[2023] 13 S.C.R. 1071 : 2023 INSC 1026

CASE DETAILS

VISHNU KUMAR SHUKLA & ANR.

v.

THE STATE OF UTTAR PRADESH & ANR.

NOVEMBER 28, 2023

(Criminal Appeal No. 3618 of 2023)

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: Whether the order passed by the High Court refusing to discharge the accused in a criminal case and quashing an FIR calls for interference.

Code of Criminal Procedure, 1973 – ss. 239-240 – Trial of warrant-cases by Magistrates – Application for discharge – Permissible extent of scrutiny – On facts, refusal of the High Court to discharge the accused-appellant in a criminal case and quash an FIR – Interference with:

Held: Case for interference made out – There is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged, u/ss. 448, 454 and 380 IPC – Criminal case against the appellants amounts to clear abuse of the process of the Court – It would be unjustified to make the appellants face a full-fledged criminal trial – Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial, 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 – High Court should have intervened and discharged the appellants – Thus, there not being sufficient material on record to proceed against the appellants, they are discharged – Impugned judgment of the High Court as well as the order of the trial court dismissing the prayer for discharge are are unreasoned and set aside. [Para 14, 23, 24]

Code of Criminal Procedure, 1973 – ss. 239-240 – Trial of warrant-cases by magistrates – Discharging of accused – Framing of charges – Reliance on Minakshi Bala's case which held that at the stage of framing of charges, the court cannot usurp functions of a trial court to delve into and decide upon respective merits:

Held: If ***Minakshi Bala's*** case is accepted as it, the necessary concomitant would be that despite examining the matter in detail, a court would find its freedom restricted while considering the discharge application – This would amount to forcing a person to stand trial, even when 'overwhelming' material points to his/her innocence – Obviously, hands of a Court ought not to be tied down, and not against liberty – Thus, ***Minakshi Bala's*** case is doubted on the limited aspect, however, not referred to the larger bench for reconsideration observing that the same would be done in a more appropriate case – Precedent. [Para 18, 25]

LISTS OF CITATIONS AND OTHER REFERENCES

Minakshi Bala v Sudhir Kumar, (1994) 4 SCC 142: [1994] 3 SCR 1008 – Doubted on limited aspect.

Ajoy Kumar Ghose v State of Jharkhand, (2009) 14 SCC 115: [2009] 4 SCR 515; *Rumi Dhar v State of West Bengal, (*2009) 6 SCC 364: [2009] 5 SCR 553; *State of Tamil Nadu v N Suresh Rajan,* (2014) 11 SCC 709: [2014] 1 SCR 135; *State of Bihar v Ramesh Singh,* (1977) 4 SCC 39: [1978] 1 SCR 257; *Union of India v Prafulla K Samal,* (1979) 3 SCC 4: [1979] 2 SCR 229; *Stree Atyachar Virodhi Parishad v Dilip N Chordia,* (1989) 1 SCC 715: [1989] 1 SCR 560; *Niranjan Singh Karam Singh Punjabi v Jitendra B Bijjaya,* (1990) 4 SCC 76: [1990] 3 SCR 633; *Dilawar B Kurane v State of Maharashtra,* (2002) 2 SCC 135: [2002] 1 SCR 75; *Chitresh K Chopra v State (Government of NCT of Delhi),* (2009) 16 SCC 605: [2009] 13 SCR 230; *Amit Kapoor v Ramesh Chander,* (2012) 9 SCC 460: [2012] 7 SCR 988; *Dinesh Tiwari v State of Uttar Pradesh,* (2014) 13 SCC 137: [2014] 8 SCR 207; *Dipakbhai Jagdishchandra Patel v State of Gujarat,* (2019) 16 SCC 547: [2019] 6 SCR 701; *State (NCT of Delhi) v Shiv Charan Bansal,* (2020) 2 SCC 290: [2019] 17 SCR 1155; *K P Raghavan v M H Abbas,* AIR 1967 SC 740: 1967 AIR 740; *Almohan Das v State of West Bengal,* (1969) 2 SCR 520: [1969] 2 SCR 520; *Sajjan Kumar v Central Bureau of*

Investigation, (2010) 9 SCC 368: [2010] 9 SCC 368; *State of Gujarat v Dilipsinh Kishorsinh Rao,* 2023 INSC 894 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.3618 of 2023.

From the Judgment and Order dated 02.08.2017 of the High Court of Judicature at Allahabad, Lucknow Bench in CN No.4929 of 2017.

Appearances:

Alok Kumar Mishra, Ashutosh Lal, Pramod Tiwari, Vivek Tiwari, Ms. Priyanka Dubey, Dr. Vinod Kumar Tewari, Advs. for the Appellants.

Adarsh Upadhyay, Ms. Pallavi Kumari, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. This appeal is directed against the Final Judgment and Order dated 02.08.2017 (hereinafter referred to as the "Impugned Judgment") passed by the Lucknow Bench of the High Court of Judicature at Allahabad (hereinafter referred to as the "High Court") in Case U/S 482/378/407 Cr.P.C. No.4929 of 2017, by which the Order dated 02.06.2017 passed by the Chief Judicial Magistrate, Lucknow rejecting the prayer for discharge of the appellants, who are husband and wife, respectively, has been upheld.

THE FACTUAL PRISM:

3. In brief, the allegations are that the Complainant/Respondent No.2 (hereinafter referred to as "R2") was a tenant of a shop situated in the house of one Hari Narayan Shukla. On 29.06.2011, the appellants, along with others, locked the door of R2's shop from inside, broke the wall and looted wheat (APL), sale money, about INR 21,000 worth of kerosene oil, goods in stock, all the registers of the shop, documents and a two-wheeler bearing

Registration Number UP32BX2356 which led to R2 filing of the Hazratganj P.S. Case No.341 of 2011 dated 01.07.2011 (hereinafter referred to as the "FIR") under Sections 448, 454 and 380 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC").

SUBMISSIONS BY THE APPELLANTS:

4. The learned counsel for the appellants submitted that FIR itself would show that the allegation(s) is/are frivolous in nature and levelled with a view only to frustrate the appellants from enjoying their property, as admittedly, Appellant No.2 (hereinafter referred to as "A2") is the owner of the shop referred to *supra*, being the *bona fide* purchaser through a registered Sale Deed.

5. Learned counsel for the appellants submitted that R2, who claimed to be the tenant of the property in question, had on 31.05.2011 filed Regular Suit No.104/2011 for permanent injunction before the Civil Judge (Senior Division) South, Lucknow which was based on a so-called 'Memorandum of Agreement of Tenancy' dated 24.11.2005, in which the present symbol of the Indian National Rupee i.e., ₹, has been shown but the said symbol came into being only in the year 2010[1] and thus, could not have been reflected in a 'Memorandum' of the year 2005, which clearly exposes the falsity of the claim. Moreover, it was submitted that this would also amount to perjury by filing of a forged document before a Court of Law, for which the appellant(s) had filed an application under Section 340[2] of the Code of

1 To be precise, the symbol was officially approved on 26.08.2010 *vide* F.No.03/17/10-Cy., Government of India, Ministry of Finance, Department of Economic Affairs (Cy. Section).

2 ***340. Procedure in cases mentioned in Section 195.****—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—*

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

Criminal Procedure, 1973 (hereinafter referred to as the "CrPC") before the concerned Court.

6. It was further submitted that the FIR lodged by R2 on 01.07.2011 was for alleged offences under Sections 448[3], 454[4] and 380[5] of the IPC. However, it was contended that though no case was made out, still the police in collusion with R2 submitted Charge Sheet No.189 of 2011 dated 07.08.2011 under Section 448, IPC against the appellants upon which the appellants were summoned and were put on trial. It was submitted that R2 also filed an application under Section 144[6], CrPC before the Additional

---

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 195.

3 ***448. Punishment for house-trespass.****—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

4 ***454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.****—Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.*

5 ***380. Theft in dwelling house, etc.****—Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

6 ***144. Power to issue order in urgent cases of nuisance or apprehended danger.****—(1) In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate*

City Magistrate (First), Lucknow, registered as Suit No.01 of 2012 against the appellants which, by Order dated 09.08.2012, was rejected as not maintainable. It was further submitted that A2 moved the High Court in Rent Control Case No.125 of 2012 and *vide* order dated 14.12.2012, the High Court directed the said Rent Control Case proceeding to remain in abeyance.

7. Learned counsel submitted that the Trial Court, upon the Charge Sheet submitted by the police in the FIR, took cognizance on 07.08.2011, against which the appellants moved the High Court under Section 482[7],

---

considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

7 ***482. Saving of inherent powers of High Court.****—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

CrPC, in Case No. U/S 482/378/407 No. - 2413 of 2012 which was disposed of vide order dated 10.04.2014 with the direction that the appellants may file application for discharge before the Court concerned.

8. It was submitted that on 18.12.2014, the Civil Judge (Junior Division), South, Lucknow in Miscellaneous Suit No.540031 C/2012, which was instituted on the application filed by the appellants under Section 340, CrPC, *prima facie* found that offence under Section 463[8], IPC had been committed by R2 and directed initiation of proceedings against him.

9. Furthermore, it was pointed out that in terms of the High Court's Order dated 10.04.2014, the appellants on 16.01.2016 filed application for discharge before the Chief Judicial Magistrate, Lucknow, in Case Crime No.368 of 2011, wherein one of the grounds taken was the order dated 18.12.2014 passed by the Civil Judge (Junior Division), South, Lucknow.

10. Learned counsel submitted that Order dated 18.12.2014 was a clear-cut finding by a Court of Law that the entire suit was premised on forged and fabricated document(s). He submitted that once the same has been established, the contention of R2 to be in possession of the property in question does not arise and clearly the FIR itself was a misuse and abuse of the process of law. Learned counsel submitted that despite there being sufficient material for discharge, the Trial Court by order dated 02.06.2017 rejected the application on vague grounds and thus, the appellants had to move the High Court under Section 482, CrPC in Case U/S 482/378/407 Cr.P.C. No.4929 of 2017, which was dismissed by the Impugned Judgment.

11. Learned counsel pointed out that innocence of the appellants would be further established by the fact that despite the initial FIR having been registered under Sections 448, 454 and 380, IPC, the police did not find any case under Sections 454 and 380, IPC, to which R2 neither objected nor

---

8 ***463. Forgery.***—*Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery*.

filed any protest. Thus, it was contended that the acceptance of the fact that there was no lurking house-trespass or housebreaking in order to commit offence punishable with imprisonment (Section 454, IPC) and no theft in dwelling house, etc. (Section 380, IPC) also make it amply clear that R2 was never in possession of the property in question and his entire case falls flat.

SUBMISSIONS OF THE RESPONDENT-STATE:

12. *Per contra*, learned counsel for the State opposed the prayer by the appellants seeking discharge, and supported the Impugned Judgment. Learned counsel sought dismissal of the appeal.

NON-APPEARANCE OF THE RESPONDENT NO.2:

13. Despite service, nobody appeared on behalf of R2.

ANALYSIS, REASONING AND CONCLUSION:

14. Having examined the matter in detail, a case for interference has been made out. The fact is that the Indian National Rupee symbol i.e., ₹ was not in existence during the time the purported 'Memorandum' was signed. Furthermore, R2 has based his entire claim of tenancy on a document which has been, *prima facie*, found to be forged and fabricated, for which the Court concerned has directed lodging of a criminal case. There is no other claim by R2 to show that he was in possession. When coupled with the fact that the police did not find any offences having been made out against the appellants under Sections 454 and 380, IPC, the case against the appellants under Section 448, IPC finds itself on shaky ground. R2 never objected to the above nor took any further steps. R2, as noted above, has not entered appearance before this Court. Thus, the case against the appellants finds itself on shakier ground. We are of the firm view that A2 being the undisputed landlord, the criminal case filed by R2, in the facts and circumstances supra, amounts to clear abuse of the process of the Court. Moreover, we find that the Impugned Judgment and the judgment dated 02.06.2017 of the Chief Judicial Magistrate, Lucknow are unreasoned as to why discharge is to be denied. Thus far on facts and merits. Now, on the law.

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-

240[9], CrPC are relevant, we also propose to glance at Section 245[10], CrPC (concerning trial of warrant-cases by Magistrates apropos cases instituted otherwise than on police report), as also Sections 227-228[11], CrPC, which pertain to Trial before a Court of Session.

---

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

240. Framing of charge.—*(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

10 ***245. When accused shall be discharged***.—*(1) If, upon taking all the evidence referred to in Section 244, 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, the Magistrate shall discharge him.*

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

11 ***227. Discharge.***—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—*(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

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

22[12]. *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 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 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of the case", clearly bring out this position.*

Xxx

12 Paragraph 22 was corrected *vide* Official Corrigendum F.3/Ed.B.J./124/2009 issued on 22.08.2009 by the Court.

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 take[13].

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**

13 Yes, the allusion is to Robert Frost's celebrated poem – *The Road Not Taken.*

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 judgement *viz.* ***State of Gujarat v Dilipsinh Kishorsinh Rao,*** **2023 INSC 894**[14]**,** 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.*

14 **2023 SCC OnLine SC 1294**.

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.*

24. Accordingly, this appeal is allowed. The appellants, on bail, stand discharged of the liabilities of their bail bonds. The Impugned Judgment of the High Court as well as the order of the Trial Court dismissing the prayer

15 ***Priyanka Mishra v State of Uttar Pradesh,* 2023 INSC 729 | 2023 SCC OnLine SC 978.**

for discharge are set aside. Consequently, there not being sufficient material on record to proceed against them, the appellants stand discharged in the criminal case. Our judgment shall not influence pending civil proceeding(s), if any, between the private parties.

25. Insofar as ***Minakshi Bala*** (*supra*) is concerned, having taken the view that we have and expressed our doubt on the limited aspect, yet we do not find any need to burden a larger Bench to reconsider the said judgment, at this juncture. '*In a more appropriate case…*', perhaps, as the saying goes.

Headnotes prepared by:
Nidhi Jain

Appeal allowed.