

Thereafter the respondent again applied for appointment on the compassionate ground on the post of Workshop Hand. The case of the respondent was considered, however, she failed in the physical test examination, which was required as per the relevant recruitment rules of 2005. Therefore, thereafter she was offered appointment on compassionate ground as Messenger which was equivalent to the post held by the deceased employee. Therefore appellants were justified in offering the appointment to the respondent on the post of Messenger. However, the respondent refused the appointment on such post.

11. In view of the above and for the reasons stated above, the Division Bench of the High Court has misinterpreted and misconstrued Rule 5 of the Rules 1974 and in observing and holding that the 'suitable post' under Rule 5 of the Dying In Harness Rules 1974 would mean any post suitable to the qualification of the candidate and the appointment on compassionate ground is to be offered considering the educational qualification of the dependent. As observed hereinabove such an interpretation would defeat the object and purpose of appointment on compassionate ground."

16. In such circumstances, therefore, I am of the considered view that petitioner could have been offered any group 'D' post in the establishment of the respondent.

17. Thus, the order impugned rejecting the claim of the petitioner for compassionate appointment cannot be sustained in law and, accordingly, the order dated 23rd February, 2015 (Annexure - 7 to the writ petition) is hereby quashed.

18. The appointment order to the petitioner on the compassionate basis shall be issued by the respondents within maximum period of 30 days from the date of production of certified copy of this order if otherwise there is no legal impediments.

19. It is clarified that petitioner's claim will not be rejected on any technical ground including the ground that appointment is to be offered after five years of the death of the deceased employee.

20. There will be no order as to cost.

(2024) 9 ILRA 1412
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.09.2024

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Criminal Revision No. 4562 of 2024

Sanjeev Nayan Mishra **...Revisionist**
Versus
State of U.P. & Ors. **...Opposite Parties**

Counsel for the Revisionist:

Ayush Mishra, Prabha Shanker Mishra,
 Vinay Kumar Tiwari

Counsel for the Opposite Parties:

G.A.

Criminal Law –Code of Criminal Procedure, 1973 - Section 397/401 - order rejecting discharge application challenged- -Section

13 (1) (b) r/w Section 13 (2) of Prevention of Corruption Amendment Act-Section 227 Cr.P.C-application of discharge-disproportionate assets in check period-at the stage of framing charges-it is not required to evaluate the evidence's probative value but only to determine if a prima facie case exists-there was sufficient ground to proceed with the trial based on the material presented-trial court's decision to reject the discharge application-well-reasoned-revision dismissed. (Paras 12 and 23)

HELD:

The Apex Court, in the case of Sajjan Kumar Vs C.B.I. : (2010) 9 SCC 368, held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a prima facie case is made out or not, and the court is not required to consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. (Para 12)

Thus, the position of law that emerges is that at the stage of discharge/framing of charge, the Court is merely required to shift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused i.e. whether a prima facie case is made out against the accused. Further the ground that income of other family members has not been considered also cannot be looked into and considered at the stage of discharge, it is to be considered in the trial only. (Para 23)

Revision dismissed. (E-13)

List of Cases cited:

1. Sajjan Kumar Vs C.B.I.: (2010) 9 SCC 3682
2. Amit Kapoor Vs Ramesh Chander: (2012) 9 SCC 460
3. Asim Shariff Vs National Investigation Agency: (2019) 7 SCC 148
4. Bhawna Bai Vs Ghanshyam: (2020) 2 SCC 217
5. M.E. Shivalingamurthy Vs CBI: (2020) 2 SCC 768

6. St. of Rajasthan Vs Ashok Kumar Kashyap: 2021 SCC OnLine SC 314

7. St. of T.N. Vs R. Soundirarasu: (2023) 6 SCC 768

8. Manendra Prasad Tiwari Vs Amit Kumar Tiwari: 2022 SCC OnLine SC 1057

9. Kanchan Kumar Vs St. of Bihar: (2022) 9 SCC 577

(Delivered by Hon'ble Samit Gopal, J.)

1. Heard Sri Ayush Mishra, learned counsel for the revisionist, Sri P.K. Giri, learned Additional Advocate General and Ajay Singh, learned A.G.A.-I for the State of U.P. and perused the material on records.

2. The present revision under Section 397/401 Cr.P.C. has been filed by the revisionist- **Sanjeev Nayan Mishra**, with the prayer to allow the present revision and set-aside the impugned order dated 14.08.2024 passed by Special Judge, Prevention of Corruption Act / Additional Sessions Judge, Meerut, in Criminal Case No. 08 / 146 arising out Case Crime No. 05 of 2020, under Section 13 (1) (b) r/w Section 13 (2) of Prevention of Corruption Amendment Act, Police Station U.P. Vigilance Establishment, Meerut, Sector Meerut, with a further prayer to stay the effect & operation of the aforesaid impugned order, during the pendency of the present revision.

3. The present revision has been preferred against the order dated 14.08.2024 by which the trial court concerned has rejected the Application No. 53 Ka under Section 227 Cr.P.C. along with additional Application No. 57 Kha for discharge. Earlier the revisionist had approached this Court challenging the

charge-sheet of the matter in Application U/S 482 No. 22409 of 2024 (Sanjeev Nayan Mishra vs. State of U.P. and 3 others) which was disposed of vide order dated 16.07.2024 by a co-ordinate Bench of this Court in which liberty was granted to the applicant to approach the court concerned for discharge under Section 227 Cr.P.C. The said order reads as under:-

"1. Heard Mr. Rajendra Prasad Tiwari, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. Applicant Sanjeev Nayan Mishra has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:

"It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the Crl. Misc. Application U/S 482 Cr.P.C. and to quash the charge sheet no. 02/2024 dated 20.01.24 in Case Crime No. 05/2020, u/s 13 (1)B r/w 13 (2) Prevention of Corruption (Amendment) Act, 2018, Police Station -U.P. Vigilance Establishment Meerut Sector Meerut and cognizance order dated 31.01.24 passed by Additional District & Sessions Judge/Special Judge, Prevention of Corruption, Meerut in Crl. Case No. 08/146/2024, State Vs. Sanjeev Nayan Mishra.

It is also further prayed that this Hon'ble court may graciously be pleased to stay the entire proceeding of Crl. Case No. 08/146/2024, State Vs. Sanjeev Nayan Mishra, Case Crime No. 05/2020, u/s 13(1) B r/w 13 (2) Prevention of Corruption (Amendment) Act, 2018, Police station-U.P. Vigilance Establishment Meerut Sector Meerut in pursuance of charge sheet no. 02/2024 dated 20.01.2024 and cognizance order dated 31.01.24 passed by

Additional District & Sessions Judge/Special Judge, Prevention of Corruption, Meerut during the pendency of the present Criminal Misc. Application u/s 482 Cr.P.C., in the interest of justice, otherwise applicants will suffer irreparable loss and injury."

4. After some arguments, the learned counsel for applicant fairly submits that since as per the material on record no prima facie case is made out against applicant, therefore, interest of justice shall better be served in case applicant is permitted to seek discharge under Section 227 Cr.P.C. before court.

5. Learned A.G.A.has no objection to the prayer made by the learned counsel for applicant.

6. Having heard the learned counsel for applicant, the learned A.G.A. for State and considering the submissions urged by the learned counsel for applicant as noted herein above, the prayer prayed for by means of present application is refused.

7. However, liberty is granted to applicants to approach court below by means of a discharge application under Section 227 Cr.P.C. within a period of two weeks from today. In case applicant appears before court below and files discharge application, court below shall enlarge the applicant on interim bail and, thereafter, decide the application for discharge filed by applicant within a period of one month from the date of presentation of a certified copy of this order by a reasoned and speaking order. The protection granted by court below shall come to an end automatically after the order is passed by court below on the discharge application.

8. With the aforesaid directions, this application is finally disposed of."

4. In compliance of the said order the application for discharge and another application supplementing it was moved which has been rejected and is now the subject matter of the present revision.

5. The facts of the case are that the revisionist was working as the District Social Welfare Officer and retired from service on 31.07.2019. The allegation against the revisionist is that during the check period 02.02.1990 to 30.03.2016 after calculation of his income and expenditure, disproportionate income to the tune of Rs. 42,15,150/- was found and as such after enquiry a First Information Report was lodged against him on 26.10.2020, under Sections 13 (1) (b) and Section 13 (2) of Prevention of Corruption Act, 1988 by Smt. Neelam, Inspector, U.P. Vigilance Establishment, Meerut, Sector Meerut.

6. The matter was investigated and a charge-sheet dated 20.01.2024 was submitted under Section 13 (1) (b) r/w Section 13 (2) of Prevention of Corruption Act 2018 on which the court concerned took cognizance and summoned him vide order dated 31.01.2024. Against the same, the revisionist preferred a petition under Section 482 Cr.P.C. before this Court which was disposed of by the order dated 16.07.2024 which is quoted herein above. Subsequent to the disposal of the petition under Section 482 Cr.P.C. of the revisionist, the revisionist preferred an application dated 26.07.2024 numbered as Paper No. 53 Ka, under Section 227 Cr.P.C. claiming discharge. Further an application No. 57 Kha with additional grounds was moved by the revisionist for the same. Both the applications stand rejected vide the order impugned herein.

7. Learned counsel for the revisionist submitted that the rejection of the application for discharge of the revisionist is totally based on misreading of material on record and without appreciating the same in its true prospective. It is submitted that although in the first information report it is stated that income of Rs. 42,15,150/- is shown to be disproportionate but in the charge-sheet the said amount shown is Rs. 31,75,590/- and thus the whole prosecution story becomes suspicious. It is submitted that as a matter of fact the revisionist retired on 31.07.2019 but the Investigating Officer has shown his retirement as 30.03.2016 which would also go to show that investigation has not been conducted seriously. It is further submitted that salary of Smt. Beena Mishra, wife of the revisionist for the months of July 2010 to March 2012 and even the properties in the name of the dependents of the revisionist have wrongly been shown in the calculation. It is submitted that the income of the revisionist has not been calculated properly. It is further submitted that the trial court concerned has not applied its judicial mind while deciding the application for discharge and has in a mechanical manner dismissed the same. It is submitted that as such the revision be allowed and the order impugned be set-aside and the revisionist be discharged.

8. *Per contra*, learned counsel for the State opposed the prayer and submitted that the revisionist was a Government servant. After investigation it has been found that there are disproportionate assets with him and thus charge-sheet was submitted against him on which the court concerned has taken cognizance and summoned him. It is submitted that in so far as the order summoning the revisionist is concerned, the same has attained finality as although

the same was challenged before this Court but the same was not interfered and liberty was granted to him to claim discharge. It is submitted that the trial court has considered his applications for discharge in a detailed manner and has meticulously returned a finding that the material available on record does not call for the accused to be discharged and thus rejected his said applications. It is submitted that in so far as the factum of accounting of income is concerned, the same is a matter of trial which needs to be considered at the appropriate stage by the trial court. It is submitted that the revision is devoid of any merit and be dismissed.

9. After hearing the learned counsels for the parties and perusing the records, it is evident that the revisionist was a public servant. Subsequent to an enquiry for the relevant check period with regards to disproportionate a first information report was lodged against him. The matter was investigated and the investigating agency submitted a charge-sheet against him on which the court concerned has taken cognizance and summoned him. The summoning order was challenged before this Court which was not interfered but liberty was granted to him to claim discharge. The revisionist moved applications for discharge which has been rejected vide the order impugned which is the subject matter of challenge before this Court. In so far as calculation of income is concerned, the same cannot be looked into at this stage. The same is a matter of trial. The application for discharge has been rejected by this trial court by a well reasoned and speaking order.

10. The law with regards to discharge of accused, framing of charge and powers

of revision under Section 397 Cr.P.C. is well settled.

11. An accused can also be discharged as per Section 227, 239 Cr.P.C. They read as under:

"Section 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."

"Section 239 Cr.P.C. Discharge - 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 doing so."

12. The Apex Court, in the case of **Sajjan Kumar Vs. C.B.I. : (2010) 9 SCC 368**, held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a prima facie case is made out or not, and the court is not required to consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. The relevant portion of the judgment is reproduced below:

"21. On consideration of the authorities about scope of Sections 227 and

228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate

the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. In **Amit Kapoor Vs. Ramesh Chander : (2012) 9 SCC 460**, the Apex Court enlisted certain principles with reference to exercise of power under Section 397 and Section 482 of Cr.P.C. by the Courts while deciding as to whether the charges framed against an accused be quashed or not. The principles listed are as under:

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

or Section 482 of the Code or together, as the case may be:

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

27.2. *The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

27.3. *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

27.4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

27.5. *Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings,*

such a bar is intended to provide specific protection to an accused.

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*

27.7. *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

27.8. *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.*

27.9. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

27.10. *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

27.11. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

27.12. *In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take*

into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial

compliance to the requirements of the offence."

14. In the case of **Asim Shariff v. National Investigation Agency : (2019) 7 SCC 148**, it was reiterated by the Apex Court that the trial court is not supposed to divulge the evidence on the record to determine whether the accused would get acquitted or convicted if a particular charge is framed against an accused. The relevant portion of the observation of the court in the case is as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record."

15. Further, in the case of **Vikram Johar v. State of Uttar Pradesh : 2019 SCC OnLine SC 609** the Apex Court has

reiterated that during the stage of charge, the court must not conduct a mini-trial and the decision should be based on the prima facie appreciation of the materials placed on record. The relevant portion of the said judgment is as under:

"19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence."

16. The Apex Court in **Bhawna Bai Vs. Ghanshyam : (2020) 2 SCC 217**, has observed as under:—

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen."

17. In **M.E. Shivalingamurthy Vs. CBI : (2020) 2 SCC 768**, the Hon'ble Apex Court, while discussing the principles to be followed while dealing with an application seeking discharge, observed as under:

"i. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

ii. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

iii. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

iv. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.

v. It is open to the accused to explain away the materials giving rise to the grave suspicion.

vi. The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

vii. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

viii. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused..."

18. The Apex Court decision in **State of Rajasthan Vs. Ashok Kumar Kashyap : 2021 SCC OnLine SC 314**, held that at the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. The Court observed that the position of law that emerges is that at the stage of discharge/framing of charge, the Judge is

merely required to take note of the material on record in order to find out whether or not there is sufficient ground for proceeding against the accused.

19. In the case of ***State of Rajasthan Vs. Ashok Kumar Kashyap : 2021 SCC OnLine SC 314***, the Apex Court held that the evaluation of evidence on merits is not permissible at the stage of considering the application for discharge. At the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. It has been held as under:

"23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that 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. It is observed that in other words, the sufficiency of grounds 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. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, 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."

20. The Apex Court, in ***State of T.N. v. R. Soundirarasu : (2023) 6 SCC 768*** has held that discharge claimed by contending that the Investigating officer has not considered the proper explanation and income of other family members and also failed to consider the assets lawfully acquired by the wife is not tenable since the accused public servant does not have a right to be afforded a chance to explain the alleged disproportionate assets to the investigating Office before the filing of charge-sheet. It has been held as under:

"45. In K. Veeraswami [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734], this Court held thus : (SCC p. 715, para 75)

"75... since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the investigating officer to explain the alleged disproportionality between assets and the known sources of income. The investigating officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the investigating officer. The investigating officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the

investigation, he may examine the accused. He may seek his clarification and if necessary, he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the investigating officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the investigating officer to the position of an enquiry officer or a Judge. The investigating officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

(emphasis supplied)

75. The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there

is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.

76. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be "groundless".

77. The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever.

79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be

exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

21. In the case of **Manendra Prasad Tiwari Vs. Amit Kumar Tiwari : 2022 SCC OnLine SC 1057**, the Apex Court has explained the well-settled law on exercise of powers under Section 397 and 482 Cr.P.C. as under:

"21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong

reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an

error of jurisdiction or law or the perversity which has crept in the proceeding."

22. In the case of **Kanchan Kumar Vs. State of Bihar : (2022) 9 SCC 577** the Apex Court while considering the judgement in the case of Dipakbhai Jagdishchandra Patel Vs. State of Gujarat summarised the principles on discharge under Section 227 Cr.P.C. and held as follows:

"15. Summarising the principles on discharge under Section 227 CrPC, in Dipakbhai Jagdishchandra Patel v. State of Gujarat [Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361] , this Court recapitulated : (SCC p. 561, para 23)

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a

case where it is possible that the accused has committed the offence. Strong suspicion must be 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."

(emphasis supplied)"

23. Thus, the position of law that emerges is that at the stage of discharge/framing of charge, the Court is merely required to shift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused i.e. whether a *prima facie* case is made out against the accused. Further the ground that income of other family members has not been considered also cannot be looked into and considered at the stage of discharge, it is to be considered in the trial only.

24. Looking to the facts of the case, the *prima facie* allegation against the revisionist and the law as stated above, no case for interference is made out. The present revision is thus **dismissed**.

(2024) 9 ILRA 1424

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.09.2024

BEFORE

**THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Criminal Misc. Writ Petition No. 9932 of 2024

**Smt. Kalpana Maheshwari ...Petitioner
Versus
State of U.P. & Anr. ...Respondents**

Counsel for the Petitioner: