

VARIOUS PROVISIONS RELATING TO DISCHARGE OF ACCUSED UNDER SPECIFIC CIRCUMSTANCES AVAILABLE IN CR.P.C.

By

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According to the Criminal Procedure Code, there are three types of cases. They are :

1. Warrant Cases.
2. Summons Cases.
3. Summary Trial Cases.

The procedure to deal with these three types of cases are laid down under various provisions of law.

Chapter-XIX of Cr.PC deals with trial of warrant cases by Magistrate. In the said Chapter, Sub-Chapter (A) deals with cases instituted upon police report and Sub-Chapter (B) deals with cases instituted otherwise than on Police Report.

Chapter-XX deals with trial of summons cases by Magistrates.

Chapter-XXI deals with Summary Trials.

Cr.PC Section 239 deals with the procedure, when the accused can be discharged.

In accordance with the provision of law, if upon considering the police report and the documents sent with it under Section 173 Cr.P.C. 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 reason for so doing. From the above provision of law, it is clear that there shall be a police report.

Further we have to consider the definition of police report as envisaged under Section 2(r) of definition which speaks "Police Report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173.

But, in the absence of any police report, the question of discharge under Section 239 Cr.PC does not arise. So, Section 239 Cr.PC applies to all warrant procedure cases filed on police report only.

At the time of framing charge, the only consideration is "whether there is *prima facie* case made out showing commission of an offence and involvement of charged persons". Evidence cannot be gone into meticulously and the same was held in *State v. Rodda Vasudeva Reddy*, 2006 (3) ALT (Crl) 282 (A.P.).

There must be *prima facie* case made out against the accused on perusal of FIR, the final report filed under Section 173 of Cr.PC and all the other documents accompanying it. In case, if there is no sufficient evidence, the accused is entitled for discharge and the same is held to be an abuse of process of Court and in support of it the Hon'ble Apex Court held in *K. Ramakrishna v. State of Bihar*, 2000 (6) Supreme 609.

It is also held in a decision reported in "*AIR 1987 SC 863*" that the accused can be discharged in the absence of *prima facie* case against him and charges appears to be groundless.

Chapter-XIX trial of warrant cases by Magistrates B-cases instituted otherwise than on police report, Section 245 Cr.PC speaks about 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 un-rebutted, 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.

For framing of charge preliminary evidence is sufficient and the same is held in a decision reported in “*AIR 2002 SC 64*”.

Magistrate is required to write an order for discharging the accused and for framing of charge, he may do so without recording his reasons and the same is held in a decision reported in “*AIR 2000 SC 522*”.

There are some offences which the Court shall not take cognizance for the offences punishable under Chapter-XX of IPC except upon a complaint made by some person aggrieved by the offence and the same is held in *SCC 198 Cr.PC 198-B, 199 Cr.PC*. Regarding taking cognizance of offence and non-taking cognizance of offences by Magistrates are discussed in Chapter XIV from Sections 190 to 199 Cr.PC. Most of the members of Legal fraternities are being neglected Sections 190 to 199 Cr.PC provisions which are crucial. For example while dealing with the election offences under Sections 172 to 188, it is bar for taking cognizance by the Courts when the written complaint is not given by public servant concerned, or some other public servant to whom he is administratively subordinate as per Section 195(a)(i) the same is held by our Hon'ble High Court of A.P. in various decisions.

However, if a case is instituted otherwise than on police report as provided under Sub-Chapter (B) of Chapter-XIX, of course, the Court has power to stop proceedings in certain cases as per Section 258 Cr.PC in any summons case instituted otherwise than upon complaint, a Magistrate of First Class or with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made

after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release the accused, and such release shall have the effect of discharge. So, Section 258 Cr.PC applies to summons cases instituted on police report, but not to the private complaint cases.

Section 258 Cr.PC has no application to the case instituted upon private complaints and the question of discharge does not arise in summons case as held by his lordship Hon'ble Justice Sri Gopala Krishna Tamada in a decision reported in “*2011 (1) ALD (Cr.) 819*”.

The trial was thus without jurisdiction *Abintinitio* and the conviction cannot be maintained and the same was held in a decision reported in “*2012 (3) ALT (Cr.) 236*”, in which his lordship Hon'ble Justice Sri B. Kantharao, held the same.

Chapter-XVIII trial before a Court of Sessions Section 227 Cr.PC speaks that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission 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.

AIR 1997 SC 2401 :—While framing charge Trial Court need not marshal material on record-*prima facie* consideration is sufficient.

AIR 2000 SC 665 :—High Court not to interfere ordinarily with the order of Trial Court of framing of charge.

AIR 2008 SC 2991 :—Words “not sufficient ground for proceeding against the accused. The question of discharge does not arise and the same was held in “*2011 (1) ALT (Cr.) 819 (A.P.)*”.

I made this effort to equip myself as a learner and also to make use of this article by the junior and upcoming Advocates but not for the learned seniors and legal luminaries.