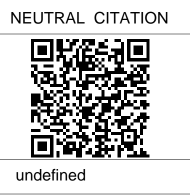

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 536 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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JAYDEEPSING PRAVINSINH CHAVDA & ORS.
Versus
STATE OF GUJARAT

==

Appearance:
MR TEJAS BAROT, SENIOR ADVOCATE WITH MS RHEA CHOKSHI(10808) for the Applicant(s) No. 1,2,3
MR SM JOSHI, ADDL.PUBLIC PROSECUTOR for Respondent(s) No. 1

==

CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 09/05/2024
CAV JUDGMENT

1. This revision under Section 397 read with Section 401 of the Cr.P.C. challenges the order passed below Exhibit-19 in Sessions Case No.151 of 2021 whereby learned 2nd Additional Sessions Judge, Mehsana declined to discharge the petitioners – accused from offence punishable under Section 306, 498A and 114 of IPC.

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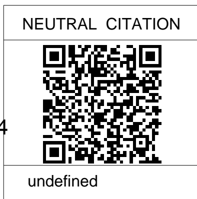

2. The facts which can be outlined in brief are as under :-

2.1 The petitioner No.1 and deceased wife were married in the year 2009 and thereafter the deceased wife was living with her matrimonial house. During the wedlock the deceased wife gave birth to a child named Kanji. It is alleged that accused petitioners sold away the gold ornaments of the deceased and when the deceased used to demand her gold ornaments, she was subjected to physical and mental cruelty by the petitioners. Ultimately, on 18.04.2024, the deceased committed suicide. Thereafter, FIR came to be filed against the petitioners and the case was committed to Sessions Court. Petitioners earlier filed quashing petitions before this Court which were disposed of vide order dated 28.06.2023. Thereafter, petitioners filed SLP (Criminal) No.9461 of 2023 before Hon'ble Supreme Court which also came to be withdrawn by the petitioners *vide* order dated 11.08.2023. Thereafter, the petitioners preferred application for discharge of the offence before the learned Sessions Judge and the same came to be rejected *vide* order dated 28.02.2024. Hence, the present revision.

3. Heard learned Senior Advocate Mr.Tejas Barot assisted by learned advocate Ms.Riya Choksi appearing for the petitioners – accused and learned APP Mr.Soham Joshi representing the State.

4. Starting with the previous proceedings taken place in the above said offence, learned Senior Advocate Mr.Tejas Barot would submit that the petitioners – accused have previously preferred Criminal Misc. Application No.12431 of 2021 as well as

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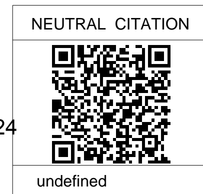

Criminal Misc. Application No.11831 of 2021 before this Court under Section 482 of the Cr.P.C. for quashing the FIR against the petitioners claiming it to be an abuse of process of law. The coordinate Bench of this Court by two different judgments dated 28.06.2023 and 12.07.2023 dismissed both the Criminal Misc. Applications and declined to quash the FIR. The issue carried to the Hon'ble Supreme Court by filing SLP (Criminal) No.9461 of 2023 wherein Hon'ble Supreme Court was not inclined to admit the petition and hence, it was withdrawn leaving it open to the petitioners to avail such other remedy as may be available under the law in particular Cr.P.C. before the learned Trial Court or any other forum.

5. Learned Senior Advocate Mr.Tejas Barot would submit that thereafter the petitioners preferred discharge application before the learned Trial Court *vide* Exhibit-19 and the same was declined. The petitioners have therefore approached this Court by way of this revision. After narrating the previous proceedings taken place between the parties, it is mainly argued by learned Senior Advocate that admittedly in a case on hand the marriage span is of twelve years and during the last twelve years, no FIR/ complaint or any other proceeding was filed establishing that there was scuffle / dispute between the husband and wife. He would further submit that in view of marriage span of twelve years, the presumption under Section 113-A of the Evidence Act would not arise in the present case.

6. Learned Senior Advocate Mr.Barot would further submit that basic necessity for establishing the offence under Section

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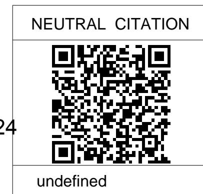

306 of IPC, it is essential to establish the offence under Section 107 of IPC. The accused must have done something or has not done something which has direct nexus with the suicide of the deceased and such act or omission of act must have resulted into suicide of the deceased. In the present case, there is no act alleged to have been done by the petitioners/accused in proximity or link with the suicide of the deceased. Learned Senior Advocate would submit that *prima facie* the abetment is failed to be established in the present case, even if evidence on record is taken as it is. He would further submit that even if the charge-sheet papers are taken as gospel truth, no allegation of any positive act on the part of the petitioners which induce the deceased to commit suicide, are *prima facie* visible. Therefore, it is submitted that learned Sessions Judge has committed serious error in denying the discharge application. He would further submit that the charge-sheet papers if taken as proven evidence it at the most indicates general allegation of extending physical and mental torture to the deceased by the accused. No specific time, date or day are stated in charge-sheet papers to establish cruelty and harassment.

7. Learned Senior Counsel would further submit that according to FIR and other charge-sheet papers which includes the statements of witnesses, the incident of taking away gold ornaments of the deceased and to sell it by the accused is stated to have happened in twelve months back of the incident of suicide. Therefore, there is no positive act which was in immediate past and have proximity with suicide of the deceased. The incident which is alleged to have taken place a year back

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could not be a ground to commit the suicide. Therefore, there is no reason to believe that the prosecution has sufficient evidence to send the accused for the trial. To buttress the submissions, learned Senior Counsel would refer to the recent judgment of Hon'ble Supreme Court in case of **Kumar @ Shiva Kumar vs. State of Karnataka – 2024 SCC Online SC 216**, wherein the earlier judgments are referred to. He would refer to para 80 thereof to submit that there are end number of possibilities for committing the suicide as human mind or his thought process are untraceable. It is mysterious aspect and there are several reasons which may change from person to person which would be the reasons to commit suicide, but suicide of the deceased cannot be clubbed with the accused until any positive act on the part of the accused is established. Para 80 thereof reads as under :

> *"80. Human mind is an enigma. It is well neigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit suicide: it may be a case of failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging to the marginalized sections, joblessness, financial difficulties, disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth. Therefore, it may not always be the case that someone has to abet commission of suicide. Circumstances surrounding the deceased in which he finds himself are relevant."*

8. Learned Senior Counsel would further submit that mere allegation of harassment without establishing any continuous harassment or without any positive action on the part of the accused proximate to the time of occurrence which led the

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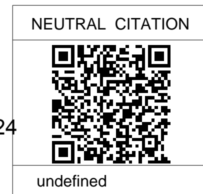

deceased to commit suicide cannot be considered as offence under Section 306 of IPC. He would further submit that abetment by a person is said when a person instigate another to do something. He would further submit that instigation can be inferred when the accused had, by his act or omission create such circumstances that the deceased was left with no alternative except to commit suicide. Learned Senior Counsel would further submit that in the instant case the prosecution has failed to establish such incident, *prima facie* even if the charge-sheet papers are believed to be true. He would submit that the deceased may be hyper-sensitive to ordinary petulance, discord and difference in domestic life which is quite common to the society to which the deceased belonged to may commit suicide but it would not fall in the definition of abetment.

9. Referring to recent judgment of Hon'ble Supreme Court in case of **Naresh Kumar vs. State of Haryana – (2024) 3 SCC 573**, learned Senior Advocate would submit that mere harassment which is said to have been meted to the deceased itself is not a reason to presume that the deceased was continuously under harassment and therefore, she committed suicide. Criticizing the impugned order, learned Senior Advocate would submit that the learned Sessions Court has not considered the discharge application from this but legal point of view and has failed to address and discuss the issue and material which are argued before it and as such learned Trial Court has committed serious error in rejecting the discharge application.

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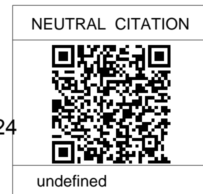

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10. Referring to the scope of discharge of accused, learned Senior Counsel has referred to judgment of Hon'ble Supreme Court in case of **P. Vijayan vs. State of Kerala – (2010) 2 SCC 398** and more particularly paragraphs 10, 11 and 25, to submit that at the time of deciding the discharge of the accused under Section 227 of the Cr.P.C., the Court has to sift the evidence to find out whether or not there is strong and sufficient suspicion available against the accused in the proceedings. The Court certainly cannot evaluate the evidence as it could do during the trial but the Court is undoubtedly power to sift and weigh the evidence for the limited purpose of finding out about the existence of the *prima facie* case against the accused and to find out sufficiency of the evidence to frame the charge.

11. Learned Senior Counsel submit that in the present case the learned Trial Court has failed to adhere to its legal duty to sift and weigh the evidence on limited circumference to find out that whether sufficient evidence and more particularly evidence of abetment to do things are available. Learned Senior Advocate would further submit that not even a whisper of word has been discussed by the learned Sessions Judge in the impugned order which can demonstrate that for the limited purpose the learned Sessions Judge has sifted and weighed the evidence on record and satisfied that there is sufficient aspect to frame charge against the accused. Thus, it is submitted that order impugned is full of error and as such needs to be corrected.

12. On the scope of discharge application under Section 227 of the Cr.P.C., another judgment relied upon by the learned Senior

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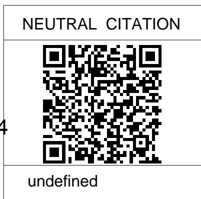

Advocate is in the case of **L. Krishna Reddy vs. State by Station House Officer – (2014) 14 SCC 401**, more particularly paragraphs 8 to 12 therein.

13. Another judgment in case of **Balwantsinh Khengaji Jadeja vs. V.B.Rathod, being Special Criminal Application No.446 of 2016** is also referred to by the learned Senior Counsel to argue that the ratio laid down therein has not been followed by the learned Court below and as such has committed serious error.

14. For the foregoing submissions, learned Senior Counsel would submit to allow this revision and request to interdict the impugned order and to grant the relief as prayed for in the revision.

15. To buttress his contentions, learned Senior Counsel has referred to various judgments. They are as under :

(i) Mahendra K.C. Vs. State of Karnataka – (2022) 2 SCC 129. (Relevant para 23-26)

(ii) Ramesh Kumar vs. State of Chhatisgarh – (2001) 9 SCC 618. (Relevant para 20-22)

(iii) Chitresh Kumar Chopra vs. State (Government of NCT of Delhi). (Relevant para 15-21)

(iv) Ude Singh and others vs. State of Haryana – (2019) 17 SCC 301. (Relevant para 16)

(v) Shabbir Hussain vs. State of Madhya Pradesh and others – 2021 SCC Online SC 743. (Relevant para 5-7)

(vi) Amalendu Pal alias Jhantu vs. State of West Bengal – (2010) 1 SCC 707. (Relevant para 12-13)

(vii) Vaijnath Kondiba Khandke vs. State of Maharashtra – (2018) 7 SCC 781. (Relevant para 5,7-8)

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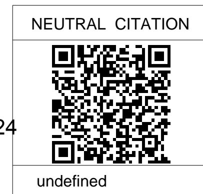

(viii) Mangat Ram vs. State of Haryana – (2014) 12 SCC 595. (Relevant para 24,27-28)

(ix) M. Mohan vs. State – (2011) 3 SCC 626. (Relevant para 40-49)

(x) Geo Varghese vs. State of Rajasthan – 2021 SCC Online SC 873. (Relevant para 17 to 23,40)

(xi) Mariano Anto Bruno and another vs. Inspector of Police – 2022 SCC Online SC 1387. (Relevant para 28 to 30, 40,42,48)

(xii) M. Arjunan vs. State – (2019) 3 SCC 315. (Relevant para 6-7)

(xiii) S.S. Chheena vs. Vijay Kumar Mahajan and another – (2010) 12 SCC 190. (Relevant para 13-25, 26, 27)

(xiv) Narendrakumar Manjibhai Panchotiya vs. State of Gujarat, being Criminal Revision Application No.553 of 2024. (Relevant para 8-10)

16. On the other hand, learned APP appearing for the State would submit that the petitioners firstly remained unsuccessful in getting the relief in quashing petitions now has moved the discharge application. Thus, it is second round of litigation. He would further submit that undoubtedly scope, ambit and power of the Court under Section 482 of Cr.P.C. is wide enough in the nature to see that any illegality is committed which abuses the process of law. He would further submit that in the present case, the present petitioners have availed remedy under Section 482 of Cr.P.C. unsuccessfully after filing of the chargesheet, meaning thereby when the coordinate Bench has decided the quashing petitions on merits, all the chargesheet papers were available with the coordinate Bench and after examining those chargesheet papers, the coordinate Bench did not find it fit to

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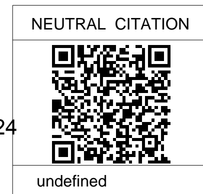

exercise wider jurisdiction under Section 482 of Cr.P.C. The order passed by coordinate Bench is confirmed by Hon'ble Supreme Court. In this circumstance, the question does not arise to discharge the accused and therefore learned Sessions Court has rightly declined to grant the relief of discharge. He would further submit that there are several statements of witnesses in charge-sheet which indicates that deceased was under continuous harassment since long and meted with cruelty since last one year when gold ornaments of the deceased was snatched away by petitioners and sold out against wishes of deceased. When the deceased had asked about the gold ornaments, she was subjected to physical and mental cruelty at the hand of the petitioners which later on ended in suicide committed by deceased. So there is a *prima facie* evidence available in charge-sheet papers against petitioners, which permit the learned Sessions Judge to frame charge against the accused. He would further submit that at the time of framing of charge Court is not required to appreciate the evidence and to see that whether the available evidence is sufficient to convict the accused or there is evidence in the nature of beyond reasonable doubt is available. It is sufficient for the Court to reach to the subjective satisfaction that there are sufficient evidence on record to frame charge against the accused and to start trial. Referring to the statement of witness on page 55 and 56, learned APP would submit that these statements forming part of the charge-sheet are sufficient to establish strong suspicion against the accused and therefore, he submits to dismiss this revision.

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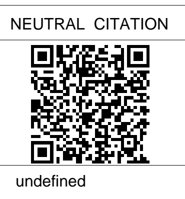

17. I have given my anxious thoughts to the rival submissions made by the learned counsels for the parties and I also apply my mind to the material on record. At the outset, I may refer to Section 227 of the Cr.P.C. which reads as under :

> ***"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."*

18. In the case of **State of Tamil Nadu v/s. R. Soundirarasu - (2023) 6 SCC 768**, the Hon'ble Apex Court after referring to Sections 227, 228, 239, 240 and 245 of Cr.P.C., vividly and exhaustively discussed the scope, ambit and power of Court for discharge. Relevant are para 53 to 70 which reads as under :-

> *"53. The aforestated Sections indicate that the CrPC contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. The three Sections contain somewhat different provisions in regard to discharge of the accused. As per Section 227, the trial judge is required to discharge the accused if "the Judge considers that there is not sufficient ground for proceeding against the accused". The obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless". The power to discharge under Section 245(1) is exercisable when "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".*

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54. Sections 227 and 239 respectively provide for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 has been taken.

55. Despite the slight variation in the provisions with regard to discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of "prima facie" case has to be applied — if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

56. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-

> *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is*

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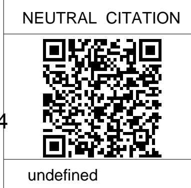

whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

57. Then again in the case of Som Nath Thapa (supra), a three- Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 resply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 resply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) qua the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

"32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

58. In a later decision in Mohanlal Soni (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7)

"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

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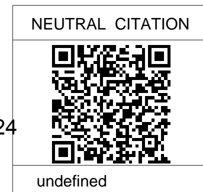

59. Reiterating a similar view in Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another, (2013) 11 SCC 476, it was observed by this Court that while framing charges the court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that the accused had committed the offence and it is not required to evaluate sufficiency of evidence to convict the accused. It was held that the Court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions & inconsistencies in the statement of witnesses cannot be looked into at the stage of discharge.

60. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

61. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not

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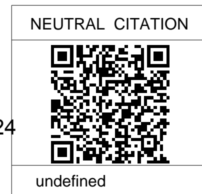

permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See :V.C. Shukla v. State through CBI, AIR 1980 SC 962).

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

63. The learned author Shri Sarkar in his Criminal P.C., 5th Edition, on page 427, has opined as:-

> *"The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S. 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all."*

64. In short, it means that if no prima facie case regarding the commission of any offence is made out, it would amount to a charge being groundless.

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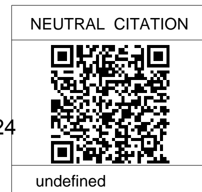

65. In Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra, AIR 1972 SC 545, this Court has stated about the ambit of Section 251(A)(2) of the CrPC 1898, which is in pari materia with the wordings used in Section 239 of the CrPC as follows:-

> *"It cannot be said that the Court at the stage of framing the charge has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in S. 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution."*

66. In para 16, this Court has stated as:-

> *"16.... Under sub-sec. (2), if upon consideration of all the documents referred to in S. 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with sub- sec. (3), according to which, if after hearing the arguments and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chap. XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two subsections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges." (Emphasis supplied)*

67. Thus the word 'groundless', as interpreted by this Court, means that there is no ground for presuming that

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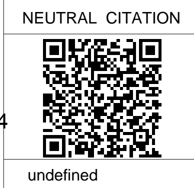

the accused has committed an offence.

68. This Court has again dealt with this aspect of the matter in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, AIR 1980 SC 52. This Court has stated in the said case as:-

> *"At this stage, even a very strong suspicion found upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."*

69. The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words "a very strong suspicion" used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting the offence alleged.

70. Section 239 has to be read along with Section 240 of the CrPC. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations), he may frame charge in accordance with Section 240 of the CrPC. But if he finds that the charge (the allegations or imputations) made against the accused does not make out a prima facie case and does not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused.

71. Indeed in case where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 of the CrPC, the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed, in a case where the Magistrate takes cognizance of an

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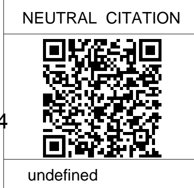

offence without taking note of Section 468 of the CrPC, the most appropriate stage at which the accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify.

72. The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

73. The provisions of discharge under Section 239 of the CrPC fell for consideration of this Court in K. Ramakrishna and others v. State of Bihar and another, (2000) 8 SCC 547, and it was held that the questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by the trial court under Section 239 and the High Court under Section 482. It was observed as follows:-

> *"4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charge. Such an endeavour may be justified during trial but not during the initial stage."*

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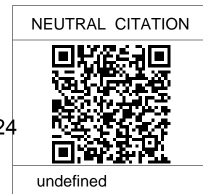

74. In the case of State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath, (2019) 7 SCC 515, this Court observed and held in paragraph 25 as under:-

> *"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)*
>
> *"29. … At this stage, probative value of the materials has tobe 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 law does not permit a mini trial at this stage."*

19. Invariably the settled principle is that, the stage of framing of the charge is since primary and preliminary one, the Court has to apply test of *prima facie* case. If the Court conducting the trial is satisfied that *prima facie* case exists, charge has to be

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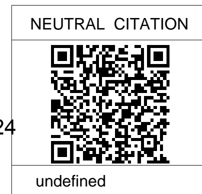

framed. The crystallized judicial view is that at the stage of framing charge, the Court has to *prima facie* consider whether there is sufficient material to proceed further against the accused, is available or not. Appreciation of evidence is absolutely impermissible to conclude whether the material produced is sufficient or not to convict the accused. The theory of probable consequence is required to be applied. The Court is expected to come to the conclusion that commission of offence is probable consequence. Sooner as, the Court conducting the trial reaches to the conclusion that case for framing of charge exists, the relief of discharge would be denied. It is apparent that at the stage of framing charge if the Court thinks that the accused might have committed the offence it can frame the charge. Apparently at the stage of framing the charge, probative value of the material / evidence on record cannot be gone into. The material which the prosecution has produced are to betaken as gospel truth.

20. In **Balwantsinh Khengaji Jadeja (supra)**, the coordinate Bench of this Court after referring various previous judgments of the Supreme Court summarize the position of law as under :

> "*Let me summarise the law referred to above and discussed:*
>
> *(1) The Judge, while considering the question of framing the charges, 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. What do we understand by the term "prima facie". "Prima facie" may be used as an adjective meaning "sufficient to establish a fact or raise a presumption unless disapproved or rebutted". A prima*

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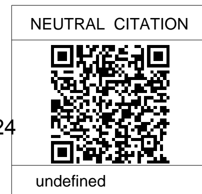

> *facie case is the establishment of a legally required rebuttable presumption.*
>
> *(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
>
> *(3) The test to determine prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a universal law. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence adduced 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) The court concerned, while deciding the discharge application filed by the accused, should not merely act 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 appearing in the case and so on. However, this 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."

21. Reference can also be made to the judgment of the Supreme Court in case of **Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra - AIR 1972 SC 545**. The Supreme Court has stated about the ambit of Section 251(A)(2) of the Cr.P.C. which is *pari materia* with the wordings used in Section 239 of Cr.P.C. which is another provision in Cr.P.C. for discharging the accused, as follows :

> *"It cannot be said that the Court at the stage of framing the charge has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect*

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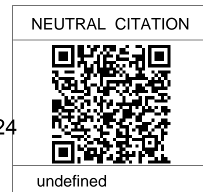

the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in S.173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution."

In para 15, the Supreme Court has stated as :-

"Under sub-sec. (2), if upon consideration of all the documents referred to in S.173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with sub-sec.(3), according to which, if after hearing the arguments and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chap. XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two sub-sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges ."

22. Another judgment which could be referred to is in the case of **Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja - AIR 1980 SC 52**. The Supreme Court has stated in the said case as:-

"At this stage, even a very strong suspicion found upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."

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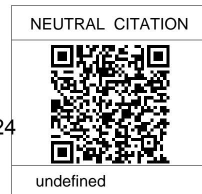

23. What emerges from the above that the Court is required to apply test to evaluate the material and documents on record with a view to find out if the facts emerging from the charge-sheet papers taken at their face value discloses the existence of the ingredients constituting the alleged offence. Whether the charge-sheet papers are so groundless that no ground of presumption presumes that accused has committed offence is emerging or there is no suspicion is founded upon material placed before the Court which led him to prove presumptive opinion as to existence of factual ingredients constituting the offence alleged. The words 'strong suspicion' must not be a strong suspicion of vacillating mind of the Court but it must be founded on the material placed before the Court which led him to form a presumptive opinion about the existence of factual ingredients constituting the alleged offence.

24. Coming back to case on hand, at page 65 there is a statement of witness Ranjitbhai and on page 67 is a statement of witness Mahendrasinh. They are cousins of the deceased. Their statements indicate that the deceased was subjected to physical and mental torture. Even on previous occasion the deceased was meted with physical and mental torture and therefore she had came back to her paternal home. But there she was explained to go back to her matrimonial home and not to disturb her marriage life. It is specifically alleged that the gold ornaments which are given as *Stree Dhan* of the deceased was sold by the petitioners one year back and whenever deceased was demanding her gold ornaments, she was given physical and mental torture and she was given harassment continuously which ultimately led the

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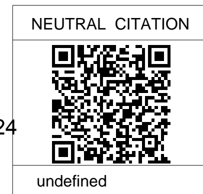

deceased to commit suicide. Another aspect is also stated by the witness that before a week of the incident the marriage was there in the matrimonial home and at that time, deceased demanded her gold ornaments and at that time the deceased was given physical and mental harassment which ultimately led the deceased to commit suicide. All the witnesses have more or less spoken the same in the charge-sheet papers.

25. While rejecting the quashing petition filed under Section 482 of the Cr.P.C., the coordinate Bench in scope and power under Section 482 of Cr.P.C. has also examined the facts of the case. Para 11 of the judgment delivered in Criminal Misc. Application No.12431 of 2021 reads as under :

> *"11. I have considered the rival submissions made at the bar. I have also considered the judgments, which are cited at the bar by the learned advocate for the applicant. There is no doubt that ratio of that judgments is binding to this court, but in the facts and circumstances of the present case, primafacie, it transpires from the bare reading of the FIR that there is continuous harassment due to non-conceive of the deceased after a married life of 05 years and the deceased was given mental and physical torture. Thereafter, due to sell out the golden ornaments, which were given by the father of the deceased at the time marriage to the deceased. Therefore, the deceased has told her father about the mental and physical torture was given by the applicant and family members. Though the said incident was alleged before 12 months, the deceased admittedly staying at matrimonial home and therefore, it can be certainly presumed that when she has given mental as well as physical torture, she made a complaint to his father at the time when she visited her parental home. Therefore, it cannot be said that there is no prima-facie material is available against the applicant. While adjudicating on an application under Section-482 of Cr.P.C., the task of High Court is to determine whether the allegations made in the first*

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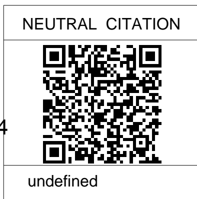

information report or the complaint, even if they are taken at their face value and accepted in their entirety did or did not prima-facie constitute an offence or make out case against the accused. The allegations made in the said FIR clearly attracts the ingredients of Section-306 & 498A of IPC, which are required to decided at the time of conclusion of trial. Since the prima-facie offence is made out and required to be adjudicated by prper criminal trial, this Court is of the opinion that the proceedings initiated pursuant to the quashing of FIR under Section-482 of Cr.P.C. more particularly, considering the observations of the judgments cited by the learned APP in the case of Mahendra K.C. Vs. State of Karnataka reported in (2022) 2 SCC 129, this Court do not think fit to exercise the discretionary powers under Section-482 of Cr.P.C."

26. The judgment and order of the cooperate Bench has been assailed before the Hon'ble Supreme Court in SLP (Criminal) No.9461 of 2023. The order of the Hon'ble Supreme Court reads as under :

"Learned counsel for the petitioner(s) states that these petition(s) may be dismissed as withdrawn leaving it open to the petitioner(s) to avail such other remedy as may be available under law, in particular Cr.P.C., before the Trial Court or any other forum."

27. In backdrop of the above finding if we examine the correctness of the impugned order, paragraph 5 is the reasoning part of the impugned order. It is in vernacular language and for better understanding, it is translated into English and reproduced as under :

"*(5) In view of the above mentioned judgement, the complaint in this case as well as the evidences affiliated to the same i.e, statements of Witnesses and the documentary evidence produced vide D-list are considered. As per the facts of the complaint, about 12 months prior to the incident, on asking to return the*

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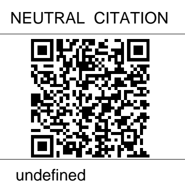

jewellery given by parents of the deceased, which were sold by her husband, mother-in-law and father-in-law, she was said to be harassed mentally and physically. Further, accusation has been made that she was subjected to mental and physical torture, as she did not give birth to any child for about 5 years after the marriage. As the incident of asking to return the above mentioned jewellery took place a year ago, the court is of clear opinion that it is a matter of proof as to whether the torture done to the deceased mentioned in the complaint was continuous or not? At this stage, i.e, while framing the charges, the evaluation of evidences does not seem to be necessary. While framing the charges, it is not necessary to have proofs which are required for convicting the accused. But if the accusations of the involvement of the accused in the offence is primarily established on record, he shall not be acquitted. Upon considering the facts mentioned in the complaint, it appears that the deceased was subjected to mental and physical torture, as she did not give birth to any child for about 5 years after the marriage and about a year before the death of the deceased, on asking to return the jewellery given by parents of the deceased, which were sold by her husband, mother-in-law and father-in-law, she was subjected to mental and physical torture. The deceased was at her in-law's place when she died. In such circumstances, it does not appear to be justified and appropriate to acquit the accused unimpeached without recording evidence with respect to all the said facts."

28. At this juncture, this Court with profit can refer to the recent judgment of Hon'ble Supreme Court in case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao – 2023 (7) Supreme 80 : 2023 (4) Crimes 146**, wherein the Hon'ble Supreme Court laid down principle to be considered for the exercise of the jurisdiction under Section 397 particularly in the context of prayer for quashing of the charge framed under Section 228 of Cr.P.C. Para 14 of the said judgment reads as under :

"14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of

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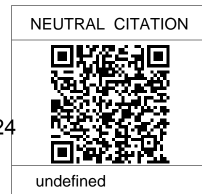

jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under:

> *"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*
>
> *27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*
>
> *27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*
>
> *27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*
>
> *27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts,*

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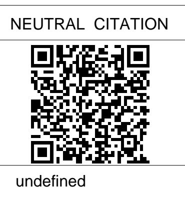

> *evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*
>
> *27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."*

29. Since the learned advocate appearing for the petitioners has failed to bring any material on record which proves to be patently absurd or inherently improbable that a prudent person can reach to such a conclusion that no case is made out to frame charge against the accused. The Court does not find any case in favour of the petitioners. It is well reasoned order under the scope of Section 227 of Cr.P.C. Learned Sessions Judge has sifted and weighed the material available with it to *prima facie* establish that very strong suspicion against the accused exist and it may lead learned Sessions Court to frame the charge. The revision is not only found to be devoid of merit but one more attempt to prolong the trial. For the foregoing reasons, the present revision stands dismissed.

(J. C. DOSHI, J)

GAURAV J THAKER

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