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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
PANKAJ MITHAL; J., S.V.N. BHATTI; J.**

May 22, 2025.

SPECIAL LEAVE PETITION (CRIMINAL) NOS. 5941-5951 OF 2022

**STATE REPRESENTED BY INSPECTOR OF POLICE, CBI, ACB, VISAKHAPATNAM *versus*
ELURI SRINIVASA CHAKRAVARTHI AND OTHERS**

Code of Criminal Procedure, 1973; Section 239 - Scope of Consideration for Discharge Plea - Held, a court must evaluate a discharge plea under Section 239 CrPC based solely on the prosecution's chargesheet and documents, without considering defence materials or conducting a premature merits-based assessment. The trial court and High Court erred by relying on a defence-submitted letter from the Cotton Corporation of India, claiming no loss, to counter the prosecution's allegations of fraud, forgery, and conspiracy under Sections 120-B, 420, 468, 471 of the Indian Penal Code, 1860, and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, in a cotton procurement scam under the Minimum Support Price scheme. Such reliance on defence materials at the discharge stage is impermissible and constitutes an illegal "mini-trial," contrary to established precedent. The Supreme Court set aside the High Court's order affirming the discharge, allowed the CBI's appeal, and remitted the matter to the Special Court for reconsideration strictly in accordance with Section 239 CrPC. (Para 27)

For Petitioner(s) Mr. K M Nataraj, A.S.G. (N.P.) Ms. Rukhmini Bobde, Adv.(argued by) Mr. Mukesh Kumar Maroria, AOR Mr. Anuj Srinivas Udupa, Adv. Ms. Vanshaja Shukla, Adv. Mr. Ashok Panigrahi, Adv. Ms. Seema Patnaha, Adv.

For Respondent(s) Mr. Shoeb Alam, Sr. Adv.(argued by) Ms. Mahima Pandey, Adv. Mr. Mullapudi Rambabu, Adv. M/S. M. Rambabu And Co., AOR Mr. Shoeb Alam, Sr. Adv. Mr. Rajat Singh, AOR Mr. Sarthak Chandra, Adv. Mr. Dev Sareen, Adv. Mr. K V Girish Chowdary, Adv. Mr. D Satya Sumanth, Adv. Ms. Tatini Basu, AOR

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.
2. The criminal appeals arise from the common order dated 27.12.2021 in Criminal RC No. 3388/2017 and ten other cases in the High Court of Andhra Pradesh at Amaravati. The prosecution/CBI is the Appellant in the batch of appeals.
3. On 27.06.2006, the CBI, Visakhapatnam registered FIR RC No. 11(A)/2006-CBI/VSP under sections 120B read with 420 of the Indian Penal Code, 1860 ('IPC') and sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act'). The registration of crime was against one, Rayapati Subba Rao/A-1 and a few other unknown individuals.
4. Between November 1994 and May 2006, A-1 served as Cotton Purchase Officer ('CPO') in the Cotton Corporation of India ('CCI'), Guntur Branch. The alleged offences for which the *suo motu* FIR was registered by the CBI are said to have happened in the financial year 2004-05. The CCI, as part of a policy, buys cotton at the Minimum Support Price ('MSP') on a year-to-year basis. The CCI, for the financial 2004-05, released the policy of MSP through letters CCI/HO/PUR/MSP/2002-2003 dated 10.01.2003,

CCI/HO/PUR/2004-2005 dated 18.10.2004, and CCI/HO/PUR/2005-2006 dated 26.12.2005.

5. The relevant parts of the above circulars are excerpted below:

“CCI/HO/PUR/MSP/2002-2003

(...)

Through this letter, it is again advised that whenever kapas purchases are effected under MSP, the same should be made only from the market yards/functional market yards and in the presence of representatives of the APMCs so that cotton farmers get due benefit of MSP operations. (...)

The kapas produce brought directly by farmers only in the market yard be purchased and prices be offered based on the quality of kapas under MSP guidelines so that farmers get due benefit for their produce.

XXX XXX XXX

CCI/HO/PUR/MSP/2004-05

(...)

The kapas meeting the quality parameters of FAQ grade, can be purchased at the minimum support price without any quantitative limits. However, in actual practice, a good portion of daily arrivals may fall short of the FAQ grade parameters and in order to help the cotton farmers, Corporation may purchase below FAQ grade kapas with suitable discounts from the support price of the concerned variety. (...)

Needless to say all purchases under MSP are to be made strictly through the market yards and in the presence of APMC representatives.

XXX XXX XXX

CCI/HO/PUR/MSP/2005-2006

(...)

As the main objective of MSP operations is to protect the interests of the cotton farmers therefore through this circular, it is again advised that whenever kapas purchases are effected under MSP, the same should be made only from the market yards/functional market yards and in the presence of officials/representatives of the APMCs so that the farmers get due benefit of MSP operations. (...)

The kapas produce brought directly by farmers only in the market yard/notified market yards be purchased and prices be offered based on the quality of kapas under MSP guidelines so farmers get due benefit for their produce.

XXX XXX XXX”

6. The investigation into RC No. 11(A)/2006-CBI/VSP disclosed a pattern of buying cotton at the then prevailing market rate, which is lower than the MSP and selling the hoarded cotton to CCI and availing the MSP made available for the farmers of cotton. The investigation revealed an alleged conspiracy between A-1 and one RVK Prasad/A-3, proprietor of M/s Balachamundeswari Cotton Company Limited. Notably, A-3 is the son of A-1. The investigation further implicated Syed John Syda/A-2, a supervisor at the Agricultural Market Committee (‘AMC’), Phirangipuram and 45 others as accused in RC No. 11(A)/2006-CBI/VSP.

7. The modus operandi, briefly stated as per the prosecution, is that A-1 and A-3 allegedly purchased cotton from genuine farmers at lower prices before the announcement of MSP by the Government of India, and they hoarded these cotton stocks. Once CCI started purchasing cotton at MSP, A1, with the support of A-3, resold the hoarded cotton under benami names of farmers, A-4 to A-47, to CCI at the higher MSP rates. These transactions occurred at Pericherla and Phirangipuram in the Guntur District, and Madhira in the Khammam District, where A-1 was the in-charge CPO during the 2004-2005 financial year. Many of the farmers (A-4 to A-47) allegedly did not have sufficient land to cultivate the large quantities of cotton they purportedly sold to CCI. A few of the accused did not have cultivable land at all, while a few others had very small holdings, and the volume of cotton sold at MSP is disproportionate to their land holdings. Bank accounts were opened in the names of these farmers, often introduced by A-3 or his employees. Payments from CCI (in the form of cheques) were routed through these accounts and allegedly were encashed and utilized by A-3 and A-2 by forging the signatures of farmers on takpatties and katachitta (weighment slips) pertaining to Phirangipuram. The investigation revealed that the thumb impressions were used on relevant material, whereas the said person acknowledged through signature in English/Telugu.

8. The prosecution alleges wrongful loss under the MSP for a sum of Rs. 21,19,35,646/- to the CCI/Government of India, and the wrongful gain is to the accused persons. The premise of the accusation is that the MSP is meant and intended for cotton farmers and growers, and through the alleged modus operandi, it has been subverted by the accused for gain. On 31.12.2009, chargesheet no. 31/2009, along with a list of documents (452), were filed before the special judge for CBI cases against A-1 to A-48. On 09.06.2011, the learned special court took cognizance of the chargesheet and numbered the case as CC No. 16/2011. The gist of the chargesheet against the accused is stated thus:

8.1 The chargesheet first reiterates the conspiracy and modus operandi. After which, it details the procedure for cotton purchase by CCI, including (i) testing quality, (ii) fixing rates under MSP, (iii) weighment, preparation of katachitta, (iv) takpatti, and (v) payment through cheques via the AMC. The chargesheet notes that A-1 was in charge of Pericherla, Phirangipuram, and Madhira centers, and alleges that A-3 connived with A-7 to open bank accounts in the names of the villagers of Jamalapuram and Banjara. A-1 and A-3 purchased cotton at lower prices before the MSP announcement and purportedly resold it to CCI at MSP through benami farmers. It lists the farmers (A-4 to A-47), their bank account details, amounts credited, and alleged land possession, highlighting discrepancies between land held and cotton sold.

8.2 The chargesheet also specifically mentions that A-2 forged the signatures of farmers on bidding slips, takpatties and weighment slips. The Government Examiner of Questioned Documents' ('GEQD') opinion also confirms the alleged forgery. It also highlights discrepancies in fathers' names and residential addresses mentioned in the Bidding Slip versus actual details. Further, it states that many farmers denied selling such large quantities or even visiting the market centres. Some stated they signed blank cheque books at the instance of A-3 or A-7, and the chargesheet further notes that employees of A-3's company (M/s Balachamundeswari Cotton Company) were also shown as farmers selling cotton by availing the subject MSP.

8.3 The chargesheet concludes that A-1 abused his official position, conspired with others, and caused wrongful loss to CCI and gain to themselves to the tune of Rs.

21,19,35,646/- by showing procurement from traders and fictitious persons under the guise of small and marginal farmers. Consequently, sanction for prosecution against A-1 (Rayapati Subba Rao) under Section 19(1) of the PC Act was obtained, and no sanction was sought for A-2 (Syed John Syda) as he had retired.

8.4 Therefore, charges were filed under sections 120-B read with sections 420, 468, 471 IPC and section 13(2) read with section 13(1)(d) of the PC Act.

9. The record discloses that before the framing of charges was taken up by the special court, the accused filed Criminal MP No. 1056/17 to summon the letter dated 08.01.2007 addressed by the CBI to the Deputy General Manager of CCI, Guntur and the reply of the CCI dated 31.01.2007 to the CBI. It is contextual to note two aspects of the matter – (a) documents have been summoned before the charge is considered by the special court, and (b) the communication by CBI and the reply given by CCI to CBI.

9.1 The CBI in its letter dated 08.01.2007 to CCI posed questions pertaining to the difference in purchases made by A-1, the deviation of rules by A1, the loss caused by A-1's purchase, complaints made by AMC or farmers against A-1, objections by audits and unsold cotton purchased by A-1 resulting in loss.

9.2 The reply by CCI dated 31.01.2007 replies to these queries by noting that the purchases were made as per the MSP guidelines in force for the year, and no loss was caused by A-1. The reply further notes that no complaints were received from the AMC against the purchases made by A-1, no objections were raised by statutory auditors and all the purchases made by A-1 were sold and lifted by buyers.

10. The Respondent Nos. 1 to 11 filed Criminal MPs in CC no. 16/2011 under section 239 of the Criminal Procedure Code, 1973 ('CrPC'). The details of the alleged wrongful gain, Criminal MP, Criminal Revision, and the Criminal Appeal in the Court are stated in the following table:

Wrongful gain by the accused.	CrI. M.P. Nos in CC No.16/2011	Before the High Court	SLP Nos.	Respondent - Accused
Rs. 32,72,020/-	827/2016	3388/2017		R1/A-46
Rs. 31,55,052/-	1513/2016	3393/2017		R2/A-24
Rs. 86,72,235/-	243/2017	6/2018		R3/A-15
Rs. 66,72,370/-	245/2017	9/2018		R4/A-40
Rs. 42,64,355/-	1512/2016	12/2018		R5/A-23

Rs. 58,63,905/-	1515/2016	15/2018		R6/A-41
Rs. 33,84,317/-	244/2017	29/2018	SLP (Crl.) Nos. 5941 to 5951 of 2022	R7/A-27
Rs. 61,59,585/-	1510/2016	424/2018		R8/A-17
Rs. 44,00,432/-	1516/2016	512/2018		R9/A-47
Rs. 35,80,291/-	1511/2016	513/2018		R10/A-21
Rs. 49,67,779/-	1514/2016	861/2018		R11/A-26

11. The accused raised the objection that the subject chargesheet is without merit and groundless, primarily because there exists no case for framing charges under sections 120B, 420 and 471 of the IPC. They make this objection by noting that (i) there are no witnesses or documents that prove wrongful loss to CCI, (ii) there is no specific overt act of forgery, fabrication, or use of forged documents by these accused, (iii) the court in Visakhapatnam is jurisdictionally barred from trying transactions related to Madhira Centre under section 177 of CrPC, (iv) there are contradictions with respect to land holdings and amounts credited in the chargesheet, (v) the Petitioners are legitimate cultivators, either holding land personally, or cultivating on lease and (vi) the CCI letter dated 31.01.2007 states that there was no loss caused to CCI.

12. The CBI opposed the prayer for discharge and the summary of the objections raised by the accused, noting that there is sufficient evidence of conspiracy, cheating and forgery, resulting in wrongful gain/loss as the case may be. The CBI further places stress on the *modus operandi* used by the accused to procure cotton at low prices and sell it to CCI at MSP through benami transactions. It further stresses the GEQD's opinion, which supports the allegation of forgery. Consequently, the CBI alleges that there is a diversion of the MSP benefit, which has caused a loss to the public exchequer. The CBI finally notes in its opposition that the application for discharge is merely an attempt to prolong the trial.

13. The special court, through a similar order and reasoning, allowed the prayer for discharge under section 239 of the CrPC. The view of the special court is that the letter dated 31.01.2007 of the CCI is an important document that categorically states that purchases by A-1 were as per MSP guidelines, and there were no differences compared to other officers. Crucially, the court held that no loss was caused by A-1 in this regard. The special court then found that there was (i) no wrongful loss, (ii) no prima facie case, and (iii) an abuse of the process of law by requiring a full trial despite the letter by CCI dated 31.01.2007. In this light, the special court held that the threshold under section 239 of the CrPC was met since the material did not create a strong and serious suspicion. Therefore, the special court allowed the discharge petition.

14. To appreciate the grounds of challenge to the order of discharge, it is necessary to reproduce the following paragraphs from the order dated 05.09.2017 of the special court.

“11. A combined reading of Sections 239 and 240 Cr.P.C. makes it abundantly clear, that before a charge is framed, trial Court is expected to consider the material placed before it to decide whether charges could be framed against the accused.

12. Bearing the said crucial aspects in mind, if we switch back to the material placed before the Court, the petitioner along with some other accused filed Crl.M.P.1056/17 to summon certain documents from the custody of Cotton Corporation of India, Guntur.

(...)

17. In the result the petition is allowed with a finding that the petitioner is entitled to get discharge from main case. Accordingly, the petitioner is discharged from main case.”

15. CBI filed a criminal revision case before the High Court of Andhra Pradesh, and through the common order impugned in the criminal appeals, the revisions were dismissed. The High Court, in assessing the scope of revisional jurisdiction and the principles of discharge under section 239 of the CrPC, affirmed that a judge can sift and weigh evidence to find a *prima facie* case, justifying a charge if ‘grave suspicion’ exists but allowing discharge if only ‘some suspicion’ arises or if two views are equally possible and the evidence gives rise to some suspicion but not grave suspicion, the accused can be discharged. The judge is not merely a ‘post office’ and must consider broad probabilities and basic infirmities without conducting a full trial, ensuring that facts at face value disclose all ingredients of the alleged offense. In this specific case, the High Court relied on the letter from the CCI dated 31.01.2007, which asserted that no financial loss to CCI was caused by the accused, that all purchases adhered to MSP guidelines, and no complaints were received, thereby directly contradicting the prosecution's central claim of a Rs. 21 crore loss and procedural violations. Given the CCI's exonerating letter, the High Court found no incorrectness, illegality, or impropriety in the special court's order discharging the accused due to allegations being groundless.

16. We have heard advocate Ms. Rukhmini Bobde for the appellant and Mr. Shoeb Alam, learned senior counsel, for the respondents/accused.

17. Learned counsel for the appellant, by taking us through, the chargesheet, the modus operandi allegedly put in place by the accused, argues that there appears to be conspiracy by A-1, an officer of CCI, in concert with his son/A-3, A-2/supervisor of AMC and A-48 who purchased cotton from the farmers at the prevailing market price, hoarded the stocks by introducing A-4 to A-48 as farmers, sold the cotton in favour of CCI at the MSP in operation for the purpose of encashment, facilitated opening of bank accounts and from the forensic report, there is forgery and impersonation. From the allegations in the chargesheet, read with the accompanying documents, the special court should have examined the prayer for discharge. The order of discharge does not show as one being compatible with an order of discharge, but sounds like an order of acquittal on merits by appreciating the likely defence of the accused. The order, both in the procedure stipulated under section 239 of the CrPC and the available ground, i.e., the allegations being groundless, has exceeded its statutory discretionary jurisdiction. Consequently, the order of discharge is illegal. The reasoning in the orders of discharge is erroneous and based on assumptions. The order of discharge, in law, has a different connotation, but the discharge impugned sounds like an order of acquittal. The courts below have not appreciated the principal accusation of wrongful gain/loss and the conspiracy to make CCI purchase hoarded cotton from the accused. A few of the accused do not have agricultural land, and bank accounts are opened on the same day to receive the MSP. Thus, there is enough intrinsic material warranting a trial. MSP is meant for the benefit of farmers, and it cannot be syphoned off, and such syphoning, if proved, amounts to wrongful gain. The

counsel invites our attention to specific allegations on this behalf and argues that a case involving triable charges has been abruptly closed through the impugned discharge orders.

18. Mr. Shoeb Alam, appearing for the accused, in reply, argues that the registration of FIR, investigation, and the chargesheet are misappreciated circumstances of the case. The accused in the subject criminal appeals are small farmers, and the cotton supplied is not only from the agricultural lands owned by them, and could also be as noticed by the impugned orders, from the agricultural lands taken on lease. There is no restriction on the source of procurement of cotton, and the statement of A-2 demonstrates that the guidelines have been scrupulously followed. The special court and the High Court have rightly appreciated the underlying offence for trial, i.e., wrongful gain/loss. It is argued with sufficient emphasis that the commissions or omissions do not qualify as a penal act in the circumstances warranting prosecution or trial. The loss alleged in the purchase of the subject cotton is denied by the CCI, and consequently, there cannot be a trial on these charges except to conduct prosecution as an abuse of the process of law. The CBI, *suo motu*, registered the FIR, and the material gathered in the investigation on forgery, misrepresentation, etc., either from the chargesheet or from the documents, cannot be made out. Among the Respondents-accused, two of them are no more. It cannot be gainsaid that the cotton supplied is of lesser quality or quantity, so a case for examination of cheating needs to be tried. On the forgery and fabrication, the case is without merit. The case does not warrant interference under Article 136 of the Constitution of India.

19. We have taken note of the rival arguments and perused the record. The chargesheet, read with documents placed on record, runs into more than a thousand pages. The alleged commonality, participation, and resultant benefit can be for the limited purpose of appreciating the correctness in the orders impugned in the succinct way, and is tabulated thus:

Fact	Inference Drawn
A-1 and his son, A-3, allegedly purchased cotton at low prices before the MSP announcement and resold it to CCI at higher MSP rates through benami farmers (A4 to A-47).	Suggests a pre-planned conspiracy to exploit the MSP scheme for personal profit by manipulating the procurement process. A-1's official position provided the means, and A-3's business potentially provided the infrastructure/cover.
Many farmers (A-4 to A-47) listed as sellers had insufficient or no land to cultivate the large quantities of cotton sold to CCI.	Strong indicator that these individuals were likely not genuine farmers selling their own produce but were acting as fronts or 'benamis' for A-1 and A-3 to channel the previously hoarded cotton into the MSP scheme.

Bank accounts for many 'farmers' opened in Guntur (where A-1 & A3 were based), introduced by A-3 or his employees, despite farmers residing elsewhere (e.g., Khammam). Blank cheques obtained.	Centralized banking operations facilitated control over funds by A-3. Introductions by A-3 and his employees suggest direct involvement in setting up the financial mechanism for the alleged fraud. Obtaining blank, signed cheques implies intent to control and divert the proceeds meant for farmers.
Alleged forgery of signatures on takpatties and weightment slips by A-2 and discrepancies in signatures/details across documents (Takpatties, bidding slips, Katachittas, ID cards, Bank forms).	Indicates manipulation of official records required for the cotton procurement process to legitimize the fraudulent sales and facilitate payments. This points towards an attempt to cover up the use of benami farmers.
CBI initiates investigation based on 'source information', not a complaint from CCI or farmers.	Suggests the alleged irregularities might not have been immediately apparent or reported by the directly affected entities (CCI/genuine farmers), requiring external intelligence to uncover the potential fraud.
CCI's reply (31.01.2007) to CBI states that no rules were deviated, no loss was caused, no complaints were received, and no audit objections were raised regarding A-1's purchases.	This official communication from CCI contradicts the core allegations of the CBI charge sheet (loss, rule deviation). This became a primary basis for the Special Court and High Court discharging the accused.
The Special Court and High Court discharge the accused primarily based on the CCI letters, finding	Courts gave significant weight to CCI's assessment (no loss, no rule violation) over the prosecution's evidence
insufficient grounds/grave suspicion based on the material presented by the prosecution.	(benami farmers, land records, alleged forgeries).

20. Immediately, we hasten to add that whether the chargesheet in any way presents a triable charge by the special court or not. The issue is examined at the stage of section 239 of the CrPC. Therefore, the present consideration shall not be understood as this Court is examining the allegations *vis-à-vis* the lack of grounds for framing or not framing charges. In other words, we are not delving into the merits of the matter.

21. Having summarily noticed the contours of controversy between the prosecution and the accused, we will examine the fundamental illegality of the courts below while passing the orders impugned.

22. It is noticed that through Criminal MP No. 1056/17, letters communicated between the investigating officer-CBI and CCI have been summoned. The petition and the order are referred to in the orders impugned. The letter sent by CBI to CCI dated 08.01.2007,

and the letter sent in reply to CBI by CCI dated 31.01.2007, were summoned by the special court. The consideration by the special court to arrive at a finding where there is no loss to CCI is primarily based on the reply dated 31.01.2007. Section 239 of the CrPC, which facilitates discharge of an accused in a warrant case triable by the magistrate if the charge against the accused is groundless, reads thus:

“s.239 When accused shall be discharged: If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

23. The question for consideration is whether the two letters could have been looked at or relied upon by the special court for exercising its jurisdiction under section 239 of CrPC.

24. The decisions of this Court in *Satish Mehra v. Delhi Administration and another*¹ and *State of Bihar v. Ramesh Singh*² took divergent views on the competence of a special court/magistrate to look at material other than the final report read with documents filed by the prosecution in terms of section 173 of the CrPC. The issue was referred to a three-judge bench for decision in *State of Orissa v. Debendranath Padhi*.³ The full bench in a detailed examination of the statutory scheme and also the precedents on the point has held that the accused at the stage of framing of charge does not have a right to file material or documents. It is apt to excerpt the following paragraphs from the said decision.

“8. What is the meaning of the expression “the record of the case” as used in Section 227 of the Code. Though the word “case” is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit “the case” to the Court of Session and send to that court “the record of the case” and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

15. *In State of Maharashtra v. Priya Sharan Maharaj (1997) 4 SCC 393 it was held that at Sections 227 and 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, 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.”*

18. *We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot*

¹ (1996) 9 SCC 766.

² (1977) 4 SCC 39; see also, *Supdt. And Remembrancer Of Legal Affairs, West Bengal v. Anil Kumar Bhunja And Others*, (1979) SCC 4 274. ³ (2005) 1 SCC 568

be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

(emphasis supplied)

25. Recently, in *State of Rajasthan v. Swarn Singh @ Baba*,³ to which one of us, Justice Pankaj Mithal, was a part of, relied on *Debendra Nath Padhi (supra)* to hold that the accused cannot and does not have the right to invoke section 91 of the CrPC at the time of framing of charge. Under the statutory scheme of the CrPC, sections 227/239 are positioned in the midway of continuing or abandoning the prosecution if no case is discernible from the chargesheet and documents. The common belief of the prosecution/complainant is that the report filed warrants trial and conviction, which is to be balanced by the magistrate against the belief of the accused that every prosecution initiated is false and nothing short of an abuse of process. The magistrate, at this stage, by exercising the jurisdiction within the parameters set out by sections 227/239 of the CrPC, decides whether the narrative of the complainant warrants prosecution/trial or the accused is entitled to be discharged. The discretion is exercised in the manner stipulated by sections 227/239. The inner and outer limits of the discretion under these sections are no more *res integra*, and a few of the precedents having a bearing on the conspectus of the case are referred to hereunder.

25.1 In *Sheoraj Singh Ahlawat v. State of U.P.*,⁴ it is observed that inconsistency in material produced by the prosecution cannot be looked into for discharge of the accused in the absence of a full-fledged trial.

25.2 Reiterating the dictum in *Debendra Nath Padhi* again in *State of Madhya Pradesh v. Rakesh Mishra*,⁶ it has been held that only the chargesheet along with accompanying materials are to be considered at the stage of framing of charges, so as to satisfy the existence of a case for trial.

25.3 Further, in *State of Rajasthan v. Ashok Kumar Kashyap*,⁵ this Court reiterates beyond debate that defence on merits is not to be considered at the stage of framing of charges/discharge.

26. We do not intend to refer to too many precedents on a well-established proposition of law on the method and mode of exercising jurisdiction by a magistrate under section 239 of the CrPC. It is correct that *Union of India v. Prafulla Kumar Samal and another*⁸ lays down the standard for discharge of an accused under section 239 of the CrPC. The

³ 4 Criminal Appeal No. 856 of 2024.

⁴ (2013) 11 SCC 476. ⁶ (2015) 13 SCC 8.

⁵ (2021) 11 SCC 191. ⁸ (1979) 3 SCC 4.

application of the principle for the documents relied upon by the special court and the High Court is both debatable. Discharge under the CrPC is salutary, and the magistrate, through the expression used in these sections, is under an obligation to discharge the accused where, from the chargesheet and the appended documents, it is noticed that the trial of such charges is worthless. Therefore, to sustain the exercise of discretion, the order of discharge conforms to the requirements of these sections.

26.1 The jurisdiction conferred on the magistrate by section 239 of the CrPC is appreciated from the language of the said provision. In a civil suit, the triable issues of fact or law are culled from a material proposition of fact or law affirmed by one party and denied by the other, and the issue in a civil suit is an admixture of a case to parties to the *lis*. In contrast, section 239 of the CrPC, which deals with the trial of warrant cases by a magistrate, confines the examination to the final report and documents sent with it under section 173 of the CrPC. The allegations in the FIR, transformed through investigation and the collection of evidence, are shaped into a final report. This receives the attention of the magistrate to decide whether the charge so presented against the accused is groundless.

26.2 The salutary duty fastened on the magistrate is exercised not only for aborting unwanted and groundless prosecutions, but also for ensuring the continuation of prosecution of a final report with documents presenting a triable charge. Considering the importance of either discharging the accused or continuing the prosecution, the magistrate neither acts as a post office nor conducts a mini-trial of the report and the documents before it while exercising the power under section 239 of the CrPC. Stated briefly, the learned magistrate, in sufficient measure, examines the report and documents while taking a decision for discharge or for proceeding with the prosecution. We propose to examine whether the order impugned before us withstands the scrutiny and requirement of this Court.

26.3 However, since the order of discharge is amenable to the jurisdiction of the revisional court, the order of discharge must speak for itself, and only a warranted conclusion is arrived at by the magistrate. The deviation from the discretionary limits definitely attracts the supervisory jurisdiction of the revisional courts. The issue of whether discharge is warranted or trial is continued depends on the circumstances of each case.

27. Reverting to the circumstances of this case, it is borne out by the record that the plea for discharge is founded on the correspondence dated 08.01.2007 and 31.01.2007. Thereafter, by referring to the very gist of the communication, prayer for discharge has been made. In clear terms and reasoning, the discharge has been ordered not by referring to any of the situations referred in section 239 of the CrPC, but by relying on the documents made available by the accused. The procedure followed by the trial court and as confirmed by the High Court is patently illegal, and contrary to the binding precedent. The passing remark by the High Court in the common order that there is no material for cheating and forgery belies the existence of allegations and documents. The consideration of material, i.e., chargesheet and list of documents, in the background of allegations made against the accused is the available path for discharge by the special court and the High Court. But, a path unavailable to the special court and the High Court is the consideration of material invited at the instance of the defence for ordering discharge. The orders impugned proceed on the assumption of the absence of loss to the CCI on the basis of the letter dated 31.01.2007. The case of prosecution established looks at wrongful gain through conspiracy and forgery to defraud the CCI and the farmers to the tune of Rs.21,19,35,646/-. Non-compliance with the discretionary limits as set out under section 239 of the CrPC warrants the interference of this Court.

28. Hence, for the above discussion and reasons, the orders impugned are set aside, and the prayer for discharge of the accused by looking at the documents brought on record is set aside. Consequently, the Criminal MPs filed by the accused are dismissed. The special court is directed to exercise its jurisdiction in terms of section 239 of the CrPC, particularly, uninfluenced by any of the observations made in this Judgment, and decide whether a case for discharge is available or charges are to be framed for trial of the alleged offences. The Criminal Appeals are allowed. Pending applications, if any, are disposed of accordingly.

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