



A.F.R.



2025:AHC:225699

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 40092 of 2024

Pawan Kumar
Singh And 3 Others

.....Applicant(s)

Versus

State of U.P. and
Another

.....Opposite Party(s)

Counsel for Applicant(s)	: Abhishek Bhushan, Dinesh Singh, Sr. Advocate
Counsel for Opposite Party(s)	: Anand Kumar, G.A., Pankaj Kumar, Shyam Singh

Court No. - 82

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Shri R.R. Shukla, Advocate holding brief of Shri Dinesh Singh, learned counsel for the applicants and Shri Pankaj Kumar Tripathi, learned AGA for the State.
2. Learned counsel for the applicants submits that he has filed the instant application under Section 482 Cr.P.C. with the **relief** which has been mentioned in the prayer clause of the application.
3. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the present criminal application and quash the summoning order dated 28.05.2024 passed in Criminal Case No. 157 of 2024 for the offences under Section 354A, 504 and 506 Indian Penal Code pending before the Court of Civil Judge, Junior Division FTC/offences against woman, Mirzapur and also quash the further proceedings Criminal Case No. 157 of 2024 emanating from Charge Sheet dated 29.01.2024 arising out of Case Crime No. 369 of 2023, PS-Kotwali Chunar, Mirzapur, for the offences under Section 354A, 504 and

506 Indian Penal Code pending before the Court of Civil Judge, (Junior Division) FTC/offences against woman, Mirzapur, otherwise the applicants shall suffer irreparable loss and hardship."

4. **Learned counsel for the applicants submits** that opposite party No.2 lodged the First Information Report (F.I.R.) with allegations of molestation and making indecent comments against her, who is a lady. On the facts so alleged in the First Information Report, the F.I.R. was registered as Case Crime No. 369 of 2023, Police Station Kotwali Chunar, Mirzapur, under Section 354A, 504 and 506 of the Indian Penal Code.

5. Learned counsel for the applicants further submits that the victim, i.e. opposite party No.2, in her statements recorded under Sections 161 and deposition recorded under Section 164 Cr.P.C., has not supported the version of the F.I.R. However, after investigation, the police has submitted charge-sheet under Sections 354A, 504 and 506 I.P.C. against the applicants. Learned counsel for the applicants further submits that the present case is a counter blast, as disciplinary proceedings had earlier been initiated against the opposite party No.2 (Victim) by the department.

6. **Per contra, learned A.G.A. submits** that the F.I.R. is not an encyclopedia. Therefore, the victim, i.e. opposite party No.2, has disclosed other facts which occurred with her at a later stage and the charge-sheet has been submitted in accordance with law and the learned Judicial Magistrate has taken cognizance on the sections mentioned in the charge-sheet.

7. On perusal of the record, it transpires that the learned Magistrate has taken cognizance on the charge-sheet as per law and if no offence is made out under the sections mentioned in the charge-sheet, the same can be examined at a later stage, as remedy is available to the accused under Section 239 Cr.P.C. (corresponding Section 262 B.N.S.S.) at the stage of framing of charges, where the accused shall be provided an opportunity of hearing. Thus, quashing/setting aside the cognizance order amounts to

discharge at an early stage and adding or subtracting, excluding or including any section also amounts to alteration of charge for which an appropriate stage is provided under Sections 216, 218 and 221 Cr.P.C. (corresponding Sections 239, 241 and 244 B.N.S.S.) for alteration of charge, separate charge for distinct offence and cases where it is doubtful as to what offence has been committed. The provisions mentioned in Section 216, 218, 221 Cr.P.C. (corresponding Section 239, 241, 244 BNSS) delineated below:

"Section 216 Cr.P.C., Court may alter charge- (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Section 218 Cr.P.C., Separate charges for distinct offences- (1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately.

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Section 221 Cr.P.C., Where it is doubtful what offence has been committed- (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any

of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Section 239 B.N.S.S., Court may alter charge- *(1) Any Court may alter or add to any charge at any time before judgment is pronounced.*

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Section 241 B.N.S.S., Separate charges for distinct offences- *(1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately.*

Provided that *where the accused person, by an application in writing, so desires and the Court is of opinion that such person is not likely to be prejudiced thereby, the Court may try together all or any number of the charges framed against such person.*

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 242, 243, 244 and 246.

Section 244 B.N.S.S., Where it is doubtful what offence has been committed- *(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.*

(2) If in such a case the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

8. The material collected by the Investigating Officer during investigation is not evidence as per the Indian Evidence Act, 1872 or Bharatiya Sakshya Adhiniyam, 2023. The term "evidence" is defined under Section 3 of the Indian Evidence Act, 1872 as well as under Section 2(1)(e) of the Bharatiya Sakshya Adhiniyam, 2023, which are delineated below respectively:

***Evidence-**"Evidence" means and includes— (1) **all statements** which the **Court permits** or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;*

(2) all documents including electronic records produced for the inspection of the Court;

such documents are called documentary evidence.

***Section 2(1)(e) "Evidence"** means and includes— (i) **all statements** including statements given electronically which the **Court permits** or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;*

(ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

9. The remedy is available to the accused to seek discharge from the offences mentioned in the charge-sheet or cognizance-cum-summoning order. The Hon'ble Supreme Court in **State of Gujarat v. Girish Radhakrishnan Varde**, (2014) 3 SCC 659, has observed in paragraphs 13 and 14 of the judgment that the Judicial Magistrate or court cannot add or subtract, exclude or include any Section mentioned in the charge-sheet at the time of taking of cognizance as the same is permissible at the time of framing of charge. The relevant paragraphs are delineated below:

"13. But if a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police

*which alone is legally entitled to conduct the investigation and, thereafter, submit the chargesheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the chargesheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and **the magistrate cannot exclude or include any section into the chargesheet after investigation** has been completed and chargesheet has been submitted by the police.*

*14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be **precluded from seeking a remedy** if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the **prosecution** cannot be allowed to suffer prejudice by ignoring **exclusion of** the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for **taking cognizance** after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report **cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C.** as the case may be which means that after submission of the chargesheet it **will be open for** the prosecution to contend before the appropriate trial court **at the stage of framing of charge** to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. **Simultaneously, the accused also has the liberty** at this stage to submit whether the **charge** under a particular provision should be framed or not and this is the **appropriate forum in a case based on police report** to determine whether the **charge can be framed** and a particular section can be **added or removed depending upon the material collected during investigation** as also the **facts disclosed in the FIR and the chargesheet.***

(Emphasis supplied)"

10. The accused has a remedy to move a discharge application before the concerned Magistrate or Sessions Court. The Court, after providing an opportunity of hearing, may either discharge the accused or frame charges against the accused as per the provisions of law mentioned in the Code of Criminal Procedure, 1973 or the Bharatiya Nagarik Suraksha Sanhita, 2023. The relevant provisions are quoted below:

(i). In a **Sessions trial**, under Section 227 Cr.P.C. (corresponding Section 250 B.N.S.S.), an application for discharge is filed while under Section 228 Cr.P.C. (corresponding Section 251 B.N.S.S.), an order for framing of charge is passed. The aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

*"Section 227 Cr.P.C., Discharge- If, upon consideration of the record of the case and the documents submitted therewith and **after hearing the submissions of the accused** and the prosecution in this behalf, the Judge considers that there is **not sufficient ground** for proceeding against the accused, he **shall discharge** the accused and record his reasons for so doing.*

***Section 228 Cr.P.C., Framing of charge-** (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before such Magistrate on such date as he deems fit and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

***Section 250 B.N.S.S., Discharge-**(1) The accused may prefer an application for discharge within a period of Sixty days from the date of commitment of the case under Section 232.*

*(2) If, upon consideration of the record of the case and the documents submitted therewith and **after hearing the submissions of the accused** and the prosecution in this behalf, the Judge considers that there is **not sufficient ground** for proceeding against the accused, he shall **discharge the accused** and record his reasons for so doing.*

***Section 251 B.N.S.S., Framing of charge-**(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before such Magistrate on such date as he deems fit and thereupon such Magistrate shall try the offence

in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court of Session, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

(ii). In the **trial of warrant cases by a Magistrate instituted on a police report**, under Section 239 Cr.P.C. (corresponding Section 262 B.N.S.S.), an application for discharge is filed while, under Section 240 Cr.P.C. (corresponding Section 263 B.N.S.S.), an order for framing of charge is passed. The aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

"Section 239. Cr.P.C., 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.*

Section 240 Cr.P.C., Framing of charge.— *(1) 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, he shall frame in writing a charge against the accused.*

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 262 B.N.S.S., When accused shall be discharged- *(1) The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under Section 230.*

(2) If, upon considering the police report and the documents sent with it under Section 193 and after 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.

Section 263 B.N.S.S., Framing of charge- *(1) 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 the Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

(iii). In the **trial of warrant cases by a Magistrate instituted otherwise than on a police report**, i.e. on a **complaint**, under Section 245 Cr.P.C. (corresponding Section 268 B.N.S.S.), an application for discharge is filed while, under Section 246(1) Cr.P.C. (corresponding Section 269(1) B.N.S.S.), an order for framing of charge is passed. The aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

“Section 245 Cr.P.C., When accused shall be discharged- (1) *If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that **no case against the accused has been made out** which, if unrebutted, would warrant his conviction, the Magistrate shall **discharge him**.*

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless.

Section 246(1) Cr.P.C., Procedure where accused is not discharged- (1) *If, when such evidence has been taken or at any previous stage of the case, 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, he shall frame in writing a charge against the accused.*

Section 268 B.N.S.S., When accused shall be discharged-- *If, upon taking all the evidence referred to in Section 267, the Magistrate considers, for reasons to be recorded, that **no case against the accused has been made out** which, if unrebutted, would warrant his conviction, the Magistrate shall **discharge him**.*

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 269(1) B.N.S.S., Framing of charge- (1) *If, when such evidence has been taken or at any previous stage of the case, 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, he shall frame in writing a charge against the accused.”*

11. After framing of charge, if the accused does not plead guilty, the trial court shall call the prosecution witnesses and the accused shall be given an opportunity of hearing to cross-examine the witnesses and lead evidence and before entering into defence, the Court may acquit the accused under Section 232 Cr.P.C. (corresponding Section 255 B.N.S.S.) in a Sessions trial. In the case of trial of warrant cases, the accused shall be provided an opportunity of hearing to cross-examine the prosecution witnesses under Sections 242 and 246(4) Cr.P.C. (corresponding Sections 265 and 269(4) B.N.S.S.). The provisions mentioned in the aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

***“Section 232 Cr.P.C., Acquittal-** If, after taking the evidence for the prosecution, **examining the accused and hearing the prosecution and the defence on the point**, the Judge considers that there is **no evidence** that the **accused** committed the offence, the Judge shall record an order of **acquittal**.*

***Section 242 Cr.P.C., Evidence for prosecution-** (1) If the accused refuses to plead or does not plead or claims to be tried or if the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses.*

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

***Section 246(4) Cr.P.C., Procedure where accused is not discharged-** (4) If the **accused** refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether **he wishes to cross-examine any**, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.*

***Section 255 B.N.S.S., Acquittal-** If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is **no evidence** that the **accused** committed the offence, the Judge shall record an order of **acquittal**.*

***Section 265 B.N.S.S., Evidence for Prosecution-** (1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 264, the Magistrate shall fix a date for the examination of witnesses:*

***Provided that** the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.*

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

***Provided that** the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination:*

***Provided further that** evidence of a witness under this sub-section may be recorded by audio-video electronic means.*

***Section 269(4) B.N.S.S.,** If the accused refuses to plead, or does not plead or claims to be tried or if the **accused** is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he **wishes to cross-examine any**, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.”*

13. Before the stage of framing of charge, remedy is available to the accused as per the conditions mentioned in the judgments of **Arnesh Kumar vs. State of Bihar; 2014 (8) SCC 273** and **Satyendra Kumar Antil vs. Central Bureau of Investigation and Another; 2021 (10) SCC 773**, that the accused may not be taken into custody during investigation for the offence mentioned in the F.I.R. and the accused may file a writ petition for quashing of the F.I.R. or for stay of arrest during investigation or move an application for anticipatory bail or regular bail before the competent Court and participate in the discharge proceedings.

14. In view of the aforesaid facts and circumstances of the case, this Court is not inclined to grant any relief to the applicant as prayed in the prayer clause as the issue has already been settled by the Hon’ble Supreme Court in the case of **State of Gujarat v. Girish Radhakrishnan Varde; (2014) 3 SCC 659**, in paragraphs 13 and 14 of the judgment.

15. Accordingly, the application is **dismissed**.

16. The trial court is directed to frame charge in accordance with law.

(Praveen Kumar Giri,J.)