

**A.F.R.****Court No. - 15****Case :-** APPLICATION U/S 482 No. - 2180 of 2018**Applicant :-** Chavi Lal And Others**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Rama Kant Dixit**Counsel for Opposite Party :-** Govt. Advocate**Hon'ble Suresh Kumar Gupta,J.**

1. Heard learned counsel for petitioners and learned A.G.A. for the State and perused the material available on record.

2. By means of this petition under Section 482 Cr.P.C. the petitioner have sought following reliefs:-

*"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to set aside impugned order dated 08.02.2018 passed by learned Sessions Judge, Shravasti whereby revision of the petitioners against the judgment and order dated 19.12.207 passed by learned Chief Judicial Magistrate Shravasti has been rejected without application of judicious mind."*

3. Brief facts of the case are as under:-

The revenue record i.e. Khatauni was inspected by Tehsildar Bhinga (first informant) of Village Panchayat Bechuwa and it was found that Khata No. 313/4.381 acre was recorded in the name of Awadh son of Mohan in 1395 to 1400 Fasli but the said land was fraudulently, intentionally and illegally was recorded/mutated in the name of Smt. Belwa D/o Awadh, wife of Chhavi Ram as legal heirs by Naib Tehsildar Druv Nath Pandey on 28.12.1989 and also mentioned the fake caste in column 13. Likewise Khata No. 482/4.062 acre was also mutated in the name of Smt. Pushpa Devi alias Prema Devi showing the daughter of Ram Pheran S/o Jamuna Prasad also interring the fake caste in Column 13. It was further narrated that the Investigating Officer investigated the matter and recorded the statement under Section 161 Cr.p.C. and submitted the charge sheet against the petitioners and also other co-accused persons on 31.08.1992 and 26.12.1992 in Case No. 2724 of 2002 (State Vs. Chhavi Lal and others) arising out of Case Crime No. 138 of 1992, under Sections 167, 218, 466, 467, 468, 471, 420 and 120-B IPC, Police Station Kotwali Bhinga District Shravasti. Thereafter the petitioners appeared before the court concerned and bail was granted to them.

4. Learned counsel for petitioners has submitted that the trial court as well as revisional court without application of judicious mind rejected the discharge application of the petitioner. Further submission is that no disclosed offence is made out against the petitioner. The petitioner

moved an application for discharge on 6.11.2016 stating therein that no such material evidence has been collected by the Investigating Officer against the petitioners on which very basis no offence is made out and main author of the crime is co-accused Naib Tehsildar Dhruv Nath who made entry in the revenue record without calling the report from Lekhpal of concerned village and the petitioners have not given any application or evidence before him for mutating their names under the proceedings of Section 34 of the Land Revenue Act.

5. Further submission is that since there is no cogent and reliable evidence against the petitioners, so the petitioners filed discharge application before the learned Chief Judicial Magistrate, Shravasti by means of order dated 19.12.2017. Learned Chief Judicial Magistrate, Shravasti rejected the discharge application without considering the aspect of the matter that the petitioner never moved any application for name of the petitioners to be recorded in the revenue record before the Naib Tehsildar but the learned trial court wrongly rejected the discharge application of the petitioners. Being aggrieved with the said order, the petitioners also filed revision before the Sessions Court, Shravasti bearing Criminal Revision No. NIL of 2018 (Chhavi Lal V. State) but learned Sessions Court also rejected the revision of the petitioners without considering the material aspect available on record and dismissed the revision vide order dated 08.02.2018. It is further submitted that the main accused i.e. Dhruv Nath Pandey, who is the main author of this crime has not been arrested and he is also not attending the court in the garb of order dated 25.09.1992 passed in Writ Petition No. 6788 (SB) of 1992 while the said petition has been dismissed for want of prosecution vide order dated 23.12.2010.

6. It is vehemently argued by learned counsel for petitioners that since the aforesaid writ petition of co-accused Dhruv Nath Pandey has already been dismissed by this Court but still learned trial court has not summoned the co-accused Dhruv Nath Pandey and the petitioners are unnecessarily suffering trauma of trial as the whole proceedings against the petitioners have been initiated due to malafide intention and no disclosed offence is made out against the petitioners. Thus, this is the abuse of the process of law. Learned counsel for petitioners prays to allow this petition and set aside the entire proceedings.

7. I have heard learned counsel for parties and perused the material available on record.

**8. "Section 239 in The Code Of Criminal Procedure, 1973**

*239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such*

*examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."*

9. Hon'ble the Apex Court in the catena of judgment has provided that at the time of discharge application, only it is to be seen whether prima facie case is made out or not? The detailed inquiry is not required at the time of framing of charge, the accused can be discharged only when the charge is groundless.

10. In the case of ***Dilawar Balu Kurane Vs. State of Maharashtra*** reported in **(2002) Supreme Court Cases 135**, the Apex Court has examined the ambit and scope of section 227 Cr.P.C. and held:-

*"In exercising powers under section 227 Cr.P.C., the settled position of law is that the Judge while considering the question of framing the charges under the limited purpose of finding out whether or not a prima facie case against the accused has been made out; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him gave rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under section 227 Cr.P.C., the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

11. In case of ***Yogesh alias Sachin Jagdish Joshi*** reported in **(2008) 10 SCC 394**, the Apex court has almost propounded the same principles in the following terms:-

*"It is trite that the words "not sufficient ground for proceeding against the accused" appearing in section 227 Cr.P.C., postulate exercise of judicial*

*mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material 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 a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible."*

12. In the case of **Palwinder Singh Vs. Balwinder Singh and others** reported in **(2009) 2 SCC (Cri) 850**, the Apex Court reiterated the aforesaid principles and held:-

*"The jurisdiction of the learned Sessions Judge while exercising power under section 227 Cr.P.C is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. "*

13. Apart from the aforesaid cases, in the case of **Sajjan Kumar vs. Central Bureau of Investigation, JT 2010(10) SC 413**, the Apex Court has formulated the following guidelines with regard to the question as to how a matter for framing a charge against the accused is to be dealt with:

*"(i) The Judge while considering the question of framing the charges under Section 227 of the 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. 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 discloses 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."*

14. The aforesaid decisions have almost settled the legal position that at the stage of charge the court is not required to consider pros and cons of the case and to hold an enquiry to find out truth. Marshalling and

appreciation of evidence is not in the domain of the court at that point of time. What is required from the court is to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case for framing a charge against the accused has been made out. Even in a case of grave or strong suspicion charge can be framed. The court has to consider broad probabilities of the case, total effect of the evidence and the documents produced including basic infirmities, if any. 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, but the court should not weigh the evidence as if it were holding trial. Accused can be discharged only when the charge is groundless.

15. In my considered opinion, learned Chief Judicial Magistrate Shravasti as well as learned Sessions Judge has taken into account all the relevant material and passed the impugned orders keeping in view the parameters laid down by Hon'ble Apex Court. It does not appear to be a case which is to be closed at the stage of charge. Therefore, the submission of the learned counsel for applicant that no charge was made out has no substance.

16. For the reasons discussed above, the application under Section 482 Cr.P.C. no merits and is accordingly dismissed.

17. Interim order, if any, stands vacated.

18. Since the matter is pending since long time before the trial court, therefore, it is directed that the trial court take endeavour to expedite the present case expeditiously.

**Order Date :- 5.3.2022**

Virendra