

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MMO No. 989 of 2025****Reserved on: 04.11.2025****Date of Decision: 27.11.2025**

Rakesh Kumar**...Petitioner****Versus****State of H.P. & others****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting? Yes***

For the Petitioner	:	Mr. Dheeraj K. Vashishat, Advocate.
For the respondent/ State	:	Mr. Jitender K. Sharma, Additional Advocate General, for respondent No.1/State.

Rakesh Kainthla, Judge

The petitioner has filed the present petition against the order dated 30.08.2025 passed by learned Additional Sessions Judge-II, Una, District Una, H.P. (learned Trial Court) vide which an application seeking discharge filed by the petitioner (accused before the learned Trial Court was dismissed. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*)

2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan before the

learned Trial Court for the commission of offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code (IPC). It was asserted that the police received information on 12.12.2023 at 1:20 a.m. that Sant Prakash co-accused, had shot a labourer. The police went to Sant Rice Mill, where the incident had taken place. They found the blood stains near the rice sheller. HHG Paramjeet was directed to preserve the spot. The police found that the injured was taken to Naya Nangal Hospital for treatment. The police went to Naya Nangal Hospital and the Medical Officer disclosed that the injured was brought dead. Santosh Kumar made a statement that Sant Prakash was beating Ghura (since deceased). Ritesh Kumar, Hira, Ram Lal and Rakesh Kumar (petitioner/accused) tried to rescue Ghura from Sant Parkash. Sant Parkash shot Ghura. Sant Parkash went to his room and brought the key to the vehicle. Rakesh Kumar and Sant Parkash took the injured to the hospital. The Medical Officer declared Ghura to be brought dead. The police registered the FIR and investigated the matter. The police searched for Sant Parkash and Rakesh. The police traced their location with the help of Cyber Cell. Three people were found moving outside R.K. Hospital. One person identified

himself as Sant Parkash, who disclosed that the injured person was sent to Chandigarh. Another person identified himself as Rakesh Kumar and did not disclose anything about the injured. Santosh Kumar disclosed that Ghura had died, who was taken somewhere in the vehicle by Sant Parkash and Rakesh Kumar, who had returned to the hospital on foot. The police interrogated Sant Parkash and Rakesh Kumar, who took the police to the vehicle bearing registration No. HP-10B-8896, from where the dead body was recovered. The police investigated the matter. The police found, after investigation that Sant Parkash had shot Ghura and had parked the vehicle containing the dead body in a lonely place at a distance of two kilometres. Rakesh Kumar had assisted Sant Parkash in the concealment of the dead body. Sant Parkash and Raksh Kumar had misled the police for 30-40 minutes. The autopsy report revealed that the cause of death was hemorrhagic shock due to injury to abdominal and thoracic contents caused by firearm injury, which was sufficient to cause death in the ordinary course of nature. Hence, the charge sheet was filed before the Court.

3. The accused Rakesh Kumar filed an application for his discharge, asserting that he was falsely implicated. He was employed in the company owned by the co-accused. F.I.R. showed that the accused/petitioner had tried to save Ghura from the co-accused. The accused is not shown to be a party to criminal conspiracy. His involvement is not disclosed. Therefore, it was prayed that the application be allowed and the accused be discharged.

4. Learned Trial Court held that the accused Rakesh Kumar knew that the offence had been committed. He caused the evidence of the offence to disappear and provided false information regarding the offence. Santosh Kumar had specifically stated in his supplementary statement that the accused, Sant Parkash and Rakesh Kumar, took the vehicle to some place and returned on foot. They gave false information to the police. This was done to conceal the dead body and mislead the police. The Court has to see a *prima facie* case while framing the charges, and these allegations were sufficient to frame the charges for the commission of an offence punishable under Section 201 of the IPC. Consequently, the charge was framed by the learned Trial Court.

5. Being aggrieved by the order of framing the charges, the accused filed the present petition, asserting that he was acting in his official capacity. Co-accused Sant Ram, the informant Santosh Kumar, and he brought the injured to the hospital. He was following the command of his superior. There is no evidence that the accused had willfully helped the co-accused Sant Parkash. Learned Trial Court passed the order mechanically, hence, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

6. I have heard Mr Dheeraj K. Vashishat, learned counsel for the petitioner, and Mr Jitender K. Sharma, learned Additional Advocate General, for respondent No.1/State.

7. Mr Dheeraj K Vashisht, learned counsel for the petitioner/accused, submitted that the petitioner/accused was innocent and he was falsely implicated. He was following the directions of the co-accused, who was his employer. There was no disappearance of the evidence, and the learned Trial Court erred in framing the charges against the accused. Therefore, he

prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

8. Mr Jitender K. Sharma, learned Additional Advocate General for respondent No.1/State, submitted that the petitioner/accused had not only helped in concealing the dead body but had provided a false information regarding it; therefore, the learned Trial Court had rightly framed the charges and there is no error in the order passed by the learned Trial Court. Hence, he prayed that the present petition be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. It was laid down by the Hon'ble Supreme Court in *State of Gujarat v. Dilip Singh Kishor Singh Rao*, 2023 SCC OnLine SC 1294, that while framing the charges, the Judge has to examine the evidence collected by the prosecution to determine whether or not sufficient grounds exist to proceed against the accused. It was observed: -

“7. It is a trite law that the application of judicial mind is necessary to determine whether a case has been made out by the prosecution for proceeding with trial, and it would

not be necessary to dwell on the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, 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 in which prima facie reveal that there are 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. If there is no sufficient ground for proceeding against the accused, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that the accused has committed the offence which is triable, then necessarily a charge has to be framed.

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10. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in *State of Tamil Nadu v. N. Suresh Rajan*, (2014) 11 SCC 709, adverting to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration on the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless to pass an order of

discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom, taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, the probative value of the materials has to be gone into, and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini-trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and 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. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 and the *State of MP v.*

Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

11. This position was reiterated in *Vishnu Kumar Shukla v. State of U.P.*, (2023) 15 SCC 502: 2023 SCC OnLine SC 1582, wherein it was observed at page 513: -

“15. The extent of scrutiny permissible when an application for discharge is being considered has attracted this Court's attention on a number of occasions. It is appropriate to take note of the leading precedents on the subject. Insofar as Section 245, CrPC is concerned, the decision of this Court in *Ajoy Kumar Ghose v. State of Jharkhand* [*Ajoy Kumar Ghose v. State of Jharkhand*, (2009) 14 SCC 115 : (2010) 1 SCC (Cri) 1301] is instructive : (SCC pp. 124-25 & 127-28, paras 19-20, 22-25 & 36-37)

“19. The essential difference of procedure in the trial of a warrant case on the basis of a police report and that instituted otherwise than on the police report is particularly marked in Sections 238 and 239CrPC on one side and Sections 244 and 245CrPC on the other. Under Section 238, when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like the police report, FIR, statements recorded under sub-section (3) of Section 161CrPC of all the witnesses proposed to be examined by the prosecution, as also the confessions and statements

recorded under Section 164 and any other documents which have been forwarded by the prosecuting agency to the court.

20. After that, comes the stage of discharge, for which it is provided in Section 239CrPC that the Magistrate has to consider the police report and the documents sent with it under Section 173CrPC and if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of the aforementioned documents, he comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is then that the charge is framed under Section 240CrPC, and the trial proceeds for recording the evidence. Thus, in such a trial prosecution has only one opportunity to lead evidence, and that too comes only after the charge is framed.

22 [Ed.: Para 22 was corrected vide Official Corrigendum F.3/Ed.B.J./124/2009 issued on 22-8-2009 by the Court.]. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the framing of the charge. Of course, under Section 245(2)CrPC, a Magistrate can discharge the accused *at any previous stage of the case*, if he finds the charge to be groundless.

23. Essentially, the applicable sections are Sections 244 and 245CrPC since this is a warrant trial instituted otherwise than on police reports. There had to be an opportunity for the prosecution to lead evidence under Section 244 (1) CrPC or to summon its

witnesses under Section 244 (2) CrPC. This did not happen, and instead, the accused proceeded to file an application under Section 245 (2) CrPC on the ground that the charge was groundless.

24. Now, there is a clear difference in Sections 245 (1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244, and he has to consider whether the evidence remains unrebutted; the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1)CrPC.

25. The situation under Section 245(2)CrPC is, however, different. There, under sub-section (2), the Magistrate has the power of discharging the accused *at any previous stage of the case*, i.e. even before such evidence is led. However, for discharging an accused under Section 245(2)CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244CrPC. The words appearing in Section 245(2)CrPC “*at any previous stage of the case*”, clearly bring out this position.

36. The Magistrate has the power to discharge the accused under Section 245(2)CrPC *at any previous stage* i.e. before the evidence is recorded under Section 244(1)CrPC, which seems to be the established law, particularly in view of the decision in *Cricket Assn. of Bengal v. State of W.B.* [*Cricket Assn. of Bengal v. State of W.B.*, (1971) 3 SCC 239: 1971 SCC (Cri) 446], as also the subsequent decision of the Bombay High Court in *Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar* [*Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar*, 1983

SCC OnLine Bom 323]. The same decision was followed by the Kerala High Court in *Manmohan Malhotra v. P.M. Abdul Salam* [*Manmohan Malhotra v. P.M. Abdul Salam*, 1994 *SCC OnLine Ker 5*] and Hon'ble Justice K.T. Thomas, as the learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2)CrPC to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in *Mohd. Sheriff Sahib v. Abdul Karim Sahib* [*Mohd. Sheriff Sahib v. Abdul Karim Sahib*, 1927 *SCC OnLine Mad 137*; *AIR 1928 Mad 129 (1)*], as also the judgment of the Himachal Pradesh High Court in *Gopal Chauhan v. Satya* [*Gopal Chauhan v. Satya*, 1978 *SCC OnLine HP 33*].

37. We are convinced that under Section 245(2)CrPC, the Magistrate can discharge the accused at any previous stage, i.e. even before any evidence is recorded under Section 244(1)CrPC. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty.”(emphasis in original and supplied)

16. Turning to Sections 239 to 240CrPC, this Court held as under in *Minakshi Bala v. Sudhir Kumar* [*Minakshi Bala v. Sudhir Kumar*, (1994) 4 *SCC 142*; 1994 *SCC (Cri) 1181*]: (SCC pp. 144-45, paras 6-8)

“6. Having regard to the fact that the offences, for which a charge-sheet was submitted in the instant case and cognisance taken, were triable as a warrant case, the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173CrPC and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If, on such consideration, examination and hearing, the Magistrate finds the charge groundless, he has to

discharge the accused in terms of Section 239CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him, he has to frame a charge in terms of Section 240CrPC.

7. If charges are framed in accordance with Section 240CrPC on a finding that a prima facie case has been made out — as has been done in the instant case — the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. *To put it differently, once charges are framed under Section 240CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add that even in such exceptional cases, the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.*

8. Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of advertent to and confining its attention to the documents referred to in Sections 239 and 240CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order [**Sudhir Kumar v. State of Punjab**, 1992 SCC OnLine P&H 663]. The course so adopted cannot be supported; firstly, because finding regarding the commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge, the

Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case.”
(emphasis supplied)

17. With great respect, we express our reservations in fully acceding to what has been stated above. If para 8 of *Minakshi Bala [Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181]* is accepted as it is, the necessary concomitant would be that, despite examining the matter in detail, a court would find its wings clipped to intercede. This would amount to forcing a person to stand trial, even when the overwhelming material points to his/her innocence. Obviously, the hands of a court ought not to be tied down, and especially not by a higher court, and more so, not against liberty. Para 7 of *Minakshi Bala [Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181]* does enable examining unimpeachable documents. We are conscious that *Minakshi Bala [Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142: 1994 SCC (Cri) 1181]* has been followed in later decisions by the Court. However, we have chosen to survey the precedents further, and then decide on the road we wish to take [Yes, the allusion is to Robert Frost's celebrated poem — The Road Not Taken.].

18. In *Rumi Dhar v. State of W.B. [Rumi Dhar v. State of W.B., (2009) 6 SCC 364: (2009) 2 SCC (Cri) 1074]*, this Court held that the Judge concerned with an application under Section 239CrPC has to:

“17. ... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not, as a strong suspicion in regard thereto shall subserve the requirements of law. (SCC p. 369, para 17)”

19. In *State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721]*, it was observed notwithstanding the difference in language of Sections 227 and 239CrPC, the approach of the Court concerned is to be common

under both provisions. The principles holding the field under Sections 227 and 228CrPC are well settled, courtesy, inter alia, *State of Bihar v. Ramesh Singh* [*State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] ; *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] ; *Stree Attyachar Virodhi Parishad v. Dilip Nathumal Chordia* [*Stree Attyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] ; *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [*Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] ; *Dilawar Balu Kurane v. State of Maharashtra* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] ; *Chitresh Kumar Chopra v. State (NCT of Delhi)* [*Chitresh Kumar Chopra v. State (NCT of Delhi)*, (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] ; *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] ; *Dinesh Tiwari v. State of U.P.* [*Dinesh Tiwari v. State of U.P.*, (2014) 13 SCC 137 : (2014) 5 SCC (Cri) 614] ; *Dipakbhai Jagdishchandra Patel v. State of Gujarat* [*Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361] and *State (NCT of Delhi) v. Shiv Charan Bansal* [*State (NCT of Delhi) v. Shiv Charan Bansal*, (2020) 2 SCC 290 : (2020) 1 SCC (Cri) 594] . We need only refer to some, starting with *Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4: 1979 SCC (Cri) 609], where, after considering *Ramesh Singh* [*State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39: 1977 SCC (Cri) 533], *K.P. Raghavan v. M.H. Abbas* [*K.P. Raghavan v. M.H. Abbas*, 1966 SCC OnLine SC 76: AIR 1967 SC 740] and *Almohan Das v. State of W.B.* [*Almohan Das v. State of W.B.*, 1968 SCC OnLine SC 85 : (1969) 2 SCR 520], it was laid down as under : (*Prafulla Kumar Samal* case [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4: 1979 SCC (Cri) 609], SCC p. 9, para 10)

“10. Thus, on 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 a 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 were conducting a trial.” (emphasis supplied)

20. In *Niranjan Singh Karam Singh Punjabi [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47]*, this Court was alive to reality, stating that : (SCC p. 85, para 7)

“7. ... it cannot be expected even at the 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.”

If a view gives rise to suspicion, as opposed to grave suspicion, the court concerned is empowered to discharge the accused, as pointed out in *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371]. The Court, in *Dinesh Tiwari* [*Dinesh Tiwari v. State of U.P.*, (2014) 13 SCC 137 : (2014) 5 SCC (Cri) 614] had reasoned that if the court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the charge-sheet. As to what is “strong suspicion”, reference to *Dipakbhai Jagdishchandra Patel* [*Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361] is warranted, where it was explained that it is : (SCC p. 561, para 23)

“23. ... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”

12. The present matter has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

13. The accused has been charged for the commission of an offence punishable under Section 201 of IPC, which reads as under:-

“201. *Causing disappearance of evidence of offence, or giving false information to screen offender.*—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that

intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.”

14. The ingredients of the commission of an offence punishable under Section 201 of IPC were explained by the Hon’ble Supreme Court in *Sukhram v. State of Maharashtra*, (2007) 7 SCC 502: (2007) 3 SCC (Cri) 426: 2007 SCC OnLine SC 1018 as under at page 510:

“18. The first paragraph of the section contains the postulates for constituting the offence, while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed;

(iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused had caused the evidence to disappear in order to screen the offender, known or unknown.”

15. In the present case, the F.I.R. specifically mentions that the petitioner/accused had tried to save Ghura from the co-accused. The co-accused brought a gun and shot Ghura; therefore, he was aware of the fact that murder had taken place. He accompanied the accused to the Medical Officer, who declared Ghura to be brought dead. Thus, he knew that Ghura was no longer alive. He boarded the vehicle with the accused and helped him park the car containing the dead body at a lonely place. It was laid down in *Mata Din v. Emperor*, 1929 SCC OnLine Oudh CC 175: AIR 1930 Oudh 113 that where the accused had removed the body from the scene of crime, they would be liable

for the commission of an offence punishable under Section 201 of IPC. It was observed at page 120:

“16...We consider that when in those circumstances those men deliberately caused evidence to disappear, they must be considered to have had an intention of screening the murderer or murderers. Their main intention may have been to save themselves. But there was also, in our opinion, an intention to shield the murderer or murderers, and that is sufficient to justify the convictions....”

16. It was held in *Raveendran v. State of Kerala, 1993 SCC OnLine Ker 482: 1994 Cri LJ 3562* that throwing the dead body into the ravine attracts Section 201 of the IPC. It was observed at page 3579:

“29. The learned Sessions Judge also convicted the first accused under S. 201, I.P.C. The ingredients of this section are sufficiently satisfied in this case. It is proved that after having committed the murder, the dead body was thrown into the ravine with the intention to efface the evidence. Normally, it is difficult for any person to trace the place where the dead body was thrown. In this case dead body happened to be traced out only because foul smell from the decomposed dead body, which spread in the area. Thus, it is sufficiently established that the first accused caused the evidence regarding the commission of murder to disappear with the intention to escape from the clutches of legal punishment. Therefore, the conviction and sentence under S. 201, I.P.C., ordered by the trial court against the first accused are only to be confirmed. We do so.”

17. It was laid down by the Hon'ble Supreme Court in *Vithal Tukaram More v. State of Maharashtra*, (2002) 7 SCC 20: 2002 SCC (Cri) 1555: 2002 SCC OnLine SC 660 that where the accused had helped the co-accused in throwing the body into the well, he would be liable for the commission of an offence punishable under Section 201 of the IPC. It was observed at page 29:

“22. So far as the offence under Section 201 read with Section 34 IPC for which they are charged and convicted is concerned, from the discussion of the evidence made by the two courts below and by us above, the evidence on record, in our opinion, is sufficient to sustain their conviction for the said offences. Their presence in the house has been proved. On recovery of the dead body of the deceased from the well, the post-mortem shows the cause of death to be homicidal and not suicidal. The present appellants have been found to be present on the date and hour of the incident in the house in which the deceased was done to death by physical assaults made by the two convicted accused. The present appellants were certainly guilty of screening the offenders. The body of the deceased, after she was physically assaulted and murdered, was thrown into the well, to the knowledge of the appellants. Yet they took a false plea that on the date and hour of the incident, the deceased was not in the house.”

18. It was held in *Suresh v. State of Karnataka*, 2002 SCC OnLine Kar 703: 2002 Cri LJ 3273 that burying a dead body

attracts the provisions of Section 201 of the IPC. It was observed at page 3278:

“9...The body was found buried in the field belonging to accused No. 1. He has not explained how it got there. It is established that he misled the police and the parents about the whereabouts of Veenadevi but more importantly after his arrest he led the police to that spot and pointed it out and he also produced the implements that were used for the burial and consequently, we have no hesitation in confirming the finding of the trial Court that as far as the offence under S. 201, IPC, is concerned that the same has been established. As regards the submission that this conviction in isolation would not be legally correct is concerned, what we need to point out is that S. 201, IPC, is an independent and distinct offence though it may relate to the commission of another offence. From the evidence on record, there is sufficient material to indicate that Veenadevi met with an unnatural death but for the hypertechnical legal reasons set out by us we have refrained from confirming the conviction under S. 302, IPC, but having regard to the independent evidence under this head of charge, we hold that the accused knew and had knowledge of the commission of the offence that he buried the body in order to destroy the evidence and that he has rightly been convicted for the offence punishable under S. 201, IPC.”

19. In the present case, the dead body of Ghura was moved after he was declared dead and was found in a car parked at a lonely place. These allegations *prima facie* show the commission of an offence punishable under Section 201 of the IPC.

20. It was also asserted that the accused returned with the co-accused to the hospital and falsely told the police that the dead body was taken to PGI, Chandigarh. It was laid down in *State of Kerala v. Markose*, 1961 SCC OnLine Ker 16: AIR 1962 Ker 133 that giving wrong information to the police during the investigation does not attract Section 201 of the IPC. It was observed at page 137:

“28. Section 161 provides for the recording of statements of persons acquainted with the facts and circumstances of the case by the police officer making the investigation. A statement so recorded must be distinguished from one constituting the information which starts the investigation, and it has been distinguished in S. 162 by being described as a statement made by any person to a police officer in the course of an investigation. Under the Code of Criminal Procedure of 1882, the public were no doubt bound to answer “truly” all questions put to them by the police while investigating a cognizable case. If, therefore, they answered falsely, they could have been then prosecuted under S. 193 of the Code. But this obligation of answering “truly” no longer exists, and they could be punished under Ss. 182, 201 or 203 I.P.C., it would render nugatory the policy which dictated the amendment of the Code of Criminal Procedure by the removal of the word “truly” from Section 182 of the Cr PC. That is why Irwin, C.J., in the case in 2 Cr LJ 474 (FB) observed that as persons examined by the police can no longer be punished for giving false evidence, it would be mere evasion of law to hold them liable under S. 182 I.P.C. It also seems to us unfair that a man should be liable to be convicted of giving false information on the strength of a statement given to a police officer which is not given on oath, which he has not signed, and which he has had no opportunity of verifying. As is well known, such statements

are hurriedly taken down as rough notes, and the police officer is not trained in taking evidence. We are aware of the force of the argument of the learned Public Prosecutor of not imposing a Liability on persons, who give false information to the police with the object of laying false trails or causing the enquiry to be buried or weaken the prosecution and thereby injuriously interfere with public justice but justice as well as expediency demand that a ban be placed on prosecutions based on statements made to the police during investigation.”

21. It was submitted that the petitioner is an employee of the co-accused, and he was to act as per the direction of his employer. This submission will not help the accused. He helped the co-accused in secreting the dead body and will not be saved because of his employment.

22. Therefore, the learned Trial Court had rightly framed the charges, and there is no jurisdictional error in the order passed by the learned Trial Court.

23. In view of the above, the present petition fails, and it is dismissed.

24. The observations made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

27th November 2025*(ravinder)*