



2026:AHC-LKO:33434

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 2542 of 2026

Baburam And 8 Others

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko And
Another

.....Respondent(s)

Counsel for Petitioner(s)

: Shikhar Anand

Counsel for Respondent(s)

: G.A., Dharendra Kumar Mishra

[A.F.R.]

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri Shikhar Anand, the learned counsel for the petitioners, Shri Jai Prakash, the learned A.G.A. and Sri. Dharendra Kumar Mishra, the learned counsel for the opposite party No.2.

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioners have challenged the validity of an order dated 16.01.2024 passed by the learned Additional Chief Judicial Magistrate, Court No. 20, Sultanpur in Criminal Case No.7039 of 2023 arising out of Case Crime No.81 of 2019 under Section 457, 380 IPC, Police Station-Baldirai, District- Sultanpur whereby an application filed by the petitioners under Section 227 Cr.P.C. seeking their discharge, has been rejected. The petitioners challenged the aforesaid order by filing Criminal Revision No. 43 of 2024, which too has been dismissed by means of a judgment and order dated 17.08.2024 passed by the learned Session Judge, Sultanpur and validity of the revisional order has also been assailed through the present petition.

3. The aforesaid case was instituted on the basis of an application under Section 156(3) Cr.P.C. filed by the opposite party No.2- Tejbahadur against (i) Baburam, aged about 58 years, (ii) Sant Ram, aged about 65 years, (both (i) and (ii) sons of Hublal), (iii) Rinku @ Ashwani, aged about 20 years son of Baburam and (iv) Devendra @ Moti, aged about 25 years, son of Santram, the petitioner nos.1, 2, 3 and 4 respectively in the present petition.

4. It was stated in the application that the complainant is a permanent resident of House No. 162, Village- Lakehatamafi, Police Station and Tehsil -Baldirai, District- Sultanpur. The opposite party nos. 1 to 4 forcibly attempted to take possession of the house and they instituted Regular Suit No. 76 of 2006, wherein the trial Court passed an order directing the parties to maintain status-quo. On 26.12.2018 at about 7:00 p.m., when the complainant had gone out in connection of his treatment, the opposite party nos.1 to 4 broke open the lock of the house, entered into it and took away a generator along with its parts worth Rs. 80,000/-, three takhats, 50 sacks full of paddy, 40 sacks full of wheat, two benches, one table, a gas stove, a gas cylinder and some other household articles. Upon receiving information from some unnamed persons, the complainant dialed 100 and informed the police. By the time the police arrived, the accused persons had already taken away the articles.

5. The complainant reported the incident to the police but the police did not lodge a First Information Report. Thereafter, on 29.12.2018, he sent information of the incident to the Superintendent of Police, Sultanpur through registered post and when no action was taken on that application, he filed an application under Section 156(3) Cr.P.C. against the petitioner nos. 1 to 4. On the said application, the learned Additional Chief Judicial Magistrate, Court No.18, Sultanpur passed an order dated 15.03.2019 directing the police to register a case. In compliance thereof, FIR No.81 of 2019 was registered under Sections 457 and 380 IPC against petitioner nos.1 to 4, against whom allegations had been levelled in the application under Section 156(3) Cr.P.C.

6. During investigation, the Investigating Officer recorded statement of the complainant and he reiterated the allegations made in the application under Section 156(3) Cr.P.C. In his additional statement, the complainant stated that he had gone to some relative's place at about 6:00 p.m. on 25.12.2018. At about 5:00 a.m. on 26.12.2018, some unnamed villager telephonically informed him that the petitioner No.1 and his family members were taking possession of his house. Upon receiving this information, he dialed 100 and informed the police. The police reached the village and took the 'party' to the police station. Thereafter, he went to Sultanpur for taking medicine. He returned to his village at about 8:30 p.m. and found that the locks of his shop and house had been broken open and the petitioner No.1 and his family members were loading the goods from the shop and house on a four-wheeler

pickup vehicle. The complainant stated that he again dialed 100, but the call could not be connected. He also attempted to contact the police outpost and the police station telephonically, but those calls too could not be connected. Thereafter, he went to the police station, where the police assured him that they would reach the spot. The complainant further stated that he waited at the police station for some time. When he eventually returned to the spot, he found that the accused persons had already removed all the articles and had taken possession of the shop and the house.

7. In his additional statement, the complainant stated that he had personally witnessed the accused persons removing the goods from his shop and house. The complainant further stated that besides himself, Devinder alias Moti, son of Sant Ram, Babu Ram son of Hublal, Santram son of Hublal and Rinku son of Baburam had witnessed the incident.

8. Learned counsel for opposite party No. 2 pointed out that a copy of the statement of the complainant's father Raghunath annexed with the petition is incomplete. He produced a complete photocopy of statement of Raghunath recorded by the Investigating Officer wherein he stated that he had retired from the post of Sub-Inspector of Police in the year 2001 while he was posted at Lucknow. He further stated that the petitioner No.1 belongs to his village and his caste and he had previously resided with Raghunath at Lucknow where he used to work as a Chowkidar in a hospital. Raghunath further stated that on 25.12.2018, his son Tejbahadur (the opposite party No. 2) had gone to the house of some relatives. Raghunath and his grandson Deepak were sleeping in the house. At about 5:00 a.m. on 26.12.2018, the petitioner No.1 arrived there and asked Raghunath to leave the house. His grandson Deepak got frightened. Thereafter, the police vehicle arrived and took Raghunath and his grandson Deepak with them. They went with the police after locking the house. One Jitendra Bahadur Singh resident of Sonbarsa reached there and he asked that the persons from the side of the petitioners should also be taken by the police. Thereupon, the police took along Rinku, Baburam and Devindra (the petitioner Nos. 1, 3, and 4 as well).

9. At the police station, Raghunath and his grandson Deepak were detained whereas Moti, Devindra and Rinku were released. Jitendra took them away and thereafter the police allegedly set them free at about 9:00 p.m. Upon returning home, the complainant found that the locks of the shop and the house had been broken. Persons of Baburam (the petitioner No.1) were

loading the goods on a tractor and a pickup vehicle.

10. Raghunath stated that he owned certain land at Lucknow. He had executed a sale deed in respect of half of his land at Lucknow in favour of the petitioner No.1 on the condition that the petitioner No.1 will give him equal land in the village. The petitioner No.1 constructed a house on the land given by Raghunath at Lucknow and he had been residing there for the past 18-19 years. Raghunath constructed a house in the year 2001 on the land of petitioner No.1 in the village and had been residing there with his family. Subsequently, the petitioner No. 1 demanded an additional sum of Rs.50,000/- claiming that his land was situated on the roadside. Raghunath paid the amount on 10.12.2005 and the petitioner No.1 gave an acknowledgment written on a stamp paper. Thereafter, the petitioner No. 1 turned dishonest and he instituted Regular Suit No. 76 of 2006. Raghunath stated that there was an electricity connection in the name of the complainant Tejbahadur. He also alleged that the petitioner No.1 had obtained a stay order dated 12.07.2010 by concealing material facts.

11. The Investigating Officer recorded the statement of Deepak (son of the complainant and grandson of Raghunath). He stated that the Village Pradhan got him and his grandfather Raghunath released from the police station and brought them back to the village at about 9:00 p.m. He further stated that villagers have clicked some photographs of the incident. According to him, there was a photograph showing Devinder @ Moti breaking open the locks. He further stated that several villagers had witnessed the family members of petitioner No.1 forcibly entering the premises and looting the goods.

12. The Investigating Officer recorded the statements of independent witnesses Rakesh Yadav, Brijnath and Surendra Kumar, who stated that Baburam, Rinku, Kailashpati, Renu, Santram, Rajendra, Jagram @ Sanjay, Sitaau Devi, Urmila etc. were taking out the goods hurriedly and were loading them on a pickup vehicle.

13. Although the application under Section 156 (3) Cr.P.C. was filed levelling allegations against 4 persons, the Investigating Officer submitted a charge-sheet dated 13.06.2019 against nine accused persons (the petitioners) for offences punishable under Sections 457 and 380 IPC. The trial Court thereafter took cognizance of the offences on 20.01.2021.

14. The charge-sheet was submitted for offences punishable under Sections

457 and 380 IPC. Thereafter, the Investigating Officer arrested two more persons - one of the named accused persons Devendra alias Moti (the petitioner no. 4) and Jagram (the petitioner No. 7, who was not named in the FIR) on 04.08.2019 and showed recovery of a generator from their possession. The Investigating Officer further showed recovery of an empty LPG cylinder of Indane Gas from Rajendra son of Santram.

15. The petitioners filed an application under Section 227 Cr.P.C. on 11.08.2020 seeking their discharge. It was stated therein that, although the application under Section 156(3) Cr.P.C. and the consequent FIR named only four persons (the petitioner nos. 1 to 4) and it did not allege involvement of any other named or unnamed persons, the Investigating Officer submitted a charge-sheet against three additional persons.

16. On 30.07.2019, the Investigating Officer showed recovery of a generator from a named accused Devendra @ Moti (the petitioner no. 4) and an unnamed person Jagram alias Sanjay (the petitioner no. 7), who was not named in the FIR. On the basis of the alleged recovery, Section 411 IPC was added in the case. The petitioners contended that after submission of the charge-sheet, the Investigating Officer had no authority to conduct further investigation in the manner adopted by him. It was also stated that the trial court had rejected the request for remand of the aforesaid accused persons under Section 411 IPC, but their remand was subsequently allowed.

17. The petitioners filed an application under Section 227 Cr.P.C. on 11.08.2020 seeking their discharge. It was stated therein that, although the application under Section 156(3) Cr.P.C. and the consequent FIR named only four persons, namely petitioner Nos. 1 to 4, and did not disclose the involvement of any other named or unnamed persons, the Investigating Officer had nevertheless submitted a charge-sheet against five additional persons.

18. It was further contended that, although the charge-sheet had already been submitted on 30.07.2019, the Investigating Officer subsequently arrested two accused persons, who were not named in the application under Section 156(3) Cr.P.C. or in the FIR, and thereafter showed recovery of a generator and a gas cylinder. On the basis of the alleged recovery, Section 411 IPC was added to the case.

19. The petitioners contended that after submission of the charge-sheet, the

Investigating Officer had no authority to conduct further investigation in the manner adopted by him. It was also stated that the trial court had rejected the request for remand of the aforesaid accused persons under Section 411 IPC, though their remand was subsequently permitted.

20. It was further stated in the discharge application that the Investigating Officer had submitted a charge-sheet against Renu Kumari, petitioner No. 6, although she was employed at Chitrakoot with "Charcha Aaj Ki". The Editor of "Charcha Aaj Ki" had allegedly furnished a written statement certifying that Renu Kumari had continuously attended her duties at Chitrakoot till 25.05.2019.

21. The discharge application was rejected by the impugned order dated 16.01.2024. The trial court observed that from the material collected during investigation, offences under Sections 457 and 380 IPC were prima facie made out against all the accused persons and, therefore, no ground existed for discharging them. The revisional court affirmed the aforesaid order.

22. Challenging the validity of the aforesaid orders, learned counsel for the petitioners submitted that the learned Magistrate has rejected the discharge application in a mechanical manner without examining whether even a prima facie case was made out against the petitioners on the basis of the material available on record. In support of his submissions, learned counsel for the petitioners placed reliance upon the judgments of the Hon'ble Supreme Court reported in **Tuhin Kumar Biswas versus State of West Bengal**: 2025 SCC OnLine SC 2604 and **Ram Prakash Chadha versus State of Uttar Pradesh**: (2024) 10 SCC 651.

23. On the other hand, learned counsel for opposite party No. 2 placed reliance upon the decision of the Hon'ble Supreme Court in **Manjit Singh Viridi v. Hussain Mohammed Shattaf**: (2023) 7 SCC 633 and upon a judgment rendered by a Coordinate Bench of this Court in Neeraj and two others v. State of U.P. and another, reported in 2025 ASCLKO 45421, wherein the Coordinate Bench had referred to numerous precedents regarding the scope and ambit of Section 227 Cr.P.C.

24. Section 227 Cr.P.C. reads as follows: -

"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."

25. In **Sajjan Kumar v. CBI:** (2010) 9 SCC 368, the Hon'ble Supreme Court considered various precedents on the scope of Sections 227 and 228 Cr.P.C. and culled out the following principles:-

"Exercise of jurisdiction under Sections 227 and 228 CrPC

21. *On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(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 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.

(vii) 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 and at this stage, he is not to see whether the trial will end in conviction or acquittal."

(Emphasis added)

26. The aforesaid judgment has been followed by a Bench consisting of three Hon'ble Judges of the Hon'ble Supreme Court in **Ghulam Hassan Beigh v. Mohd. Maqbool Magrey**: (2022) 12 SCC 657.

27. In **Manjit Singh Viridi v. Hussain Mohammed Shattaf**: (2023) 7 SCC 633, the Hon'ble Supreme Court held that: -

"11. ...The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the court."

28. In **Ram Prakash Chadha v. State of U.P.**: (2024) 10 SCC 651, the Hon'ble Supreme Court held that: -

"27. ...in a case where an application is filed for discharge under Section 227CrPC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence

of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court...."

29. In **Tuhin Kumar Biswas v. State of W.B.**: 2025 SCC OnLine SC 2604, it was held that: -

"28. ... where there is a pending civil dispute between the parties, the Police and the Criminal Courts must be circumspect in filing a chargesheet and framing charges respectively. In a society governed by rule of law, the decision to file a chargesheet should be based on the Investigating Officer's determination of whether the evidence collected provides a reasonable prospect of conviction. The Police at the stage of filing of Chargesheet and the Criminal Court at the stage of framing of Charge must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. The tendency of filing chargesheets in matters where no strong suspicion is made out clogs the judicial system. It forces Judges, court staff, and prosecutors to spend time on trials that are likely to result in an acquittal. This diverts limited judicial resources from handling stronger, more serious cases, contributing to massive case backlogs. Undoubtedly, there can be no analysis at the charge framing stage as to whether the case would end in conviction or acquittal, but the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as it compromises the right to a fair process."

30. When the facts of the present case are examined in the light of the judgments of the Hon'ble Supreme Court in the aforesaid cases, it appears that while deciding an application for discharge, the Court is required to examine the material placed by the prosecution for the limited purpose of

satisfying itself as to whether the material gives rise to a grave suspicion that the accused persons have committed the alleged offences.

31. In the present case, the incident is alleged to have taken place at about 7:00 p.m. on 26.12.2018. The complainant filed an application under Section 156(3) Cr.P.C. On 24.01.2019, i.e, after about a month since the occurrence, against four persons only. In the application was filed about a month of the incident, the petitioner Nos. 5 to 9 were not named.

32. In the statement recorded under Section 161 Cr.P.C., the complainant reiterated the FIR version. In his additional statement, the informant stated that, upon receiving information, he reached his house and found that the petitioners had already established their possession over the shop and the house.

33. The complainant's father, Raghunath, stated that he had seen the men of Babu Ram (the petitioner no. 1) loading the goods on a tractor and a pickup vehicle. Although Raghunath claimed to have witnessed removal of goods by the associates of the petitioner No. 1, petitioner Nos. 5 to 9 were still not named in the application under Section 156(3) Cr.P.C., which had been filed after about one month from the date of the incident.

34. Petitioner Nos. 5 to 9 were subsequently implicated on the basis of the statements of certain independent witnesses, who stated that all the accused persons were seen loading the goods onto a four-wheeler pickup vehicle. However, even those witnesses did not state that the aforesaid persons had committed theft by breaking open the locks or had forcibly entered the house and shop or that the goods were being loaded onto a tractor, as alleged by the complainant's father, Raghunath.

35. Non-mention of the names of petitioner Nos. 5 to 9 in the application under Section 156(3) Cr.P.C., which was filed about one month after the incident, and the omission of their names in the statement of the complainant's father, Raghunath, who claimed to have seen the men of Babu Ram removing the goods, constituted relevant material which ought to have been taken into consideration by the trial court while deciding the application for discharge.

36. However, the trial court rejected the discharge application merely by observing in a single sentence that the material collected during investigation

disclosed the involvement of the petitioners in the commission of the offence. The failure of the trial court to consider the aforesaid relevant material vitiates the impugned order.

37. The revisional court also failed to examine this aspect of the matter and affirmed the order of the trial court in a mechanical manner.

38. However, the case of the petitioner no. 7 Jagram is different from the petitioner nos. 5, 6, 8 and 9 and it is alleged that the stolen generator was recovered from him. In view of the prosecution's claim of recovery of a stolen article from the possession of the petitioner no. 7, he is not entitled to be discharged.

39. It does not appeal to common sense that had the ladies of the house been involved in commission of the alleged offences, still they would not have been named in the application under Section 156 (3) Cr.P.C. and in the statement of the complainant's father, who claims to be an eye witness. There implication only through subsequent statements of alleged eye-witnesses, without they having been implicated in the application under Section 156(3) Cr.P.C. Or in the statement of the complainant's father raises a serious suspicion against the correctness of the statements of witnesses alleging their involvement in commission of the offence and such statements cannot be taken as gospel truth. The trial Court and the revisional Court have failed to evaluate the material available on record and consider the total effect of the basic infirmities in the prosecution evidence as noted above, whereas it was necessary to be done to ascertain the broad probabilities of the case. It appears that the trial court and the revisional court have acted merely as a post office or a mouthpiece of the prosecution. Upon sifting and weighing the evidence, it appears that even a prima facie case is not made out against the persons who had not been named in the FIR or the statement of Raghunath and from whom no recovery has been made.

40. In view of the aforesaid discussion, I am of the considered opinion that petitioner Nos. 5, 6, 8 and 9, all of whom are ladies and whose names were not mentioned in the application under Section 156(3) Cr.P.C. or in the statement of the complainant's father, and nothing is said to have been recovered from whom, appear to have been implicated by including their names in the statements of witnesses later on as an afterthought and those ladies are entitled to be discharged.

41. However, no good ground exists for discharge of the petitioner Nos. 1 to 4, as they were specifically named in the application under Section 156(3) Cr.P.C. and specific allegations were leveled against them or of the petitioner no. 7, from whom the stolen generator is said to have been recovered.

42. I do not find force submission in the learned Counsel for the petitioner that pendency of a civil dispute gives rise to a ground for discharge of all the petitioners. In **Indian Oil Corpn. v. NEPC India Ltd.:** (2006) 6 SCC 736, the Hon'ble Supreme Court held that: -

*"A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. **The test is whether the allegations in the complaint disclose a criminal offence or not.**"*

43. In the present case, the allegations clearly make out commission of offences punishable in criminal law. Merely because there is a civil dispute between the parties, it cannot be said that the petitioners cannot be prosecuted for the allegations of commission of offences.

44. Accordingly, the petition is partly **allowed**. The prayer for discharge of the petitioner no. 5 Kailashpati, the petitioner no. 6 Renu, the petitioner no. 8 Sitau Devi and the petitioner no. 9 Urmila, is allowed, whereas the prayer for discharge of petitioner Nos. 1 to 4 and 7 is rejected.

May 8, 2026

-Amit K-

(Subhash Vidyarthi,J.)