

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.5086 of 2023

Arising Out of PS. Case No.-193 Year-2021 Thana- TURKAULIYA District- East Champaran

Masum Khan @ Masoom Khan @ Sabih Ahmed, Son of Late Wazir Ahmed Khan,  
R/o- Bela Thana, P.S.- Nagar, East Champaran.

... .. Petitioner

Versus

1. The State of Bihar

2. Dr. Kumkum Sinha @ Kumkum Kumari, Wife of Dr. Shyam Babu, R/o  
Mohalla Badhai Tola Chhatauni, P.S.- Chhatauni, District- East Champaran.

... .. Opposite Party

*Code of Criminal Procedure---section 207, 239---Indian Penal Code--- section 341, 354B, 386, 387, 504, 506, 34---concept of “grave suspicion”---petition for quashing/setting aside the impugned order whereby and whereunder discharge application filed by Petitioner was rejected---allegation against the Petitioner is that he engaged/send 4 unknown persons to demand extortion and to commit criminal act against the informant.*

*Findings:- Unknown persons, who threatened the informant/OP No. 2 and asked for a ransom, was not apprehended and there is no statement of any apprehended person---admittedly, the petitioner was not present on spot and he did not use any criminal force to disrobe the informant or to restrain her--- narration of F.I.R. suggest only and only suspicion gathered out of political rivalry--- from perusal of the impugned order, it transpires that order was passed in very mechanical manner merely for the reason that learned jurisdictional Magistrate took cognizance seeing prima-facie materials against the petitioner--- the order is silent as to what material is available against this petitioner which, if cannot be rebutted, may cause conviction and, therefore, the concept of “grave suspicion” appears completely overlooked--- impugned order set aside---petition allowed. (Para 30-32, 37)*

*2023 SCC Online SC 1582, 1994 Suppl.(2) SCC 707, (2022) 9 SCC 577, AIR 2005 SC 359, 1992 Supp (1) SCC 335*

*.....Referred To.*

*Discharge Petition---Principles--- Magistrate before arriving to conclusion that charge against accused is “groundless” or not, has to necessarily ensure following legal compliance: (i) Police report and documents sent with it under section 173 of Cr.P.C.; (ii) Making some examination, if any, of the accused as the Magistrate thinks*

*necessary; (iii) Opportunity to accused of being heard; and (iv) Recording of reasons---- all aforesaid four limbs of section 239 of Cr.P.C. must be dealt with strict scrutiny and utmost care as any order passed under this provision opens a gate of criminal trial. (Para 36)*

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Champaran

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Ahmed Khan, R/o- Bela Thana, P.S.- Nagar, East Champaran.  
... .. Petitioner

Versus

- 1. The State of Bihar
- 2. Dr. Kumkum Sinha @ Kumkum Kumari, Wife of Dr. Shyam Babu,  
R/o Mohalla Badhai Tola Chhatauni, P.S.- Chhatauni, District- East  
Champaran.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Amit Shrivastava, Sr. Advocate  
Mr.Ali. M. Ahmad, Advocate  
Mr.A. Akhtar, Advocate  
Mr.Shahbaj Alam, Advocate  
Mr.Shailesh Kumar, Advocate  
For the State : Mr.Zainul Abedin, APP  
For the Informant : Mr. Ansul, Sr. Advocate  
Mr.Karandeep, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
C.A.V. JUDGMENT

Date : 07-04-2025

Heard Mr. Amit Srivastava, learned senior counsel  
appearing for the petitioner, Mr. Ansul, learned senior counsel  
for the informant/opposite party no. 2 and Mr. Zainul Abedin,  
learned A.P.P. for the State.

2. The present petition is being preferred for  
quashing/setting aside the impugned order dated 16.12.2022  
as passed by Ms. Pooja Kumari, learned Judicial Magistrate -  
1<sup>st</sup> Class, Motihari, East Champaran in Trial No. 1031/2022



arising out of Turkauliya Banjariya P.S. Case No. 193 of 2021, whereby and whereunder application for discharge of the petitioner as pressed by petitioner/accused under section 239 of the Code of Criminal Procedure (in short the 'Cr.P.C.') has been rejected.

3. The prosecution story in brief is that Dr. Kumkum Sinha (informant-Opposite Party No. 2) Ex- Nagar Parshad Ward No. 18 Motihari cum District President (Mahila) JDU, East Champaran, had given her written information on 06.03.2021 before the Officer-in-charge of Banjariya Police Station stating *inter alia* that she is a practicing lady doctor having her own clinic near NH-28 Singhia Sagar Morh, P.S Banjariya. On 05.03.2021 at 7:45 PM, while she was returning to her residence at Badhai Tola from her nursing home Shivam Seva Sadan, Singhia Sagar Morh, on the way, four unknown persons on two motorcycles having no number plate surrounded her car, out of which one was white colour Apache motorcycle and another was black Red colour Pulsar motorcycle, and after stopping her car on way made a demand of Rs. 50,00,000/- as extortion and, said that it is



the *Farman* (mandate) of one Masoom Bhai (petitioner), and if the demand was not fulfilled within five days, then her clinic would be exploded and her children would be kidnapped from their way to school. The informant alleged that she was also threatened that if she would inform to police then she will face dire consequences. The informant/O.P. No. 2 stated that after this incident she became pretty sure that this Masoom Khan is the same person who had attacked earlier upon her and is also accused in another case for beating and demanding extortion money from junior engineer of PWD department and for the said incident, he was also sent to jail. It is further alleged that not only this, even in case No. 1/2018 which is registered at Sadar Police Station, arrested accused Lal Saheb has confessed that Masoom Khan is hatching criminal conspiracy with the help of other criminals and they may likely to kill complainant, her husband and childrens, and were also likely to explode her clinic with bombs but, in the meantime, all of them got arrested with arms. It is further alleged that Complainant/informant had also filed a complaint in this regard. Aforesaid incident was also published in the



newspaper. The informant /O.P. No. 2 has also alleged that in the month of October 2017 accused has also demanded ransom from her staff over telephone from jail and a threat was also advanced to her clinic staff through whatsapp. It is alleged that Masoom Khan is mentally torturing her by abusing, making calls from his mobile and through internet call. It is further alleged that threat was also given to retrieve her photos from social networking site as to make it viral after tampering it. It is further alleged that the accused always chased/followed her vehicle. The informant/O.P. No. 2 stated that the petitioner always used to say that his brother is working as a Peshkar/clerk with Judge, therefore, he'll easily come out from jail, in any case. It is further alleged that the petitioner has a habit to flying abroad after committing crime along with Lal Saheb.

4. On the basis of aforesaid written information given before the Officer-in-charge of Banjariya Police Station, a formal First Information Report (F.I.R.) was registered being Banjariya P.S. Case No. 193 of 2021 for the alleged offence under section 341/354B/386/387/34 of the Indian Penal



Code. Upon investigation of the aforesaid case, police submitted charge-sheet, where on the basis of available materials learned Chief Judicial Magistrate, Motihari transferred the case record to the court of Shri Bhola Singh, learned J.M. 1<sup>st</sup> Class, Sadar at Motihari for further proceeding, accordingly, trial was numbered as 1031/2022. Upon receiving of police papers under Section 207 of the Cr.P.C., an application was preferred by the petitioner for discharge under Section 239 of the Cr.P.C., which after considering the available materials on the record, rejected by M/s Pooja Kumari, learned Judicial Magistrate - 1<sup>st</sup> Class, Motihari, East Champaran.

5. The petitioner preferred a criminal revision also against the cognizance order passed by learned C.J.M. Motihari, which was heard by Additional District and Sessions Judge- XIV<sup>th</sup>, Motihari on 27.07.2022, where the revision of petitioner was partly allowed and cognizance for the offences under section **386** of the I.P.C. was set-aside.

6. Mr. Amit Shrivastava, learned senior counsel, while arguing on behalf of the petitioner, submitted that there is no



“strong suspicion” against the petitioner to frame charge. It is pointed out that material available on record is sufficient to suggest that allegation as raised by O.P. No. 2 was “groundless” as to frame charge against petitioner, which was completely overlooked by learned Magistrate. It is submitted that no doubt the meticulous examination of evidence cannot be done at this stage to the extent whether the case would culminate with acquittal or conviction, but the assessment of materials must be done comparatively in more strict manner of taking cognizance, to arrive on conclusion that case against accused petitioner is not found “groundless” and for said purpose the “strong suspicion” is required from the available materials, which is absent in the present case.

7. It is further submitted that no doubt defence of petitioner cannot be considered at this stage but the documents which is of sterling in nature cannot be overlooked. In support of submission, learned senior counsel relied upon the legal report of Hon’ble Supreme Court as available through **State of Orissa Vs. Debendra Nath Padhi** reported in **AIR 2005 SC 359**.





8. Mr. Shrivastava, while arguing further submitted that petitioner has been made victim of political rivalry, who is a civil engineer and District Vice President of JDU, whereas informant/opposite party no. 2 was Ex- Vice President of JDU (Women Cell), East Champaran. It is pointed out that as informant failed to get ticket of MLA for certain reasons, she suspected that it was the petitioner who played a key role in not allotting party ticket to her and, therefore, she lodged the present false case without having any materials.

9. Arguing further, Mr. Shrivastava submitted that even from perusal of First Information Report, it appears that implication of this petitioner is merely on the basis of suspicion as it is apparent from written statement of informant itself, where she stated through F.I.R. that "मुझे पूरा यकीन हो गया कि यह वही मासूम खान है".

10. In this context, it is further submitted that from perusal of supplementary case diary it appears that no one came near to the clinic of informant, not demanded any extortion money nor gave any threat to commit any crime against her, which shows that petitioner did not engaged/send any unknown person to demand extortion or to commit any



criminal act against the petitioner.

11. It is submitted that as per supplementary case diary, no clue was found against unknown co-accused persons, neither any possibility to find any clue about them in future, as place of occurrence is a populated area.

12. Taking further reference of F.I.R., it is submitted by Mr. Shrivastava that the oblique motive can be gathered easily as informant referred one case No. 01/2018, where one co-accused Lal Saheb confessed that petitioner is hatching conspiracy to kill her husband and children and also to destroy her clinic by throwing bomb, but accusation against petitioner was not found true. It is also submitted that in Town P.S. Case No. 95/2017, which was numbered as Trial No. 3815/2019, petitioner was discharged and, as such, no case is pending against the petitioner for the present.

13. It is submitted that false implication out of oblique motive is evident from the fact that the husband of informant namely, Dr. Shyam Babu projected himself during investigation as an eye witness of the occurrence, but from the F.I.R., it appears that informant proceeded alone from her



Nursing Home to Barhai Tola.

14. Mr. Shrivastava further submitted that the F.I.R. is related with the incident which was said to be occurred on 05.03.2021, wherein it has been raised specifically that this petitioner started harassing the informant through digital/ Net calls. The documents attached is dated 15.12.2017 and 03.01.2020 respectively making false allegation on its face. The sterling value of these documents cannot be denied by informant/O.P. No. 2, and, moreover, said document is not supported by the certification required under section 65B of the Indian Evidence Act.

15. It is submitted by Mr. Shrivastava that upon revision, the allegation leveled under section 386 of the I.P.C. was set-aside by the Revisional Court through its order dated 27.07.2022 as passed in Cr. Revision No. 1000/2021, but the said revisional court failed to appreciate that the allegation against this petitioner is also ground-less for the offence under sections 341, 354B, 120B, 387, 504 and 506 of the I.P.C., as admittedly, the petitioner was not present on spot and he was found nowhere involved directly or indirectly



with the present case.

16. It is submitted that as petitioner was not present on spot, no criminal force can be said to be used by the petitioner to disrobe the informant and, therefore, allegation against petitioner under section 354B I.P.C. appears ground-less. Same is also about the allegation regarding wrongful restrain under section 341 of the I.P.C. It is submitted that unknown persons who committed the occurrence were never apprehended and, therefore, the allegation *qua* conspiracy or threat for extortion and also to provoke breach of peace as alleged under section 120B, 387 and 504 of the I.P.C. appears ground-less.

17. Explaining further the criminal antecedents, Mr. Shrivastava submitted that when petitioner was acquitted in Motihari Town P.S. Case No. 95/2017 through its judgment dated 13.01.2021, the informant made her maid instrumental for lodging the complaint case bearing No. 63 of 2022 against petitioner which was instituted as Turkauliya P.S. Case No. 1060 of 2022 for the offences under Sections 341, 323, 427, 354B, 504, 354D, 506 and 34 of the I.P.C. which is under



investigation. It is pointed out by Mr. Shrivastava that during pendency of the present quashing petition, criminal antecedent of the petitioner was made available to this Court by S.D.P.O. Sadar through its letter No. 3430 dated 30.07.2024, which suggest that no criminal case is pending against the petitioner in Turkauliya Police Station.

18. It is submitted that petitioner was not sent up for trial and was exonerated after investigation in Turkauliya P.S. Case No. 1060/2022 as police did not find any material muchless cogent to implicate the petitioner, where it also transpired that informant of the said case had named the petitioner at the instance of Dr. Kumkum Sinha, the informant of the present case. Similarly, the petitioner was also not sent up for trial and was exonerated by the investigating officer from Motihari P.S. Case No. 01/2018, which is only the basis of suspicion mentioned in the F.I.R. itself, but the informant moved a petition dated 02.07.2021, 29.07.2021 and 27.08.2021 as a protest in aforesaid case to direct investigating agency to issue bailable warrant against petitioner. However, finally the Investigating Authority in



Motihari P.S. Case No. 01/2018 submitted its supervision report dated 19.01.2019, stating that police has not found petitioner's involvement in the present case as the petitioner was found out of India for his work purpose as well as categorically found the ongoing political rivalry between petitioner and opposite party no. 2. It was transpired during investigation from the photocopy of passport of the petitioner which categorically reveals that petitioner departed from India on 15.09.2017 and arrived on 13.06.2018 and was not present in country at relevant date of occurrence.

19. It is further submitted by learned counsel that in Chhatauni P.S. Case No. 42 of 2023, instituted on 22.01.2023, for the offences under Section 67 and 37A of the IT Act, where informant of the present case moved an application after six months of the F.I.R. dated 31.07.2023 before the S.H.O. for adding the petitioner in the Chhatauni P.S. Case No. 42 of 2023. However, the Investigating Authority in its supervision report in P.S. Case No. 42/2023, has clearly pointed out the political rivalry between the parties.



20. Summing up all such false implication by petitioner, it is submitted by Mr. Shrivastava, learned senior counsel, that the present case is next of the series of false implication, where petitioner was implicated by informant/ O.P. No. 2 as to settle her own political score and wreaking vengeance.

21. Mr. Shrivastava further submitted that opposite party no. 2 herself is a lady of criminal antecedents and facing trial of two heinous offences of murder and attempt of murder i.e. Chhautani P.S. Case Nos. 53/2015 and 64/2023. It is submitted that political rivalry is apparent from the face of F.I.R. itself as information was registered in the capacity of District President, Women Cell, East Champaran, Motihari.

22. While concluding argument, Mr. Shrivastava, submitted that the impugned order is perverse on its face for the reason that there is no *prima-facie* indication of involvement of the accused in the present case and on the basis of materials on which, cognizance was taken against this petitioner on said material only ignoring the other material aspects, the discharge petition under Sections 239 of the



Cr.P.C. of petitioner was rejected. It is submitted that some rival versions as available on record, which are unimpeachable documents and are of sterling quality, was completely overlooked by learned Magistrate. It is submitted that in view of aforesaid, the impugned order is bad in the eyes of law and same be quashed/set-aside.

23. Mr. Shrivastava, learned senior counsel for the petitioner relied upon the legal reports of Hon'ble Supreme Court as available through **Vishnu Kumar Shukla and Anr. Vs. State of Uttar Pradesh and Anr.**[2023 SCC Online SC 1582]; **The State of Uttar Pradesh through the Central Bureau of Investigation Vs. Dr. Sanjay Singh & Ors.** [1994 Suppl.(2) SCC 707]; **Kanchan Kumar Vs. State of Bihar** [(2022) 9 SCC 577]; **Ram Prakash Chadha Vs. The State of Uttar Pradesh** [2023 SCC Online SC 1709] and **M/s Karnataka Emta Coal Mines Limited and Anr. Vs. Central Bureau of Investigation** [2023 SCC Online SC 2250].

24. Mr. Ansul, learned senior counsel appearing for the informant/opposite party no. 2, while opposing the





petition, submitted that learned Magistrate correctly hold that there are triable issues as certain rival submissions were advanced. It is pointed out that meticulous examination cannot be done at this stage and, therefore, learned Magistrate rightly relied upon the legal report of Hon'ble Supreme Court as available through **State of Tamil Nadu Vs. R. Soundirarasu and Ors.** reported in **2022 SCC Online SC 1150**. However, Mr. Ansul, learned senior counsel could not disputed the long standing political disputes and implicating attempts of the informant *qua* petitioner, which was found false by the Investigating Authority and also the involvement of informant/OP No. 2 in heinous offences like murder, as submitted above by Mr. Shrivastava, learned senior counsel for the petitioner.

25. It would be apposite to reproduce para 22 of **Vishnu Kumar Shukla's case (supra)**, which reads as under:

"22. In a recent judgment viz. **State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 INSC 89444**, this Court held:

7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely



examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the Investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the 1.0.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. . . .

X    X    X

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The



expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.(emphasis supplied)”

26. It would further be apposite to reproduce **para 18 to 22 of Dr. Sanjay Singh's case (supra)**, which reads as under for ready reference:

“18. At the highest, the prosecution can only suggest from the circumstances what is or may be the motive for any particular act. However, motive is not a *sine qua non* for bringing the offence of murder or of any crime home to the accused. At the same time the absence of ascertainable motive comes to nothing, if the crime is proved to have been committed by a sane person but to eke out a case by proof of a motive alone that too suspicion of motive apparently tending towards any possible crime, is not only a very unsatisfactory but also a dangerous process, because circumstances do not always lead to particular and definite inferences and the inferences themselves may sometimes be erroneous.

19. When we scrutinise the entire material placed on record, even if unrebutted or totally accepted, we are of the view that they do not make out a case for conviction and the mere suspicion of motive cannot serve as a sufficient ground for framing the charges in the absence of any material, *prima facie*



show showing that the particular motive has passed into action and that the accused is connected with that action in question.

**20.** This Court in ***Century Spinning & Manufacturing Co. Ltd. State of Maharashtra [(1972) 3 SCC 282 : 1972 SCC (Cri) 495 : AIR 1972 SC 545]*** while examining the scope of Section 251(A) sub-sections (2) and (3) of the old Code corresponding to Sections 239 and 240 of the new Code has made the following observation: (SCC p. 291, para 17: AIR p. 553, para 16)

“..... If on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges 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 is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecution authorities, be relying on the documents referred to in Section 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 advertent to the material on the record it must find blindly adopt the decision of the prosecution.”

**21.** Y.V. Chandrachud, J. (as the learned Chief Justice then then was) speaking for the three-Judge Bench in ***State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404 : AIR 1977 SC 1489]*** in which the State challenged the order of discharge made by the trial court in exercise of its powers under Section 227 of the Code of Criminal Procedure, 1973 has ruled thus: (AIR p. 1492, para 7)

“This section is contained in Chapter XVIII called ‘Trial before a Court of Sessions. It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reason to be recorded that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused.”



**22.** Thereafter referring the decision of **Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra** the learned Judge has observed: by its order dated 17.4.1979 dismissed the revision petition. This appeal by way of special leave petition is against the judgment of the High Court.

2. Rules 6 and 54 of the U.P. Sales Tax Rules, 1948 (the Rules) to the extent they are relevant are reproduced hereunder:

“For the purpose of determining whether there is sufficient ground for proceeding against an accused the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.”

**27.** It would be apposite to reproduce para **15** of

**Kanchan Kumar’s case (supra)**, which are as under:

“15. Summarising the principles on discharge under Section 227 CrPC, in **Dipakbhai Jagdishchandra Patel v. State of Gujarat**, this Court recapitulated: (SCC p. 561, para. 23)

*"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence." (emphasis supplied).*



28. In para 27, 28 & 29 of **Debendra Nath Padhi's case (supra)**, the Hon'ble Apex Court has observed, which are as under:

**27.** Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

**28.** We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose — investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.

**29.** Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .



29. It would also be necessary to reproduce **para 102 of Bhajal Lal's case (supra)**, for better understanding of the law, as laid down by Hon'ble Supreme Court, which are as under:

**'102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under



which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

30. Considering the submission and discussion of legal position of law, as advanced above, now coming to the facts of the present case. The first and foremost thing, which is required to be considered, is whether the present F.I.R. was lodged with oblique or ulterior motive as to settle the personal political score. The F.I.R. in issue clearly suggests that the informant/opposite party no. 2 proceeded from her clinic to *Barhai Tola* for some personal work and at that point of time she was alone. The F.I.R. was also lodged in the capacity of President, Women Cell. F.I.R. also suggest suspicion from the confessional statement of one Lal Saheb, who apprehended in Town P.S. Case No. 01/2018. Unknown persons, who threatened the informant/OP No. 2 and asked for a ransom, was not apprehended. There is no statement of any apprehended person. Admittedly, the petitioner was not present on spot. He did not use any criminal force to disrobe





the informant or to restrain her. The narration of F.I.R. suggest only and only suspicion gathered out of political rivalry. Whatsapp chats, enclosed with the F.I.R., appears to be done with another person where even the name of O.P. No.2 not appears. All these facts may constitute a motive and suspicion, but cannot be said to impress a “grave suspicion” on the basis of which this petitioner can be put on criminal trial on the charges leveled against him, as raised above.

31. The informant/O.P. No. 2 herself appears to be a lady of criminal antecedents involved in heinous offences, as discussed above. There is *prima-facie* no agreement to commit the present occurrence between the unknown accused persons with the petitioner as to bring *prima-facie* charge under Section 120B of the I.P.C. as even confessional statement is not available in want of arrest of unknown persons.

32. Petitioner is an engineer and also ex-Vice President of same political party to which the informant/O.P. No.2 appears affiliated. This submission was raised before the learned trial court while arguing on discharge petition, but was



not taken into consideration.

33. In view of the fact that Turkauliya P.S. Case No. 1060/2022 was filed by the Maid of the informant/O.P. No.2. and also, the informant filed a petition to implicate the petitioner in Motihari P.S. Case No. 01/2018 and also moved an application after six months of the F.I.R. dated 31.07.2023 i.e. Chhatauni P.S. Case No. 42/2023 instituted on 22.01.2023 to implicate this petitioner are such unimpeachable documents, having sterling nature, cannot be overlooked to say that informant/O.P. No. 2 was in political rivalry and, therefore, lodging of the present case out of ulterior and oblique motive cannot be denied.

34. It would be further apposite to reproduce paragraph '**10**' of the impugned judgment, which are as under:

*"10. Perusal of the allegations and record, prima-facie indicated the involvement of the accused in this present case. Considering prima-facie of materials brought on record after investigation is connecting the accused with the offences for which cognizance was taken against him in aforesaid case. At this stage, detail evaluation of materials and meticulous consideration of the defence are impermissible. There are triable issues involved in this present matter, therefore, if there are triable issues then the Court is not expected to go into the veracity of the rival versions therefore the case put up by the prosecution against the accused cannot be termed as groundless."*



35. It would be apposite to reproduce Section **239** of the Cr.P.C. for the sake of understanding the position of law, which is being reproduced hereunder for a ready reference:

**“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.”

36. From aforesaid provision of law, it appears that Magistrate before arriving to conclusion that charge against accused is “groundless” as to discharge or having grounds to frame charge to proceed further by entering into trial, following legal compliance necessary to be followed, which are as under:

1. Police report and documents sent with it under section 173 of Cr.P.C.;
2. Making some examination, if any, of the accused as the Magistrate thinks necessary;
3. Opportunity to accused of being heard; and
4. Recording of reasons.

Aforesaid safe grounds are formulated with object to



save an innocent persons from trauma of facing criminal trial. This provision of law should not be dealt in mechanical manner, as any order passed under this provision opens a gate of criminal trial. Therefore, all aforesaid four limbs of section 239 of Cr.P.C. must be deal with strict scrutiny and utmost care as to arrive on conclusion that charge against accused is “not groundless” or “groundless” as the case may be.

37. From perusal of the impugned order, it transpires that order was passed in very mechanical manner merely for the reason that learned jurisdictional Magistrate took cognizance seeing *prima-facie* materials against the petitioner. The order is silent that what material is available against this petitioner which, if cannot be rebut, may cause conviction and, therefore, the concept of “grave suspicion” appears completely overlooked.

38. Accordingly, the present petition stands allowed.

39. The impugned order dated 16.12.2022 as passed by learned Judicial Magistrate - 1<sup>st</sup> Class, Motihari, East Champaran in Trial No. 1031/2022 arising out of Turkauliya



Banjariya P.S. Case No. 193 of 2021 with all its consequential proceedings/orders *qua* petitioner, is hereby set-aside/quashed.

40. Let a copy of this judgment be sent to the learned trial court immediately.

**(Chandra Shekhar Jha, J.)**

Rajeev/-

AFR/NAFR	AFR
CAV DATE	12.02.2025
Uploading Date	07.04.2025
Transmission Date	07.04.2025

