



2026:AHC:4543

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1467 of 2024

Avanish Chandra Srivastava

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Neeja Srivastava, Ritesh Singh, Suresh Singh, Sr. Advocate, Veerendra Singh

Counsel for Opposite Party(s) : G.A.

Court No. - 84

HON'BLE CHAWAN PRAKASH, J.

1. Heard Mr. V. P. Srivastava, learned Senior Advocate assisted by Mr. Veerendra Singh, learned Counsel for the revisionist and learned A.G.A. for the State.

2. The instant criminal revision has been filed against the order dated 07.02.2024, passed by the learned Chief Judicial Magistrate, Kaushambi, whereby the discharge application moved by the revisionist, in Case No. 286 of 2007, State v. Avanish Chandra Srivastava and others, under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C., arising out of Case Crime No. 28 of 2004, registered at Police Station Manjhanpur, District Kaushambi, has been rejected.

3. It is submitted by Mr. V. P. Srivastava, learned Senior Advocate that on 29.03.2004, opposite party no.2 lodged an F.I.R., which was registered as Case Crime No. 28 of 2004, under Section 409 I.P.C, Police Station Manjhanpur, District Kaushambi with the allegation that the revisionist has not handed over the charges and also has not submitted relevant papers of rural development to the concerned Officer, after being relieved. It was further alleged that he prepared some receipt/bill voucher after making forged signature.

4. On 31.12.1981, the revisionist was appointed as Junior Clerk in the Office

of the District Panchayat Raj Officer, Mirzapur. In the month of April, 1982, he was transferred from District Mirzapur and he joined the same post in Block Manjhanpur (then District Allahabad). He was promoted to the post of Accountant in the year 1996 and in the year 1997 he was transferred to District Kaushambi and attached in the office of the District Development Officer, Kaushambi. Ultimately, in the year 2000, he was attached with the office of the District Panchayat Raj Officer, Kaushambi till 17.12.2003. Thereafter, he was relieved from that office and was transferred to the office of Block Development Officer Sarsawa, District Kaushambi and then on 31.12.2022, he retired after attaining the age of superannuation.

5. After registration of F.I.R., the investigation was proceeded and the Investigating Officer interrogated the first informant Mohan Singh Dohare, Kamal Narayan Singh and Chandrama Prasad Pandey. During investigation, the Investigating Officer collected the applications send by one Indra Pal Sonkar mentioning in it that two files were not handed over to him. The Investigating Officer recorded supplementary statement of one Chandrama Prasad Pandey and the first informant. Thereafter, he collected affidavit of Dr. Vinay Kumar Upadhyay and recorded his statement. He also recorded the statements of co-accused Indra Pal Sonkar. In the meanwhile, the Investigating Officer was changed and new Investigating Officer started investigating the matter on 28.05.2006.

6. It is further submitted that the allegations made against the revisionist are totally incorrect and baseless. In the investigation, nothing was found against the revisionist but co-accused Indra Pal Sonkar was found to be guilty. The revisionist in his statement has clearly stated that he was transferred from his post and he handed over the charges to the District Panchayat Raj Officer, Kaushambi on 17.12.2003, including files in question. He also handed over Rs. 11,392/- and Rs. 40,000/- in cash to him. It is further submitted that the Investigating Officer filed a charge-sheet on 24.12.2006 against the revisionist and co-accused Indra Pal Sonkar under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C and the learned Magistrate, took cognizance on 21.02.2007. During investigation, it became quite clear that the said two files, which were stated to have been missing, was received by co-accused Indra Pal Sonkar. Thus, no offence against the revisionist is made out. The files in question were found in almirah of Indra Pal Sonkar when it was

opened by the expert before the official concerned. A disciplinary proceedings was also initiated against the revisionist in which he was found innocent and ultimately exonerated on 25.08.2023 on the basis of the fact that the missing files were found in almirah of Indra Pal Sonkar.

7. The next contention of the learned Counsel for the revisionist is that the revisionist had filed an application under Section 482 Cr.P.C., being Application U/s 482 No. 41651 of 2023, which was disposed of by this Court *vide* order dated 29.11.2023 and a liberty was given to the revisionist to file a discharge application before the Trial Court. The revisionist filed a discharge application before the learned Chief Judicial Magistrate, Kaushambi by submitting all the documents but the learned Magistrate did not consider the said application as well as supporting documents and rejected the same. The learned Magistrate has committed illegality in rejecting the said application and the said order is liable to be set aside and the revision may be allowed.

8. *Per contra*, learned Counsel for opposite party no.2 and learned A.G.A. have stated that the learned Magistrate has not committed any illegality in passing the impugned order because the revisionist neither handed over the charges nor submitted the relevant papers of Rural Development to the concerned Officer after being relieved and he prepared some receipt/ bill voucher by a forged signature. During investigation, the Investigation Officer had recorded the statement of the witnesses and also interrogated the matter in depth. He also collected some documents and filed a charge-sheet against the revisionist. The learned Magistrate took cognizance on the charge-sheet. The revisionist had also filed an application under Section 482 Cr.P.C. before this Court for quashing the charge-sheet dated 24.12.2006, but this Court disposed of that application by stating that a *prima facie* offence is made out against the revisionist. The revisionist has filed a discharge application with additional documents, which are not the part of the charge-sheet. At the time of hearing on discharge application, learned Magistrate has taken into consideration the Police report and the documents sent with it under Section 173 Cr.P.C. The documents or the defence of the accused cannot be taken into consideration while passing an order on discharge application. Thus, the learned Magistrate has not committed any illegality in passing the impugned order and the revision is liable to be

dismissed.

9. As per the fact of the present case, a First Information Report was registered as Case Crime No. 28 of 2004 under Section 409 I.P.C. at Police Station Manjhanpur District Kaushambi with an allegation that the revisionist has not handed over the charges and also not submitted the relevant papers of the Rural Development to the concerned Officer after being relieved. It was further alleged in the F.I.R. that the revisionist has prepared some receipt/bill voucher after making forged signatures. The Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. He has also interrogated the revisionist and co-accused. During investigation, he collected certain documents and after completion of investigation a charge-sheet was filed on 24.12.2006, under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C, in which the learned Magistrate took cognizance on 21.02.2007.

10. The revisionist has filed a discharge application before the Trial Court annexing with it the report of disciplinary inquiry dated 25.08.2023, in which he was exonerated. The learned Magistrate has dismissed the said application stating that at the time of passing of an order on application under Section 239 Cr.P.C., the Police report and the documents annexed along with it would be taken into consideration.

11. Section 239 Cr.P.C. reads as under:

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

12. As per aforesaid Section, if, upon considering the police report and the documents sent with it under section 173 Cr.P.C. 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, he shall discharge the accused, it means at the time of passing of an order on application filed under Section 239

Cr.P.C. only the police report and the document submitted along with it would be taken into consideration.

13. In respect of warrant cases triable by Magistrates, instituted on police report, Sections 239 Cr.P.C. and 240 Cr.P.C. are the relevant statutory provisions. Section 239 Cr.P.C. requires the Magistrate to consider on the Police report and the documents sent with it under Section 173, and, if necessary, examine the accused after giving him an opportunity of being heard, if Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording the reason thereof.

14. As per settled provision of law, at the stage of framing of charge, it is not obligatory for the Judge to consider, in any detail and weigh in a sensitive balance, whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and at that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

15. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 Cr.P.C. in a case triable by it; cases instituted upon a police report are covered by Section 239 Cr.P.C. and cases instituted otherwise than on a police report are dealt with in Section 245 Cr.P.C. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the Code, the Trial Court is required to discharge the accused if it considers that there is not sufficient ground for proceeding against the accused. However, discharge under Section 239 Cr.P.C. can be ordered when the Magistrate considers the charge against the accused to be groundless. The power to discharge is exercisable under Section 245(1) Cr.P.C. when, the Magistrate considers, for reason to be recorded that no case against the accused has been made out which, if un rebutted, would warrant his conviction.

16. Section 227 Cr.P.C. and Section 239 Cr.P.C. provide for discharge

before the recording of the evidence on the basis of police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245 Cr.P.C., on the other hand, is reached only after the evidence referred in Section 244 Cr.P.C. has been taken.

17. Thus, there is difference in the language employed in these provisions. But, 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 proceedings against the accused.

18. It is also settled principle of law that the Magistrate, at the stage of framing charges, has to see whether the facts alleged and sought to be proved by the prosecution *prima facie* disclose the commission of offence on general consideration of the material placed before him by the investigating Officer. It is well settled that at the stage of framing of charge, the defence of the accused cannot be put forth. In other words, it can be said that at the time of framing of charge or taking cognizance, the accused has no right to produce any material.

19. In the present case, an F.I.R. as Case Crime No. 28 of 2004 was registered against the revisionist with an allegation that the revisionist has not handed over the charges and also has not submitted relevant papers of rural development to the concerned Officer, after being relieved. It was further alleged that he prepared some receipt/bill voucher after making forged signature. During investigation, the Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. and also collected the documentary evidence. After completion of investigation, a charge-sheet was filed on 24.12.2006 against the revisionist and co-accused Indra Pal Sonkar under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C. and the learned Magistrate took cognizance on 21.02.2007.

20. At the time of deciding the discharge application, the Court has to see whether a *prima facie* case against the accused is made out or not. In the present case, a *prima facie* case is made out against the revisionist. Moreover, the departmental inquiry, in which the revisionist was stated to be exonerated, was conducted after filing of the charge-sheet and thus, the inquiry report cannot be taken into consideration at the time of deciding the

discharge application.

21. Before imparting the order, it is relevant to mention here that in the present case the discharge application filed by the accused was dismissed by the learned Chief Judicial Magistrate, Kaushambi *vide* order dated 07.02.2024 but no charge has been framed by the concerned Court against the accused persons till date. This Court has come across with a number of criminal revisions in which the learned Trial Courts, while dismissing the application filed by the accused seeking discharge of any case, are fixing the case for framing of charges after about one month and, in some other cases, the Trial Courts are not framing charges against the accused persons on the pretext that criminal revisions are pending before High Court against the impugned order. This Court has observed in many cases that the Trial Court usually defer final hearing of the cases as soon as the parties prefer an appeal, revision or writ before the superior court, even if no order is passed by the the superior Courts granting stay of further proceedings.

22. It is relevant to reproduce here Sections 227, 228, 239 and 240 Cr.P.C., which reads as under:

"227. 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.

228. 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 the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, 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.

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

240. 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."

23. As per the above mentioned sections, in case the Sessions Court did not discharge the accused as per Section 227 Cr.P.C. or the learned Magistrate did not find any ground to discharge the accused under Section 239 Cr.P.C., then unless the order rejecting the discharge application was challenged and stayed by the Higher Court, the Sessions Court and the Magistrate Courts are statutory bound to frame charges against the accused under Section 228 Cr.P.C. and 240 Cr.P.C. respectively. It is a settled provision of law that merely filing of criminal revision or criminal appeal against any order, does not amount that the proceedings of the said Court, has been stayed.

24. Upon considering the facts of the present case and on taking into consideration the order passed by the learned Magistrate, this Court is of opinion that the learned Magistrate has not committed any illegality in

rejecting the said discharge application. Hence, this revision is liable to be dismissed.

25. Accordingly, this revision is **dismissed**.

26. Let a copy of this judgment be circulated amongst all the District Courts by the Registrar (Compliance) with a direction that the learned District Judges shall impress upon all the Judicial Officers in the Judgeship that in case any discharge application is dismissed by the Trial Court then unless the order rejecting the discharge application is challenged and stayed by the High Court, the Trial Courts are under statutory duty to frame charges against the accused and merely filing of an appeal, revision or even a writ petition against an order or judgment shall not be considered any valid or justifiable ground to say the proceedings of a case unless the superior Court grants stay order of further proceedings.

(Chawan Prakash,J.)

January 8, 2026

Vijay