REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1562 OF 2022
ARISING OUT OF SLP (CRL) NO. 9601 OF 2016

KANCHAN KUMAR ...APPELLANT

VERSUS

THE STATE OF BIHAR ...RESPONDENT

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA J.

1. Leave granted.

2. This appeal is against the concurrent dismissals by the Trial[1] and the High Court[2] of the application for discharge filed by the Appellant under Section 227 of the Code of Criminal Procedure, 1973[3].

1 Special Judge (Vigilance), Patna, in Special Case No. 9 of 2000 dated 28.03.2016.
2 High Court of Judicature at Patna, in Criminal Miscellaneous No. 23031 of 2016 dated 05.10.2016.
3 hereinafter referred to as the 'Cr.P.C.'

3. ***Facts leading to the filing of this Appeal:*** The Appellant joined the Bihar State Financial Corporation[4] in the capacity of an Assistant General Manager on 19.07.1974. After a period of thirteen years, in 1987, a complaint came to be filed against the Appellant for having allegedly purchased three houses and two pieces of land in Bihar, which according to the complainant, was disproportionate to Appellant's known sources of income. This complaint was inquired into, and after a detailed investigation, the allegations were found to be false. Except for a residential house in Patna, which the Appellant had purchased on 29.08.1988 for Rs. 2,26,500 with the help of a loan from the BSFC, no other assets could be traced to the ownership of the Appellant. However, despite finding no merit in the allegation, the investigation was kept pending.

4. In the meanwhile, life moved on and in 1996, the Appellant joined the Oil and Natural Gas Commission[5] as Deputy General Manager on deputation, keeping his lien with the BSFC. Four years after joining ONGC, an FIR came to be registered against him on 21.02.2000, under Sections 13(l)(d) and 13(2) of the

4 hereinafter referred to as 'the BSFC'.
5 hereinafter referred to as 'the ONGC'.

Prevention of Corruption Act, 1988[6], on the same allegation that he possessed assets disproportionate to his known sources of income. These alleged assets were purportedly acquired during his tenure with the BSFC, and consequently, the check period in the FIR was considered from the date he joined BSFC, i.e., 19.07.1974 to the date of registration of the residential house purchased by him, i.e., 29.08.1988. The Appellant wrote a letter to the Director General of Police (Vigilance), Patna, on 18.04.2002, raising a grievance that the calculations in the FIR undervalued his income and overvalued his assets, thus depicting a false and inflated account of his expenditure.

5. Eventually a charge sheet came to be filed on 11.09.2007, i.e., about seven years after the registration of the FIR, and in fact, twenty years after the complaint on this very allegation was found to be false by the authorities. Be that as it may, the charge-sheet filed against the Appellant indicated that he earned a total income of Rs. 3,01,561 and incurred an expenditure of Rs. 5,24,386 during the check period. In view of this, the charge against the Appellant was of having amassed Rs. 2,22,825, disproportionate to his known sources of income. The charge-

6 hereinafter referred to as the 'PC Act'.

sheet indicated two components of his income, being - i) savings of Rs. 1,13,081 (1/3rd of his salary), and ii) home and car loan from BSFC worth Rs. 1,88,480. On the other hand, the charge sheet included six components of his expenditure, being – i) payment of Rs. 2,26,500 towards the construction of his house, ii) general expenditure during the check period of Rs. 24,800, iii) amount in bank deposit worth Rs. 55,000, iv) loan repayment of Rs. 53,467, v) LIC deposit worth Rs. 6,057, and vi) estimated value of articles found during a search conducted on 21.02.2000, as being Rs. 1,58,562.

6. At the relevant stage, the Appellant applied for discharge under "Section 239" of the Cr.P.C (which should have been under Section 227[7]) before the Court of Special Judge (Vigilance), Patna, alleging that there were glaring errors in the calculation. However, the Court summarily dismissed the application by its order dated 28.03.2016, without analysing or examining the documents produced and the arguments advanced. The Court held that:

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7 Though the Appellant stated that the application is under Section 239 of the Cr.P.C., as Special Judges appointed under the PC Act are deemed to be Court of Session, the discharge application should have been filed under Section 227 of the Cr.P.C., and not under Section 239 therein. The Ld counsel for the Appellant Shri Sunil Kumar, Senior Advocate clarified this position of law while making his submissions.

> "*Perused the record and I find that there is sufficient materials against accused in this case at least prima facie at this stage to frame charge against the accused against whom there is allegation that he during the check period amassed. Although certain explanations have been advanced by the learned counsel for the petitioner but the same appears to be looked into and appreciated during the course of trial when the accused petitioner wife have a chance to prevents innocence producing his oral or documentary evidences. For the present I am not satisfied with the explanation so produced by the accused in his favour in support of his discharge application.*
>
> *Considering the aforesaid facts and circumstances the charge petition of the accused petitioner namely Kanchan Kumar is hereby rejected. Put up on 22.04.2016 for framing of charge. The accused is directed to remaining physically present on the date so fixed by this court for framing of charge.*"

7. Aggrieved by the dismissal of his application for discharge, the Appellant moved the High Court. After recounting the chronology of events, the High Court proceeded to quote judgment after judgment, and finally dismissed the revision application by merely holding that:

> "***15.*** *In the aforesaid circumstances, even if considering the submissions made on behalf of petitioner, for argument's sake needs proper verification attracting roving enquiry which could be permissible only during course of trial.*

> ***16.*** *Much emphasis has been laid at the end of the petitioner relating to valuation. With the cost of repetition, the contention of the petitioner is that as the raid was conducted on 21.02.2000, on account thereof, the valuation having been shown against the article so seized at the end of the Vigilance must be considered to be in consonance with the date of recovery. That argument happens to be fallacious in the background of the fact that from the case diary, it is evident that valuation has been estimated only. There happens to be complete absence of prima facie material whereupon one could infer that the value so affixed at that very moment was prevailing rate on the alleged date of seizure. Furthermore, to ascertain genuineness on this score will again attract roving enquiry which for the present stage is found forbidden.*
>
> ***17.*** *Consequent thereupon, the instant petition is found devoid of merit and is, accordingly, rejected.*"

8. It is against the aforesaid order that the Appellant has approached this Court.

9. ***Submissions of parties*****:** The Ld. Senior Counsel Shri Sunil Kumar has submitted that the basic objection relating to the calculation and wrongful inclusion of certain items was sufficient for the Trial Court to discharge the Appellant. In a simple and straight forward submission, he took us through certain glaring errors that were evident from the record of the case before the

Special Judge (Vigilance). In support of his submissions, he also referred to the decisions of this Court in *Union of India* v. *Prafulla Kumar Samal and Anr.*[8] and *Ghulam Hassan Beigh* v. *Mohammad Maqbool Magrey*[9].

10. The counsel for the Respondent Shri Abhinav Mukerji AOR, has contended that the Trial Court was right in dismissing the discharge application. He submitted that the Courts could not have conducted a roving inquiry while adjudicating an application under Section 239 of the Cr.P.C.

11. ***Issue:*** The short question arising for consideration is whether the Appellant is entitled to be discharged of the proceedings initiated against him under the PC Act.

12. ***Legal provision and precedents:*** Section 227 of the Cr.P.C relating to discharge is as under:

> "***227. Discharge —*** *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*"

8 (1979) 3 SCC 4.
9 2022 SCC OnLine SC 913.

13. The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In *Prafulla Kumar Samal* (supra), it was noted that:

> ***"10.*** *Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
>
> *(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.*
>
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
>
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*
>
> (emphasis supplied)

14. In *Sajjan Kumar* v. *Central Bureau of Investigation*[10], the Court cautioned against accepting every document produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that:

> *"**21.** On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
> *...*
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
>
> *(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and*

10 (2010) 9 SCC 368.

documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case..." (emphasis supplied)

15. Summarising the principles on discharge under Section 227 of the Cr.P.C, in *Dipakbhai Jagdishchandra Patel* v. *State of Gujarat*,[11] this Court recapitulated:

> *"**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*

11 (2019) 16 SCC 547.

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)*

16.1 ***Analysis:*** Without getting into too many details, we consider it to be appropriate and in fact sufficient to confine our inquiry to three heads of expenditure indicated in the charge-sheet itself. This limited inquiry will also satisfy the requirements of Section 227 of the Cr.P.C.

16.2 The first objection pertains to the inclusion an amount of Rs. 55,000, recorded as the balance amount in the Appellant's bank account during the check period, and accordingly counted as an expenditure in the charge sheet. However, the Bank Passbook filed by the Appellant, which was available to the Investigation Officer and the Special Judge (Vigilance), evidently records a balance amount of only Rs. 11,998 during the check-period. The difference in the figures was not explained by the Prosecution. Accordingly, the Special Judge (Vigilance) and the

High Court failed to reconcile such a simple and straightforward inconsistency in the Prosecution's evidence. We are of the opinion that only an amount of Rs. 11,998, recorded in the Appellant's Bank Passbook during the check-period as the balance amount, is validly admissible as expenditure under this head.

16.3 The second objection relates to the inclusion of an amount of Rs. 53,467 as expenditure towards repayment of the loan from the BSFC. However, the amount repaid towards loan instalments was already deducted from Appellant's gross salary, and the deducted figure was recorded as the total disposable income with the Appellant during the check period. Hence, the loan repayment cannot be separately counted as an expenditure yet again. This is a glaring mistake. The Special Judge (Vigilance) as well as the High Court did not consider this objection on the ground that a roving inquiry is not permissible the stage of discharge.

16.4 The third objection relates to the inclusion of Rs. 1,58,562 as the value of the articles found during a search conducted in Appellant's house on 21.02.2000, twelve years after the check period of 1974 to 1988. There is nothing to indicate,

even *prima facie*, that these articles found during the search in the year 2000 were acquired during the check period. In the absence of any material to link these articles as having been acquired during the check period, it is impermissible to include their value in the expenditure. We are therefore of the opinion that the Appellant's objection about inclusion of this amount in the list of expenditure is fully justified. Unfortunately, even this objection, which did not require much scrutiny of the material on record, was not considered by the Special Judge (Vigilance) or the High Court.

17. The three heads of expenditure discussed hereinabove must be excluded from Appellant's total alleged expenditure during the check period. First, the Appellant's actual balance amount reflected in the Bank Passbook, i.e., Rs. 11,998, as against the purported account balance of Rs. 55,000, must be taken into account. Further, the second and third amounts, as indicated above, must be excluded from Appellant's total expenditure mentioned in the charge-sheet. Accordingly, the total expenditure comes only to Rs. 2,69,355, and not Rs. 5,24,386, which is based on certain mistakes that we have indicated hereinabove. It is this

expenditure of Rs. 2,69,355 which is to be contrasted with the income of Rs. 3,01,561 during the check-period. These facts clearly demonstrate that there is no *prima facie* case made out by the prosecution and therefore the Appellant was entitled to be discharged.

18. The conclusions that we have drawn are based on materials placed before us, which are part of the case record. This is the same record that was available with the Special Judge (Vigilance) when the application under Section 227 of the Cr.P.C. was taken up. Despite that, the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge (Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a *prima facie* case is made out for the Appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge (Vigilance).

19. Apart from the above analysis, we would note with great distress that the allegation relating to Appellant's disproportionate income in the period between 1974 and 1988 was levelled in an FIR filed twelve years after the said period concluded. The charge-sheet came to be filed seven years after the registration of the FIR. The application for discharge came to be dismissed on 28.03.2016, almost after a decade of filing of the charge sheet. The dismissal was affirmed by the High Court seven months thereafter, i.e., on 05.10.2016. Finally, and most unfortunately, the present SLP has been pending before this Court for the last six years. In the meanwhile, the Appellant superannuated from service in 2010, but had no option except to contest the case. He is now 72 years. Continuation of the prosecution, apart from the illegality as indicated hereinabove, would also be unjust.

20. For the reasons stated above, we allow the Criminal Appeal arising out of SLP (Crl) No. 9601 of 2016, and set aside the judgment and order of the High Court of Patna in CRLM No. 23031 of 2016 dated 05.10.2016, and that of the Court of Special

Judge (Vigilance), Patna in Special Case No. 09 of 2000, dated 28.03.2016, and discharge the Appellant.

21. No order as to costs.

.....J.
[B.R. GAVAI]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
SEPTEMBER 14, 2022