Pramod Kumar Alias Sanjay And Others vs State Of U.P. Thru. Its Prin. Secy. ... on 15 January, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LKO:2403

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9045 of 2024

Applicant :- Pramod Kumar Alias Sanjay And Others

Opposite Party :- State Of U.P. Thru. Its Prin. Secy. Deptt. Of Home, Lko. And Another

Counsel for Applicant :- Surendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Sri Surendra Kumar Mishra, learned counsel for the applicants, Sri Ajay Kumar Srivastava, learned AGA for the State of U.P. and perused the record.

2. By means of this application, the applicants have prayed for the following main reliefs:-

> "The petitioner above named most respectfully begs to submit that for the facts, reasons and circumstances as stated in the accompanying affidavit, this Hon'ble

> Court may kindly be pleased to quash the order dated 10.09.2024 passed by the Sessions Judge, Unnao, in Session Trial No. 826/2023 "State Vs. Pramod Kumar alias Sanjay and others" arising out of Case Crime No. 108/2020, under section 147, 148, 308, 323, 504, 506, 325 I.P.C. at police station Fatehpur Chaurasi, District Unnao, in the interest of justice.
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> It is further prayed that the Hon'ble Court may kindly be pleased to stay the order dated 10.09.2024 passed by the Sessions Judge, Unnao, in Session Trial No. 826/2023 "State Vs. Pramod Kumar alias Sanjay and others."

3. Brief facts of the case in hand are to the effect that the opposite party No. 2/Mohit submitted a written Tehrir alleging that on 12.05.2020 at about 5:00 A.M., his father was coming from Baruaghat. When his father reached near the village, the applicants namely Pramod alias Sanjay, Rajeev Kumar alias Mahadev, Shyam Yadav alias Shyam, Satyam Yadav alias Satyam, Nemsingh and Ramveer alias Raghuveer were already present there with dangerous weapon in their hands. They started abusing his father and started beating him. On hearing the screaming noise, the complainant, his family members and the people of village rushed to save him. After threatening to kill him, all the accused fled away. He brought his father to P.H.C. F-84 in unconscious condition. Being serious in condition, he was referred to District Hospital, Unnao. His medical was done on 13.05.2020. On the basis of the written Tehrir given on 12.05.2020, the first information report No. 108 of 2020 dated 12.05.2020 U/s 147,148,308,323,504,506 I.P.C. was lodged against the applicants.

4. The injury report of the injured reads as under:-

> "Fracture found in left hand and both legs. Chronic white matter ischemic changes with atrophy found in head."

5. After investigation, the chargesheet was submitted under Sections 147,148,308,323,504,506,325 I.P.C. against the applicants. Thereafter, cognizance was taken by the Additional Chief Judicial Magistrate,Court No.4, Unnao on 05.04.2021 and the case was committed for the trial. At the time of framing of charges, the accused/applicants filed the discharge application under Section 227 Cr.P.C.

6. By the order impugned dated 10.09.2024, the Sessions Judge, Unnao (in short "trial court") has rejected the application preferred by the applicants seeking discharge. The relevant portion of the order dated 10.09.2024 on reproduction reads as under:-

> "16. From perusal of record and case diary, it is evident that there is sufficient prima facie evidence available to frame charge against the accused Pramod alias Sanjay, Rajeev alias Mahadev, Shyam, Satyam, Nemsingh and Ramveer alias Raghubeer U/s 147,148,308,323,504,506,325 I.P.C., as the victim sustained grievous injuries on the head and hand and legs. Due to rivalry accused attacked on the victim with dangerous weapon and threatened to kill him, by which victim sustain grievous

> injuries. If in any case after trial section 308 I.P.C. is not made out then also court is competent to convict in lesser section or acquit the accused.
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> 17. Hence, discharge application 8Ka dated 16.10.2023 is liable to be rejected.
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> Order:
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> The discharge application 8Ka dated 16.10.2023 for discharge of accused/applicants Pramod alias Sanjay, Rajeev alias Mahadev, Shyam, Satyam, Nemsingh and Ramveer alias Raghubeer is rejected. Put up the filer on 23.09.2024 for framing of charge."

7. It would be apt to indicate that at the stage of quashing of charge sheet in exercise of power under Section 482 Cr.P.C. (now repealed) and Section 528 Bharatiya Nagrik Suraksha Sahinta, 2023 (in short "B.N.S.S.") as also at the stage of discharge or framing of charge(s), the court concerned/Magistrate is required to consider the evidence/material placed before it by the Investigating Officer (in short "I.O.") and in case of complaint, the documents/evidence placed by the complainant can be considered and defence of accused cannot be taken note of while exercising inherent jurisdiction by this Court as also the court/Magistrate concerned at the stage of discharge or framing of charge(s). The defence which is irrefutable/ indisputable/ undeniable/ unquestionable/ irrefragable may be considered in exceptional circumstances in the peculiar facts of a given case by this Court while exercising its power/ jurisdiction under the said provisions.

8. Further, it appears from the record that the I.O. during investigation recorded the statements of various persons including the injured.

9. The evidence/testimony of an injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly as observed by the Hon'ble Apex Court in the case(s) of State of M.P. vs. Mansingh (2003) 10 SCC 414; Abdul Sayeed vs. State of M.P. (2010) 10 SCC 259; State of U.P. vs. Naresh; (2011) 4 SCC 324 and Laxman Singh vs. State of Bihar (Now Jharkhand) (2021) 9 SCC 191.

10. Before proceeding further, it would also be apt to indicate the principles related to dealing with the discharge application, which have already been settled by the Hon'ble Apex Court in various pronouncements.

11. The Hon'ble Apex in the case of Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 has observed as under:-

> 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.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

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. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4) "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 considers 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."

12. Subsequently, the ambit and scope of Section 227 Cr.P.C. as well as parameters regarding exercise of jurisdiction under Section 227 Cr.P.C. came to be considered by a three Judges Bench of Supreme Court in Tarun Jit Tejpal Vs. State of Goa and Another, 2019 SCC OnLine SC 1053, wherein Court concluded as under in paragraphs 8 and 9:-

> 8. Now, so far as the prayer of the appellant to discharge him and the submissions made by Shri Vikas Singh, learned Senior Advocate on merits are concerned, the law on the scope at the stage of Sections 227/228 CrPC is required to be considered.
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> 8.1. In 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] this Court had an occasion to consider in detail the scope of the proceedings at the stage of framing of the charge under Sections 227/228 CrPC. After considering earlier decisions of this Court on the point, thereafter in paras 29 to 31 this Court has observed and held as under : (SCC pp.

721-23) "29. We have bestowed our consideration to 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 so as 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, 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.

30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P. [Sheoraj Singh Ahlawat v. State of U.P., (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21] , in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) [Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (Sheoraj Singh Ahlawat case [Sheoraj Singh Ahlawat v. State of U.P., (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21] , SCC p. 482, para 15) '15. ... "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 [Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] , SCC p. 565, para 11).'

31. Now reverting to the decisions of this Court in Sajjan Kumar [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and Dilawar Balu Kurane [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , 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 cannot 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. Sections 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 R.S. Nayak v. A.R. Antulay [R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716 : 1986 SCC (Cri) 256] . 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.' "

(emphasis in original) 8.2. In the subsequent decision in S. Selvi [State v. S. Selvi, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710] this Court has summarised the principles while framing of the charge at the stage of Sections 227/228 CrPC. This Court has observed and held in paras 6 and 7 as under : (SCC pp. 458-59) "6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI,

(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , 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] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] 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 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 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 mouthpiece 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.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles : (SCC pp. 376-77, para 21) '(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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 disclose 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.' "

8.3. In Mauvin Godinho [Mauvin Godinho v. State of Goa, (2018) 3 SCC 358 : (2018) 2 SCC (Cri) 63 : (2018) 1 SCC (L&S) 591] this Court had an occasion to consider how to determine prima facie case while framing the charge under Sections 227/228 CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 CrPC 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.

8.4. At this stage the decision of this Court in Stree Atyachar Virodhi Parishad [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Sections 227/228 CrPC. In paras 11 to 14 observations of this Court in the aforesaid decision are as under : (SCC pp. 719-21) "11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

> '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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In State of Bihar v. Ramesh Singh [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] , Untwalia, J., while explaining the scope of the said sections observed : [SCC pp. 41-42, para 4 : SCC (Cri) pp. 535-36 : SCR p. 259] '4. ... 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.'

13. In Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Fazal Ali, J., summarised some of the principles : [SCC p. 9, para 10 : SCC (Cri) pp. 613-14 : SCR pp. 234-35] '(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 had 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.'

14. These two decisions do not lay down different principles. Prafulla Kumar case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] has only reiterated what has been stated in Ramesh Singh case [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] . In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor

is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

8.5. Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Sections 227/228 CrPC, we are of the opinion that the submissions made by the learned counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned trial court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for.

9. In view of the above and for the reasons stated above, the present appeal fails and as a result the appeal stands dismissed. Considering the fact that the allegations against the appellant of sexual abuse are very serious and affecting the dignity of a woman and is the most morally and physically reprehensible crime in a society, an assault on the mind and privacy of the victim and the trial for such offences is required to be decided and disposed of at the earliest and considering the fact that in the present case the learned trial court has framed the charge against the accused and the incident is of 2013 and there is already a delay in concluding the trial because of the pending proceedings, we direct the learned trial court to conclude the trial at the earliest within a period of six months from the date of receipt of the order of this Court. All concerned are directed to cooperate with the trial court in the earlier disposal of the trial and within the stipulated time observed hereinabove."

13. In the case of State of Gujarat vs. Dilipsinh Kishorsinh Rao reported in 2023 SCC OnLine SC 1294, the Hon'ble Apex Court has observed as under:-

> "10. It is 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 Vs. N. Suresh Rajan And Others (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:
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> "29. We have bestowed our consideration to 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 12 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 so as 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, 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 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 Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. 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 14 charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor Vs. Ramesh 15 Chandra (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

> "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and

regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it 16 may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under:

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the 17 more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently

> improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
>
> 27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
>
> 27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
>
> 27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation 18 of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge."

14. In the case of Vishnu Kumar Shukla v. State of U.P., 2023 SCC OnLine SC 1582, the Hon'ble Apex Court has observed as under:-

"15. Although the instant case pertains to Trial of Warrant-Cases by Magistrates and is a case instituted on a police report, meaning Sections 239-2409, CrPC are relevant, we also propose to glance at Section 24510, CrPC (concerning trial of warrant-cases by Magistrates apropos cases instituted otherwise than on police report), as also Sections 227-22811, CrPC, which pertain to Trial before a Court of Session.

16. 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, (2009) 14 SCC 115 is instructive:

> '19. The essential difference of procedure in the trial of 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 239 CrPC on one side and Sections 244 and 245 CrPC 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 161 CrPC 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 239 CrPC that the Magistrate has to consider the police report and the documents sent with it under Section 173 CrPC 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 240 CrPC and the trial proceeds for recording the evidence. Thus, in such trial prosecution has only one opportunity to lead evidence and that too comes only after the charge is framed.

Xxx 2212. 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 245 CrPC since this is a warrant trial instituted otherwise than on police report. 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 if 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 subsection (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 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of the case",

clearly bring out this position.

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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. [(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 [1984 Cri LJ 513 (Bom)]. The same decision was followed by Kerala High Court in Manmohan Malhotra v. P.M. Abdul Salam [1994 Cri LJ 1555 (Ker)] 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 [AIR 1928 Mad 129 (1)], as also the judgment of the Himachal Pradesh High Court in Gopal Chauhan v. Satya [1979 Cri LJ 446 (HP)].

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 supplied)

17. Turning to Sections 239-240, CrPC, this Court held as under in Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142:

> '6. Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance 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 173 CrPC 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 239 CrPC; 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 240 CrPC.
>
> 7. If charges are framed in accordance with Section 240 CrPC 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 173 CrPC 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 240 CrPC the High Court in its revisional

jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add 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 adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC 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. The course so adopted cannot be supported; firstly, because finding regarding 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)

18. With great respect, we express our reservations in fully acceding to what has been stated above. If Paragraph 8 of Minakshi Bala (supra) 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 moreso not against liberty. Paragraph 7 of Minakshi Bala (supra) does enable examining unimpeachable documents. We are conscious that Minakshi Bala (supra) 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 take13.

19. In Rumi Dhar v. State of West Bengal, (2009) 6 SCC 364, this Court held that the Judge concerned with an application under Section 239, CrPC has to '... 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.'

20. In State of Tamil Nadu v. N Suresh Rajan, (2014) 11 SCC 709, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; Union of India v. Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v. Dilip N Chordia, (1989) 1 SCC 715; Niranjan Singh Karam Singh Punjabi v. Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v. State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v. State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai

Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v. Shiv Charan Bansal, (2020) 2 SCC 290. We need only refer to some, starting with Prafulla K Samal (supra), where, after considering Ramesh Singh (supra), K P Raghavan v. M H Abbas, AIR 1967 SC 740 and Almohan Das v. State of West Bengal, (1969) 2 SCR 520, it was laid down as under:

> '10. 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.' (emphasis supplied)

21. In Niranjan Singh Karam Singh Punjabi (supra), this Court was alive to reality, stating that '... 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. Central Bureau of Investigation, (2010) 9 SCC 368. The Court, in Dinesh Tiwari (supra) 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 (supra) is warranted, where it was explained that it is '... 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.'

22. In a recent judgment viz. State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 INSC 89414, this Court held:

> '7. It is trite law that application of judicial mind being 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 into 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 basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals 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 necessarily, 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 accused has committed the offence which is triable, then necessarily charge has to be framed.
>
> 8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.
>
> 9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.
>
> 10. It is 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. ...

xxx

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 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 prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.' (emphasis supplied)

23. On a careful conspectus of the legal spectrum, juxtaposed with our view on the facts and merits expressed hereinbefore, we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged. It would be unjustified to make the appellants face a full-fledged criminal trial in this backdrop. In an appeal dealing with the refusal of the High Court to quash an FIR under Section 482, CrPC albeit, this Court, while setting aside the judgment impugned therein and quashing that FIR, took the view that '...the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial.'15 The protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts. The High Court should have intervened and discharged the appellants. But this Court will intervene, being the sentinel on the qui vive."

15. While impeaching the order dated 10.09.2024, it is stated that no offence under Section 308 I.P.C. is made out against the applicants. To substantiate this, counsel for the applicants says that the injuries are not on vital part of the body nor are fatal in nature and accordingly the trial court, after due application of mind over the material available on record, ought to have framed charges under Section 323/324 I.P.C. Thus, interference in the matter is required.

16. Learned A.G.A. for the State opposed the present application stating that the charges have properly been framed as required under the law and the trial court at the stage of framing of charges is not under obligation to minutely consider the material evidence available on record and the trial court at the stage of framing of charges has to consider the evidence and material available on record only prima-facie and as such no interference is required in the matter.

17. Considered the aforesaid and perused the record.

18. In order to appreciate the aforesaid, it would be appropriate to take note of Section 308 IPC, which reads as under:-

> "Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

19. The essential ingredients of the offence under Section 308 I.P.C. are as under:-

> "(i) a person does any act
>
> (ii) the act was committed with intention or knowledge to commit culpable homicide not amounting to murder,
>
> (iii) the act was committed under such circumstances that if the accused by that act caused death, he would be guilty of culpable homicide not amounting to murder."

20. A bare perusal of the aforesaid statutory mandate makes it clear that by enacting Section 308 IPC, the Legislature has made a composite provision in order to deal with two separate situations.

21. The first part of Section 308 IPC does not make any inference to any hurt being caused by the accused persons and, therefore, any hurt being caused is not an essential condition to attract the provisions of Section 308 IPC.

22. The second part of Section 308 IPC provides that if hurt is caused to any person by an act which falls within the purview of the Section, the accused shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

23. It is apparent that Section 308 IPC is in two parts. First part relates to the case where hurt/injury is not caused and second part relates to the case where hurt/injury is caused and for both these types of cases different punishment(s) have been provided. In this view of the matter, causing hurt/injury is not an essential condition/ingredient to attract the provision of Section 308 IPC. Injury case and no injury case both are covered under Section 308 IPC.

24. Section 308 IPC indicates that if an act should have been done with such intention or knowledge and under such circumstances that in case the said act caused death, he would be guilty of culpable homicide not amounting to murder. This is relevant.

25. Thus, the totality of the circumstances of the case will determine the nature of the offence and not the fact that whether injury has been caused or not or injury is simple or grievous.

26. The intention or knowledge and the circumstances under which the act has been done is to be gathered from the allegations of the FIR, the evidence and other material and all other attending circumstances of the case.

27. In Tukaram Gundu Naik Vs. State of Maharashtra, (1994) 1 SCC 465, where none of the injuries had affected any vital part of the body and it was doubtful whether the accused had intended to commit murder of the victim, the Apex Court attributed only knowledge that by inflicting such injuries, he was likely to cause death and it was held that an attempt to such an offence would be punishable under Section 308 I.P.C.

28. Considering the settled proposition of law by the Hon'ble Apex Court in the judgment(s), referred above, while dealing with the discharge application as also the statement of the injured witness and also the injuries sustained, indicated in paragraph 4 of this judgment, this Court is of the view that at this stage of proceedings, it can't be said that no offence is made out against the applicants.

29. Having observed aforesaid, this Court finds no force in this application. It is accordingly dismissed. No order as to costs.

Order Date :- 15.01.2025/Arun/-