



2026:AHC:68283

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HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 44853 of 2024

Amir @ Jamir Ahmad

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Aushim Luthra, Mayank Chandra,
Surya Pratap Singh, Sr. Advocate
Counsel for Opposite Party(s) : G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Manish Tiwary, learned Senior Counsel assisted by Sri Mayank Chandra, learned counsel for the applicant and Sri Pankaj Kumar, learned A.G.A. appearing for the State respondents.

2. Present application has been filed for quashing the impugned order dated 14.8.2024 passed by learned Additional Sessions Judge / FTC-II, Prayagraj as well as charges framing order dated 12.9.2024 in Session Trial No. 2554 of 2023 (State of U.P. vs. Amir) arising out of Case Crime No. 372 of 2019, under Section 307 IPC, Section 3/5A/8 of U.P. Prevention of Cow Slaughter Act, 1955 and Section 11 of Prevention of Cruelty to Animals Act, 1960, Police Station Shankargarh, District Prayagraj. Further prayer has been made seeking stay of the aforesaid case.

3. Learned Senior Counsel for the applicant submitted that the first information report of the present case was lodged on 12.12.2019 under Section 307 IPC, Section 3/5A/8 of U.P. Prevention of Cow Slaughter Act, 1955 and Section 11 of Prevention of Cruelty to Animals Act, 1960 as Case Crime No. 372 of 2019 at Police Station Shankargarh, District Prayagraj. It is alleged in the first information report that on 12.12.2019 while the police party was on patrolling duty, they received an information that a truck loaded with bulls is being transported illegally

from Chitrakoot to Bihar. On the basis of this information, police party reached at the place of incident, where two persons managed to escape and five persons including the applicant were arrested by the police on spot. It is also alleged in the first information report that the driver of the truck tried to run over the police party but somehow they saved their life. The driver was running the truck at a very high speed and lost control and was apprehended by the police. On interrogation, the arrested persons disclosed their names. The applicant was one of the accused, who was arrested on spot. The names and identities of the escaped persons were disclosed by the spot arrested accused. On inspecting the truck, it was found that the truck was carrying 19 bulls. The truck was seized by the police and a recovery memo was prepared and thereafter the first information report was lodged against the applicant and other co-accused.

4. It is submitted by the learned Senior Counsel that the applicant was falsely implicated in the present case. Infact he was not arrested on spot and on 12.12.2019 at 10:50 hours Station House Officer, Ghoorpur, through his CUG number, called the applicant on his mobile to meet him. Subsequently, when the applicant reached Ghoorpur Police Station he was arrested by the police and a false recovery was shown by the police and he was made an accused in the present case and all the allegations are a work of fabrication by the police. The applicant was not arrested on spot as alleged by the police in the first information report dated 12.12.2019. The arrest of the applicant in the present case is against the material on record. At the time of alleged arrest of the applicant, he was accompanied by his Gunner and thereafter the applicant's Gunner was asked by the police to leave the place and in the absence of the Gunner, the applicant was taken into custody.

5. Learned Senior Counsel for the applicant has next submitted that the investigation was handed over to the Investigating Officer, who did not conduct a fair and impartial investigation and charge-sheet was submitted against the applicant and other co-accused on 9.2.2020. The learned Magistrate wrongly and illegally took cognizance of the offence.

6. It is further submitted by the learned Senior Counsel that once the police report had been prepared, the matter was ordered to be investigated

further vide order dated 20.9.2020 and as such further investigation in the matter took place. Several affidavits were filed by the witnesses to prove innocence of the applicant, which were made part of the case diary vide Parcha No. SCD-7 of the Case Diary. Thereafter the Investigating Officer recorded statement of the Gunner of the applicant in Parcha No. SCD-9 of the Case Diary, wherein the Gunner stated that the applicant was not present at the spot rather he was called from Kanpur City by the police of Police Station Ghoorpur and once he reached there, he was illegally detained by the police. The said Parcha No. SCD-9 was prepared on 24.8.2021, however, later on, the Investigating Officer removed the said parcha and appended a different parcha altogether numbering the same as Parcha No. SCD-9.

7. It is further submitted by the learned Senior Counsel that the statement of the Gunner of the applicant was again recorded vide Parcha No. SCD-18 dated 8.2.2022, however, this time the Gunner had stated nothing about the alleged incident. Thereafter, the Investigating Officer filed a supplementary charge-sheet on 8.2.2022 and the applicant challenged the validity and legality of the charge-sheet dated 8.2.2022 as well as the order dated 21.2.2022 by filing the Application u/s 482 No. 39035 of 2022 but no interference in the charge-sheet was made by this Court.

8. It is further submitted by the learned Senior Counsel that the applicant was subsequently released on bail. On his appearance, the copy of the charge-sheet and other relevant documents were supplied to him as per provision of Section 207 Cr.P.C. However, certain relevant documents were not provided to him. Therefore, the applicant moved an application before the court concerned to provide him Parcha No. SCD-9 of the Case Diary, which has been removed by the Investigating Officer during the course of investigation. The Parcha No. SCD-9 of the Case Diary makes it clear that the applicant was falsely implicated in the present case. The Gunner has given statement under Section 161 Cr.P.C. and stated that the applicant was called by the police of Police Station, Ghoorpur, District Prayagraj and no such incident as alleged in the first information report had taken place. This Parcha No. SCD-9 of the Case Diary was knowingly and illegally removed by the Investigating Officer after recording his statement in Parcha No. SCD-9 of the Case Diary. The

Gunner had stated that the applicant at the time of alleged incident was in Kanpur and he was called by the police of Police Station Ghoorpur, where he was illegally detained and the Gunner was asked to return to police lines. It is also submitted that the said Parcha No. 9 of the Case Diary was prepared on 24.8.2024 but later on the same was removed by the Investigating Officer and another parcha altogether numbering the same as SCD-9 was appended. The conduct of the Investigating Officer goes to show that no fair or impartial investigation was conducted by him rather the investigation was tainted, faulty and defective and on the basis of faulty investigation, the applicant cannot be prosecuted in the present case. It is further submitted by learned Senior Counsel that he moved a discharge application under Section 227 Cr.P.C. before the learned trial court, which was wrongly and illegally rejected vide order dated 14.8.2024 and thereafter charges were framed on 12.9.2024. Both the orders dated 14.8.2024 and 12.9.2024 have been challenged by the applicant.

9. Per contra, the learned A.G.A. has submitted, on the basis of counter affidavit, that earlier the applicant filed an Application u/s 482 Cr.P.C. No. 39035 of 2022 (Aamir vs. State of U.P. and another) on the same ground, in which the legality and validity of the charge-sheet was challenged and the prayer made in the aforesaid application for quashing the charge-sheet was refused by this Court vide order dated 17.1.2023 by a reasoned and detailed order. The applicant is again raising the same plea which has already been decided by this Court vide order dated 17.1.2023. The present application under Section 528 B.N.S.S. is not maintainable since the same arguments are being advanced in the present application which have already been adjudicated by this Court. It is further submitted by the learned A.G.A. that the allegations levelled in the first information report and the statements of the witnesses recorded during course of investigation, prima facie, makes an offence against the applicant. The charge-sheet cannot be quashed on account of faulty, defective or impartial investigation. The witnesses have supported the prosecution case, as mentioned in the first information report, when their statements were recorded during course of investigation. All the witnesses stated that the applicant was arrested from the spot.

10. It is further submitted by the learned A.G.A. that Parcha No. 8 of the supplementary case diary was prepared on 19.8.2021. Thereafter the Investigating Officer prepared Parcha No. SCD-8(2) on 24.8.2021 in which statement of the Gunner of the applicant got recorded. In his statement the aforesaid Gunner, namely, Abhimanyu Kumar Bind stated that on 12.9.2019, he was very well present with the applicant and when they were coming from Kanpur, the Station House Officer, Ghoorpur called the applicant, thereafter they reached at Police Station Ghoorpur at about 15:30 hours. The incident in the present case had taken place on 12.12.2019. According to the statement of the Gunner, the applicant along with his Gunner reached the Police Station Ghoorpur on 12.9.2019, though in the present case incident had occurred on 12.12.2019. Therefore, the presence of the applicant along with his Gunner at the Police Station Ghoorpur on 12.9.2019 has no relevance with this case.

11. It is also submitted by the learned A.G.A. that so far as missing of the Parcha No. SCD-8(2) dated 24.8.2021 is concerned, a preliminary inquiry was conducted by the department and after the inquiry, a conclusion was drawn by the Inquiry Officer that the then Station House Officer, Sub Inspector Brijesh Singh was at fault in the matter of missing of Parcha No. SCD-8(2). It is further submitted that on the basis of statements of the witnesses, involvement of the applicant was rightly found in the instant case. Thereafter the Investigating Officer recorded second statement of the Gunner vide Parcha No. SCD-18, who did not state anything regarding the incident dated 12.12.2019. Thereafter on the basis of evidence collected during investigation, the Investigating Officer filed supplementary charge-sheet on 8.2.2022. It is also submitted that the Investigating Officer rightly prepared the case diary but the next Investigating Officer in collusion with the applicant made some overwriting in Parcha No. SCD-8(2) and removed the same from the case diary and he was found guilty after inquiry.

12. It is further submitted that this is defence of the applicant that he was called by the police of Police Station Ghoorpur, District Prayagraj on 12.12.2019 and his defence cannot be appreciated at this stage. The impugned orders cannot be set aside on the ground that some manipulation was done by the Investigating Officer during the course of

investigation and it is a subject matter of trial. Learned A.G.A. in last submitted that the impugned orders cannot be set aside at this stage when a prima facie offence is made out against the applicant. Learned trial court passed a well reasoned order dated 14.8.2024 and thereafter framed charge on 12.9.2024 after hearing the applicant.

13. I have heard rival submissions of the parties and perused the record.

14. However, the question that arises is whether an accused may be discharged on account of faulty or impartial or defective investigation. In other words, can the benefit of defective investigation be extended to the accused-applicant?

15. The law relating to faulty or impartial or defective investigation has been discussed by the Hon'ble Supreme Court as well as this Court in several judgments and it has been held that an accused cannot be acquitted on account of defective or faulty investigation. In the case of **Edakkandi Dineshan @ P. Dineshan and others vs. State of Kerala (Criminal Appeal No. 118 of 2013)** decided on 6.1.2025, it has been held that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecution agency. The relevant paragraph is reproduced hereunder:-

"22. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a properly investigation could have strengthened its case. In the case of Paras Yadav & ors. vs. State of Bihar⁵, the Apex Court observed as under:

"Para 8 - ..the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is bcommitted designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar and others, J.T. (1998) 3 SC 290.

"In such cases, the story of the prosecution will have to be examined de hors

such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW1 Jitesh, PW 2 and PW4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 am, it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defense. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the Accused and the witnesses were well acquainted with each other as PW1, PW 2 and PW4 had defected from the CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry."

16. In the case of **Ram Bali vs. State of U.P. (2004) 10 SCC 598**, the Hon'ble Supreme Court has held that an accused cannot be acquitted on account of defect in investigation. The relevant part of **Ram Bali (supra)** is reproduced hereunder:-

"12. The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.* (1995 (5) SCC 518).

13. In *Paras Yadav and Ors. v. State of Bihar* (1999 (2) SCC 126) it was held that if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined de hors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand on the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the community at large.

14. As was observed in *Ram Bihari Yadav v. State of Bihar and Ors.* (1998 (4) SCC 517) if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again re- iterated in *Amar Singh v. Balwinder Singh and Ors.* (2003 (2) SCC 518). As noted in *Amar Singh's case* (supra) it would have been certainly better if the firearms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect credibility of the prosecution version."

17. The law relating to defective investigation has been summarised by the Division Bench of this Court in the case of **Chhote Lal vs. State of U.P. (Criminal Appeal No. 3382 of 2010)** decided on 24.5.2019,

wherein it has been held as hereunder:-

"22. Even assuming that there was some lacuna on the part of investigating agency while conducting investigation like not mentioning of crime number in the documents and some over writing in the documents, the same will not give any benefit to the accused. These deficiencies in the investigation are of insignificant nature.

It is settled proposition of law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In *C. Muniappan v. State of Tamil Nadu*; 2010 ((9) SCC 567, the following discussion and conclusion are relevant which are as follows:-

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

In *Dayal Singh v State of Uttaranchal*; 2012 (8) SCC 263, while reiterating the principles rendered in *C. Muniappan (supra)*, the Apex Court held thus:

"18. ... Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. ..."

In *Gajoo v State of Uttrakhand*; 2012 (9) SCC 532, while reiterating the same

principle again, the Apex Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in *Dayal Singh v. State of Uttaranchal* while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)

"27. Now, we may advert to the duty of the court in such cases. In *Sathi Prasad v. State of U.P.*, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab*, held: (SCC p. 657, para 5)

"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'

28. Dealing with the cases of omission and commission, the Court in *Paras Yadav v. State of Bihar* enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In *Zahira Habibullah Sheikh (5) v. State of Gujarat*, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The court

issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

"42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.'

(emphasis in original)

30. With the passage of time, the law also developed and the dictum of the court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in *NHRC v. State of Gujarat* held as under: (SCC pp. 777-78, para 6)

"6. ..."35. ... The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the "majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a

spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators." (Zahira Habibullah case, SCC p. 395, para 35)

32. In *State of Karnataka v. K. Yarappa Reddy*, this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p.720)

"19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.'

33. In *Ram Bali v. State of UP*, the judgment in *Karnel Singh v. State of M.P.* was reiterated and this Court had observed that: (Ram Bali case (SCC p. 604, para 12)

"12. ... In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.'

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the court should leave no stone unturned to do justice and protect the interest of the society as well.

35. This brings us to an ancillary issue as to how the court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh v. State of Punjab*, the Court, while dealing with discrepancies between ocular and medical evidence, held: (SCC p.159, para 8)

"8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence

in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.'

36. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

"34. ... The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert's opinion is accepted, it is not the opinion of the medical officer but [that] of the court."

Above proposition of law has been duly considered by the Apex Court in Hema (supra) and it has been further held by the Apex Court:

"(13) It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence de hors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth."

18. Therefore, in view of the aforesaid law, it is clear that an accused cannot be acquitted on account of defects in investigation, much less discharged on the same grounds. It is a settled law that no benefit can be extended to the accused at the stage of discharge, if some defects have occurred during the course of investigation.

19. Now, this Court will examine the second contention of the parties, i.e., whether the evidence, led by the prosecution during course of investigation, is sufficient to proceed against the applicant or he may be discharged at this stage. In order to appreciate rival contentions, the relevant provision of Cr.P.C. and B.N.S.S. may be adverted to.

20. The procedure for trial before a court of session is provided under Chapter XVIII of the Cr.P.C. and Sections 227 and 228 Cr.P.C., which

relate to discharge and framing of charges are extracted below:-

"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.

228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

21. Now, the procedure for trial before a court of sessions is provided under Chapter XIX of the BNSS and Section 250 and 251 of the BNSS are relating to discharge and framing of charge, which are reproduced hereunder:-

"250. Discharge.--(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under Section 232.

(2) 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.

251. Framing of charge. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

22. The prerequisites for framing of charge were subject matter of consideration in **Soma Chakravarty vs. State through CBI**, reported in **(2007) 5 SCC 403**, and it was held that the court can frame the charge if on the basis of material on record it can form an opinion that the commission of offence by the accused was possible. The question as to whether the accused committed the offence can only be decided in the trial, and at the stage of framing of charge the probative value of the material on record cannot be gone into and the said material has to be accepted as true. The paragraph no. 10 of **Soma Chakravarty (supra)** is reproduced hereunder:-

"10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of 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. 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 at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

23. The question as to when discharge of an accused would be warranted in exercise of powers under Section 227 Cr.P.C. of the Code in the light of its scope and object was considered in **P. Vijayan vs. State of Kerala and another**, reported in **(2010) 2 SCC 398**, and it was held that at the stage of Section 227 Cr.P.C., the Court has merely to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and 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.

24. The scope of exercise of powers under Sections 227 and 228 Cr.P.C. with regard to framing of charge/discharge again fell for consideration in **Sajjan Kumar Vs. Central Bureau of Investigation**, reported in **(2010) 9 SCC 368**, and it was held that at the stage of framing of charge under Section 228 or while considering discharge petition filed under Section 227 Cr.P.C., it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability thereof, and it is at the trial that the Judge concerned has to appreciate evidentiary value, credibility or otherwise of the material and veracity of various documents. The following principles were laid down by the Hon'ble Supreme Court in paragraph no. 21:-

"21. On consideration of the authorities about the scope of Section 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."

25. The relative scope and distinction between Sections 227 and 228 Cr.P.C. with regard to discharge of accused and framing of charge was

discussed and explained in detail in **Amit Kapoor vs. Ramesh Chander and another**, reported in **(2012) 9 SCC 460** and it was held that at the stage of Section 228, the Court is not concerned with proof, but with a strong suspicion that the accused has committed an offence and the final test of guilt is not to be applied at the stage of framing of charge. It was stated thus:-

"15.

It was stated thus :-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

.....

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

26. In State of **Tamil Nadu vs. N. Suresh Rajan and others**, reported in **(2014) 11 SCC 709**, while considering the scope of exercise of jurisdiction and power by Court at the stage of framing of charges or discharge of accused under Sections 227 and 228 Cr.P.C., it was restated that no mini trial is contemplated at the stage of considering the discharge application and only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against the accused without any requirement of going deep into the matter.

27. The exercise of powers under Section 227 Cr.P.C. of the Code and the matters to be considered and the extent of inquiry permissible on part of Court was again subject matter of consideration in **Asim Shariff vs. National Investigation Agency**, reported in **(2019) 7 SCC 148**, and it was reiterated that the judge while considering the question of framing of charge under Section 227 Cr.P.C. is 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 and the Court, at this stage, is not supposed to hold a mini trial by marshalling the evidence on record. It was held as follows:-

"18.

"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."

28. The relevant considerations to be made by the Court at the stage of Section 227 Cr.P.C. of the Code were discussed in **M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru**, reported in (2020) 2 SCC 768 and it was reiterated that the Court at this stage, without making a roving inquiry into the pros and cons, is only required to consider the broad probabilities and the probative value of material on record is not to be gone into.

29. The ambit and scope of exercise of power under Sections 227 and 228 Cr.P.C. of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the trial court comes to a conclusion that there is sufficient ground to proceed, it will frame a charge under Section 228 Cr.P.C. of the Code, if not, it will discharge the accused. At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.

30. In the case of State of **Madhya Pradesh vs. Rakesh Mishra (2015) 13 SCC 8**, the Hon'ble Supreme Court has held that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out against the accused. The relevant paragraph no. 7 of **Rakesh Mishra (supra)** is reproduced hereunder:-

“7. The major argument advanced by the State of Madhya Pradesh before us has been that the High Court traversed beyond the permissible limit while deciding the legality of order framing charges, being a pre-trial stage. Various authorities have been cited before us to prove that point. However, it would suffice to say that the law on this point is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of

framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. In our opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground.”

31. In the case of **State (By the Inspector of Police, Chennai vs. S. Selvi and another (2018) SCC 455**, the Hon'ble Supreme Court has held that at the stage of consideration of an application for discharge, the court has to proceed with the presumption that materials on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offences. The relevant paragraph of **S. Selvi (supra)** are reproduced hereunder:-

"6. It is well settled by this Court in a catena of judgments including *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], *Dilawar Balu Kurane v. State of Maharashtra* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688], *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [*Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and *Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code 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 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 rights to discharge the accused. The Judge 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 statements 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 materials as if he was conducting a trial.

7. In *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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 disclose 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."

9. In the matter on hand, the main allegation against the first respondent-Accused 2 as found in the charge-sheet is that while the complainant along with the relevant documents proceeded to the residence of Accused 1 and 2 at Door No. 28, West Gopalapuram, Chennai-86, to get back his money due to him on 20-9-2011, at about 1730 hours, Accused 1 and 2 threatened the complainant, snatched away the documents from him, denied him permission to enter into their house and threatened him with dire consequences if he entered into their house. It is relevant to note that in the complaint dated 21-9-2011 it is stated that when the complainant went to West Gopalapuram and met the accused for an enquiry about payment, the accused got furious, beat him and with the help of four henchmen pushed him out of their house. On the basis of these discrepancies, the contention of the learned counsel for the accused that the case as made out by the prosecution cannot be believed inasmuch as the material on record is not consistent. It may give rise to some suspicion but not grave suspicion, though appears to be attractive, but is not acceptable in view of entire material on record. On going through the judgment of the High Court, we find that the High Court has virtually appreciated the entire material on record as if the High Court is trying a criminal case. It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and

weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case. At this preliminary stage, the High Court was not justified in concluding that the accused is entitled for discharge merely on the ground of discrepancy in the timings of the incident. The question as to whether Respondent 1 was present on the place of incident or not during the relevant point of time or she had been in Calcutta as sought to be argued before this Court is a matter of proof. Such fact needs to be gone into by the trial court after recording the evidence."

32. Reverting to the facts of the present case, it is clear that the Investigating Officer has collected evidence in this case and recorded statements of several witnesses, who have given statements against the applicants. Even the statement of the Gunner Abhimanyu Kumar would not help the applicant-accused. Since he stated in his statement that he went to Kanpur with the applicant on 12.9.2019, whereas in the present case the incident had taken place on 12.12.2019. When second statement of the aforesaid Gunner was recorded, he did not state that he went to Kanpur with the applicant on 12.12.2019. The second statement of the Gunner has been appended as Annexure-13 to this application.

33. This Court is of the view that the charge can be framed on strong suspicion against the accused persons. There is no material contradiction with regard to the prosecution case mentioned in the first information report as well as in the statements of the witnesses. The statements of witnesses recorded by the Investigating Officer during course of investigation cannot be brushed aside at the stage of considering the discharge application or framing of charge. It is well settled law that at the stage of considering the discharge application, the defence of the accused cannot be taken into consideration. The ground taken by the applicant in the present application is disputed question of fact, which cannot be adjudicated at the time of framing of charge. This Court is of the view that the appreciation of evidence is a function of the trial court at the appropriate stage. It is crystallized judicial view that at the stage of discharge the court is to examine the materials only with a view to be satisfied that prima facie case of the commission of offence alleged has

been made out against the accused. If there is ground for presuming that the accused has committed the offence, the court can justifiably say that prima facie case exists against the accused. Marshalling and appreciation of facts is not in the domain of the trial court at the time of considering discharge application. The broad test to be applied is whether the material on record, if unrebutted, makes a conviction reasonably possible. The final test of guilt is not to be applied at that stage.

34. Considering the facts, circumstances and material available on record, in view of the law laid down by Hon'ble Apex Court as well as Division Bench of this Court, I do not find any illegality, infirmity or perversity in the impugned orders dated 14.8.2024 and 12.9.2024, therefore, no case is made out to interfere in the impugned orders. The concerned trial court while passing the impugned orders dated 14.8.2024 and 12.9.2024 has considered all the relevant materials on record and decided the discharge application of the applicant in accordance with law in the light of well settled legal principle laid down by the Hon'ble Apex Court. The applicant has a remedy under the law to raise all such plea in his defence before the trial court at the appropriate stage.

35. In view of the above, the present application lacks merit and is, accordingly, dismissed.

36. No orders as to costs.

37. Registrar (Compliance) is directed to send a copy of this order to the trial court concerned.

(Vivek Kumar Singh,J.)

April 1, 2026

Lalit Shukla