

IN THE MUNICIPAL MAGISTRATE, 2nd COURT, CALCUTTA

Present: Smt. Sneha Basu

JO Code: WB-01437

Criminal Misc Case 87770 of 2015

CNR No. WBCS03-0001928- 2015

Order dated 19.06.2025

Today is fixed for appearance of executing officer and order in discharge petition.

Executing officer namely S Mardi is present. He is apprised about the fact that Gita Devi Aggarwal was a part of the instant case record and had faced considerable trial. He had been directed to try and find accused person namely Gita Devi Aggarwal.

The record is taken up for passing order in connection with discharge petition dated 27.03.2025

Summary of contentions in the petition

Perused the petition and an abridgment of the contentions therein, is that the accused person namely Md. Shahid @ Md. Sayeed has contended that Gita Devi Aggarwal had made an agreement with his company and he had carried out the new construction of G+II Storied building after obtaining due sanction plans. He has contended that after construction he had handed over the premises and all documents to Gita Devi Aggarwal and has further submitted that he was not named as an accused person in the charge-sheet.

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 person s 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 accused person has been added after defence evidence in terms of provision of law under Section 239 of Criminal procedure code. The accused person has contended that he had entered to an agreement and thereafter carried out construction at the case premises. The court must restrict itself to analysing the presence of a prima facie case only. **Whether the accused persons had made construction as per due sanction and had thereafter handed over the property, is a point which can be determined only after trial. At the present stage the court should not dwell 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 material on record, 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 Md. Sayeed in the instant petition under Section 239 of Code of Criminal Procedure, is rejected in terms of the observations made above.

Fix 31-07-2025 for charge

Municipal Magistrate
2nd Court, Calcutta