IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 2113 of 2018

Nishikant Dubey (Member of Parliament) .... Petitioner

-- Versus --

State of Jharkhand .... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Prashant Pallava, Advocate
Mr. Parth Jalan, Advocate

For Respondent State :- Mr. Pankaj Kumar, Public Prosecutor

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*16/**09.02.2024*** Heard Mr. Prashant Pallava, the learned counsel appearing on behalf of the petitioner and Mr. Pankaj Kumar, the learned Public Prosecutor appearing on behalf of the respondent State.

2. This petition has been filed for quashing of the order dated 06.06.2018 passed by the learned Sessions Judge, Godda, in Criminal Revision No.32 of 2017, whereby the said petition has been dismissed and the learned court has affirmed the order dated 27.07.2017 passed by the learned Judicial Magistrate, First Class, Godda in connection with Poraiahat P.S. Case No.162 of 2009, corresponding to G.R. No.894 of 2009, pending in the court of learned Judicial Magistrate, First Class, Godda.

3. The F.I.R was registered as per the written report of the A.S.I. dated 04.09.2009, in brief is that on 04.09.2009 at about 05.00 P.M. the petitioner herein held demonstrations and blocked the road near the Primary Health Centre, Poraiyahat. That it was further alleged in the report that the Petitioner along with his associates did not let the patrol

vehicle of the complainant pass and blocked the said road and caused jam on both sides of the road. It has further been alleged that the Petitioner along with other leaders of the Bharatiya Janata Party did not pay heed to the requests of the complainant to remove the jam and started giving speeches on the road and that even when the SDO and SDPO reached the spot and requested the Petitioner and his associates to remove the jam, they did not pay any heed to such requests and further became aggressive. That finally, at the request of the petitioner, the jam was removed at about 11.45 p.m.

4. Mr. Prashant Pallava, the learned counsel appearing on behalf of the petitioner submits that police submitted the charge sheet against the petitioner and others under section 143, 186, 283, 290, 291 and 353 of the Indian Penal Code and cognizance was taken by the learned court on 08.06.2013 under those sections of the Indian Penal Code. He submits that in the First Information Report the allegations are made that the petitioner and others were agitating in Poraiyahat Block. Further by way of taking the contents of the First Information Report he submits that there is no overt act and the petitioner himself as asked the demonstrators to leave the place which has come in the First Information Report. He further submits that the ingredients of those sections are not made out. By way of referring to the definition of 'unlawful assembly' he refers to section 141 of the Indian Penal Code and submits that there is no criminal force or obstruction in discharging the duty by any of the public servant. He further submits penal sections of section 141 I.P.C is section 143 I.P.C. He submits that in light of definition of section 186 I.P.C. there is no voluntary obstruction in discharging the duty by any of the public servant and in view of that, section 186 of the I.P.C is not attracted. He submits that there was no danger and only a peaceful demonstration was going on and in view of that, section 283 I.P.C is not

attracted. He submits that section 290 and section 291 I.P.C are with regard to public nuisance and repeat or continuance of such nuisance respectively. He submits that those sections are also not attracted. By way of referring section 353 I.P.C he submits that there was no criminal force to deter public servant from discharging his duty and in view of that, section 353 I.P.C is not attracted. So far section 353 I.P.C is concerned, he relied in the case of ***Manik Taneja v. State of Karnataka, (2015) 7 SCC 423*** and he refers to paragraph nos.12 and 14 of the said judgment, which are as under:

> ***12.*** *In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.*
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> ***14.*** *In the result, the impugned order of the High Court in Manik Taneja v. State of Karnataka [2014 SCC OnLine Kar 4237] dated 24-4-2014 is set aside and this appeal is allowed and the FIR in Crime No. 174 of 2013 registered against the appellants is quashed.*

5. By way of referring to the above judgment, he submits that there was no act of threatening of any person or causing any injury and in view of that, section 353 I.P.C is certainly not attracted. He further submits that the entire allegations are made on the ground that

demonstration was going on by the petitioner at that time who happened to be Member of Parliament of that area. He submits that for a peaceful demonstration is a fundamental right under Article 19 of the Constitution of India. He submits that if a peaceful demonstration was going on in light of Article 19 of the Constitution of India, the prosecution itself is bad in law and to buttress his such argument, he relied in the case of ***Anita Thakur v. State of J&K, (2016) 15 SCC 525*** and referred to paragraph nos.12 and 15 of the said judgment which are quoted below:

> ***12.*** *We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.*
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> ***15.*** *Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become "unlawful". At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used*

> *to disperse an unruly crowd has been succinctly put by the Punjab and Haryana High Court in Karam Singh v. Hardayal Singh [Karam Singh v. Hardayal Singh, 1979 Cri LJ 1211 : 1979 SCC OnLine P&H 180] wherein the High Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd: First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Second, an Executive Magistrate should order the assembly to disperse. Third, in spite of such orders, the people do not move away.*

6. Relying on the above judgment, he submits that freedom of speech and peaceful march are covered under Article 19 of the Constitution of India. He submits that if the same is comparing with the case of the petitioner and the judgment of Hon'ble Supreme Court , the learned court as well as the learned revisional court have erred in not discharging the petitioner from the case.

7. He further submits that when action is being taken under section 186 of the I.P.C, the procedure prescribed under section 195 (1) Cr.P.C is mandatory and in absence of any complaint by any public servant whose order has been violated, the prosecution can be made by way of filing a complaint petition not the F.I.R. He submits that there was no order even at the time of peaceful demonstration by any competent authority to disperse and in view of that also, malafidely the case has been registered against the petitioner as he was member of a political party and he further submits that all the members of that political party have been implicated. He submits that the witnesses are the police personnel and there is no independent witness. On this ground, he submits that the impugned orders bad in law as only dealing with the principle of discharge the learned trial court as well as the learned revisional court have been pleased to dismiss the discharge petition filed by the petitioner.

8. Per contra, Mr. Pankaj Kumar, the learned Public Prosecutor

appearing on behalf of the respondent State submits that the order of the learned trial court as well as the learned revisional court are well reasoned and well discussed orders. He submits that the materials are there and prima facie case is made out. In view of that, the learned courts have rightly rejected the petition of discharge. He submits that obstruction in any manner in discharge of official duty the case can be maintained under section 353 of the I.P.C and to buttress his such argument, he relied in the case of ***Radhe Shyam Makharia and Others v. State of Bihar and Others, 2010 SCC Online Pat. 1717***. By way of relying on said judgment, he submits that in light of section 351 of the I.P.C. any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he, who makes that gesture or preparation, is about to use criminal force to that person. He submits that in view of that section 353 I.P.C is attracted. He further submits that in light of section 141 I.P.C an assembly of five or more persons likely to cause a disturbance is designated as unlawful assembly and he took the Court to the instances even in the said section and submits that the case of the petitioner is coming within the said definition. By way of referring to Explanation of the said section, he submits that an assembly which was not unlawful and which can mean damage subsequently become unlawful assembly. He submits that the petitioner was on the spot and in view of that section 141 I.P.C has rightly been attracted. He further submits that calling a 'bandh' is violative of fundamental rights of citizens and if by way of such act if other persons right is being snatched, the assembly itself is an unlawful assembly and to buttress his such argument, he relied in the case of ***Communist Party of India (M) v. Bharat Kumar*, (1998) 1 SCC 201** and he refers to paragraph nos. 3, 12, 17 and 18 of the said judgment which are as under:

3. *On a perusal of the impugned judgment of the High Court [(1997) 2 KLT 287 (FB) : (1997) 2 KLJ 1 (FB) : AIR 1997 Ker 291 (FB)] , referring to which learned counsel for the appellant pointed out certain portions, particularly in paras 13 and 18 including the operative part in support of their submissions, we find that the judgment does not call for any interference. We are satisfied that the distinction drawn by the High Court between a "Bandh" and a call for general strike or "Hartal" is well made out with reference to the effect of a "Bandh" on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. We may also observe that the High Court has drawn a very appropriate distinction between a "Bandh" on the one hand and a call for general strike or "Hartal" on the other. We are in agreement with the view taken by the High Court.*

12. *It is true that there is no legislative definition of the expression "bundh" and such a definition could not be tested in the crucible of constitutionality. But does the absence of a definition deprive the citizen of a right to approach this Court to seek relief against the bundh if he is able to establish before the Court that his fundamental rights are curtailed or destroyed by the calling of and the holding of a bundh? When Article 19(1) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Article 21 confers a right on any person — not necessarily a citizen — not to be deprived of his life or personal liberty except according to procedure established by law, would it be proper for the court to throw up its hands in despair on the ground that in the absence of any law curtailing such rights, it cannot test the*

constitutionality of the action? We think not. When properly understood, the calling of a bundh entails the restriction of the free movement of the citizen and his right to carry on his avocation and if the Legislature does not make any law either prohibiting it or curtailing it or regulating it, we think that it is the duty of the court to step in to protect the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organisation. The way in this respect to the courts has been shown by the Supreme Court in Bandhua Mukti Morcha v. Union of India [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : AIR 1984 SC 802].

17. *No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these original petitions will have to be considered in this background.*

18. *The contention that no relief can be granted against the political parties in these proceedings under Article 226 of the Constitution cannot be accepted in its entirety. As indicated already, this Court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any steps to control or regulate the bundhs. The stand adopted by the Advocate General is that the Court cannot compel the State or the Legislature to issue orders or make law in that regard. As we find that organised bodies or associations or registered political parties, by their act of calling and holding bundhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this Court has sufficient jurisdiction to declare that the calling of a "bundh" and the holding of it is unconstitutional*

> *especially since it is undoubted that the holding of "bundhs" are not in the interests of the nation, but tend to retard the progress of the nation by leading to national loss of production. We cannot also ignore the destruction of public and private property when a bundh is enforced by the political parties or other organisations. We are inclined to the view that the political parties and the organisations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organisers of such bundhs. We think that these aspects justify our intervention under Article 226 of the Constitution.*

9. Mr. Pankaj Kumar, the learned counsel for the respondent State submits that this petition has been filed against the order of the learned revisional court whereby discharge petition has been dismissed and at this stage, the court is not competent to weigh the pros and cons of the case and to buttress his argument, he relied in the case of ***State of Tamil Nadu by Inspector of Police, Vigilence, Anti Corruption v. N. Suresh Rajan and Others, (2014) 11 SCC 702*** and refers to paragraph nos. 29, 31.3 and 32.4 of the said judgment, which are as under:

> ***29.*** *We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has*

been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

31.3. *Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak v. A.R. Antulay [(1986) 2 SCC 716 : 1986 SCC (Cri) 256] . The same reads as follows : (SCC pp. 755-56, para 43)*

"43. … Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of 'prima facie' case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

32.4. *While passing the impugned orders [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] , [State v. K. Ponmudi, (2007) 1 MLJ (Cri) 100] , the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification.*

10. In view of above submission of learned counsel appearing for the parties this Court has gone through the materials on record including the F.I.R as well as the impugned orders.

11. In the F.I.R the allegations are made that the petitioner who happened to be a Member of Parliament was demonstrating along with others and even one of the police official who is the informant was prevented to pass through from the site of demonstration. In the F.I.R itself it has been disclosed that on the request of this petitioner, the crowd dispersed. Further in the

entire F.I.R, there is no allegation of overt act with any of the public servant. It has also been disclosed that while the Deputy Commissioner was passing through, he was also stuck in jam however it has not been stated that the Deputy Commissioner who was stuck has ordered the crowd to disperse. In this background, if peaceful demonstration in a democratic country, like India was going on, on the basis of said F.I.R a sitting Member of Parliament and others can be prosecuted or not? The prosecution is required to be on the facts and circumstances of each case. Had it been a case that any overt act has been made by any of the member, certainly the prosecution would have been maintained. However, if a peaceful demonstration was going on, certainly certain protection is there of a citizen of this country under Article 19 of the Constitution of India. Article 19(1)(a) of the Constitution of India confers right to freedom of speech to the citizen of this country and in view of this protection, a citizen is entitled to raise slogan and peaceful demonstration without using the offensive language. Article 19(1)(b) of the Constitution of India confers right to assemble and thus, an assembly can be peaceful. Article 19(1)(d) of the Constitution of India is for movement freely through out the territory. In light of Article 19 of the Constitution of India, if there is offensive language, there is no hoolagism, the protection is there and this aspect of the matter has been dealt with by the Hon'ble Supreme Court in the case of ***Anita Thakur v. State of J&K*, (2016) 15 SCC 525(supra).** In the case in hand, there is no allegation of any overt act either by the petitioner or by any person who was present at the site of demonstration and in that circumstances, whether section 353 I.P.C can be maintained or not that has been answered by the Hon'ble Supreme Court in the case of ***Manik Taneja v. State of Karnataka(supra).*** In view of application of the said section, there must be an act of threatening to another person or causing injury to the person or damage to property of the person threatened. Coming to the facts of the present case, in the entire contents of the F.I.R there is no such allegation of

criminal force or assault to the public servant and in view of that section 353 I.P.C is not attracted in the case in hand.

12. If an action is needed under section 186 I.P.C, the procedure prescribed under section 195 Cr.P.C is required to be followed. In light of section 195 Cr.P.C the exception to the general rule contained in section 190 of the Cr.P.C. that any person can set the law into motion by making a complaint as it prohibits the court from taking cognizance of certain offences unless and until the complaint is made by some particular authority or person. The legislative intention is very clear that if an action is needed under sections 172 to 188, it would be obligatory that the public servant before whom such offence is committed can file complaint before Judicial Magistrate either orally or in writing. Hence, it is not within the domain of the police to register a case for the offence registered under section 172 to 188 of the I.P.C and investigate the same as registration of the F.I.R for violation of those sections are not permitted.

13. For proceeding under section 143 of the I.P.C one has to pass the test of section 141 of the I.P.C which is the definition section of unlawful assembly. The common object has to be inferred from the facts and circumstances of each case. It is to be inferred from the membership of the assembly, the weapon used and the nature of injuries and the surrounding circumstances; all these are absent in the contents of the F.I.R. as admittedly, there is no use of weapon and there is no injury and the tenor of the contents of the F.I.R clearly speak that it was a peaceful demonstration. Even when there are sudden unprecedented free-fight between two groups, the members of such groups would not be said to have formed an unlawful assembly as has been held by the Hon'ble Supreme Court in the case of ***Tanaji Govind Misal v. State of Maharashtra with analogous cases, (1997) 8 SCC 340***. Admittedly, in the case in hand, there is no allegation of overt act either by the petitioner or any of the person who were present at the site of demonstration.

Even admittedly no filthy language was used and if all these are absent, section 141 of the I.P.C is also not attracted.

14. Section 283 I.P.C speaks of causing danger, obstruction or injury. Nothing is there in the contents of the F.I.R. that any danger or injury was there. For application of section 290 I.P.C and section 291 I.P.C one has to go through the contents of the F.I.R and the tenor of the contents of the public nuisance in the F.I.R also attract Article 19 of the Constitution of India and if such situation is there, section 290 and 291 of the I.P.C are not attracted.

15. The public representative is entitled to raise a legitimate public issue and for that, a peaceful demonstration is going on everywhere. The petitioner is not indulged in any act of violence.

1*6.* The judgment relied by Mr. Pankaj Kumar, the learned counsel for the State in the case of ***Radhe Shyam Makharia and Others v. State of Bihar and Others***(supra), wherein the Hon'ble Patna High Court has been pleased to struck section 353 of the I.P.C. so far as that case is concerned, considering that no ingredient of section 353 IPC was made out. Although, in that case, the allegation was there that one of the employees was drove away by the accused. In the case in hand, even such act is not there. In light of that, the judgment relied by Mr. Pankaj Kumar, the learned counsel for the respondent State in the case of ***Radhe Shyam Makharia and Others v. State of Bihar and Others***(supra) is not helping the respondent State.

17. I am in agreement on the judgment relied by Mr. Pankaj Kumar, the learned counsel appearing on behalf of the respondent State in the case of ***Communist Party of India (M) v. Bharat Kumar****(supra),* certainly if a Bandh is called by any political party causing national loss, depriving other facilities that is deprecated by the courts and that was the issue dealt with by the Hon'ble Supreme Court in the case of ***Communist Party of India (M) v. Bharat Kumar****(supra).* The facts of the present case is otherwise as only peaceful demonstration by the group of people was going on in a particular

area. Thus, that judgment is also not helping the respondent State.

18. Coming to the principle of discharge, it is well settled that the Court cannot act as mouth piece of the prosecution or act as post office and may seek evidence in order to find out whether or not the allegations made are grounded so as to pass the order of discharge. In view of this principle, it is settled that once a petition for discharge is filed before the learned court, the Court has to apply its judicial mind and the Court is not required to act as post office of the prosecution. That aspect of the matter has also been dealt with by the Hon'ble Supreme Court in the case of ***State of Tamil Nadu by Inspector of Police, Vigilence, Anti Corruption(supra)*** the judgment on which reliance has been placed by the respondent State. The Court is required not to make a roving enquiry for deciding a petition for discharge. Further the Court has to consider the broad probabilities, total effect of the evidence and the documents produced before the Court, any basic informatives appearing in the case and so on. This, however, would not entitle to make the Court to roving enquiry into the pros and cons and several criteria has been made by the Hon'ble Supreme Court in the case of ***M.E. Shivalingamurthy v. C.B.I, (2020) 2 SCC 768***. Paragraph nos.17 (i) to 17 (viii) of the said judgment are quoted below:

> *"**17.1.** If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.*
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> ***17.2.** The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.*
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> ***17.3.** The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.*
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> ***17.4.** If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".*
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> ***17.5.** It is open to the accused to explain away the materials*

giving rise to the grave suspicion.

17.8. *There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.*

17.7. *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.*

17.6. *The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons."*

19. Coming to the facts of the present case, without appreciating the evidence, the contents of the F.I.R as well as the legal issues which has been dealt hereinabove, the case of the petitioner comes within the guided principle of discharge and in view of that the facts, reasons and analysis, the Court finds that the petitioner is fit to be discharged in the case in hand.

20. Accordingly, order dated 06.06.2018 passed by the learned Sessions Judge, Godda, in Criminal Revision No.32 of 2017, whereby the said petition has been dismissed and the learned court has affirmed the order dated 27.07.2017 passed by the learned Judicial Magistrate, First Class, Godda in connection with Poraiahat P.S. Case No.162 of 2009, corresponding to G.R. No.894 of 2009, pending in the court of learned Judicial Magistrate, First Class, Godda are set aside.

21. The petitioner is hereby discharged from the case in connection with Poraiahat P.S. Case No.162 of 2009, corresponding to G.R. No.894 of 2009, pending in the court of learned Judicial Magistrate, First Class, Godda.

(Sanjay Kumar Dwivedi, J.)

SI/, A.F.R.