



2026:AHC-LKO:44658

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 4710 of 2026

Anand @ Anand Singh

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Dr. Pooja Singh, Anshuman Singh,
Shivangi Paliwal
Counsel for Opposite Party(s) : G.A.

Court No. - 16

HON'BLE SHREE PRAKASH SINGH, J.

Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.

Heard Dr. Pooja Singh, learned counsel for the applicant and Mr. Nirmal Kumar Pandey and Mr. Susheel Kumar Pandey, learned AGA for the State.

Notice to the opposite party no.2 is hereby dispensed with.

Present applicant has been filed with the prayer to quash the entire proceedings of Case No. 5084/2020, "State Vs. Raj @ Pushpendra Jatav @Guru Ji @ Sushil @ Neetu and other", Under Sections-419, 420, 467, 468, 471 and 474 IPC, at P.S.- Kotwali Nagar, District- Gonda, pending in the Learned Court of Chief Judicial Magistrate, Gonda arising out of case crime no. 385/2020, Under Sections-419, 420, 467, 468, 471 and 474 IPC, at P.S. Kotwali Nagar, District- Gonda, against the applicant.

that the complainant had informed on 9.6.2022 to the District Basic Education Officer, Gonda, regarding misuse of the academic certificate of the complainant, for the alleged appointment, in Kasturba Gandhi Vidyalaya.

Submission of the learned counsel for the applicant is that the applicant is innocent and has been falsely implicated. She submits that the applicant moved an application under Section 239 of CrPC on 30.5.2023, which was heard by the learned trial court and in a cursory manner, without application of judicial mind, the order dated 26.9.2024 has been passed. She contends that the finding itself transpires that the trial court has not considered the discharge application in right perspective, as it has been held by the trial court that the truthfulness and genuineness of the facts will be considered after the evidence are furnished as the applicant/defence can furnish the evidence once the trial is committed. She argued that in such a way, the stage of discharge has been made redundant by the trial court. She also submits that after rejection of the discharge application on 26.9.2024, no further proceedings has been undertaken and even the charges have not been framed as yet, as is mentioned in paragraph 3 of the affidavit filed in support of the supplementary affidavit.

In addition, she argued there is no cogent evidence against the applicant regarding his involvement in commission of offence and it started from the very initial stage that is the stage of investigation. The things have been done in very negligent and lethargic manner. Concluding her arguments, she submits that since the order impugned dated 26.9.2024 has been passed without application of mind and without any finding given thereof, the same may be set aside.

Per contra, learned counsel for the State has opposed the contention aforesaid, but he has failed to controvert the fact regarding the non-speaking

the trial court in the month of September 2024.

Relevant portion of the order impugned, is quoted herein under:-

"उन्मोचन प्रार्थना पत्र में अभियुक्त द्वारा जिन तथ्यों का उल्लेख किया गया है, उनकी सत्यता के सम्बन्ध में साक्ष्य के उपरान्त ही कोर्ट निष्कर्ष दिया जा सकता है। अभी इस स्तर पर मात्र विवेचक द्वारा संकलित साक्ष्य का ही मूल्यांकन किया जाना है। विवेचक द्वारा संकलित साक्ष्य से अभियुक्त के विरुद्ध धारा-419,420,467,468,471,474 भा०दं०सं० का अपराध होना पाया गया है। 'इस स्तर पर अभियुक्त को उन्मोचित किये जाने का आंधार पर्याप्त नहीं है। अतएव अभियुक्त द्वारा प्रस्तुत उन्मोचन प्रार्थना पत्र स्वीकार किये जाने योग्य नहीं है। तदनुरूप निरस्त किये जायें योग्य है।"

From the perusal of the finding recorded by the trial court, it reveals that the trial court did not consider the ground raised by the applicant in the discharge application. The trial court on place of considering the material available before it, proceeded and observed that the facts mentioned in the discharge application would be considered after the evidences are produced before it.

The procedure for discharge has been prescribed under Section 239 of the CrPC, which is extracted herein under:-

"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."

From bare reading of the above noted provision, it transpires that while considering the discharge of an accused, it is incumbent upon the Magistrate to consider the police report and the documents sent with it under Section 173 CrPC. It further provides that if the Magistrate thinks necessary, he can examine the accused. The consideration of police

It is long settled law that the trial court while dealing with the application of discharge, would not act as a rubber stamp or post office rather he will substantially apply his judicial mind, upon the material, i.e., the police report and the documents sent along with it. In fact, the trial Judge will be empowered to discharge the accused without being influenced with the fact that the trial would end in conviction or acquittal.

It is discernible that there can be no strait jacket formula for consideration of discharge rather it depends upon the facts and circumstances of each case. The stage of discharge is very significant stage as trial starts after the discharge request is rejected and the stage of defence would come only when the statement of accused is recorded under Section 313 CrPC. In between the framing of charges to the stage of recording the statement of the accused under 313 CrPC, there is no say of the accused regarding his defence.

The scope of discharge as prescribed under section 227 of the CrPC (which is akin to Section 239 CrPC, pertaining to warrant cases), as is held in the case of **State Vs. S. Selvi** reported in **(2018) 13 SCC 455**, followed by **Vikram Johar Vs. State of UP** reported in **(2019) 14 SCC 207**, and subsequently considered by the Apex Court in the case of **State of Bihar Vs. Ramesh Singh**, reported in **(1977) 4 SCC 39**, wherein in paragraph 4, it has been held as under:-

“4. ... Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in

the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

It has been observed by the Apex Court that the strong suspicion may not take place of proof, at the trial stage, but yet it is sufficient for the satisfaction of the trial judge in order to frame charge against the accused.

In the case of **Union of India Vs. Prafulla Kumar Samal** reported in **(1979) 3 SCC 4**, certain principles for consideration on discharge, has been enunciated, which are extracted as follows:-

"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

under section 227 of the CrPC, the trial court cannot act as mouthpiece or rubber stamp of the prosecution, but the broad probabilities and the cumulative effect of evidence and documents produced before such court shall be considered. In fact, the thin difference is that while considering such documents, the trial court shall know the limits that there will be no indulgence like a trial, but it is to prima facie look into the materials available, that whether those constitute the sufficient ground for proceeding with the trial or not.

It is trite that the evidentiary value of the materials placed by the prosecution cannot be entered into, at the stage of discharge, rather, prima facie consideration is permitted under the law. This view has been taken by the Apex Court in the case of **State By Karnataka Lokayukta, Police Station Bengaluru Vs. M.R. Hiremath** reported in (2019) 7 SCC 515, wherein in paragraph 25, it has been held as under:-

"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is

law does not permit a mini trial at this stage.”

It emerges from the above noted observations that while dealing with discharge application, the court must determine whether the facts borne out from the material discloses existence of necessary contents to constitute the offence. This law has been reiterated in the recent judgment rendered in the case of **Dr. Anand Rai Vs. State of Madhya Pradesh and another**, reported in 2026 SCC Online SC 187. Paragraph 21 of the said judgment is extracted herein under:-

"21. Before parting with the matter, it is observed that at the stage of framing of charge or considering discharge, the Court is not dealing with an abstract legal exercise. It is dealing with real people, real anxieties, and the real weight of criminal prosecution. Judicial responsibility at this stage calls for care, balance, and an honest engagement with the facts on record. The power to frame a charge is not meant to be exercised by default or out of caution alone. When the material placed before the Court, taken at face value, does not disclose the ingredients of an offence, the law expects the Court to have the clarity and courage to say so and to keep such a case aside.

Discharge, in that sense, is not a technical indulgence but an essential safeguard. The Court must consciously distinguish between a genuine case that warrants a trial and one that rests only on suspicion or assumption or for that matter without any basis. To allow a matter to proceed despite the absence of a prima facie case is to expose a person to the strain, stigma, and uncertainty of criminal proceedings without legal necessity. Fidelity to the rule of law requires the Court to remember that the process itself can become the punishment if this responsibility is not exercised with care.

This responsibility weighs heaviest on Trial Courts, which are the first courts most people ever step into. For a litigant or an accused, the Trial Court is not just one level in a hierarchy. It represents the face of the judiciary itself. The sensitivity, fairness, and legal discipline shown at this stage shape how ordinary citizens understand

present matter and it has been held that discharge cannot be considered in a technical way, but the consideration has to go to the limit of the distinction between suspicion and assumption, groundlessness and material, which warrants the trial. It is apt to say here that the consideration of discharge application cannot be undertaken as a formality, but the material, which is available before the trial court, has actually been considered to reach the fine line distinction between the sufficient ground, which indicates prima facie insufficiency of leading the trial.

Now, coming to the present case, it emerges from the order impugned that there is non-application of mind by the Magistrate as he has not examined the material available before him with scrupulous measure to find out that whether the same discloses the presence of necessary ingredient to constitute the offence. The finding recorded reveals that the trial court had given his findings into two paragraphs. The first paragraph is narration of the facts regarding the charge-sheets sent to the trial court and the order of cognizance including the summons, while in the second paragraph it has been observed that after examining the evidentiary value of the material, the court can reach to the conclusion which, in fact, is impermissible under the law as the Apex court, time and again, has reiterated that the material available before the trial court shall be looked into prima facie and the evidentiary value of such evidence cannot be examined as the same would warrant proceeding of the trial.

In view of the abovenoted submissions and discussions, this Court finds that the order impugned herein, is unsustainable, consequently, the same is hereby set aside.

Eargo the matter is remitted back to the trial court concerned to pass fresh order on the application of discharge, within a period of eight weeks.