

**Ram Prakash Chadha**

v.

**The State of Uttar Pradesh**

(Criminal Appeal No. 2395 of 2023)

15 July 2024

**[C.T. Ravikumar\* and Sudhanshu Dhulia, JJ.]**

#### **Issue for Consideration**

In the chargesheet, appellant was accused for commission of offences u/s. 302, 343, 217, 218, 330, 120B and 34, IPC. An application for discharge u/s. 227 of Cr.PC was rejected by the Trial Court. Whether the findings of the trial Court on the ground to proceed against the appellant is based on suppositions and suspicions, having no foundational support from the materials produced by the prosecution.

#### **Headnotes<sup>†</sup>**

**Code of Criminal Procedure, 1973 – s.227 – Discharge – In the chargesheet, appellant was accused for commission of offences u/s. 302, 343, 217, 218, 330, 120B and 34, IPC – Appellant sought discharge u/s. 227 of Cr.PC – The said application for discharge u/s. 227 of Cr.PC, was rejected by the court of Additional Sessions Judge/Special Judge (CBI) – The appellant filed an application u/s.482 of Cr.PC before the High Court, however, same was dismissed by the High Court – Propriety:**

**Held:** In the final report filed in FIR No.371 of 1993 viz., in the custodial death case, the record revealed that the essence of the accusation is commission of custodial death owing to the torture to which victim-deceased was subjected to, from 17.07.1993 to 23.07.1993 – A scanning of the charge as also the other materials including the statements of the witnesses recorded u/s. 161, Cr.PC, would reveal that there is absolute absence of any accusation or even an insinuation that the appellant had played any role in torturing victim – The implication of the appellant in the crime is with the aid of s.120B and s.34, IPC – An agreement referred to in Section 120A, IPC may be expressed or implied or

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in part express and in part implied – However, no record of the case or documents submitted therewith carry such an allegation/accusation against the appellant – The findings of the Trial Court on the ground to proceed against the appellant is based on suppositions and suspicions, having no foundational support from the materials produced by the prosecution – It is to be noted that it is nobody's case that the appellant was in the Police Station or informed of the sufferance from chest pain of accused – In another case, Crime No.351/1993 u/s. 392, IPC the deceased was only a witness and that the amount in cash and the draft involved was that of the appellant – It is also the case of the prosecution that the said case was registered, at the instance of the appellant against unknown persons – Hence, when the appellant who lost the money went to Police Station along with the witness thereof, how can it be presumed by the Court as a strong case for suspicion for commission of the offence of criminal conspiracy – When there is no case for the prosecution that the appellant pointed the fingers at deceased how the lodging of the complaint, apprehending custodial death of deceased who was appellant's clerk for about 13 years, which caused the registration of custodial death case under FIR No.371/1993 can be taken as a ground for framing charge against the appellant for the offences punishable u/s. 302, IPC, 120-B with the aid of s.34, IPC – These aspects were not considered by the High Court – Consequently, the order and judgment dated 21.04.2023 passed by the High Court in an application filed u/s. 482, Cr.PC, and the order dated 19.04.2007 passed by the Additional Sessions Judge/Special Judge (CBI) are set aside.[Paras 23, 24, 28, 30, 35]

**Code of Criminal Procedure, 1973 – s.227 – Jurisdiction of the Court:**

**Held:** It will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused concerned has been made out – This Court is of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction u/s. 227, Cr.PC, and entering into the scope of power u/s. 232, Cr.PC, cannot be ruled out as such instances are aplenty. [Para 19]

**Code of Criminal Procedure, 1973 – s.227 – Framing of charge – Duty and obligation of the Court:**

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**Held:** The question of framing the charge would arise only in a case where the court upon such exercise satisfies itself about the *prima facie* case revealing from “the record of the case and the documents submitted therewith” against the accused concerned – In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if ‘the record of the case and the documents submitted therewith’ discloses ground for proceeding against him – When that be so, in a case where an application is filed for discharge u/s. 227, Cr.PC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf – To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. [Para 22]

**Code of Criminal Procedure, 1973 – s.227 – Application for discharge – Disclosure of reasons by the Court for rejection of application:**

**Held:** When an application for discharge is filed under Section 227, Cr.PC, the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding *prima facie* case, as it will enable the superior Court to examine the challenge against the order of rejection. [Para 22]

**Code of Criminal Procedure, 1973 – s.227 – Meaning of the expression “the record of the case and the documents submitted therewith” – discussed.****Case Law Cited**

*State of Orissa v. Debendra Nath Padhi* [2004] Supp. 6 SCR 460 : (2005) 1 SCC 568; *P. Vijayan v. State of Kerala and Anr.* [2010] 2 SCR 78 : (2010) 2 SCC 398; *Union of India v. Prafulla Kumar Samal* [1979] 2 SCR 229 : (1979) 3 SCC 4 – relied on.

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*Yogesh alias Sachin Jagadish Joshi v. State of Maharashtra* [\*\*\[2008\] 6 SCR 1116\*\*](#) : AIR 2008 SC 2991; *State of Tamil Nadu v. N Suresh Rajan & Ors.* [\*\*\[2014\] 1 SCR 135\*\*](#) : (2014) 11 SCC 709; *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia & Anr.* [\*\*\[1989\] 1 SCR 560\*\*](#) : (1989) 1 SCC 715; *Om Parkash Sharma v. CBI* [\*\*\[2000\] 3 SCR 188\*\*](#) : (2000) 5 SCC 679; *R. Venkatakrishnan v. CBI* [\*\*\[2009\] 12 SCR 762\*\*](#) : (2009) 11 SCC 737; *Ajay Aggarwal v. Union of India & Ors.* [\*\*\[1993\] 3 SCR 543\*\*](#) : (1993) 3 SCC 609 – referred to.

*BK Sharma v. State of UP* (1987) SCC OnLine ALL 314; *Kaushalya Devi v. State of MP* (2003) SCC OnLine MP 672 – approved.

*K.S. Narayanan & Ors. v. G Gopinathan* 1982 CriLJ 1611 (Madras) – referred to.

### List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

### List of Keywords

Section 227 of Code of Criminal Procedure, 1973; The record of the case and the documents submitted therewith; Discharge; Application for discharge; Suppositions and suspicions; Materials produced by the prosecution; Duty and obligation of the Court; Disclosure of reasons by the Court for rejection of discharge application.

### Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2395 of 2023

From the Judgment and Order dated 21.04.2023 of the High Court of Judicature at Allahabad in A482 No. 21739 of 2007

### Appearances for Parties

Siddhartha Dave, Sr. Adv., Ms. Pallavi Pratap, Ms. Prachi Pratap, Dr. Prashant Pratap, Akshay Singh, Gautam Mishra, Ms. Kinjal Aggarwal, Ms. Aakriti Priya, Ms. Muskan Jain, Advs. for the Appellant.

Ardhendumauli Kumar Prasad, A.A.G., Sarvesh Singh Baghel, Abhinav S. Agarwal, Arun Pratap Singh Rajawat, Advs. for the Respondent.

**Ram Prakash Chadha v. The State of Uttar Pradesh****Judgment / Order of the Supreme Court****Judgment****C.T. Ravikumar, J.**

1. The dismissal of application under Section 482, No.21739 of 2007, essentially, filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.PC') against dismissal of an application for discharge by the appellant herein under Section 227 Cr.PC, as per order dated 21.04.2023 by the High Court of Judicature at Allahabad is under challenge in this appeal. The appellant moved the said application for discharge in Crime No.371/1993, the charge in essence there is about custodial death of one Ram Kishore who happened to be cashier/accountant of the appellant, which in fact was registered based on the complaint of the appellant.
2. Heard, learned senior counsel Siddharth Dave appearing for the appellant and Shri Ardhendumauli Kumar Prasad, Additional Advocate General appearing for the State of Uttar Pradesh.

**Facts leading to the case:**

3. Before narrating the facts, we should bear in mind that exercise of power under Section 227, Cr.PC, is legally permissible only by considering 'the record of the case and the documents submitted therewith'. Therefore, necessarily, the question is what is the meaning of the expression '*the record of the case and documents submitted therewith*'? According to us, it refers only to the materials produced by the prosecution and not by the accused. A three-Judge Bench of this Court considered this question in ***State of Orissa v. Debendra Nath Padhi***.<sup>1</sup> It was held that the said expression as postulated in Section 227, Cr.PC, relate to the case and the documents referred to under Section 209, Cr.PC. Section 209, Cr.PC, reads thus:-

***"209. Commitment of case to Court of Session when offence is triable exclusively by it. — When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall —***

1 [2004] Supp. 6 SCR 460 : (2005) 1 SCC 568

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- (a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

In view of Section 209, Cr.PC, as extracted above, to know what exactly are the documents falling within the said expression Sections 207 and 208, Cr.PC, are also to be looked into.

4. We referred to the provisions under Section 227 and the decision in Debendra Nath Padhi's case (*supra*) only to conclude that even for the purpose of referring to the facts leading to the case, as also for consideration of the contentions for the purpose of Section 227, Cr.PC, we cannot refer to the grounds carrying or referring to the case of the appellant-accused, in view of the aforesaid provisions of law and position of law, requiring to confine such consideration only with reference to the materials produced by the prosecution.
5. Now, we will refer to the facts leading to the case, as per the prosecution and as per the materials falling within the purview of Section 227, Cr.PC.
6. The appellant, who is the owner of Goodwill Enterprises dealing with wood, registered Case Crime No.351 of 1993 under Section 392 of the Indian Penal Code, 1860 (for short '*the IPC*') at Police Station Modi Nagar, District Ghaziabad, alleging that his cashier/accountant-Ram Kishore and one Pappu Yadav went for collecting his business proceeds from shops at Meerut and Modi Nagar in the morning of 15.07.1993. On their way back from Meerut, after collecting such business proceeds, they stopped the car in front of Ginni Devi School in Modi Nagar and Ram Kishore went to Poonam Sales for collection

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and Pappu Yadav remain seated in the car with the bag containing the collection and some documents. Soon, two persons came and snatched the said bag from Pappu Yadav after putting him at gun point and escaped on a motorcycle. The appellant was given such information over phone. Later, on that day itself the appellant got registered the above-mentioned FIR about robbery and asked for investigation and appropriate legal action, in the incident.

7. The materials on record and the counter affidavit filed in this appeal on behalf of the respondent based on such materials would reveal that the initial investigation in Case Crime No.351/1993 (hereinafter referred to as 'the robbery case') found it to be false. However, the Supervising Officer concerned viz., the Commanding Officer, Modi Nagar stopped the closure report and entrusted the case for investigation to another officer. Thereafter, on 17.07.1993, the appellant called Ram Kishore from his house through one of his employees viz., Jagannath and took him to the Modi Nagar Police Station for inquiry. It is only appropriate to extract from the chargesheet dated 21.02.2000 filed by CBCID, Lucknow, U.P., in FIR No. 371/1993 of Police Station, Modi Nagar, registered in connection with the custodial death of Ram Kishore unfolding further the case of the prosecution instead of narrating it. It in so far as relevant reads thus:-

*“...Ram Kishore was illegally kept in the police station by Inspector of Police R.D. Pathak and Sub-Inspector of Police Jawahar Lal from 17.07.1993 to 23.07.1993 night and by subjecting him to the torture he was kept being interrogated about the said incident. In the night of date 23.07.1993 on Ram Kishore falling ill he was taken to M.M.G. Hospital Ghaziabad by Inspector R.D. Pathak through staffs and Jeep where on 3:20 in the morning he died. He was admitted by the police in the Hospital in the name of unknown. After death of the young man Ram Kishore on date 24.07.1993, a complaint regarding death was submitted by the complainant to the Circle Inspector Modi Nagar raising suspicion about death of Shri Ram Kishore having been caused by the Inspector of Modi Nagar by beating him on which Crime Case No.371/1993 was registered illegible. As per the post mortem report dated 24.07.1993 ante mortem redics cut incision were*

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*found on his both the buttocks and because of the cause of death not having been ascertained his internal organs were preserved which was examined on date 03.01.1995 poison etc. were ruled out. ...”*

8. In the chargesheet dated 21.02.2000 filed in Crime No.371/1993, the aforesaid Rameshwar Dayal Pathak, the then Inspector of Police and Jawahar Lal, the then Sub-Inspector of Police and the appellant were made accused Nos. 1 to 3 respectively, for commission of offences under Sections 302, 343, 217, 218, 330, 120B and 34, IPC. It is seeking discharge under Section 227, Cr.PC, in the aforesaid case viz., Crime No.371/1993 that appellant herein approached the court of Additional Sessions Judge/Special Judge, Ghaziabad by filing application dated 04.04.2007 contending absolute absence any ground to proceed against him. The said application for discharge under Section 227, Cr.PC, was rejected by the court of Additional Sessions Judge/Special Judge (CBI), as per order dated 19.04.2007. The impugned order dated 21.04.2023 was passed by the High Court in the petition filed under Section 482, Cr.PC, against the said order dated 19.04.2007.

**Rival contentions:**

9. The learned senior counsel appearing for the appellant would contend that the very charge filed by the CBCID dated 21.02.2000 in the custodial death case viz., FIR No. 371/2023 would reveal that the appellant herein is the informant. It is also submitted that the final report filed in the ‘custodial death case’, dated 21.02.2000 would further show that he was witness No.1 and also as accused No.3. The Learned Senior Counsel would further submit that there is absolute absence of any material to arraign the appellant herein as an accused with the aid of either Section 120B, IPC or Section 34, IPC. The next submission was that even if the statements of the witnesses recorded under Section 161, Cr.PC, including the witnesses related to the deceased Ram Kishore like Smt. Santosh, Shri Promod Kumar and Shri Bhim Singh, who are respectively the widow, son and brother of deceased Ram Kishore are taken as correct, they would not reveal anything to base an allegation of criminal conspiracy or sharing of common intention against the appellant. It is the further submission that virtually, the appellant’s application for discharge was dismissed by the Court of the

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Additional Sessions Judge taking two circumstances as suspicious circumstances (i) that it was he who had taken accused Ram Kishore to Police Station in connection with the investigation in Crime No.351/1993 (the robbery case) (ii) that immediately on the death of Ram Kishore from the hospital he filed the complaint which culminated in the registration of FIR No.371/1993 in connection with the murder of Ram Kishore, alleging that Inspector, Modi Nagar and 3-4 other police personnel had taken Ram Kishore with them for interrogation and apprehending the cause of his death due to torture by police personnel. It is submitted neither the statements of witnesses or the chargesheet carry any such accusation or insinuation and that suspicion was made only by the court in the order dated 19.04.2007 while rejecting the appellant's application for discharge. In short, the contention is that neither the trial court nor the High Court considered the application for discharge in the manner required under law.

10. *Per Contra*, the learned Additional Advocate General appearing for the State would submit the materials on record produced along with the chargesheet would *prima facie* show that it was the appellant who lodged the complaint resulting in registration of Crime No.351/1993, and that it was in connection with the investigation of the said crime that the appellant himself produced the deceased Ram Kishore before the Police Station after calling him from his house through another employee and as such his very action in filing another complaint leading to the registration of Crime No.371/1993 against the first accused, the then SHO, Police Station, Modi Nagar, for the death of Ram Kishore immediately on coming to know about the death of Ram Kishore, is sufficient to create a strong suspicion against the appellant. When such a strong suspicion is there, in the light of the statements made by the other witnesses under Section 161, Cr.PC, the concurrent finding resulted in dismissal of application for discharge filed by the appellant invites no interference, according to the learned Additional Advocate General.
11. For appreciating the aforesaid contentions, we are of the considered view that it is only appropriate to refer to the position of law with respect to the scope of exercise of power under Section 227, Cr.PC, as also the ingredients to attract Section 120B, IPC. Section 227, Cr.PC, reads thus:

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**“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.”**

12. We have already considered the meaning of the expression “*the record of the case and the documents submitted therewith*” relying on the decision in Debendra Nath Padhi’s case (*supra*) only to re-assure as to what are the materials falling under the said expression and thus, available for consideration of an application filed for discharge under Section 227, Cr.PC. In the light of the same, there cannot be any doubt with respect to the position that at the stage of consideration of such an application for discharge, defence case or material, if produced at all by the accused, cannot be looked at all. Once “*the record of the case and the documents submitted therewith*” are before the Court they alone can be looked into for considering the application for discharge and thereafter if it considers that there is no sufficient ground for proceeding against the accused concerned then he shall be discharged after recording reasons therefor. In that regard, it is only appropriate to consider the authorities dealing with the question as to what exactly is the scope of consideration and what should be the manner of consideration while exercising such power.
13. The decision in Yogesh alias Sachin Jagadish Joshi v. State of Maharashtra<sup>2</sup> this Court held that the words “*not sufficient ground for proceeding against the accused*” appearing in Section 227, Cr.PC, postulate exercise of judicial mind on the part of the Judge to the facts of the case revealed from the materials brought on record by the prosecution in order to determine whether a case for trial has been made out. In the decision in State of Tamil Nadu v. N Suresh Rajan & Ors.<sup>3</sup> this Court held that at a 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

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2 [2008] 6 SCR 1116 : AIR 2008 SC 2991

3 [2014] 1 SCR 135 : (2014) 11 SCC 709

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evaluate the materials to find out whether the facts taken at their face value disclose the existence of the ingredients constituting the offence. At this stage, only the probative value of the materials has to be gone into and the court is not expected to go deep into the matter to hold a mini-trial.

14. In the decision in ***BK Sharma v. State of UP***,<sup>4</sup> the High Court of judicature at Allahabad held that the standard of test and judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very strong suspicion, based on the material on record, and would be sufficient to frame a charge.
15. We are in agreement with the said view taken by the High Court. At the same time, we would add that the strong suspicion in order to be sufficient to frame a charge should be based on the material brought on record by the prosecution and should not be based on supposition, suspicions and conjectures. In other words, in order to be a basis to frame charge the strong suspicion should be the one emerging from the materials on record brought by the prosecution.
16. In the decision in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia & Anr.***,<sup>5</sup> this Court held that the word 'ground' in Section 227, Cr.PC, did not mean a ground for conviction, but a ground for putting the accused on trial.
17. In ***P. Vijayan v. State of Kerala and Anr.***,<sup>6</sup> after extracting Section 227, Cr.PC, this Court in paragraph No.10 and 11 held thus: -

**"10.**

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*.....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. Further, the words "not sufficient ground for proceeding against the accused"*

4 1987 SCC OnLine ALL 314

5 [1989] 1 SCR 560 : (1989) 1 SCC 715

6 [2010] 2 SCR 78 : (2010) 2 SCC 398

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*clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.*

- 11.** *At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”*
- 18.** In paragraph 13 in P. Vijayan's case (*supra*), this Court took note of the principles enunciated earlier by this Court in Union of India v. Prafulla Kumar Samal<sup>7</sup> which reads thus: -

“10....

- (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*

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<sup>7</sup> [1979] 2 SCR 229 : (1979) 3 SCC 4

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*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."*

19. In the light of the decisions referred *supra*, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227, Cr.PC, and entering into the scope of power under Section 232, Cr.PC, cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in *Om Parkash Sharma v. CBI*.<sup>8</sup> Taking note of the language of Section 227, Cr.PC, is in negative terminology and that the language in Section 232, Cr.PC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227, Cr.PC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232, Cr.PC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a *prima facie* case is made out against the accused,

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on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232, Cr.PC, available only after taking the evidence for the prosecution and examining the accused.

20. Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in ***Kaushalya Devi v. State of MP***.<sup>9</sup> It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression 'legal evidence' has to be construed only as evidence disclosing *prima facie* case, '*the record of the case and the documents submitted therewith*'.
21. The stage of Section 227, Cr.PC, is equally crucial and determinative to both the prosecution and the accused, we will dilate the issue further. In this context, certain other aspects also require consideration. It cannot be said that Section 227, Cr.PC, is couched in negative terminology without a purpose. Charge sheet is a misnomer for the final report filed under Section 173 (2), Cr.PC, which is not a negative report and one that carries an accusation against the accused concerned of having committed the offence (s) mentioned therein.
22. In cases, where it appears that the said offence(s) is one triable exclusively by the Court of Session, the Magistrate shall have to commit the case to the Court of Session concerned following the prescribed procedures under Cr.PC. In such cases, though it carries an accusation as aforementioned still legislature thought it appropriate to provide an inviolable right as a precious safeguard for the accused, a pre-battle protection under Section 227, Cr.PC. Though, this provision is couched in negative it obligated the court concerned to unfailingly consider the record of the case and document submitted therewith and also to hear the submissions of the accused and the prosecution in that behalf to arrive at a conclusion as to whether or

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not sufficient ground for proceeding against the accused is available thereunder. Certainly, if the answer of such consideration is in the negative, the court is bound to discharge the accused and to record reasons therefor. The corollary is that the question of framing the charge would arise only in a case where the court upon such exercise satisfies itself about the *prima facie* case revealing from “*the record of the case and the documents submitted therewith*” against the accused concerned. In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if ‘*the record of the case and the documents submitted therewith*’ discloses ground for proceeding against him. When that be so, in a case where an application is filed for discharge under Section 227, Cr.PC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. We are not oblivious of the fact that normally, the Court is to record his reasons only for discharging an accused at the stage of Section 227, Cr.PC. However, when an application for discharge is filed under Section 227, Cr.PC, the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding *prima facie* case, as it will enable the superior Court to examine the challenge against the order of rejection.

23. By applying the laws enunciated and the principles laid, we will proceed to consider the case on hand. In the final report filed in FIR No.371 of 1993 viz., in the custodial death case, the afore-extracted portion from it revealed that the essence of the accusation is commission of custodial death owing to the torture to which Ram Kishore was subjected to, from 17.07.1993 to 23.07.1993. It reveals that going by the same, he was illegally kept in the Police Station by accused Nos.1 and 2. A scanning of the charge as also the other materials including the statements of the witnesses recorded under

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Section 161, Cr.PC, would reveal that there is absolute absence of any accusation or even an insinuation that the appellant had played any role in torturing Ram Kishore. Therefore, the question is how he is arraigned as third accused in the aforesaid crime. In that regard, it is apposite to refer again to the final report dated 21.02.2000 filed in Crime No.371/1993. The relevant portion in the final report in this regard, reads thus: -

*“...In this manner from this investigation, it was found that deceased Ram Kishore was kept in the Police Station from dated 17.07.1993 to 23.07.1993 in the Police Station under the criminal Conspiracy of the accused persons mentioned in the column no.3 during which he was tortured and interrogated regarding the incident of loot and knowingly with the intention of saving their skins no entry of the same was made in the records of the Police Station nor was the same mentioned by the complainant in its report. Charge under Section 341/217/218/201/330/34 /120B Indian Penal Code, 1860 was found to have been made out against all the accused persons. ...”*

24. From the above extracted portion, it is evident that the implication of the appellant in the crime is with the aid of Section 120B and Section 34, IPC. Apart from using the expression “criminal conspiracy” there is absolute absence of anything whatsoever in the said final report as also in the statement of any of the witnesses, suggesting that the appellant herein conspired with the other accused or what exactly is the criminal conspiracy.
25. This Court in the decision in *R. Venkatakrishnan v. CBI*,<sup>10</sup> held that criminal conspiracy, in terms of Section 120B, IPC, is an independent offence and its ingredients are:
  - (i) an agreement between two or more persons;
  - (ii) the agreement must relate to doing or causing to be done either –
    - (a) an illegal act;
    - (b) an act which is not illegal in itself but is also done by illegal means.

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26. An important facet of law of conspiracy is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of conspiracy. A careful scanning of the provisions under Sections 120A and 120B, IPC, would reveal that the *sine qua non* for an offence of criminal conspiracy is an agreement to commit an offence. It consists of agreement between two or more persons to commit the criminal offence, irrespective of the further consideration whether or not the offence is actually committed as the very fact of conspiracy constitutes the offence (See the decision in **K.S. Narayanan & Ors. v. G Gopinathan**<sup>11</sup>).
27. There can be no doubt that conspiracy is hatched in privacy and not in secrecy, and such it would rarely be possible to establish conspiracy by direct evidence. A few bits here and a few bits there, on which the prosecution may rely, are not sufficient to connect an accused with the commission of the crime of criminal conspiracy. To constitute even an accusation of criminal conspiracy, first and foremost, there must at least be an accusation of meeting of minds of two or more persons for doing an illegal act or an act, which is not illegal in itself, by illegal means.
28. In **Ajay Aggarwal v. Union of India & Ors.**,<sup>12</sup> this Court characterized the offence of criminal conspiracy as an agreement between two or more persons to do an illegal act or a legal through illegal means. Furthermore, it was held that commission of the offence would be complete as soon as, there is consensus *ad idem* and it would be immaterial whether or not the offence is actually committed. It is also held therein that necessarily there must be agreement between the conspirators on the design or object of the conspiracy. As held in **R. Venkatakrishnan** case (*supra*), the quintessential ingredient to attract the offence of criminal conspiracy is agreement between two or more persons. Therefore, the question is whether it spelt in the final report dated 21.02.2000 or in any of the records of the case and documents submitted therewith, so as to find a *prima facie* case of commission of criminal conspiracy against the appellant. True that an agreement referred to in Section 120A, IPC may be expressed or

11 1982 CriLJ 1611 (Madras)

12 [1993] 3 SCR 543 : (1993) 3 SCC 609

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implied or in part express and in part implied. However, no record of the case or documents submitted therewith carry such an allegation/accusation against the appellant.

- 29.** What is the common plan or the common intention? This aspect is also conspicuously absent in the materials produced by the prosecution. In regard to all such aspects, referred above, none of the witnesses has spoken while giving statements under Section 161, Cr.PC. In this context it is also to be noted that according to the Trial Court, a very strong suspicion lingers on account of twin circumstances. In the order dated 19.04.2007, the Trial Court in this regard observed and held thus: -

*"The learned Assistant District Government Counsel (Criminal) has argued that if the accused persons says that he had fell ill in the night and he was complaining of having pain in the chest then why his family members were not informed. The said condition is also very much suspicious. Besides these, the accused was handed over to the police by the accused Ram Prakash Chaddha himself and in the next day morning the report was lodged by him only."*

*Keeping in view the abovementioned entire facts and circumstances sufficient evidences are available on the record for the framing of charge against the accused persons Rameshwar Dayal Pathak and Jawahar Lal and Ram Prakash Chaddha."*

- 30.** In the light of the records of the case and the documents submitted therewith, it can only be found that the said finding of the Trial Court on the ground to proceed against the appellant is based on suppositions and suspicions, having no foundational support from the materials produced by the prosecution. With respect to the first part of the above-extracted recital from the order of the Trial Court, it is to be noted that it is nobody's case that the appellant was in the Police Station or informed of the sufferance from chest pain. As relates the second suspicion, it is to be noted that the very Trial Court itself, in the very order dated 19.04.2007 itself, stated that in Crime No.351/1993 under Section 392, IPC the deceased Ram Kishore was only a witness and that the amount in cash and the draft involved was that of the appellant. It is also the case of the prosecution that the said case was registered, at the instance of the appellant

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against unknown persons. Hence, when the appellant who lost the money went to Police Station along with the witness thereof, how can it be presumed by the Court as a strong case for suspicion for commission of the offence of criminal conspiracy, especially taking note of the very case of the prosecution that causative incident for the case occurred when Ram Kishore was returning after collecting the business proceeds of the appellant and that the appellant was informed of it over telephone by Ram Kishore. When there is no case for the prosecution that the appellant pointed the fingers at Ram Kishore how the lodging of the complaint, apprehending custodial death of Ram Kishore who was appellant's clerk for about 13 years, which caused the registration of custodial death case under FIR No.371/1993 can be taken as a ground for framing charge against the appellant for the offences punishable under Section 302, IPC, 120-B with the aid of Section 34, IPC.

31. These aspects were not at all considered by the High Court. To say the least, there was no consideration of the matter by the High Court in the manner required under law, in the given facts and circumstances of the case.
32. We are at a loss to understand, how in the absence of ground for a *prima facie* case revealed from the materials produced by the prosecution a person who lost his money and lodged a complaint based on the information furnished by his employee can be implicated in an offence, that too a grave allegation of commission of an offence of custodial death amounting to murder, merely because he caused the presence of the person concerned before the Police Station unless the ingredients to attract criminal conspiracy to commit any specific offence in relation to Ram Kishore is available. If the case of the prosecution and the materials produced along with the charge are taken as true, they would only suggest that Ram Kishore was under the control of the police in the Police Station. In fact, that exactly is the prosecution case revealed from the final report dated 21.02.2000 filed in Crime No.371/1993.
33. The aforesaid being the position revealed from the materials produced by the prosecution, the mere fact that rejection of the application of the appellant for discharge is concurrent cannot be a reason for confirming the impugned order of the High Court confirming the order of the Trial Court. Since the diallage on the matter constrain us to

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come to the concrete conclusion of absence of ground for proceeding against the appellant based on final report dated 21.02.2000 in Crime No.371/1993 of CBCID, U.P. Lucknow, this appeal must succeed.

34. We clarify that the observations made in this judgment are made qua the appellant for the purpose of disposal of this appeal and we make it clear that we have not made any observation touching the merits of the case against the other accused in Crime No.371/1993 of CBCID, U.P. Lucknow.
35. For the reasons given as above, this appeal is allowed. Consequently, the order and judgment dated 21.04.2023 passed by the High Court of Judicature at Allahabad in application No.21739 of 2007 filed under Section 482, Cr.PC, and the order dated 19.04.2007 passed by the Additional Sessions Judge/Special Judge (CBI) are set aside. As a necessary sequel, the application filed by the appellant under Section 227, Cr.PC, dated 04.04.2007 for discharge in Crime No.351/1993 filed in Sessions Trial No.1532/2005 before Additional Sessions Judge/Special Judge (CBI), Prevention of Corruption Act U.P., East Ghaziabad is allowed and the appellant stands discharged.
36. Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeal allowed.

<sup>†</sup>Headnotes prepared by: Ankit Gyan