

**IN THE MUNICIPAL MAGISTRATE, 2<sup>nd</sup> COURT, CALCUTTA**

**Present: Smt. Sneha Basu**

**JO Code: WB-01437**

**GR 24 of 2024**

**CNR No. WBCS03-000025-2024**

**Order dated 20.05.2025**

Today is fixed for order.

Accused person is present.

Ld. APP is present on behalf of the state.

The record is being taken up for passing order on petition dated 02.05.2025 filed by accused persons namely Subrata Kar.

**Summary of contentions in the petition**

Perused the petition and an abridgment of the contentions therein, is that the accused person namely Subroto Kar has submitted that no specific allegation or any over act has been attributed to him in the charge-sheet and further that the allegation stated in the charge-sheet does not reveal any offence. It is further stated that he has been tagged as developer but nothing initiates that he is the developer. It is further contended that the statements of the witnesses do not directly implicate the present accused petitioner. He has contended that he has no direct involvement with the alleged construction.

The accused persons have contended that all the vacuums and inconsistencies results to no disclosure that the accused persons have committed any offence and as such there is no materials to substantiate framing of charge against the accused persons. As such, it is prayed that the accused persons be discharged as per the provisions of law under Section 239 of Code of Criminal Procedure.

**Submission by the prosecution.**

Ld. APP apprised this court about the ingredients of Section 401A of Kolkata Municipal Corporation Act and further submitted that at this stage the court can only assess the presence of a prima facie case to proceed to trial and not analyse and scrutinize the probative value of the probable evidence.

**Findings and Decision**

This court has perused the petition and all materials on record and in the opinion of this court, prior to arriving at a cohesive decision about the merits of the present petition, it is expedient to deliberate about the provision of law under Section 239 of Code of Criminal Procedure in a brief manner.

Section 239 of Code of Criminal Procedure lays down as follows.

*“If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”*

Therefore, if upon a perusal of the police report and documents, the court considers the charge to be groundless, then the court must discharge the accused.

While interpreting the provision of law under Section 239 of Code of Criminal Procedure, Hon'ble Apex Court had held the following, very poignantly held in the leading decision of **Sajjan Kumar vs. The CBI [ 2010 (10) SC 413]**

*“ 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.”*

**As such, the essential consideration at the stage of deciding upon the point of discharge is the existence of a prima facie case to proceed to trial and not deciding about the pros and cons of the evidence. The court must refrain from entering into and deliberating upon the**

**intricacies of the prosecution evidence and analyze the probative value of the same while considering a petition praying for discharge.**

Now, with a brief understanding of the ambit, scope and key ingredients under Section 239 of CrPC, this court is proceeding with analyzing the merits of the present petition.

The name of the accused person/ petitioner is indicated in the documents of corporation i.e. the letter of complaint and the report of SAE. The statement of Uttam Das also indicates the name of Subrata Kar. At this this court is not judging the veracity of the documents. The court must restrict itself to analysing the presence of a prima facie case only. **Whether the accused person is developer or not and whether he is not connected with any construction as alleged, is a point which can be determined only after trial. At the present stage the court should not delve deep into the truthfulness of the materials on record. Discharge under Section 239 of CrPC, as the provision lays down, requires the charge to be groundless and as per the charge-sheet and documents, the charge against present petitioner is not groundless.** Upon a cumulative consideration of the above, this court is not inclined to allow the prayer of the accused person in the present petition.

Hence it is,

**ORDERED**

**that, the prayer, of the accused person namely Subrata Kar in the instant petition under Section 239 of Code of Criminal Procedure, is rejected in terms of the observations made above.**

**Fix 27.06.2025 for charge**