

HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

CRIMINAL APPEAL No. - 1814 of 2026

Satish Sharma

.....Appellant(s)

Versus

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

.....Respondent(s)

Counsel for Appellant(s)	: Nandesh Verma, Pranshu Agrawal
Counsel for Respondent(s)	: G.A., Mrs.Suniti Sachan

Court No. - 12

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Anurag Shukla Senior Advocate assisted by Mr. Nandesh Verma Advocate, Mr. Shashwat Vajpayee Advocate and Mr. Nitish Shula Advocate, learned counsel for appellant, learned AGA for respondent no.1-State and Mrs. Suniti Sachan, learned counsel for respondent no.2.

2. This Criminal Appeal under Section 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been filed seeking the following relief:

"WHEREFORE, in view of the facts, reasons, and circumstances stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. Allow the instant Criminal Appeal and set aside the impugned order dated 29.06.2026 passed by the Learned Court of Special Judge, S.C./S.T. Act, Lucknow, in Special Trial No.301 of 2018, in the interest of justice; and/or"

3. Learned counsel for appellant submits that initially, an FIR was lodged as Case Crime No.423 of 2018 against the appellant, in which charge-sheet was filed on 15.07.2018 and summoning order was issued on 28.07.2018 which was challenged in application under Section 482 CrPC, bearing No.3560 of 2019. The said application was rejected by means of judgment and order dated 04.12.2019 whereafter charges were framed

and evidence of P.W.1 was ongoing. The charges so framed were thereafter challenged in Criminal Appeal No.1084 of 2019, which was allowed by means of order dated 27.02.2020 setting aside the order dated 28.05.2019 framing charges and directions were issued for framing charges afresh taking into consideration provisions of Section 212 CrPC.

4. It is in pursuance of such directions that the case is now listed before trial court for framing of charges.

5. Learned counsel for appellant submits that before trial court he had earlier preferred an application under Section 91 CrPC in the Special Sessions Trial No.301 of 2018 which was rejected but since the trial has been reopened at the stage of framing of charges, after quashing of earlier charges, the said application should also be adjudicated upon. He submits that said plea has been rejected on the ground that since a direction has been issued by this Court only for framing of charges in terms of Section 212 CrPC, the trial court cannot proceed beyond the jurisdiction which has been conferred upon it by the order of this Court dated 27.02.2020 and on that ground has rejected the said plea.

6. Learned counsel for appellant further submits that the provisions of CrPC clearly indicate that prior to framing of charges under Section 228 CrPC, it is incumbent upon the trial court to record a finding pertaining to discharge of an accused under Section 227 of CrPC, whereafter only charges can be framed under Section 228 CrPC and such a satisfaction having not been recorded as yet, framing of charges under Section 228 CrPC would vitiate the trial itself. Learned counsel has placed reliance on judgments rendered by Hon'ble the Supreme Court in the cases of *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, *P. Vijayan v. State of Kerala*; (2010) 2 SCC 398 and *Sajjan Kumar v. CBI*; (2010) 9 SCC 368.

7. Learned counsel for respondents have opposed appeal with the submission that once the application preferred by applicant under Section 91 CrPC has already been rejected vide order dated 01.5.2019, which has attained finality, the same cannot be reopened now at this stage particularly since in the earlier proceedings under Section 482 CrPC, no plea was raised with regard to re-hearing or even challenge being raised to

the application under Section 91 CrPC. It is also submitted that in the objections filed by respondent No.2 dated 16.03.2026, it has been specifically stated that once earlier a discharge application has already been disposed of, the same issue cannot now be re-opened on the pretext taken by the appellant.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it thus transpires that earlier proceedings pertaining to challenge to charge-sheet and summoning order were raised before this Court and were rejected. Subsequently an application under section 482 Cr.P.C. was preferred challenging the framing of charges. The said criminal appeal has been allowed directing trial court to frame charges afresh taking into consideration provisions of Section 212 Cr.P.C.

9. Admittedly, proceedings are now listed for framing of charges.

10. So far as the aspect of Section 227 Cr.P.C. is concerned, the provisions clearly indicate as follows:-

*“**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. ”*

11. The provision of Section 227 Cr.P.C. therefore makes it evident that trial court after hearing submissions of the accused and prosecution considers that there is insufficient ground for proceeding against the accused, it shall discharge the accused while recording reasons for doing so. The corollary to said provision is that in case trial court comes to a conclusion that the accused is not required to be discharged, it would proceed to the stage of Section 228 Cr.P.C. for framing of charges.

12. In the considered opinion of this Court, the stage of Section 227 Cr.P.C. for considering discharge of accused is a sine quo non for proceeding further or not to the stage of Section 228 Cr.P.C. The

provision of Section 227 Cr.P.C. also does not make it apparent that the same is required to be considered by trial court only upon an application to be submitted by accused. On the contrary, the provision indicates that trial court on its own also is required to consider the aspect of discharge prior to proceeding under Section 228 Cr.P.C.

13. The said aspect has been enunciated upon by Hon'ble the Supreme Court in the cases of ***Amit Kapoor*** (supra), ***P. Vijayan*** (supra) and ***Sajjan Kumar*** (supra) in the following manner:-

In the case of ***Amit Kapoor*** (supra) in the following manner:-

"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."

In the case of **P. Vijayan** (supra) in the following manner:-

"25. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure."

In the case of **Sajjan Kumar** (supra) in the following manner:-

"Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

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

14. Upon applicability of aforesaid judgment in the present facts and circumstances of this case, it thus appears that irrespective of the order passed by this Court in Criminal Appeal No.1084 of 2019, it was incumbent upon trial court to have adhered to the mandatory provisions of Section 227 Cr.P.C. while recording a satisfaction regarding discharge of the appellant or otherwise, prior to framing of charges under section 228 Cr.P.C.

15. The finding recorded in the impugned order that such a plea regarding discharge cannot be entertained since directions have been issued only for framing of charges under provision of Section 212 Cr.P.C. does not find favour with this Court. There is no prohibition indicated in the order dated

27.02.2020 regarding adherence by trial court to Section 227 Cr.P.C. Even otherwise, once the said provision has been held to be mandatory by Supreme Court, no aspect of estoppel, waiver or acquiescence can come into play and Trial court was therefore bound to have recorded a satisfaction under Section 227 Cr.P.C. prior to proceeding under Section 228 Cr.P.C, if required.

16. An aspect recorded in the impugned order is the submission made by the complainant in the application dated 16.03.2026 that once discharge application was disposed of, the only thing remaining to be done was framing of charge.

17. Learned counsel for appellant submits that the submission is incorrect since no application has been filed by the appellant earlier under Section 227 Cr.P.C seeking discharge nor has any such power been exercised by this Court suo motu. He has adverted to the certified copies of order-sheet to corroborate such a submission.

18. Learned counsel for respondent No.2 does not have any specific instructions with regard to such an aspect.

19. So far as the application under Section 91 CrPC is concerned, the provisions pertain to production and summoning of documents required by the accused to be produced. The provision does not indicate any stage for requiring summoning of such documents or other things and it has been left to the discretion of the trial court.

20. Once this Court in criminal appeal has already quashed the charges framed earlier and direction has been issued for framing of charges afresh, obviously, the trial would be reverted to stage prior to framing of charges and in such circumstances, rejection of earlier application under Section 91 CrPC would also become redundant. In such circumstances, trial court has also apparently erred in rejecting the plea only on the ground that it cannot be reopened since there was no such liberty granted by this Court.

21. In view of discussion made here-in-above, the impugned order dated 29.06.2026 is hereby set aside. The direction is therefore issued to the trial court to first consider the aspect of discharge of the appellant under

Section 227 CrPC either on the next date fixed or within a period of 15 days thereafter and upon failure to do so to record reasons for not being able to decide the said aspect within time framed prescribed. Framing of charges shall be subsequent to and dependent on order passed under Section 227 Cr.P.C.

22. So far as the aspect of application preferred under Section 91 CrPC is concerned, liberty is granted to trial court to re-adjudicate the said application and not to reject only on the ground that no such liberty has been granted earlier by this Court in Criminal Appeal No.1084 of 2019. Trial court shall apply its independent reason for adjudication of the application under Section 91 CrPC.

23. Consequently, appeal succeeds and is **allowed**.

(Manish Mathur,J.)

September 29, 2026

Subodh/-