our opinion there was such material before the court while framing the charge.

14. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the

commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

15. The question as to when discharge of an accused would be warranted in exercise of powers under Section 227 of the Code in the light of its scope and object was considered in *P. Vijayan vs. State of Kerala* and another⁷, and it was held that at the stage of Section 227, the Court has merely to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. The position of law in this regard was stated as follows :-

"10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under :

"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."

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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

16. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

17. The scope and ambit of Section 227 was again considered in *Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76, in para 6, the Court held that: (SCC pp. 83-84) "6. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution.

In *State of Bihar v. Ramesh Singh* this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

In *Union of India v. Prafulla Kumar Samal* this Court after considering the scope of Section 227 observed that the words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but it may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence."

1. 3The scope of exercise of powers under Sections 227 and 228 with regard to framing of charge/discharge again fell for consideration in *Sajjan Kumar Vs. Central Bureau of Investigation*, and it was held that at the stage of framing of charge under Section 228 or while considering discharge petition filed under Section 227, it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability thereof, and it is at the trial that the Judge concerned has to appreciate evidentiary value, credibility or otherwise of the material and veracity of various documents. The observations made in the judgment in this regard are as follows :-

"20. A Magistrate enquiring into a case under Section 209 of the Cr.P.C. is not to act as a mere Post Office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

18. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on

the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

19. The relative scope and distinction between Sections 227 and 228 with regard to discharge of accused and framing of charge was discussed and explained in detail in *Amit Kapoor vs. Ramesh Chander and another* and it was held that at the stage of Section 228, the Court is not concerned with proof, but with a strong suspicion that the accused has committed an offence and the final test of guilt is not to be applied at the stage of framing of charge. It was stated thus :-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

20. In *State of Tamil Nadu vs. N. Suresh Rajan and others*, while considering the scope of exercise of jurisdiction and power by Court at the stage of framing of charges or discharge of accused under Sections 227 and 228, it was restated that no mini trial is contemplated at the stage of considering the discharge application and only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against the accused without any requirement of going deep into the matter. Referring to the earlier judgements in the case of *Omkar Nath Mishra and Sheoraj Singh Allahabad vs. State of U.P.*¹², it was stated as follows :-

"30. Reference in this connection can be made to a recent decision of Court in *Sheoraj Singh Ahlawat v. State of U.P.*, AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in *Onkar Nath Mishra v. State (NCT of Delhi)*, (2008) 2 SCC 561:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.' (Onkar Nath case (2008) 2 SCC 561, SCC p. 565, para 11)" (emphasis in original)

21. Now reverting to the decisions of this Court in Sajjan Kumar v. CBI (2010) 9 SCC 368 and Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered 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".

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716. The same reads as follows: (SCC pp. 755-56, para 43) "43. ... 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 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 sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

22. The scope of exercise of power by trial court at the stage of framing of charge was again considered in State Vs. S. Selvi and another, and it was stated thus :-

"6. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Samal, (1979) 3 SCC 4, Dilawar Babu v. State of Maharashtra (2002) 2 SCC 135; Sajjan Kumar v. CBI (2010) 9 SCC 368; State v. A. Arun Kumar (2015) 2 SCC 417; Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424; [State of Orissa v. Debendra Nath](#)

[Padhi](#) (2003) 2 SCC 711; *Niranjan Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijjaya* (1990) 4 SCC 76 and *Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja* (1979) 4 SCC 274 that the Judge while considering the question of framing charge Under Section 227 of the Code in sessions cases (which is akin to Section 239 Code of Criminal Procedure 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 disclose 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 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 rights to discharge the Accused. The 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 statements 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 materials as if he was conducting a trial."

23 The exercise of powers under Section 227 of the Code and the matters to be considered and the extent of inquiry permissible on part of Court was subject matter of consideration in *Asim Shariff vs. National Investigation Agency*, and it was reiterated that the judge while considering the question of framing of charge under Section 227 is 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 and the Court, at this stage, is not supposed to hold a mini trial by marshalling the evidence on record. Referring to the judgements in the case of *Sajjan Kumar vs. CBI*, *State vs. S. Selvi* and *Vikram Johar vs. State of U.P.* it was stated as follows :-

"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, 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."

24. The relevant considerations to be made by the Court at the stage of Section 227 of the Code were discussed in *M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru* and it was reiterated that the Court at this stage, without making a roving inquiry into the pros and cons, is only required to consider the broad probabilities and the probative value of material on record is not to be gone into.

22. The legal principles to be applied in this regard were stated as follows :-

"17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., *P. Vijayan v. State of Kerala* (2010) 2 SCC 398 and discern 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 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.

25. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 Cr.PC (See *State of J & K v. Sudershan Chakkar* (1995) 4 SCC 181). The expression, "the record of the case", used in Section 227 Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568)."

25. The ambit and scope of exercise of power under Sections 227 and 228 of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of the Code, if not, he will discharge the accused. At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.

26. Sections 227 and 228 of the Code are supplemental and inter-related and are, therefore, to be read together.

27. Now coming to the facts of the present case a Police officer Rajesh Kumar Prabhakar Registered an FIR dated 24/08/22 around 8.43 a.m."that that while I, sub- Inspector Rajesh Kumar Prabhakar along with Constable ved Prakarsh, Constable Gangaram, and constable dharmendra Yadav Were present on Calender Tiraha , where chauki incharge

Town Mohmdabad Godhna, sub- Inspector Pankaj Yadav along with Constable Dharmendra Singh ,Constable Suneel yadav and Constable Raghwendra Pratapsingh came and we were discussing about the criminals and crime. Suddenly one informer approached us and informed that one person coming close Mohmdabad Godhna only stolen motorcycle will illegal weapon and if we rush he could be caught , on this information will look each other and and assure that non of us was carrying any illegal thing with us and tried to persuade independent witness on the tiraha but no one agreed to give evidence, then we reached on Dharahara river bridge and started waiting for the criminal, one motorcycle when approached The bridge , informer confirmed that he'll same person who was carrying illegal arm on stolen motorbike. And only strictly asking he confessed that the motorbike is stolen one and he is carrying the contrymade pistol and cartridges for protection and to threaten people. All the witness are police personals there is no independent witness."

Criminal case under section 41, 411, 413 IPC and under 3/7/25 Arms act was registered again the accused.

There was no FIR registered for the stolen bike hero HF Deluxe Black colour with registration number UP 54 AA 9173, chasis no MBLH AR 20 X HG K00050 and engine No. HA11ENHGK00031, the owner of which was Swami Nand lal chauhan son of Dev nath Chauhan Sakin Thakur Manpura District Mau .

After the arrest an application was taken by Nandalal Chauhan in which he admitted that he is the owner of the motorbike , but because his motorbike was old he has not registered any complaint about the stolen Motorbike And that is motorcycle is now recovered, no date or time on the application is mentioned.

I have heard the parties on charge. After perusal On the material available on record, I found that the allegations are very vague and seems concocted, there is no mention of the name of informer , there is no FIR of stolen motorbike on record, there is no independent witness of the whole incident.

Lets go through the sections 41 crpc is just provision for arrest

41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house- breaking; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub- section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested

and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

There is no relevance of this section in charge framing

Other sections in which the chargesheet is submitted is sec 411 IPC

Sec 411

Section 411 in The Indian Penal Code

411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The charge under 411 IPC is giving rise to some suspicion but not grave suspicion against the accused as there is no FIR by the owner on record, no independent witness, no recovery witness of the incident, but the owner of the bike gave an application to claim the bike and that it was stolen but he had not filed FIR of the incident, which is the matter of Trial

S. 413

Habitually dealing in stolen property

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

There is no ingredient of habitual dealing with stolen property in the chargesheet of FIR, so no such offence is made out

Police informer claims recovery of gun and cartridges from the accused which is matter of trial though that too is suspicious as no independent witness was produced on record

Order

After Taking into consideration the overall facts present case and absence of any specific allegation pertaining to section 413 IPC, accused Sawlat Ali @ Amir is discharged from the offence under sec 413 IPC, Charge to be framed against him under sec 411 IPC and sec 3/7/25 Arms Act.

After Framing the charge file be sent back to learned lower court for trial.

Date: 28.07.2023

ADJ Court No. 5. Mau.