

**PAPER PRESENTATION**  
**ON**  
**DISCHARGE OF ACCUSED**  
**IN CRIMINAL CASES**

**By**

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## **DISCHARGE OF ACCUSED IN CRIMINAL CASES**

### **Introduction:**

Under the Criminal Procedure Code, 1973, the Discharge Application is the remedy that is granted to the person who has been maliciously charged. If the allegations which have been made against him are false, this Code provides the provisions for filing a discharge application. If the evidence given before the Court is not sufficient to satisfy the offence and in the absence of any *prima facie* case against him, he is entitled to be discharged.

### **Classification of Criminal Cases:**

**The two major classifications of criminal cases under the Code of Criminal Procedure are:**

1. Cases instituted on the basis of a police report (Sections 238-243).
2. Cases instituted otherwise than on police report based on the complaint (Sections 244-247).

There are four types of the trial procedures provided under Cr.P.C.:

1. Summary trials (Sections 260-265),
2. Trial of summons cases by Magistrates (Sections 251-259),
3. Trial of warrant cases by Magistrates (Sections 238-250), and
4. Trial before a court of Sessions (Sections 225-237).

The procedure of warrant cases is used for the trial of warrant cases by the Magistrates and the trial before the court of sessions. Whereas trial of summons cases by Magistrates and summary trials are tried in a summons case trial.

### **Discharge of accused in warrant cases on the basis of a police report.**

The regular procedure of law is that the police after completing its investigation files the final report/charge sheet under Section 173 of the code. Thereafter trial against the accused commences by the concerned Court. However, Section 239 and 227 of Cr.P.C, provide that before the charges are framed against an Accused person, he can be discharged.

**Section 239 of the Code of Criminal Procedure states when accused shall be discharged.**

If, upon due consideration of the police report and all the documents sent under Section 173 along with examination of the accused, if any, as Magistrate thinks obligatory and after hearing prosecution as well as accused, the Magistrate considers the charge to be groundless against the accused, he shall discharge the accused and also record the reasons for doing so.

**Essential elements for Discharge:**

The Court have to consider the Charge sheet and documents appended thereto by the Police under Section 173, Cr.P.C:

- The Magistrate may, if he deems fit, examine the Accused.
- Thereafter the arguments of both the Prosecution and the Accused should be heard.
- Grounds against the accused to be baseless- There should not be any evidence present against the accused. If the Court considers that there is no prima facie case against the accused.

If all the above conditions are fulfilled, then the Accused shall be discharged.

**Whether the magistrate has to take cognizance of the material brought by the accused?**

In the case of Satish Mehra v. Delhi Administration and Another reported in (1996) 9 SCC 766, the Hon'ble Apex Court held that, Under Section 239 Cr.P.C, the Magistrate has to give the prosecution and the accused a chance of being heard besides taking cognizance of the police report and the documents sent therewith. The Magistrate should apply judicial mind while considering the discharge application.

If the accused produces any trustworthy material at that stage which might drastically effect even the very feasibility of the case, it would be very inappropriate to recommend that no such material shall be taken into consideration by the Court at that stage.

### **When accused shall be discharged in Sessions trial:**

Section 227 of the Code defines that if the judge considers that there is no sufficient ground for proceeding against the accused, upon hearing the submissions, of the prosecution and the accused and consideration of the record of the case along with the documents submitted therewith, he shall discharge the accused and record reasons also for doing so.

### **Mandatory cases where Sessions Judge is bound to discharge:**

1. Where he is precluded from proceeding because of a prior judgment of High Court,
2. Where the prosecution is clearly barred by limitation,
3. Where the evidence produced is not sufficient,
4. Where there is no legal ground for proceeding against the accused, or
5. Where no sanction has been obtained.

### **Discharge of Accused and its Procedure under Section 227 of Cr.P.C.**

Section 227 Cr.P.C deals with “discharge of the accused in a “Sessions Cases”.

Section 226 Cr.P.C also must be read together.

There are “two” important words in Section 227 Cr.P.C.

- (a) Hearing submission of the accused [AIR 2005 SC 359]
- (b) “No sufficient grounds for proceeding against the accused”.
  - 1) AIR 2008 SC 299.
  - 2) **Union of India Vs. Prafulla Kumar Samal and another**  
[1979 (3) SCC P.4]
- (c) Proper basis for framing of charge [2008 (2) SCC 561]

After receipt of case documents supplied under section 207 Cr.P.C whether the accused can bring it to the notice of the Court, that no material is available to proceed the case against him and can he ask for discharge.

- 1) **Dattatreya Samant Vs. State of Maharashtra**  
[1981 Cr.L.J.1819 (Bombay)]
- 2) **Public Prosecutor Vs. T.D. Khajanalli** [1980(2) ALT 138].  
Discharge is a Judicial order.
- 3) **Rama Swamy Gounder Vs. State** [1981 Cr.L.J. 1054 (Madras)]
- 4) **Ajay Kumar Parmar Vs. State of Rajasthan** [2012 (12) SCC 406]

## 7 GUIDING PRINCIPLES ON DISCHARGE AND FRAMING OF CHARGE

In the case of Vijayan Vs. State of Kerala and another (2010 SCC 398 SC. 1979 3 SCC P.4=AIR 1979 SC P.366) in the case of Union of India Vs. Prafulla Kumar Samal and another. Where in the Hon'ble Supreme Court formulated the following 7 guiding principles.

1. The judge while considering the question of framing the charges U/Sec. 227 Cr.P.C 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. To determine prima facie case would depend upon the facts of each case.
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 court can not act merely as a post office or a mouth piece of the prosecution but it has to consider the broad probabilities of the case. There cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if a trial was being conducted.
4. On the basis of material on record if the court could form an opinion that the accused might have committed the offence, it can frame the charge.
5. At the time of framing of the charges, the probative value of the material on record can not be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission by the accused was possible.
6. At the stage of Sec.227 and 228 Cr.P.C, the court is required to evaluate the material and documents on record with a view to find out the existence of all the ingredients constituting the alleged offence but the court cannot be expected to presume that the prosecution story is gospel truth.

7. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused irrespective of the result of the trial.

**Legal Authorities on the above seven points:**

**2009(3) SCC 850 (Palwinder Singh Vs. Balwinder Singh).**

The jurisdiction of Sessions Judge at the time of discharge is very limited. Charges can also be framed on the basis of strong suspicion. Marshaling and appreciation of evidence is not in the domain of the court at that point of time.

**2010 (9) SCC 368 (Sajjan Kumar V. CBI) – Land mark Judgment.**

At the stage of framing of Charge U/Sec. 228 Cr.P.C or while considering the discharge petition filed U/Sec. 227 Cr.P.C, it is not for the Judge concerned to analyse all the materials including pros and cons, reliability or acceptability etc; The evidentiary value and its credibility and veracity has to be considered at the stage of trial.

**2014(11) SCC 709 State of Tamilnadu Represented by the Inspector of Police Vigilance and Anti corruption Vs. N.Suresh Rajan (In ACB case).**

At the Stage of consideration of an application for discharge, Court has to proceed with an assumption that the materials brought on record by prosecution are true and to evaluate the said materials and documents with a view to find out whether the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the offence.

**Whether the material which is produced by the accused can be looked into by the session's court?**

In the case of **Satish Mehra v. Delhi Administration and Another reported in (1996) 9 SCC 766**, the Hon'ble Supreme Court held that if the accused produces any convincing material at the stage framing of charge which might drastically effect the very sustainability of the case, it is unfair to suggest that no such material should be considered into by the court at that stage.

### **Discharge Post Framing of Charge:**

In the case of Ratilal Bhanji Muthani Ver. State of Maharashtra. (AIR 1979 SC 94): After framing of charge the question of discharge does not arise. The same view was taken in the case of Stree Atyachar Veerodi Parishadh Ver. Dilip Nathumal Chordiya (1989 SCC(1) 715).

In the case of Tapati Bag v. Patipaban Ghosh reported in 1993 Cr.L.J 3932 (Cal.), it was held that if the Court considers that there are no sufficient grounds for proceeding against the accused, the accused has to be discharged, but if the Court is of the opinion after such consideration that there is ground for presuming that the accused has committed the offence which is exclusively triable by the Court of Session then the charge against the accused must be framed. Once the charges are framed, the accused is put to trial and thereafter either acquitted or convicted, but he cannot be discharged. Once charges are framed under Section 228 of the code, there is no back-gear for discharging the accused under Section 227 of the code. Discharge post framing of charge is not viewed in Cr.P.C.

### **Discharge of the accused in Cases Triable exclusively by Court of Sessions:**

In the case of Sanjay Gandhi vs Union of India reported in AIR 1978 SC 514, it was held that there is no such provision that permits the Magistrate to discharge the accused. Discharge order can be given only by a trial court and in respect of the offences exclusively triable by a court of session, the court of the Judicial Magistrate is not the trial Court.

**State Vs. Omprakash: Delhi H.C. Hon'ble Justice Suresh Kumar Kait. Decided on 06.11.2019.**

Discharge of the accused U/Sec. 12 of POCSO Act, where victim did not mention any act of sexual assault or intent in her 164 Cr.P.C statement. FIR was registered basing on the statement made by the mother of the victim. Discharge proper.

**2013(11) SCC 476. Sheoraj Singh Ahlawat Vs. State of U.P.**

At the time of framing of charge the court is required to evaluate the material and documents on record to decide whether there is a ground for presuming that the accused had committed the offence. There is no need to evaluate the sufficiency of evidence to convict the accused. Materials brought on record by the prosecution can be believed to be true, but their probative value cannot be decided at that stage. The accused is entitled to urge his contentions while entertaining the discharge application only on the material submitted by the prosecution, but he is not entitled to produce any material at that stage and the court is not required to consider any such material. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial judge is empowered to discharge the accused, irrespective of the result of the trial.

**R.S.Mishra Vs. State of Orissa (AIR 2011 SC 1103).**

**Victim has right to be heard during Discharge.**

Normally a victim is not participating in discharge proceedings U/Sec. 227 Cr.P.C, if in a case wherein the victim is not sufficiently reported by the prosecution and in cases where the interest of the victim adequately protected, there is nothing wrong on the part of the victim in stepping in with a request for being heard. In such cases the version of the victim should not remain unheard.

**State of Karnataka Lokayukta M.R. Hiremat (2019 SCC P. 734).**

At the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on 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.

**State of Karnataka Vs. L.Muniswamy (AIR 1977 SC P.1489).**

The Hon'ble Supreme Court Held that the object of the provisions which require the Sessions Judge to record its reasons while entertaining Discharge petition U/Sec. 227 Cr.P.C is to enable the superior court to examine illegality of the impugned order. In that case the trial court did not assign any reason in

the impugned order while refusing to discharge the accused as such it suffers from serious infirmity.

**State of Orissa Vs. Debendra nath Padhi (2005 (1) SCC P.568=AIR 2005 SC P.369)**

A three judge bench of Hon'ble Supreme Court held that Sec. 227 Cr.P.C is enacted in the Code for the purpose of saving the accused from unnecessary harassment, by saying prolonged trial. The same principle was laid down in **Kevankrishna Vs. Suraj Bhan 1980 SCC Supplement P.499.** The Hon'ble Apex Court observed in this case that the decision rendered by it in the case of **Sathish Mehra Vs. Delhi Administration (1996(9) SCC P.766)** is not a good law.

**APPLICATION FOR DISCHARGE IN CASES INSTITUTED BASING ON  
POLICE REPORT AND OTHER WISE.  
II – SECTION 239 OF CR.P.C.**

Before considering the application for discharge and U/Sec. 239 Cr.P.C let us discuss the aspects to be considered for discharge.

When the Police files the final report Under Section 173 Cr.P.C. It means that the charge sheet containing certain allegations. Which, if proved, constitute a “Punishable Offence”.

Even in a private complaint filed under section 200 Cr.P.C also the accused got such right to seek “discharge”.

However, there is major distinction as regards to the discharge of an accused from a warrant-case instituted upon a police report and a warrant-case instituted upon a private complaint filed under Section 200 Cr.P.C.

In the warrant-case instituted upon police complaint, the Magistrate has to consider the Final Report, statement of witnesses recorded under Section 161 Cr.P.C., documents, if he feels necessary he can examine the accused also and if he finds the charges (allegations) are groundless, he can discharge the accused under Section 239 Cr.P.C., or frame charges under Section 240 Cr.P.C.

However, in a case instituted upon a private complaint, the procedure for charge or discharge is completely different from a police case.

A close reading of Section 245(2) Cr.P.C., would show that in a warrant-case instituted upon a private complaint, after recording evidence, discharge petition can be entertained.

In a police case there will be only one cross-examination.

However, in a private complaint case, there will be two cross-examinations.

In a police case, trial commences on issuing copies under Section 207 Cr.P.C and on hearing the accused will be examined U/Sec. 227 and 239 Cr.P.C.

But, in a private complaint case, trial will commence only after framing charges under Section 246 Cr.P.C., that will be only after recording evidence under Section 244 Cr.P.C.

While recording preliminary evidence under Section 244 Cr.P.C., the accused can cross-examine the witnesses then and there or he may defer the cross to be done after framing of the charges.

After framing of charges, again the accused can cross-examine the witnesses.

It is pertinent to note that at that stage the quantum of evidence adduced is not the choice of the accused, but it is the choice of the complainant, which would be sufficient to frame charges in the opinion of the complainant.

### **Discharge in Warrant case.**

Section 239 Cr.P.C is the provision under which the Magistrate can discharge the accused in a “Warrant Case”.

- 1) The Police report and the documents filed U/Sec. 173 Cr.P.C.

2) Opportunity must be given to both prosecution and the accused. The Court has to hear them.

3) Magistrate must feel that allegations are groundless.

Now the question is whether the Court has to consider the documents and the evidence placed by the accused at the time of discharge.

The Hon'ble Supreme Court held in the (3) decisions.

a) Satish Mehra Vs. Delhi Administration [(1996) 9 SCC 766]

b) State of Orissa Vs. Debendra nath pardhi [(2005)1 SCC 568]

c) Rajiv Thapar and others Vs. Madan Lal Kapur [AIR 2013 SC 1056].

The Magistrate has to give an opportunity of being heard, before considering the police report and documents.

Whether the reasoned order is necessary at the time of framing charge. [2001(9) SCC 631]. Yes reasoned order is necessary.

The difference between discharge U/Sec. 227 Cr.P.C and Sec.239 Cr.P.C [2015(2) ALT (CrI.) AP 91].

#### **Sec. 227 Cr.P.C.**

If, the Court considers that there is no **sufficient ground** for proceeding against the accused.

#### **Sec. 239 Cr.P.C.**

If, the Magistrate considers that the charges are **groundless** in both cases the accused can be discharged **U/Sec. 227 and 239 Cr.P.C.**

#### **Relevant case laws U/Sec. 239 Cr.P.C.**

#### **Umesh Kumar IPS Vs. State of A.P. (Forgery case) Decided on 2012.**

Maintainability of Sec. 482 Cr.P.C.

Discharge application U/Sec. 239 Cr.P.C is available to the accused .

There is no bar U/Sec. 482 Cr.P.C.

The standard proof for discharge U/Sec. 239 Cr.P.C is the non existence of prima facie case, it means when no prima facie case is made out.

**Manakshi Bala Vs. Sudhir Kumar, 1994 SCC (4) 142.**

The Magistrate is required to consider the Police report and the documents submitted U/Sec. 173 Cr.P.C and he should take decision regarding discharge after hearing the both parties, he has to discharge the accused U/Sec. 239 Cr.P.C, if the charge is groundless.

**(1982) 1 SCC 561 =AIR-1982-SC-949.**

Once charges framed U/Sec. 240 Cr.P.C, if the accused aggrieved he should invoke the revisional jurisdiction of High Court or Sessions Judge claiming that the charge sheet U/Sec. 173 Cr.P.C and the documents does not disclose any ground to presume that he had committed any offence for which he was charged.

**Smt. Modalavalsa Shanthiram Ver. State of A.P. (2003(2) ALT.Crl.P.354)**

When the material brought on record show that the accused attempted to cheat the public in such case when there is a ground to presume that the accused committed the offence, the discharge was improper.

**1979(4) SCC 274.**

It may be noted that at the stage of framing charges, the prosecution evidence will not be commenced. The magistrate had therefore to consider the material placed before him by the I.O. At this stage the truth, veracity and effect of evidence which prosecutor proposes to adduce are not to be meticulously judged. The finding with regard to guilt of accused cannot be exactly to be applied nor any presumption could be drawn. The only thing is to be taken into consideration regarding the existence of factual ingredients constituting the offence as alleged.

**2000(1) SCC 522 Kanti Bhadra Shah V. State of West Bengal.**

If the magistrate considers that there are grounds to discharge the accused he must record the reasons for doing so.

**Smt. Rumidhar Ver. State of West Bengal 2009 (6) SCC 364.** The Hon'ble Supreme Court held that the Magistrate while entertaining the discharge petition U/Sec.239 Cr.P.C he has to go into the details of allegations made against each accused in order to form an opinion as to whether any prima facie case is made out or not as well as strong suspicion in regard to sub serve the requirement of law.

**Om Karnath Misra & others Ver. State (NCT Delhi & another 2008(8) SCC 561. U/Secs. 498(A), 406 r/w 34 IPC.** The Hon'ble Supreme Court held that the Court is not expected to go deep of the probative value of the material on record what needs to be considered is whether a ground for presuming that the alleged offence has been committed. The existence of factual ingredients constituting the offence to frame the charge.

Same view was taken in the case of **Sheroj Singh Ahalwat Ver. State of U.P & another (AIR 2013 SC P.52).**

**Dr. J.Muralidhar Goud Ver. State of A.P. (CBI Case CrI. Revision Case 1606/2013, dated. 09.11.2018).** Petition U/Sec. 239 Cr.P.C was dismissed by the Spl. Court. Hon'ble High Court dismissed the revision on the ground that the discharge application has been correctly dismissed as voluminous material was collected by the investigating agency directly pointing out the complicity of accused for the alleged offences.

**State of Himachal Pradesh Vs. Krishanlal Pradhan & Ors. AIR 1987 SC 773.**

It is a case where the accused was discharged from the offences U/Secs. 379, 411, 420, 218, 468, 120B IPC r/w Sec.5(2)(d) of Prevention of Corruption Act by the Special Judge, Simla. Firstly, the concerned Judge impleaded A7 to A10 on merits at the request of state represented Public Prosecutor by observing that the material on record i.e. Charge Sheet and 161 Cr.P.C statements of witnesses reveals the existence of sufficient material on record against the accused on record as well as impleaded accused. Subsequently there was a change in the Presiding Officer who discharged the accused on the ground that there is no sufficient material on record to connect the accused with the alleged offences. The said observation is diametrically opposite to conclusion made by his predecessor and contrary to the contents of Charge

Sheet and Sec. 161 Cr.P.C statements. Later the Hon'ble High Court of Himachal Pradesh passed Cryptec order "as Heard and dismissed" without assigning any reason in the revision. The Hon'ble Supreme Court came heavily upon the trial Judge for discharging the accused with erroneous perception as the impugned order was based on mere surmises and conjunctures. The trial Judge passes the discharge order without proper scrutiny of the material which connecting the alleged offences and failed to observe the concept of prima facie case. SLP was allowed directioning the trial judge to frame the necessary charges consequently the discharge order was set aside.

**Rajesh Bajaj Vs. State NCT Delhi & others 1999 (31 SCC 259).** The Hon'ble Supreme Court held that the High Court or Magistrate are not supposed to adopt a strict hyper technical approach to sieve the complainant through a cullunder of finest guaging of testing the ingredients of offence with which the accused is charged while entertaining discharge petition. Such an endeavour is justified during the trial but not during the initial stage U/Sec. 239/482 Cr.P.C.

Whether discharge application can be filed U/Sec. 239 r/w 245 Cr.P.C. The Hon'ble Supreme Court in **Crl. Appeal 759/19, SLP 4820/2017 Vikram Johar Ver. State of U.P & another** held that discharge application is maintainable in a private warrant case. It was observed that when the averments in the complaint does not contain the ingredients of the alleged offences, discharge is the remedy which is appropriate.

### (III) **Sec. 245 of Cr.P.C.**

#### **Discharge of accused in Warrant Cases instituted on Complaint**

Section 245 of Cr.P.C. states When accused shall be discharged;

Under Section 245(1) Cr.P.C the Magistrate should consider the evidence adduced U/Sec. 244 Cr.P.C and if he sees that no case has been made out against the accused, i.e., if unrebutted it would not warrant a conviction, then he will discharge the accused from the case under section 245(1) Cr.P.C. Otherwise, the Magistrate has to frame a charge U/Section 246(1) Cr.P.C.

Under Section 245(2) Cr.P.C., at any previous stage of the case, if charge is groundless, he can discharge the accused. So also at any previous stage of the case, if there is a ground for presuming that the accused has committed an offence, the Magistrate has to frame the charge.

**Legal authorities:**

In the case of *Union of India v. Prafulla Kumar Samal & Another, (1979) 3 SCC 4* the Hon'ble Supreme Court held that the words used in the context 'not sufficient ground for proceeding against the accused' show that the Judge cannot be assumed to be a post office to frame the charges at the instruction of the prosecution, and application of judicial mind to the facts of the case is necessary to determine whether a case has been made out by the prosecution for trial. In determining this fact, it is not mandatory to drive into the pros and cons of the matter by the court.

There is major distinction as regards discharge of an accused from a warrant-case instituted upon a police report and a warrant-case instituted upon a private complaint filed under Section 200 Cr.P.C. was already discussed while referring Sec. 239 Cr.P.C, hence requires no repetition.

The Hon'ble Supreme Court in *Ajoy Kumar Ghose Versus State Of Jharkhand & Anr. (2009 (14) SCC 115)* held that there is a clear difference in Sections 245(1) and 245(2) of Cr.P.C.

- Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) Cr.P.C.
- The situation under Section 245(2) Cr.P.C. is, however, different.
- Under Sec.245(2), the Magistrate has the power of discharging the accused at any previous stage of the case, i.e., even before such evidence is led.

- However, for discharging an accused under Section 245(2) Cr.P.C., the Magistrate has to come to a finding that the charge is groundless.
- There is no question of any consideration of evidence at that stage, because no witnesses will be examined on behalf of the complainant except the sworn statements U/Sec. 200 Cr.P.C.
- The Magistrate can take this decision before the accused appears or is brought before the Court or the evidence is led under Section 244 Cr.P.C.
- The words appearing in Section 245(2) Cr.P.C. "at any previous stage of the case", clearly bring out this position.

Now the question is, "what is that "previous stage".

- The previous stage would obviously be before the evidence of the prosecution under Section 244(1) Cr.P.C. is completed or any stage prior to that.
- Such stages would be under Sections 200 Cr.P.C. to Section 204 Cr.P.C.

#### **Other Decisions:**

##### **Discharge of accused U/Sec. 245(2) Cr.P.C:**

**Sunil Mehta and Another Vs. State of Gujarat [Crl.APP 327/2013 – SLP (Crl.) 374/2012] decided on 20.02.2013 (Hon’ble Justice T.S. Thakur & Justice S.J. Mukhopadhyaya)**

A Private complaint U/Secs. 406, 420 & 114 r/w 34 IPC. Case was referred to Police U/Sec. 156(3) Cr.P.C. Police filed referred charge sheet on the ground that the dispute is of Civil in nature. Later enquiry U/Sec. 202 Cr.P.C was conducted and process was issued after taking cognizance for the offences U/Sec. 406 r/w 114 IPC. Accused challenged the said order before Sessions Judge by way of revision on the ground non compliance of Sec. 245(2) Cr.P.C. Revision Petition was allowed and remitted back to the court to consider the procedure contemplated U/Secs. 244 to 247 Cr.P.C basing on the legal authority in **2009 (14) SCC 115 (Ajoy Kumar Ghosh Vs. State of Jharkhand)**.

The complainant preferred criminal appeal before the High Court of Gujarat. The High Court upheld the order of Sessions Judge. Aggrieved by the said order SLP was preferred. The Hon'ble Apex court has elaborately discussed the provisions of Secs. 244 to 246 Cr.P.C.

**Harinarayana G.Bajaj Vs. State of Maharashtra. 2010 (11) SCC 520.** Right of accused to cross examine the witness produced by the complainant before framing the charge is a valuable right. High Court order was set aside. Order of Sessions Judge was confirmed.

**Sri Suresh Kumar Goyal Vs. State of Uttar Pradesh on 11.01.2019 SC. Crl. Appeal 56/2019.** The Hon'ble Supreme Court has elaborately discussed the provisions of discharge and issued guidelines to discharge the accused U/Sec. 245(2) Cr.P.C.

Sec.245(1). **R.S. Nayak Ver. A.R.ANTULAY. 1986(2) SCC 716=AIR 1986 SC 2045=1986(2) SCC 716.** The Magistrate is required to consider the existence of prima facie case while entertaining the discharge application. If the court satisfied that a prima facie case is made out charge has to be framed. The Court should not appraise the evidence while considering the discharge petition as if it was passing an order of acquittal. Further, the defect in investigation can not be a ground for discharge.

**Yeduruparthi Kamakshamma Ver. T.Taranadh - A.P. High Court, dated. 09.03.1979.** Wherein, it was held that the Magistrate is competent to discharge the accused U/Sec.245(2) Cr.P.C. even at an earlier stage if he records a finding that facts do not constitute a criminal offence. The order should be supported by cogent reasons.

#### **IV – SECTION 251 OF CR.P.C.**

Sec.251 Cr.P.C deals with the questioning of the accused in “Summons case”. As per Sec. 251 Cr.P.C the particulars of the offence must be put to the accused. There is no provision for discharge in summons case as in Sessions case U/Sec. 227 Cr.P.C, and as in trial of warrant cases by Magistrate U/Sec. 239 Cr.P.C.

In the following cases it was held by the Supreme Court that though there is no specific provision for discharge U/Sec. 251 Cr.P.C the proceedings can be stopped.

- (a) **Sampoornamma Vs. Mr. Kula Shekaran [2003 Cr.LJ. 4373]**
- (b) **KM Mathew Vs. State of Kerala [1992 Cr.LJ 170=[1992(1) SCC 217].**

The accused had sought to recall of summoning order in a summons case. It was a case U/Sec. 500 IPC Chief Editor of particular news paper. The Editor moved an application to drop the proceedings on the ground that there was no specific allegation against them once no offence was made out. The magistrate took the view that matter could not be proceeded with against the Editor by accepting his contention. Finally the matter was carried upto Hon'ble Supreme Court. The Hon'ble Supreme Court observed that "If there is no allegation in the complaint involving the accused in the commission of crime, it is implied that Magistrate has no jurisdiction to proceed against the accused. The Magistrate may drop the proceedings. No specific provision is required for the Magistrate to drop the proceedings.

But in later decisions the said view was not accepted and held that the relief is only U/Sec. 482 Cr.P.C.

- (a) **Adalat Prasad Vs. Rooplal Jindal [2005 (1) Cr.LJ 268= [2004 (Crl.) 1927].**
- (b) **Subramaniam Sethuraman Vs. State of Maharashtra and another [2004 (13) SCC 324]**

The correctness of legal proposition setout in K.M.Mathew's case came up for consideration in **Adalat Prasad Ver. Roplal Jindal and others 2004(7) SCC P.338.** Wherein (3) Judge bench held that if the Magistrate issues process without any basis, the remedy lies U/Sec. 482 Cr.P.C and there is no power to the Magistrate either to review or recall his own order regarding the issuance of summons to the accused.

The principle laid down in Adalat Prasad case was reaffirmed by the Hon'ble Supreme Court in **Subramanian Sethuraman Ver. State of Maharashtra & another 2004 (13) SCC P. 324**: Which was a summons case U/Sec.138 of N.I. Act. The Hon'ble Supreme Court held that discharge, review, reconsideration, recall of order of issue of process U/Sec. 204 Cr.P.C is not contemplated in a summons case. It was further observed that once the accused has been summoned the trial court has to record the plea of accused as per Sec. 251 Cr.P.C and the matter has to be taken up for trial and there is no provision which permits the Magistrate to drop the proceedings along the way.

It is to be noted that in Adalat Prasad case it was triable as a warrant and not a summons case. It is pertinent to note that in warrant case the accused gets an opportunity to argue that no case is made out against him and to seek discharge to protect him from the stigma of a full fledged trial, which may take years together. Whereas there is no analogous provision as far as summons cases are to discharge the accused.

#### **The other legal decisions:**

- (a) **Anantha Prakash Sinha Vs. State of Hariyana** [AIR 2016 SC 1197]
- (b) **2013 SC Online DEL 4563.**
- (c) **Amit Sibal Vs. Aravind Kejriwal and others** [2018 (12) SCC 165]

There is no provision in the code to discharge the accused in Summons case. This is a controversy regarding the same. The very fact that in a summons case there is no specific provision of discharge as contemplated in Secs. 227/239/245 Cr.P.C. Probably, the intention of the legislature not to have an elaborate hearing at the time of issuing summons. Perhaps the summons cases relate to the offences of lesser gravity and capable of being completed expeditiously. For that reason the framing and hearing on charges would not arise to avoid unnecessary delay since such matters will be disposed of at an earlier date comparatively in Warrant and Sessions cases. The intention of the legislature to have a relatively abridged form of trial in summons cases is writ large on the face of the provision. (This was observed in 41 Law Commission report).

**Amit Sibal Vs. Aravind Kejriwal (2016 SCC Online P.1516) (2018(12) SCC P.165))**

The question arose before the Hon'ble Supreme Court "Whether Magistrate in a Summons case based on a complaint has power to drop proceedings and discharge the accused or not".

This question assumes great practical significance in so far as many as criminal cases such as defamation (Sec.500 IPC), dishonour of cheques (Sec.138 N.I.Act) among other cases of relatively private character which are in the nature of summons cases based on private complaints, in which police opposed to investigate and when no charge sheet is filed.

Earlier in 2014 in **Aravind Kejriwal and Ors. Vs. Amit Sibal & another (2014 High Court cases (Del) P.719)**. The single judge of Delhi High Court observed that Magistrate has power to hear the accused at the time of explanation of substance of the accusation, and if no offence is made out, to drop proceedings.

The said matter was carried to Hon'ble Supreme Court.

The Magistrate has no power to drop proceedings in the absence of specific provision in Cr.P.C to that affect. There is no stipulation in Cr.P.C regarding the "Discharge" in summons case.

In contrast to summons cases based on private complaint, in cases based on F.I.R and charge sheet U/Sec. 173 Cr.P.C, Sec. 258 Cr.P.C specifically provides to drop the proceedings. However a similar provision in conspicuously absent in summons case based on a private complaint.

However the Supreme Court clarified in **Dhariwal Tobacco Ver. State of Maharashtra 2009 (2) SCC P. 370** to the effect that even though there is no provision to discharge the accused in summons cases, but dual remedy is available by invoking Sec.482 Cr.P.C as well as revisional jurisdiction U/Sec. 397 Cr.P.C.

This position held away for a long time till the decision of Apex Court in **Bhushan Kumar Ver. State of NCT Delhi reported 2012(5) SCC 424;** Wherein it was observed that Magistrate has power to discharge the accused in Summons case. It is further observed that it is inherent in Sec. 251 Cr.P.C that when an accused appears before the trial court pursuant to the summons issued U/Sec. 204 Cr.P.C, the duty cast upon the trial court to carefully go through the allegations in the charge sheet or private complaint as the case may be (consider the evidence to come to a conclusion regarding the involvement of the accused). If the answer is affirmative, the magistrate shall explain the substance of the accusation and ask him whether he pleads guilty otherwise discharge the accused as per Sec. 239 Cr.P.C. The decision of the court in Bhushan Kumar has followed in catena of decisions including **Ureshila Kerkar Ver. Make my trip India Private Limited (2013-SCC-4563).**

**Certain observations raised in Bhushan Kumar case:**

(1) It was a case U/Sec. 420 IPC (7 years imprisonment) and was therefore a warrant case but not a summons case. In such factual back ground the discussion of Sec. 251 Cr.P.C seems to be inapplicable since Sec. 251 Cr.P.C applies only to summons case.

(2) The word discharge and its applicability was completely absent in Sec. 251 Cr.P.C. Therefore the case of Bhushan Kumar may not have precedential value.

It was further held by the Hon'ble Supreme Court that, it is the bounden duty of the Trial court in Sec. 251 Cr.P.C. to satisfy whether the offence against the accused is made out or not and to discharge the accused if no case is made out against him.

The Delhi High Court recently held in **R.K. Agarwal Ver. Blig Madanlal Nassa & others (2016-SCC Online Delhi P.3720)** "That the Magistrate has no power to discharge the accused in summons case for the reasons:

(1) There is no stage of discharge in summons case either on the Final report filed by the police or private complaint.

(2) The magistrate can not invoke Sec. 239 Cr.P.C in summons case due to absence of any such power of discharge U/Sec. 251 of Cr.P.C. However a judicial pronouncement is required to clear the air frame this issue. Reliance would be made on Subramaniam Sethuraman's case and Arvind Kejriwals case mentioned supra, wherein it was concluded that there is no provision in Cr.P.C to permit the Magistrate to discharge the accused in summons case. The remedy U/Secs. 397 (Revision) and 482 Cr.P.C are available to the accused to protect himself from abuse of process of law and demand to quash the proceedings. In this regard the following are the other legal authorities.

(a) John Thomas Ver. Dr. K.Jagadeeshan, CrI. APPl. 688/02, SLP 1871/01.

(b) K.Prabhakara Rao & others Ver. State of A.P. CrI. Revision P.1212/13, Hon'ble Justice Siva Shankar Rao garu had extensively dealt with Secs. 251 and 258 Cr.P.C. The stoppage of proceedings U/Sec. 258 Cr.P.C tantamount to discharge.

#### **Conclusion:**

The Legal Maxim 'Let a hundred guilty be acquitted, but one innocent should not be convicted' is the guiding principle behind rules of the procedure and evidence guiding and inspiring our courts. When any law relating to procedure and evidence requires some sort of interpretation, the interpretation is made usually in favour of the accused which is, upholding the presumption of innocence.

The reason for this is that an innocent man should not be convicted for a crime that if he did not commit any offence, otherwise people did not have faith and respect for the justice delivery system.