



2026:AHC-LKO:17841

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL REVISION No. - 252 of 2026

Kallayya Pattadamath @ Akshay Pattadamath

.....Revisionist(s)

Versus

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

.....Opposite
Party(s)

Counsel for Revisionist(s) : Abhineet Jaiswal, Devvrat Pratap Singh
Counsel for Opposite Party(s) : G.A.

Court No. - 27

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HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

2. By means of the instant criminal revision filed under Section 438 read with 442 B.N.S.S 2023, the revisionist is assailing the validity of the order dated 03.01.2026 passed by learned Special Chief Judicial Magistrate (Customs), Lucknow, in criminal case bearing W/S Case No. 121571 of 2025 (State of U.P. Vs. Baburao Sambhaji Maali and others) registered at Police Station Gosaingaj, District Lucknow, under Section 336(3), 338, 340(2) and 61(2) B.N.S an 66 D of I.T Act. By the impugned order, the learned trial court has framed charges against the revisionist under said penal sections. The revisionist has prayed to issue a direction to afford the revisionist an effective opportunity to prefer an application for discharge under section 262(1) of the B.N.S.S and to consider and decide the same in accordance with law.

3. Learned counsel for the revisionist submits that the informant in the present case lodged an FIR at the concerned Police Station on 30.06.2025 stating that he had received a message on his Facebook Messenger as well as on his WhatsApp number from some unknown person through a mobile number 9763951991. Through the said number, certain photographs and videos were sent to him offering the sale of banana plants. The unknown caller sent a DBT certificate to gain the trust of the

informant. After receiving the same, the informant agreed to purchase the banana plants. Falling into the trap of the unknown caller, he transferred total amount of Rs. 29,25,000/- into different bank accounts provided by the fraudster for the purchase of banana plants.

4. During the course of investigation, it emerged that the revisionist was in contact with the main accused Baburao Sambhaji Maali and three bank account holders, namely, Mohd. Rafeeq, Shiv Kumar and Basappa. It is alleged that the revisionist had introduced the main accused Baburao Sambhaji Maali and the three bank account holders, whose accounts were used for transferring the said amount from the account of the complainant.

5. Learned counsel for the revisionist further submits that the revisionist is neither a beneficiary of the alleged amount nor is there any allegation that any part of the said amount was received in his bank account.

6. He further submits that the learned trial court has framed charges in violation of the statutory provisions of Sections 261, 262(2), 263 and 341 BNSS. The revisionist is still in custody in connection with the said offences along with the other accused persons. He further submits that the revisionist has not been given any opportunity to file discharge application despite of the statutory requirement in this regard. The revisionist was not provided any legal aid counsel as required under Section 341 BNSS at the stage of framing of charge. In fact, no proper opportunity of hearing, whatsoever, was given to the revisionist before framing of charges against him. The ingredients of the various offences are not made out against the revisionist. Even the framing of charges is contrary to the statutory mandate and it depicts non-application of mind.

7. Learned counsel for the revisionist placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of U.P. Vs. Singhara Singh and others; AIR 1964 SC 358**, wherein it is held that, '*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessary forbidden.*'

8. Learned counsel for the revisionist has also placed reliance upon the judgment of the this Court in **Sidhique Kappan Vs. State of U.P.; 2023**

SCC OnLine All 21. In a petition under Section 482 Cr.P.C, where charges were framed against the accused under various provisions of IPC, UAPA Act, 1967 and Section 65 and 72, 76 I.T Act, 2000, were quashed on the ground of certain illegality and ambiguities apparent in framing of charges and matter was remitted back to the trial court for deciding the discharge application dated 19.12.2022 a fresh.

9. Learned counsel for the revisionist further submits that in para 18 of the case of **Sidhique Kappan** (supra), this court observed that it is also not incumbent upon the accused that he must have moved an application for discharge. Even in a situation that there was no application for discharge moved, then it is incumbent upon the trial court to decide it that whether there is sufficient material available against the accused so as to frame charges, but opportunity of hearing to the accused at this stage is an essential condition. In **Siddique Kappan's** Case an application under Section 227 of Cr.P.C was filed by the accused-applicant which was pending consideration and the court without considering the same has proceeded to frame charges and charges were framed on 19.12.2022.

10. Learned counsel for the revisionist next submits that this court has also observed that application of mind on discharge as well as assigning of reasons for refusing order under Section 227 Cr.P.C is of a much importance, which has to be complied by the trial court. The intent of the legislature is very clear that the procedure prescribed in section 227 of Cr.P.C for discharge of the accused is in fact a safeguard so that a person who has been alleged to have committed an offence, may not be harassed for facing trial proceedings. Therefore, the application of mind as well as assigning reasons for passing an order under section 227/228 of Cr.P.C is of much importance.

11. Learned counsel for the revisionist has also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of Tamil Nadu Vs. R. Soundirarasu and Others; 2023 6 SCC 768**, wherein it is held that:-

"61. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What

Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See: V.C. Shukla v. d State23).

62. Section 239 CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word "groundless", in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word "groundless" used in Section 239 CrPC means that the materials placed before the court do not make out or are not sufficient to make out a prima facie case against the accused.

12. Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is corresponding provision of Section 239 of the Code of Criminal Procedure, 1973 (Cr.P.C). However, both the provisions are similar but not identical. Certain additions have been made in Section 262 BNSS. In the earlier provisions for discharge in warrant trials as provided under Section 239 CrPC, sub-section (1) is reshaped in Section 262 BNSS in which there are certain additions which did not find place in earlier provisions of Section 239 of the CrPC (Act No. 2 of 1974). It provides that," the accused may prefer an application for discharge within a period of 60 days from the date of supply of copies of documents under Section 230 BNSS (corresponding to Section 207 CrPC, now repealed). In sub-section (2), it is provided that "*upon considering the police report and the documents sent with it under section 193 and making such examination, if*

any, of the accused, either physically or through audio-video electronic means, 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."

13. Similarly, in Section 262 BNSS of which the corresponding lies under Section 240 of CrPC, 1973, provides that if upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him and he shall frame in writing a charge against the accused **within a period of 60 days from the date of the first hearing on charge.**

14. A conjoint reading of Sections 262 to 263 of B.N.S.S, it found that there is a chapter from Section 2 from corresponding to the earlier Sections 239 and 240 of the Cr.P.C to the extent that in Section 262 BNSS, the accused has been given an opportunity to file an application seeking discharge within a period of 60 days of supply of copies of documents as provided under Section 230 BNSS and under Section 263 BNSS, the Magistrate is acquired to frame a charges against the accused if he is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XX, which is competent to try and which, in his opinion, could be adequately punished by him within a period of 60 days from the date of the first hearing on charge. No such statutory limitation of 60 days is provided under the corresponding law of Sections 239 and 240 CrPC.

15. Thus, on perusal of the aforesaid statutory provisions, it becomes crystal clear that, on the one hand, the statute gives an opportunity to the accused to move an application for discharge within 60 days of supply of copies of documents and the court has also been prescribed a time limit of 60 days for framing of charge, which commences from the date of the first hearing on charge.

16. In the present case, the accused-revisionist was languishing in judicial

custody and no opportunity was provided to him to move an application for discharge. In such circumstances, the court was under an obligation to provide legal aid counsel to the accused so as to enable him to file an application for discharge, as is provided under Section 262(1) of the BNSS, 2023 and in case he was not inclined to move an application for discharge, at least some hearing is required to be afforded to him on the question of framing of charge and with the assistance of legal aid counsel, whose assistance should have been provided to him before hearing in charge and framing of charges.

17. In the present case, upon perusal of the order dated 03.01.2026, it appears that the accused persons were produced from jail custody, charges were framed against them, and they denied the same and claimed for trial. However, it is nowhere stated in the said order dated 03.01.2026 that any opportunity of hearing was provided to the accused persons on the question of framing of charge or they were granted any opportunity to file an application for discharge. On the same day i.e. the charges were framed against the revisionist and the co-accused. Even in order sheet it is nowhere stated that any hearing was afforded to him before framing of charges.

18. In view of the foregoing discussion, the statutory provisions, and consideration of the aforesaid judicial pronouncements on the subject, this Court is of the considered opinion that the framing of charge in the present case stands vitiated due to non-compliance of the statutory provisions contained in Sections 262 and 263 of the BNSS, as is evident from the order and framing of charge dated 03.01.2026.

19. It is quite obvious that no opportunity of hearing was provided to the revisionist on the question of framing of charge, the Section 262 and 263 Cr.P.C as well as earlier provision of Sections 239 Cr.P.C, in this regard makes it mandatory to provide such an opportunity before framing of charge.

20. Accordingly, I find merit in the present revision and the impugned order dated 03.01.2026 by which charges have been framed against the revisionist is hereby set aside, as being vitiated due to non-compliance of

the statutory provisions.

21. The matter is remanded to the trial court to proceed afresh in accordance with law. The trial court shall provide an opportunity to the revisionist to move an application for discharge within two weeks from the date of production of the certified copy of this order. Thereafter, after providing an opportunity of hearing to both, the prosecution as well as the revisionist, the said application shall be decided strictly in accordance with law by passing a reasoned and speaking order. In case the trial court finds that charges are made out case against the accused, it shall proceed to frame charges in accordance with law.

22. Accordingly, the revision stands **allowed**.

(Ram Manohar Narayan Mishra,J.)

March 11, 2026

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