

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case : CRM(M) No. 840/2021
CrlM No. 2356/2021

Reserved on: 05.03.2025
Pronounced on: 18 .03.2025

Manohar Singh
S/o Sh. Krishan Singh
R/o Panjowal Surinsar
A/P Lower Jallo Chak

...Petitioner (s)

Through: Mr. Rajeev Chargetra, Advocate

VERSUS

Union Territory of J&K
Th. Police Station
Gangyal, Jammu

...Respondent(s)

Through: Mr. P. D. Singh, Dy. AG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

JUDGMENT

18.03.2025

1. The petitioner through the medium of the instant petition filed under Section 482 Cr.P.C has challenged order dated 18.11.2021 passed by the learned Sub-Judge/Spl. Railway Magistrate Jammu (hereinafter referred to as the 'trial Magistrate'), whereby charges for offences under Section 279, 304-A IPC have been framed against him.
2. As per the charge sheet which has been emanated from FIR No. 32/2020 for offences under Section 279, 304-A IPC registered with Police Station, Gangyal, Jammu on 29.02.2020, police received information from reliable

sources that a Swift Dezire vehicle bearing registration No. JK02CB-6163 was being driven by petitioner/accused in a rash and negligent manner, as a result of which he lost control over the said vehicle and a pedestrian, namely, Dina Nath suffered fatal injuries leading to his death. It was also reported to the police that the driver had fled away after leaving the vehicle on spot.

3. On the basis of the aforesaid information the police registered the FIR and started investigation of the case. During investigation of the case the police conducted spot inspection, seized the dead body of the deceased, seized the vehicle in question and recorded the statements of witnesses under Section 161 Cr.P.C. After investigation of the case, it was found that on the date of the occurrence the petitioner/accused was driving the vehicle in question and at about 11/11.30 A.M when it was heavily raining, the vehicle met with an accident resulting in death of deceased-Dina Nath. The police during the investigating questioned the petitioner/accused who admitted his crime. Thus, offences under Section 279/304-A IPC were found established against the petitioner/accused and the charge sheet was laid before the learned trial Magistrate.

4. The learned Magistrate after hearing the parties and after analyzing the material annexed with the charge sheet found that there is sufficient material on record to prima facie hold that petitioner/accused has committed offence under Section 279/304-A IPC. Accordingly, vide impugned order dated 18.11.2021 charges have been framed against the petitioner/accused.

5. The petitioner has challenged the impugned order passed by the learned trial Magistrate on the grounds that he has been implicated on the basis of confession made by him to the police which is inadmissible in evidence under

Section 25 of the Evidence Act. It has been contended that the observations made by the learned trial Magistrate that all the witnesses have stated that on the date of occurrence, petitioner accused was driving the vehicle are contrary to the statements available on record. It has been further contended that even if the material collected by the investigating agency during the investigation of the case is accepted on its face value, still then the petitioner-accused could not have been implicated in the alleged offence.

6. I have heard learned counsel for the parties, perused the record of the case, grounds of challenge as well as trial Court record.

7. Before dealing with the contentions raised by the petitioner in the present case, it would be necessary to understand the legal position as regards the scope of power of a Court while considering discharge of an accused.

8. In *Union of India vs. Prafulla Kumar Samal and another*, (1979) 3 SCC 4, the Supreme Court while considering the ambit and scope of a Trial Judge's power to pass an order of discharge under Section 227 of the CrPC, analyzed its previous judgments on the issue and laid down the following principles:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.

9. The aforesaid ratio laid down by the Supreme Court was reiterated and reaffirmed by it in the case of *Dilawar Balu Kurane vs State of Maharashtra*, (2002) 2 SCC 135 and it was clarified that in exercising jurisdiction under Section 227 of the Cr.PC, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but he has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

10. Again, in the case of **Sajjan Kumar vs. CBI** (2010) 9 SCC 368, the Supreme Court, after analyzing its previous precedents on the issue, laid down the following principles regarding the scope of Sections 227 and 228 of the CrPC:-

“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 there from 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”.

11. The Supreme Court, in the case of **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey and others**, 2022 LiveLaw (SC) 631, after noticing the aforesaid position of law, has held that the trial Court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. It has been observed by the Supreme Court in the said case that the material which is required to be evaluated by the Court at the time of framing of charge should be the material which is produced and relied upon by the prosecution and sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. It was further observed that all that is required at this stage is that the

Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice.

12. In **Shashikant Sharma and ors vs. State of Uttar Pradesh and another, 2023 Live Law (SC) 1037**, the Supreme Court has held that at the stage of framing of charges, if, from the admitted evidence of the prosecution as reflected in the documents by the I.O in the report under Section 173 CrPC, the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused.

13. From the foregoing analysis of law on the subject, it is clear that at the time of framing of charge, the Court has only to consider the material available for framing an opinion as to whether, prima facie, offence is committed which would require the accused to be put on trial. It is open to the Court, at the stage of framing of charge, to ascertain as to whether the allegations made in the charge sheet against the accused are supported by the material collected by the I.O during investigation of the case.

14. With the aforesaid legal position in mind, let us advert to the facts of the instant case. As already stated, the allegation against the petitioner/accused is that on the fateful date he was at the wheels of the offending vehicle which suffered an accident as a result of which deceased-Dina Nath was run over by the said vehicle which led to his death. So far as death of the deceased is concerned, there is sufficient material on record in support of the same. Post Mortem report of the deceased which is on record of the challan shows that the deceased has died due to polytrauma sustained in the roadside accident. Involvement of the vehicle bearing JK02CB-6163 in the occurrence is also

established from the material collected by the investigating agency. As per the statements of the witnesses to seizure of the vehicle, the same has been seized from the spot of occurrence. There are statements of the witnesses to the effect that the dead body of the deceased was recovered underneath the tyres of the vehicle in question. Thus, there is sufficient material on record of the charge sheet to show that the vehicle in question was involved in the accident.

16. The only aspect of the matter which requires debate is about the involvement of the petitioner/accused in the accident. The investigating agency during the course of investigation recorded the statements of PW Vinay, PW Mintoo, PW Sonu Kumar, PW Gurmail Singh, PW Ekesh Kumar and PW Sahil Sharma. The statements of all these witnesses pertain to the circumstances which according to the prosecution, point towards the involvement of the petitioner/accused in the occurrence. However, none of these witnesses is eye witness to the occurrence.

17. So far as PW Vinay is concerned, he happens to be the brother of deceased-Dina Nath. He has stated that on 28.02.2020 when he came back from the house of his relatives in the evening, he found that his brother had not come back. He thought that his brother may have overnight with his relatives and on the next date i.e. on 29.02.2020 at about 1.15 PM he came to know that dead body of a person is lying underneath a vehicle at Lower Jallo Chak. He proceeded on spot and found that dead body was that of his brother and the same was taken out from underneath the tyres of the vehicle by a number of persons present over there. He has stated that he had seen the petitioner/accused driving the vehicle on a number of occasions and that the accident had taken place due to rashness and negligence of the petitioner/accused.

18. According to PW Minto, he reached the spot of the accident on 29.02.2020 upon coming to know that the accident had taken place. He further stated that from underneath the tyres of the vehicle in question a dead body was taken out in his presence. He also stated that he came to know that the vehicle in question was being driven by the petitioner/accused at the relevant point of time and that the accident had taken place due to his negligence. Statements of PW Sonu and PW Rakesh Kumar are also on similar lines.

19. ASI Gurmail Singh has stated that he accompanied Sub Inspector to the place of the accident where he saw a dead body lying underneath the tyres of the vehicle in question. He further stated that dead body was taken out with the help of the people after pushing the vehicle back. According to him, dead body was identified by the brother of the deceased where after it was handed over to him. He further stated that upon inquiry he came to know that at the time of the occurrence the vehicle in question was being driven by petitioner/accused and that the accident had taken place due to his negligence.

20. PW Sahil Sharma has stated that he is an employee of the registered owner of the vehicle. He further stated that the vehicle in question was released on supurdnama after he obtained an order of release from the Court.

21. From the aforesaid statements of the witnesses recorded under Section 161 Cr.P.C it is clear that none of the witnesses has actually seen the petitioner/accused driving the vehicle prior to the accident or even on the date of the occurrence. The brother of the deceased PW Vinay has stated that he has seen the petitioner/accused driving the vehicle in question on several occasions, but he has nowhere stated that he has seen the petitioner/accused driving the vehicle at the time when the accident took place or even on the date when the

accident took place. The knowledge of the witnesses about the involvement of petitioner/accused in the alleged occurrence is hearsay in nature. According to them they came to know about it after enquiring from others. The investigating agency has not recorded the statements of the persons from whom the aforesaid witnesses gathered knowledge about the involvement of the petitioner/accused in the occurrence nor these persons have been identified by the investigating agency. The statements of the aforesaid witnesses to the extent of involvement of petitioner/accused in the occurrence is hearsay in nature and as such, is inadmissible in evidence.

22. The vehicle as per the copy of registration certificate procured by the investigating agency during the investigation of the case belongs to M/S Sarveshwar Foods Limited. The investigating agency has not collected any material to show that the registered owner had employed the petitioner/accused as its driver. Even PW Sahil Sharma, the person who has got the vehicle in question released on supurdnama on behalf of its registered owner has not stated anything about the connection of petitioner/accused with the vehicle in question.

23. In the above circumstances, there is absolutely no evidence on record to connect the petitioner/accused with the vehicle that was involved in the accident. Therefore, even if the material collected by the investigating agency during the investigation of the cases remains un-rebutted, the same is not sufficient to presume that the petitioner/accused has not committed the offence nor does it raise any grave suspicion about his involvement in the occurrence. The allegations made in the charge sheet against the petitioner in the instant case are not supported by the material collected by the investigating officer during investigation of the case. Thus, it was not open to the learned trial Magistrate to

frame charges against the petitioner/accused. The learned trial Magistrate without sifting the material collected by the investigating agency for the limited purpose of framing opinion as to whether prima facie offence is committed by the petitioner/accused has proceeded to frame charges against the petitioner/accused. The impugned order of the learned trial Magistrate is therefore, unsustainable in law.

24. For the foregoing reasons, the instant petition is allowed and the impugned order dated 18.11.2021, passed by the learned trial Magistrate, whereby charges have been framed against the petitioner/accused is set aside. He is, accordingly, discharged and the challan against him is dismissed.

JAMMU
18.03.2025
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(Sanjay Dhar)
Judge