IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 580 of 2023

Reserved on: 30.9.2026

Date of Decision: 08.10.2026.

Raj Kumar .... Petitioner

Versus

State of HP & ors. .... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Petitioner	:	Mr N.K. Thakur, Senior Advocate, with Mr Divya Raj Singh, Advocate, for the petitioner.
For Respondent No.1/State	:	Mr Ajit Sharma, Deputy Advocate General.
For Respondent No.2	:	Ms. Devyani Sharma, Senior Advocate, with Mr. Shivam Sharma, Advocate.

Rakesh Kainthla, Judge

The petitioner has filed the present petition against the order dated 04.08.2023 passed by the learned Additional Chief Judicial Magistrate, Court No.1, Una, vide which charges were framed against the petitioner for the commission of offences punishable under Section 354A(1)(ii) of the Indian

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Penal Code (IPC). *(The parties hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience)*.

2. Briefly stated, the facts giving rise to the present petition are that the informant *(name being withheld to protect her identity)* made a complaint to the police asserting that the accused asked her one day whether she had taken any loan. She replied that she had taken a study loan of ₹15,00,000/- for her daughter. The accused told her that he would lend her the money because he had some dispute with the Income Tax Department. The accused paid her the money. The informant returned the money after six months, but the accused demanded more money.

3. The accused came to the informant's house one day and asked her to become a member of the committee. The informant told her that her members were complete and she could not induct any other person. The accused demanded the informant's diary to verify this fact. The informant handed over her diary containing blank cheques, which were stolen by the accused. The accused started threatening the informant to pay

him money, or he would file a complaint against her under Section 138 of the Negotiable Instruments Act. The informant borrowed the money from her relatives and paid it to the accused. The accused demanded more money, and when the informant was unable to pay the money, the accused called her frequently, even during the night, and abused her. He would also talk indecently to her. She reported the matter to the police. The police registered the FIR, investigated the matter, and filed the challan/charge-sheet before the Court.

4. The learned Trial Court summoned the accused, and when the accused appeared, he was charged for the commission of offences punishable under Section 354A(1)(ii) and Section 506 of the IPC, to which he pleaded not guilty and claimed trial.

6. Being aggrieved by the order framing the charges, the petitioner/accused has filed the present petition asserting that the learned Trial Court erred in framing the charges for the commission of an offence punishable under Section 354A(1)(ii). The informant is not a rustic village lady but an educated person. There is a variation between the complaint made by the informant and her statement recorded under Section 164 of the

CrPC, which made her testimony doubtful. The accused had presented the cheque issued to him by the informant, which was dishonoured, and the informant made a false complaint. There was a delay in reporting the matter to the police, which made the informant's version suspicious. The accused had also made a complaint to the police against the informant, and the police filed a charge-sheet against her. She had taken ₹50,00,000/- from the accused on the pretext of sending him to the USA. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

7. I have heard Mr N.K. Thakur, learned Senior Advocate, assisted by Mr Divya Raj Singh, learned counsel for the petitioner/accused, Mr Ajit Sharma, learned Deputy Advocate General, for respondent No. 1-State, and Ms Divyani Sharma, learned Senior Advocate, assisted by Mr Shivam Sharma, learned counsel for respondent No. 2/victim.

8. Mr N.K. Thakur, learned Senior Advocate for the petitioner/accused, submitted that the learned Trial Court erred in framing charges to the accused. The complaint was silent regarding anything said by the informant involving her

modesty. She materially improved upon her version in her statement recorded under Section 164 of the CrPC, which made her testimony doubtful. The learned Trial Court erred in ignoring the improvements. Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

9. Mr Ajit Sharma, learned Deputy Advocate General for respondent No. 1-State, stated that the Court framing the charges has to see a *prima facie* case while framing the charges, and it is not permissible for the Court to record any finding regarding the truthfulness or otherwise of the material placed before it. The statement on oath made before the Magistrate cannot be discarded without any reason. Therefore, he prayed that the present petition be dismissed.

10. Ms Divyani Sharma, learned Senior Advocate for respondent No. 2, submitted that the Court framing the charges has to see a *prima facie* case and it cannot enter into an enquiry regarding the truthfulness or otherwise of the contents of the charge-sheet. The improvement in the statement would be a ground for defence, but cannot be a basis for discharge. The

informant was a woman, and it was difficult for her to come out with allegations involving her modesty. Therefore, she prayed that the present petition be dismissed. She relied upon the judgments in ***Shri Rajneesh Vasudeva Vs. State of H.P. 2015:HHC:4590*** and ***Hazrat Deen Vs. State of H.P. & Anr. 2022 SCC OnLine SC 1781*** in support of her submission.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was laid down by the Hon'ble Supreme Court in ***State of Gujarat v. Dilip Singh Kishor Singh Rao, 2023 SCC OnLine SC 1294,*** that the Judge has to take the material placed before him as correct and then determine whether or not sufficient grounds exist to frame the charges against the accused. It was observed: -

> "**10.** It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value disclose the existence of the ingredients necessary for the offence alleged. This Court, in ***State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709***, having adverted to the earlier propositions of law laid down on this subject, has held:

> "**29.** We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the 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 evaluate the said materials and documents with a view to finding out whether the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At this stage, the 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 a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on their probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini-trial at this stage."

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at

> the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.
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> **12.** The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court, by referring to its earlier decisions in the ***State of Maharashtra*** **v.** ***Som Nath Thapa*****,** ***(1996) 4 SCC 659*** and the ***State of MP*** **v.** ***Mohan Lal Soni*****,** ***(2000) 6 SCC 338*****,** has held that the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima facie case. It is also held that, at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

13. It was laid down by the Hon'ble Supreme Court in ***Vishnu Kumar Shukla v. State of U.P., (2023) 15 SCC 502: 2023 SCC OnLine SC 1582*** that the Court framing the charges has to see a *prima facie* case. It is impermissible to examine the material threadbare to determine whether the accused is likely to be convicted or not. It was observed: -

> "**12.** The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court, by referring to its earlier decisions in the ***State of Maharashtra v. Som Nath Thapa*****,** ***(1996) 4 SCC 659*** and the ***State of MP*** **v.** ***Mohan Lal Soni*****,** ***(2000) 6 SCC 338,*** has held that the nature of

evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima facie case. It is also held that, at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

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16. The extent of scrutiny permissible when an application for discharge is being considered has attracted this Court's attention on a number of occasions. It is appropriate to take note of the leading precedents on the subject. Insofar as Section 245, CrPC is concerned, the decision of this Court in ***Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115*** is instructive:

> **'19.** The essential difference of procedure in the trial of a warrant case on the basis of a police report and that instituted otherwise than on the police report is particularly marked in Sections 238 and 239 CrPC on one side and Sections 244 and 245 CrPC on the other. Under Section 238, when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like the police report, FIR, statements recorded under sub-section (3) of Section 161 CrPC of all the witnesses proposed to be examined by the prosecution, as well as the confessions and statements recorded under Section 164 and any other documents which have been forwarded by the prosecuting agency to the court.
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> **20.** After that *comes the stage of discharge, for which it is provided in Section 239 CrPC that the Magistrate has to consider the police report and the documents*

sent with it under Section 173 CrPC and, if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of the aforementioned documents, he comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is then that the charge is framed under Section 240 CrPC, and the trial proceeds for recording the evidence. Thus, in such a trial, the prosecution has only one opportunity to lead evidence, and that too comes only after the charge is framed.

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22. In the warrant trial instituted otherwise than on a police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the framing of the charge. Of course, under Section 245(2) CrPC, a Magistrate can discharge the accused at any previous stage of the case if he finds the charge to be groundless.

23. Essentially, the applicable sections are Sections 244 and 245 CrPC since this is a warrant trial instituted otherwise than on police reports. There had to be an opportunity for the prosecution to lead evidence under Section 244(1) CrPC or to summon its witnesses under Section 244(2) CrPC. This did not happen, and instead, the accused proceeded to file an application under Section 245(2) CrPC on the ground that the charge was groundless.

24. Now, there is a clear difference between Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the

evidence led by the prosecution before him under Section 244, and he has to consider whether the evidence remains unrebutted; the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC.

25. The situation under Section 245(2) CrPC is, however, different. There, under subsection (2), the Magistrate has the power to discharge the accused at any previous stage of the case, i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage because there is none. The Magistrate can take this decision before the accused appears or is brought before the court, or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of the case" clearly bring out this position.

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36. The Magistrate has the power to discharge the accused under Section 245(2) CrPC at any previous stage i.e. before the evidence is recorded under Section 244(1) CrPC, which seems to be the established law, particularly in view of the decision in ***Cricket Assn. of Bengal v. State of W.B. [(1971) 3 SCC 239: 1971 SCC (Cri) 446]***, as also the subsequent decision of the Bombay High Court in ***Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar [1984 Cri LJ 513 (Bom)]***. The same decision was followed by the Kerala High Court in ***Manmohan Malhotra v. P.M. Abdul Salam [1994 Cri LJ 1555 (Ker)],*** and Hon'ble Justice K.T. Thomas, as the learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2)

CrPC to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in ***Mohd. Sheriff Sahib v. Abdul Karim Sahib [AIR 1928 Mad 129 (1)],*** as well as the judgment of the Himachal Pradesh High Court in ***Gopal Chauhan v. Satya [1979 Cri LJ 446 (HP)]***.

37. We are convinced that *under Section 245(2) CrPC, the Magistrate can discharge the accused at any previous stage,* i.e. even before any evidence is recorded under Section 244(1) CrPC. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty.' (emphasis supplied)

17. Turning to Sections 239-240, CrPC, this Court held as under in ***Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142***:

'**6.** *Having regard to the fact that the offences, for which the charge sheet was submitted in the instant case and cognisance taken, were triable as a warrant case, the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 CrPC and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If, on such consideration, examination and hearing, the Magistrate finds the charge groundless, he has to discharge the accused in terms of Section 239 CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him, he has to frame a charge in terms of Section 240 CrPC.*

7. If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out — as has been done in the instant case — the person arraigned may, if he feels

aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court, if so satisfied, can quash the charges framed against him. *To put it differently, once charges are framed under Section 240 CrPC, the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add that even in such exceptional cases, the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.*

8. Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, *we further find that instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC, the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding the commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge, the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case.'* (emphasis supplied)

18. With great respect, we express our reservations in fully acceding to what has been stated above. If Paragraph 8 of ***Minakshi Bala*** (supra) is accepted as it is, the necessary concomitant would be that, despite examining

the matter in detail, a Court would find its wings clipped to intercede. This would amount to forcing a person to stand trial, even when the overwhelming material points to his/her innocence. Obviously, the hands of a Court ought not to be tied down, and especially not by a higher Court, and more so not against liberty. Paragraph 7 of ***Minakshi Bala*** (supra) does enable examining unimpeachable documents. We are conscious that ***Minakshi Bala*** (supra) has been followed in later decisions by the Court. However, we have chosen to survey the precedents further and then decide on the road we wish to take.

19. In ***Rumi Dhar v. State of West Bengal, (2009) 6 SCC 364***, this Court held that the Judge concerned with an application under Section 239, CrPC has to '*... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.*'

20. In ***State of Tamil Nadu v. N Suresh Rajan, (2014) 11 SCC 709***, it was observed that, notwithstanding the difference in the language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; Union of India v. Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v. Dilip N Chordia, (1989) 1 SCC 715; Niranjan Singh Karam Singh Punjabi v. Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v. State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v. State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v. Shiv Charan Bansal, (2020) 2 SCC 290***. We need only refer to some, starting with ***Prafulla K Samal*** (supra), where, after considering ***Ramesh***

Singh (supra), ***K P Raghavan v. M H Abbas, AIR 1967 SC 740*** and ***Almohan Das v. State of West Bengal, (1969) 2 SCR 520***, it was laid down as under:

> '**10.** Thus, on 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 a 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.*
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> (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.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge, who 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 were conducting a trial.'* (emphasis supplied)

14. It was held in ***Ram Prakash Chadha v. State of U.P.*, *(2024) 10 SCC 651: (2025) 1 SCC (Cri) 253: 2024 SCC OnLine SC 1709*** that the Court can sift and weigh the evidence to determine if a *prima facie* case exists against the accused. It was observed at page 661:

> "**24.** 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 227CrPC, and entering into the scope of power under Section 232CrPC, 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*, *(2000) 5 SCC 679: 2000 SCC (Cri) 1014***. Taking note of the language of Section 227CrPC, which is in negative terminology and that the language in Section 232 CrPC is in 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 227CrPC, 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 CrPC, even though the said stage has not been 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, on appreciation of the admissibility and the evidentiary value, such materials brought on record by the prosecution are 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 CrPC, available only after taking the evidence for the prosecution and examining the accused.

15. It was held in ***Yuvraj Laxmilal Kanther v. State of Maharashtra, 2025 SCC OnLine SC 520,*** that the Court is not to undertake a threadbare analysis of the material but to see if there is sufficient material to frame charges. It was observed:

> **"16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that 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 are no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, the court is only required to consider whether there are sufficient materials that can justify the launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal.

> Acquittal is at the end of the trial process; it may be for a technicality or on the benefit of doubt, or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify the launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused."

16. It was held in ***Tuhin Kumar Biswas v. State of W.B., 2025 SCC OnLine SC 2604***, that if there is a suspicion as opposed to a grave suspicion, the Court has to discharge the accused. It was observed:

> **15.** This Court has recently in ***Ram Prakash Chadha v. State of UP (2024) 10 SCC 651 : (2025) 1 SCC (Cri) 253***, cited with approval earlier decisions of this Court in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285; P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488***; and ***Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609*** as under:—
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> > "21. In the decision in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285***], this Court held that the word "ground" in Section 227 CrPC did not mean a ground for conviction, but a ground for putting the accused on trial.
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> > 22. In ***P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398: (2010) 1 SCC (Cri) 1488],*** after extracting Section 227 CrPC, this Court in paras 10 and 11 held thus: (SCC pp. 401-402)
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> > > "10. ... 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" 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 on 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.
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> 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."

23. In para 13 in ***P. Vijayan case [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488]***, this Court took note of the principles enunciated earlier by this Court in ***Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609]*** which reads thus: (***Prafulla Kumar Samal case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609***], SCC p. 9, para 10)

> "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 a 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, who 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 were conducting a trial."

16. In ***M.E. Shivalingamurthy v. Central Bureau of Investigation Bengaluru, (2020) 2 SCC 768: (2020) 1 SCC (Cri) 811***, this Court has held as under: —

"17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz. ***P. Vijayan v. State of Kerala*** and discern the following principles:

17.1. 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.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. 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.

17.4. 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 the offence, then there will be no sufficient ground for proceeding with the trial".

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

17.6. 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.

17.7. 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.

17.8. There must exist some material for entertaining the strong suspicion that can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see ***State of J&K v. Sudershan Chakkar***). The expression, *"the record of the case", used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution*. The

> Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see ***State of Orissa v. Debendra Nath Padhi***)." (emphasis supplied)
>
> **17.** Consequently, at the stage of discharge, a strong suspicion suffices. However, a strong suspicion must be found on some material which can be translated into evidence at the stage of trial.

17. A similar view was taken in ***Rajneesh Vasudeva*** (supra).

18. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. The learned Judicial Magistrate First Class, Court No. II, Una, H.P., recorded the informant's statement on oath on 11.08.2023, in which she had specifically stated that the accused used to call her telephonically and talk to her indecently. He told her that in case she was unable to pay the money, she should maintain a physical relationship with him. Section 354A(1)(ii) IPC punishes a person who makes a demand or request for sexual favours. It was submitted that the informant had made a material improvement on her initial version and this fact was never stated in the complaint made to the police. This submission will not help the petitioner/accused. It was laid

down by the Hon'ble Supreme Court in ***Hazrat Deen*** *(supra)* that the discrepancy between the FIR and any subsequent statement recorded under Section 164 of the Cr.P.C. may be a defence, but that cannot be a ground to discharge the person. It was observed:

> **6.** Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial.

20. This Court is bound by the judgment, and it is impermissible to quash the charges because of the discrepancy between the complaint made initially to the police and the statement recorded under Section 164 of the CrPC.

21. The informant had specifically stated on oath before the learned Magistrate that the accused had asked her to maintain sexual relations with him, which *prima facie* satisfies the ingredients of the commission of an offence punishable under Section 354A(1)(ii) of the IPC. This statement has to be accepted as correct at this stage, and the learned Trial Court was justified in framing charges against the accused.

22. No other point was urged.

23. In view of the above, the present revision fails and is dismissed.

24. The observations made here-in-above shall remain confined to the disposal of the present revision and will have no bearing on the merits of the case before the learned Trial Court.

(Rakesh Kainthla)
Judge

8th October, 2026
(Chander)