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**APPLICATIONS FOR DISCHARGE IN CASES INSTITUTED BASING ON  
THE POLICE REPORTS AND OTHERWISE**

- Before discussing about the present topic, it is necessary to consider the intention of the legislature for incorporating the procedure of “Discharge” in Criminal Procedure Code. **“Let a hundred guilty be acquitted, but one innocent should not be convicted”**.
- It safeguards the person against whom the false allegations have been made. No one should be punished for the offence which is not committed by him.
- Discharge application is the remedy provided to the person who has been implicated in an offence maliciously, fraudulently or otherwise not sustainable . If such allegations have been made against him, the aggrieved person can file an application for discharge. It is the salutary duty of the Court to prevent the abuse of the process, miscarriage of justice and to correct the irregularities in the judicial process.
- The legal phrase of Discharge can be understand with the expression i.e., charge. Charge means an acquisition against a person with regard to the commission of an offence and subject to trial. In view of that, the expression discharge means “a person alleged to be committed an offence can be discharged from a case if no sufficient ground and no prima-facie material available on record and without conducting trial. In warrant cases without going to the trial application for discharge can be entertained. It is to say that in summons cases the question of discharge of accused does not arise because framing of charge in summons case does not takes place.
- The expression discharge can also be explained in other words as “releasing a person from acquisition of an offence and set at liberty from the case”.
- The application for discharge can be filed even before the charges have been set against him. If the Judge contemplates that there are no sufficient grounds available for initiating the proceedings against

the accused he can discharge the accused. The discharge application can only be filed in warrant cases. Warrant cases consists of serious crimes that are punishable with death or imprisonment more than two years.

➤ **NATURE AND SCOPE OF DISCHARGE:**

- While receiving a discharge application, the Court has to consider the following facts:
  - a) Report, Charge Sheet and other relevant documents submitted by police under Section 173 Cr.P.C. to the court.
  - b) Adequate opportunity to be heard as been given to the prosecution and the accused.
  - c) The Magistrate thinks through the averments as false and unsubstantiated.
- While deciding a discharge application, the Court has to consider the following facts:
  1. The Report and other material produced by the police does not contain effective facts and reasonable grounds to proceed further.
  2. The acquisitions upon him are unsubstantiated and vague.
  3. Prosecution has not provided with any witnesses.
  4. The Magistrate finds the charges has vague and unjustified.
  5. After examining these facts and evidence, if the magistrate thinks that there is no prima-facie case is made out against the accused and there are grounds that are sufficient to satisfaction of the magistrate, he can discharge the accused. In the result, the application for discharge is accepted.
  6. If the magistrate satisfies to discharge the accused, he must record reasons for doing so. Recording of reasons in allowing the application for discharge is mandatory.
  7. Any violation of considering the sufficient ground to proceed against the accused against the principles of natural justice and framing of charge is not fair.
  8. The result of the discharge is neither acquittal nor conviction so, the discharged person is not subjected to the principles of double

jeopardy and artifiuous acquit and artifiuous convict. So that he can be called upon to the court to answer, if there is any subsequent change in circumstances or as per the facts of the case demands.

9. The factual defence of the accused could not be considered at the stage of discharge application but, if a pleas taken by the accused are factual, they can not be considered at this stage but, they can be substantiated at proper stage after adducing evidence to that effect.
10. At the stage of framing charge the criteria for consideration is whether the unrebutted evidence of the prosecution can result in to conviction of the accused. If the answer is affirmative, the accused to be charged, and if the answer is in negative, the accused is to be discharged.
11. The language emanating from Section 227 of Cr.P.C. makes with clear that judge can not proceed on the basis of presumption. The use of the word "considers" reflects that while discharging the accused there has to be consideration by the judge and not merely a presumption.
  - After the case had been committed to the court of session. The Hon'ble presiding officer can have the hearing of the case as to the commission of offence through the public prosecutor, thereupon if the court finds there is no sufficient ground to proceed, he may discharge the accused from the case or on satisfaction as to presumption of commission of offence he has to proceed with the trail after framing of charge.
  - The second scenario, if after considering the record, the judge exercises his power to frames the charges under section 228 of Cr.P.C. the opinion of the Court is tentative i.e., if the judge is of the opinion that there is ground for even presuming that the accused has committed an offence he shall frame in writing a charge against the accused. For framing of charge mere presumption is sufficient but not in case of considering discharge application.
12. At the stage of issuance of process under Section 204 Cr.P.C., the Court is only to see whether there are grounds for proceeding in the matter. The accused does not have any right to take part in the

proceedings at this stage, as held by the Supreme Court in **Chander Deo Singh v. Prakash Chander Bose**, AIR 1963 SC 1430 and **Dr. S.S. Khanna vs Chief Secretary, Patna**, AIR 1983 SC 595. However, at the stage of framing of notice under Section 251 Cr.P.C., the Court has to satisfy after considering the material on record and hearing the accused that the offence has been committed which can be legally tried. The prosecution may be barred by limitation or bad for sanction or otherwise not sustainable. No adverse order can be passed without giving the affected party, an opportunity of being heard.

13. The power of the Trial Court to discharge the accused at the stage of notice under Section 251 Cr.P.C. is based not only on sound logic but also on a fundamental principle of justice as a person against whom no offence is disclosed cannot be put to face the trial.

14. Court is satisfied that ends of justice are higher than the ends of mere law and therefore, the case warrants the issuance of appropriate directions enable the Magistrate to discharge the accused at the stage of notice under Section 251 Cr.P.C. if no prima-facie offence is made out.

15. If in a case, in which one of the offence is triable as a summons case procedure and other as a warrant case procedure. In such a situation the consideration of the application for Discharge is maintainable. For instance in a case filed under section 138 of NI Act coupled with section 420 of Indian Penal Code. The application for discharge is maintainable even though the procedure under the N.I. Act is summary or summons case procedure.

➤ **Provisions that deals with discharge application:**

- Section 227 of Criminal Procedure Code. comes into picture in case of trial before the Court of Session. Section 239 Cr.P.C. comes into light in case of trial of warrant cases by magistrates upon cases instituted on a police report. Section 245 Cr.P.C. explains the procedure in case of trial of warrant cases by magistrate upon cases instituted otherwise than on police report.

- Under Criminal Procedure Code, there are two major classifications of Criminal trials namely:

- **Police Case:**

So far as police case is concerned, it is instituted on a police report under section 173 Cr.P.C. After supply of copies under section 207 Cr.P.C. The accused can seek discharge from the case. Which was dealt under Section 239 Cr.P.C.

- **Private Case:**

Discharge of accused is possible on private case but there is no discharge in summons case.

- In Criminal Procedure Code the following are the trials available. Warrant case trial, summons case trial, summary trial and sessions case trial all these type of cases may arise out of police case and also private case.
- In **Amit Sibal vs Aravind Kejriwal** case decided on 16-01-2014, the Court has observed that there is no power available to the magistrate to discharge an accused person in a complaint case triable as summons trial. But, the accused in summons case can asked for revision under section 397 of Criminal Procedure Code.
- In view of the authoritative pronouncements of the Hon'ble Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar's case, Maneka Gandhi 's case, of this Court in Rajeev Taneja, Urrshila Kerkar's case and S.K.Bhalla, the accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C in all summons cases arising out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the accused. However, in the event of the learned Magistrate not finding a prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of

power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles laid down by the Supreme Court in *Bhushan Kumar (supra)*, *Krishna Kumar Variar (supra)* and *Maneka Gandhi (supra)*.

**Amit Sibal vs Aravind Kejriwal** case decided on 16-01-2014 also held that:

- In summons cases instituted otherwise than upon complaints which would include cases based on police reports, the Magistrate has power under Section 258 Cr.P.C. to stop further proceedings. The provisions of Section 251 read with Section 258 Cr.P.C. clothe the learned Magistrate in a case instituted on the basis of a police report with the power to discontinue proceedings at the stage of Section 251 Cr.P.C., if there be no sufficient allegations or materials to justify continuance of proceedings for an offence. Section 258 Cr.P.C. is reproduced hereunder:
- "Section 258. Power to stop proceedings in certain cases. - In any summons- case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.
- "However, since Section 258 Cr.P.C. does not empower the Magistrate to discharge the accused in summons cases instituted upon complaints.
- It cannot be said that, in the above circumstances, Courts have no power to do justice or redress a wrong merely because no express provision of the Code can be found to meet the requirements of a case. All Courts, whether civil or criminal, possess, in the absence of

express provision in the Code for that purpose, as inherent in its very constitution, all such powers as are necessary to do the right and to undo a wrong in the course of the administration of justice. This is based on the principle, embodied in the maxim “quando lex aliquid alicui conceit, concedere videtur id sine quo res ipsa esse non protest” - when the law gives a person anything, it gives him that, without which, it cannot exist. The High Court has, in addition thereto, and in view of its general jurisdiction over all the criminal Courts subordinate to it, inherent power to give effect to any order of any such Court under the Code, and to prevent the abuse of process of any such Court, or otherwise to secure the ends of justice.

**M/S Meters And Instruments and another vs Kanchan Mehta**  
**on 5<sup>th</sup> October, 2017**

- Offence under [Section 138](#) of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under [Section 139](#) but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under the [Cr.P.C.](#) but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of [Section 258](#) Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.
- With regard to the discharge under warrant cases instituted otherwise than on police report. On careful consideration of the legal position as enumerated in the provisions of the criminal procedure code. However, there is major distinction as regards discharge of an accused from warrant case instituted upon a police report and a warrant case instituted on a private complaint filed under section 200 Cr.P.C. i.e., recording of evidence under section 244 and procedure under section 245 of Cr.P.C. which was discussed elaborately hereunder.
- In warrant cases instituted upon police complaint the magistrate has to consider the documents filed by the police and if he feels necessary

he can examine the accused and if he finds any grounds he can frame the charges if not, he can discharge the accused.

- However, in a case instituted upon a private complaint the procedure for charge or discharge of accused 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.
- But in a private complaint case trial will commence only after framing charges under section 246 Cr.P.C. i.e., only after recording evidence under section 244 Cr.P.C.
- That is how, in a private complaint case the accused will have two cross examination. It is pertaining to note here that at the stage of quantum of evidence adduce is not the choice of the accused, it is the choice of the complainant, which would be sufficient to frame charges in the opinion of the complainant.
- A close reading of Section 245 (2) Cr.P.C. would also shows that, at any stage of the case, if the charge is groundless, no prima-facie case has been noticed, the Court is bound to discharge the accused.
- There is an exemption to this rule as mentioned under section 245 (2) of Cr.P.C. which states that the Court can also discharge the accused without even interpreting the evidence, if the charges against him are indefinite and groundless.

➤ **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 section 200 to 204
  - So in view of the observation of Section 245 Cr.P.C and Section 244 Cr.P.C. it is observed that where the magistrate takes the task of considering on all the evidence taken under section 244 (1) Cr.P.C. and if he comes to the conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the commission of the accused, the magistrate proceeds to discharge him.
  - The procedure with regarding discharge of accused as per sections 244 Cr.P.C. and Section 245 Cr.P.C. were discussed in **R.Ranga Rajan vs A.Vasudevan** (Madras High Court 2015).the controversy was resolved by the Supreme Court in **Ajay Kumar Ghose vs State of Jharkand** (Criminal Appeal No.485/2009) .
  - The procedure under Section 227 Cr.P.C and Section 239 Cr.P.C. are similar but the procedure under Section 245 Cr.P.C. is little variation. After considering the Section 245 Cr.P.C. the scheme under section 246 Cr.P.C. is that it is only on the basis of any evidence that the magistrate has decide as to whether there is a ground to presume that the accused has committed an offence committed under the chapter.
- **Inherent powers of High Court under section 482 Cr.P.C.**
- The power under Section 482 Cr.P.C. is in its nature extraordinary and is to be exercised ex debito justitiae to do the real and substantial justice for the administration of which alone Courts exist. The Court, therefore, has to be careful to see that its decision is based on sound general principles of criminal jurisprudence and is not in conflict with the statutory provisions.
  - In view of the numerous complaint are being filed by the departments and by the individuals for criminal prosecutions, it becomes important to analyze the remedies available with the accused in this cases, especially the option of choosing between the filing of application for discharge or approaching the High Court in a quashing petition. To understand various offences and criminal prosecutions that are filed in order to harass or to falsely implicate the people for satisfying their grudge and other malafide intentions.

- It is a continuous dilemma was prevailed before the legal fraternity and accused persons, i.e., whether they should approach the trial court with an application for discharge or approach the High Court for quashing the summoning order under section 482 of Cr.P.C., provided they are of the view that their case has some merits for such relief. In **Bushan Kumar and another vs State (NCT of Delhi)** and **Pepsi Foods Limited and another vs Spl. Judicial Magistrates and others**. Dated 04-11-1997 held that petition filed under section 482 of the code is not maintainable, can not be accepted for discharging the accused.

On this aspect, pertinent observations of Apex Court in **Bhushan Kumar & ANR. Vs. State (NCT of Delhi) & ANR.** AIR 2012 SC 1747 are as under:-

- "17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."
- The general and consistent law is that the inherent power of the high Court under section 482 Cr.P.C. for quashing has to be exercised sparingly with circumspection and in the rarest of rare cases held in **Som Mittal vs Government of Karnataka** wherein it was held that the exemption is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed and where the accused would be harassed unnecessarily.

Further, on this aspect, the dictum of the Apex Court in **Krishan Kumar Variar v. Share Shoppe**, (2010) 12 SCC is as under:-

- In our opinion, in such cases where the accused or any other person raises an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try/entertain a case will, at least in part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case.
- In the case of **CBI vs Ravi Shankar Srivastava** the Hon'ble Supreme Court was of the opinion that the High Court in the exercise of jurisdiction under section 482 Cr.P.C. of the code does not function either as a Court of appeal or revision and held three circumstances under which the inherent jurisdiction may be exercised, namely:
  1. To give effect to an order under the Court
  2. To prevent abuse of the process of the Court, and
  3. To otherwise secure the ends of justice.
- In another case, **State of Haryana and others vs CH Bajan Lal and others** the Hon'ble Supreme Court laid down the categories of cases in which the High Court may, in exercise of powers under article 226 of the constitution or under section 482 of Cr.P.C.

**Recent Judgments delivered by Hon'ble Supreme Court on the topic Discharge:**

1. **State of Madhya Pradesh vs Deepak** AIR 2019 SC 5605 held that where there is a sufficient ground to proceed against the accused, discharge is unjustified.
2. **Smt. Madhu Rani vs State (Government of NCT Delhi)** AIR 2019 SC 5470
  - Effect of discharge was discussed-- Refund of amount deposited as condition for granting anticipatory bail for an amount of Rs.1.50.000/- in name of his wife. Held the accused after discharge from offence is entitled to encash the said amount deposited in the form of FDR.

### Other important citations on Discharge.

- The Court has to consider the material at the stage of framing of charge ; **1997 (3), SC-73** ;
- Accused can be discharged only after considering the allegations in Charge sheet under relevant law ; **AIR-1997, SC- 2401**;
- The standard of test It is to be required to be applied at the time of appreciation of evidence while making the Judgment that should not be applied at the stage of deciding the matter Under Section 227,  
**Held in D.Vijay Kumar Vs State of Andhra Pradesh represented by Public Prosecutor, 2009, Part(3), ALT-Cri. – 311 (A.P.)**
- A robin enquiry cannot be undertaken into the process and grounds of the case at that stage by weighing the evidence of collecting the materials, as if during the course of trial.–  
**Held in Om Prakash Sarma Vs Central Bureau of Investigation, AIR- 2000, SC – 1136** ;
- Discharge can be asked for at any state of trial; **1987 Cri Law Journal - 584**;
- Order of Discharge is not justified where there is a prima-facie case ; **1983 SCC (Cri) – 82.**
- If there is no prospect of the case any in conviction, the valuable time of the Court should not be wasted for folding a trial for the purpose of formality accused can be discharged. **Held in M.Rajavalsi Vs State, 1999(1) Andha Law Times – Criminal – 328.**
- The test to determine the prima-facie case would naturally depends upon the fact of each case and it is difficult to lay down the Rule of universal application.
- The Judge while considering the question of framing charges or discharge the un-doubted power of way the evidence of the limited purpose of finding out whether or not a prima-facie case against the accused has been made out ;
- Order of discharge need not the very detailed whether full pledged of Judgment acquittal; **Held in AIR-1987, SC – 773**;

- In the absence of prima-facie case , accused can be discharged ;  
**AIR-2987, SC – 863 ;**
- The Magistrate has not to consider whether the material without tested by cross examination, would or would not be capable of acceptance for finding a conviction – **AIR 1962, SC 1195.**

### **Discharge of accused in summons case.**

- The recent order by the Hon'ble Supreme Court in **Amit Sibal v. Arvind Kejriwal**, has again brought to the forefront, the short but extremely important question as to : Whether the magistrate, in a 'summons case based on a complaint' has the power to drop proceedings and discharge an accused, or not ?
- The question assumes great practical significance insofar as many criminal cases such as defamation, dishonour of cheques, amongst other cases of relatively private character are triable as summons cases (based on private complaints, as opposed to investigation and charge-sheet by the police).
- To set the context right for the discussion, it would be apposite to recapitulate that, earlier in 2014, in **Arvind Kejriwal and others versus Amit Sibal & Anr<sup>3</sup>** (in a case alleging defamation by Delhi Chief Minister Mr. Arvind Kejriwal) a Single Judge of the Hon'ble High Court of Delhi had ruled that the **'Magistrate has the 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 against him at that stage itself, and the court need not, in all cases, take the matter to a full blown trial'**.
- Aggrieved by this decision, the matter was carried by the complainant (Mr.Amit Sibal) to the Supreme Court. The main ground of attack was that **'The Magistrate, in a Summons Case, has no power to drop proceedings, in absence of a specific provision in the CrPC to that effect'** Pending hearing on the matter, the Supreme Court had stayed the operation of the High Court decision. The Respondents (representing the accused) did not dispute this legal position (as to CrPC not stipulating a 'discharge scenario' in summons cases) and the Supreme Court apparently agreed with this proposition and matter was remanded to the High Court for fresh consideration from the viewpoint of Section 482 of the CrPC, effectively implying that Trial Court would have no such power.

- Since the order of the Supreme Court is basically in the nature of a 'consent order', an independent discussion of the legal position in this regard becomes extremely important and this is what the authors seek to do, by way of this article.

### **An overview of the Statutory Realm**

- Speaking purely in terms of statutory provisions, an examination and juxtaposition of the provisions relating to trial of 'Warrants Cases' and 'Summons Cases' would quickly reveal that as far as Trials of Sessions and Warrants cases (for offences punishable with imprisonment of 2 years or more) are concerned, there are specific provisions in the form of Section 227 and 239 CrPC, respectively, which stipulate affording an opportunity to the accused to make submissions on the point of charge and seek discharge at the very threshold. This is similar to a '*no case to answer*' motion, wherein accused argues that even if the prosecution case is accepted at face value and taken to be correct, no case is made out against the accused. This opportunity is specifically provided vis-à-vis Warrants Cases. However, there is no analogous provision as far as Summons Cases are concerned.

### **Chapter XX specifically deals with the procedure relating to trial of Summons cases by Magistrates.**

#### **Section 251 of the CrPC reads as follows :-**

- 251. Substance of accusation to be stated.— When in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.
- Even on a bare reading, it becomes apparent that there is no specific power of discharge or dropping of proceedings available with the Magistrate in a Summons Trial. However, the judicial opinion on this aspect is far from consistent and the position of law has meandered a

great deal. A short chronology of decisions dealing with this aspect would be apposite.

### **Judicial Interpretation of Section 251 of the CrPC**

- The issue was first dealt-with at length by the Supreme Court in **K.M.Mathew v. State of Kerala**<sup>4</sup> where the accused had sought recalling of the summoning order in a Summons Case.
- The facts of the case lie in very narrow conspectus; the accused (who was a Chief Editor of a daily newspaper) was summoned for an offence u/s 500 of the Indian Penal Code, 1860 ("IPC") (defamation). The Chief Editor, on appearance, moved an application seeking 'dropping of proceedings' on the premise that there was no specific allegation against him and offence against him was not made out. The Magistrate had accepted this plea and held that complaint, insofar as it concerned the Chief Editor, could not be proceeded with.

On the matter finally reaching the Supreme Court, it was held that:

- "If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused. It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused"
- With these observations, the proceedings against the accused were dropped. This judgment gave rise to many questions such as, would not such a decision amount to the court reviewing its own order.
- The correctness of the legal proposition set out above in K.M.Mathew (supra) came up for consideration before the Supreme Court in in **Adalat Prasad v. Rooplal Jindal & Ors**<sup>5</sup> wherein a three judge

bench was specially constituted since the validity of K.M.Mathew (supra) was open to question. The Court held that "If the Magistrate issues process without any basis, the remedy lies in petition u/s 482 of the CrPC, there is no power with the Magistrate to review that order and recall the summons issued to the accused"<sup>6</sup>

- The decision in Adalat Prasad was reaffirmed by the Supreme Court in **Subramaniam Sethuraman v. State of Maharashtra & Anr**<sup>7</sup> (which was a Summons Case relating dishonour of cheque u/s 138 of the Negotiable Instruments Act, 1881 - "NI Act"), wherein it was held that : Discharge, Review, Re-Consideration, Recall of order of issue of process u/s 204 of the CrPC is not contemplated under the CrPC in a Summons Case. Once the accused has been summoned, the trial court has to record the plea of the accused (as per Section 251 of the CrPC) and **the matter has to be taken to trial to its logical conclusion and there is no provision which permits a dropping of proceedings, along the way.**<sup>8</sup>

#### **An aberration**

- This position held sway for a long time, till the Supreme Court in **Bhushan Kumar v. State (NCT of Delhi)**<sup>9</sup> ruled that the Magistrate has the power to discharge an accused in a Summons Case. The relevant observations of the Court are as under :
- **"It is inherent in Section 251 CrPC that when an accused appears before the trial court pursuant to summons issued under Section 204 in a Summons Trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion, whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the CrPC"**

**The above observation raises more questions than it answers:**

- i. Firstly, if one delves into the facts of **Bhushan Kumar** (supra) it is revealed that the case concerned an FIR u/s 420 of the IPC, which is punishable with upto 7 years of imprisonment, and was therefore, a Warrants Case and not a Summons Case; in such a factual background, the discussion of Section 251 of the CrPC seems inapposite as Section 251 of the CrPC applies only *qua* a Summons Case;
- ii. Secondly, in the context of a Summons Case, the applicability of words 'discharge' and Section 239 of the CrPC is questionable; Section 239 of the CrPC figures in a separate and dedicated chapter (Chapter XIX) and applies only with respect to a Warrants case and not a Summons case (Chapter XX). The case before the court was a warrants case. In a matter triable as Warrants Case the possibility of discharge was never in question.
- iii. Therefore, the question as to whether the Magistrate is empowered to discharge an accused in a Summons Case never really arose before the court in this case. In fact, the case involved only the following two questions:
  - a. Whether taking cognizance of an offence by the Magistrate is same as summoning an accused to appear?
  - b. Whether the Magistrate, while examining the question of summoning an accused, is required to assign reasons for the same?

Therefore, in absence of this question arising before the court, and the case in question being a Warrants Case which specifically provides for 'discharge', **Bhushan Kumar** (supra) may not have precedential value for the following reasons:

- c. Observations *qua* Summons Case cannot be considered to be the '*ratio decidendi*' as the immediate case before the court was one triable as a Warrants Case.
- d. The court's attention not having been drawn to previous decisions in Adalat Prasad, Subramaniam Sethuraman etc, and for that reason, the decision may be *per incuriam*.
- e. being incongruent with the clear scheme of CrPC and procedure to be adopted in a Summons Case (expressly set out in Chapter XX of the CrPC)

The decision of the court in Bhushan Kumar (supra) was followed in a catena of decisions including **Urrshila Kerkar v. Make My Trip (India) Private Ltd**<sup>10</sup> with the following observations:

- It is no doubt true that Apex Court in Adalat Prasad Vs. Rooplal Jindal and Ors. (2004) 7 SCC 338 has ruled that there cannot be recalling of summoning order, but seen in the backdrop of decisions of Apex Court in Bhushan Kumar and Krishan Kumar (supra), aforesaid decision cannot be misconstrued to mean that once summoning order has been issued, then trial must follow. If it was to be so, then what is the purpose of hearing accused at the stage of framing Notice under Section 251 of Cr.P.C. In the considered opinion of this Court, Apex Court's decision in Adalat Prasad (supra) cannot possibly be misread to mean that proceedings in a summons complaint case cannot be dropped against an accused at the stage of framing of Notice under Section 251 of Cr.P.C. even if a prima facie case is not made out."

#### **Course Correction**

- The recent order of the Supreme Court in **Amit Sibal (supra)**, appears to be the much needed course correction and seems to suggest that the trial court has no power to drop proceedings/discharge in a Summons Trial. This also appears to be in sync with the settled judicial view and also the scheme of CrPC, wherein separate and distinct procedures have been laid down for Warrants, as opposed to Summons Cases (or those cases triable summarily for that matter).
- The Delhi High Court recently in **R.K. Aggarwal v. Brig Madan Lal Nassa & Anr**<sup>11</sup> expressly recognised the absence of power of discharge in a summons case by holding:
  - "There is no basis in the contention of the petitioners for discharge for the reasons that firstly, there is no stage of discharge in a summons case. Under Chapter XX of Cr.P.C, after filing a private complaint, in a summons case, the accused is either convicted or acquitted. There is no stage of discharge of an accused at any stage under Chapter XX of Cr.P.C"

**Analysis.**

- The very fact that in a Summons Case there is no specific provision of a discharge, as opposed to a Warrants Case (S.227/239/245 of the CrPC) speaks volumes as to the legislative intent of not having an elaborate hearing at the time of framing of notice. What also deserves to be borne in mind is the fact that Summons Cases were not envisaged to be as long-drawn out as Warrants Case and the need for a specific discharge hearing was ousted.
- It was expected that, since Summons Cases relate to offences of relatively lesser gravity and capable of being completed expeditiously, having a dedicated charge hearing would only delay matters unnecessarily, without any corresponding benefit. The legislative intent to have a relatively abridged form of trial in Summons Cases is writ large on the face of the provisions.<sup>12</sup>
- The latest decision in **Amit Sibal (supra)** is in perfect harmony with the statutory scheme. However, since the decision is more in the nature of a consent order, the authors feel that an authoritative judicial decision that examines the nuances of the issue is required. The decision should also take into account the fact that Summons Cases, for which a separate and abridged form of trial has been envisaged, now for all practical purposes take as long as Warrants Cases, and there is no ostensible reason as to why the accused should not be able to argue for a discharge in such cases and has to mandatorily face a protracted trial.

**Conclusion**

- A decision which reads into Section 251 itself 'the power of discharge' may be required. One way in which the same can be done is by holding that the power to frame notice in a case, has implicit within itself the power not to frame a notice when no case is made out against the accused. Such a judicial pronouncement is required to clear the air on this issue. Amendment of the law is, of course, the more appropriate way of bringing about a change, wherein the desirable results may be achieved without having to stretch the language of the section unnecessarily.

- Till then, reliance on Subramaniam Sethuraman (*supra*) (supported broadly by **Amit Sibal v. Arvind Kejriwal** - *supra*) and the bare provisions of CrPC constrain us to conclude that there is no such provision in CrPC that permits a 'discharge' or 'dropping of proceedings' in a Summons Case. Having said that, the remedy of filing a revision u/s 397 of the CrPC and/or a petition seeking quashing of proceedings u/s 482 of the CrPC before the Hon'ble High Court is always available with the accused, who can argue, in appropriate cases, that the continuance of proceedings against him amounts to abuse of process of law, and ends of justice demand that proceedings are quashed.

#### **Footnotes**

1. 2016 SCC Online SC 1516
2. In contrast to Summons Cases based on private complaint, in cases based on FIR (culminating into a Police Report u/s 173 of the CrPC), Section 258 of the CrPC specifically provides for dropping of proceedings. However, a similar provision is conspicuously absent in Summons Cases based on a private complaint.
3. (2014) 1 High Court Cases (Del) 719
4. (1992) 1 SCC 217
5. (2004) 7 SCC 338.
6. It should be noted that in Adalat Prasad (*supra*), the case against the accused was triable as a Warrants Case and not a Summons Case. It is pertinent to flag that in a warrants case the accused gets an opportunity to argue that no case is made out against him and seek a discharge, to protect himself from the rigmarole of a full-fledged trial, which might take years. Whereas, there is no analogous provision as far as Summons Cases are concerned, as demonstrated above.
7. (2004) 13 SCC 324

8. Though there is no provision for discharge in such cases, but the dual remedy of invoking Section 482 as well as revisional jurisdiction u/s 397 of the CPC was clarified by the Supreme Court in *Dhariwal Tobacco v. State of Maharashtra (2009) 2 SCC 370*.
9. (2012) 5 SCC 424
10. 2013 SCC OnLine Del 4563. To the same effect, also see : *Raujeev Taneja v. NCT of Delhi (Crl.M.C. No.4733/2013* decided on 11th November, 2013)
11. 2016 SCC OnLine Del 3720. Also see : *R.P.G. Transmission Ltd v. Sakura Seimitsu (I) Ltd. & Ors, 2005 SCC OnLine Del 311*, *Raj Nath Gupta & Ors v. State and Anr. 1999 SCC OnLine Del 683* and *Devendra Kumar Jain v. State, 1989 SCC OnLine Del 121*
12. 41st Law Commission Report, p. 178, para 22.1
  - The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

**WORK SHOP TOPIC ON**

**APPLICATIONS FOR DISCHARGE IN CASES INSTITUTED  
BASING ON THE POLICE REPORTS AND OTHERWISE**

**Presented by**

G.Srinivas,  
Junior Civil Judge,  
Narasannapeta,  
Srikakulam District