

STANDARD APPLICATION OF SECTION 228 OF THE CODE OF CRIMINAL PROCEDURE

Rohit Yadav*

ABSTRACT

As the old legal adage reads, “Justice must not only be done but also seen to be done,” the recent judgment pronounced by the Apex Court in the case of Bhawna Bai, reignites the debate surrounding the applicability of section 228 of the Code of Criminal Procedure (hereinunder referred to as the CrPC). The judgment once again opens the gates for the legal discussion about the interconnection between sections 227 which talks about “discharge” and section 228 relating to “framing of charges” of the CrPC. The court herein outrightly holds that there is no legal requirement advocated by law to give reasons whilst framing charges. The project contends that the stance given by the court in the Bhawna case might be based on too utilitarian logic, diminishes the relevance of charge framing, reducing it to a mere formality, and thereby breaches a critical statutory right of an accused. This ratio is likely to have a significant impact on criminal jurisprudence and the core statutory framework under the CrPC and hence must be reconsidered as it has the dangerous potential to initiate a practice wherein courts stop giving reasons altogether for their decisions.

Journal of Legal Research and Juridical Sciences

Keywords- Framing of Charges, Discharge, Accused, Consideration, Trial, Sections 227.

INTRODUCTION

In criminal law, the impetus behind the framing of a charge is to furnish the accused with precise information regarding the allegations pressed against him.¹ The *modus operandi* to frame a valid charge includes the cataloging of the manner, time, place, and all persons involved, to ensure the accused is made known of his accusation in the most precise way.² The elemental stage, which induces the framing of a charge, is the investigation of a case by the police force following which the team either files a charge sheet in the matter or a closure report to the concerned Magistrate. In pursuant to the filing of a charge sheet the Magistrate may take

*NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM.

¹.VC Shukla v State [1980] Cri LJ 690, 732.

² The Code of Criminal Procedure 1973, ss 211-213, no. 2, Acts of Parliament 1994 (India).

cognizance of the offenses enlisted in the charge sheet and summon the accused.³ This initiates the framing of charges which commences the criminal trial.⁴ The accused is at the end of the trial either acquitted or convicted. An *alterno procedere* is when the judge hears the arguments on merits, and in the absence of any *prima facie* case, discharges the accused⁵.

In the case of *S.K Sinha, Chief Enforcement Officer v Videocon International Ltd*⁶, the Apex Court held that taking cognizance of the offense simply connotes the judicial notice of an offense and is different, rather, a precondition to the framing of charges.⁷ Upon submission of the police report, a magistrate is bound to take cognizance of such a report in order to proceed further on it.⁸ The judge hereunder is required to consider only the charge sheet without sifting or appreciating the evidence to conclude the probability of the existence of a *prima facie* case.⁹ The accused possesses no right to furnish any evidence or make any submissions to his defense. In situations wherein the accused has provided any exculpatory evidence, the acceptance of the same lies in the hands of the police who are under no legal obligation to include the same in the charge sheet. In this article, the standard application of section 228 shall be discussed in regard to the famous Bhawna Bai case.

IMPORTANCE, ESSENTIAL, AND REMEDIES OF SECTION 228 OF THE CrPC

The framing of charges is appraised as germane for it involves a potent judicial probe into the merits of the case before coming to any conclusion.¹⁰ It involves the usage of judicial wisdom¹¹ to all intents and purposes, before deciding whether any case *prima facie* can be eked out. The judge has an obligation to sift the evidence¹² to determine the sufficiency of the grounds available before him, including the nature of the evidence and the documents submitted by the police and produced by the prosecution.¹³ In the case of *State of Orissa v. Debendra Nath Pathi*,¹⁴ this Hon'ble Court held that at the stage of framing of charges, the court must rely

³ The Code of Criminal Procedure, 1973, ss 190, no. 2, Acts of Parliament, 1994 (India).

⁴ S.K. Sinha, Chief Enforcement Officer v Videocon International Ltd [2008] 2 SCC 492 also see State of West Bengal v. Mohammed Khalid (1995) 1 SCC 684.

⁵ The Code of Criminal Procedure, 1973, ss 227, no. 2, Acts of Parliament, 1994 (India).

⁶ *Ibid*

⁷ *Ibid*.

⁸ The Code of Criminal Procedure, 1973, ss 173(2), no. 2, Acts of Parliament, 1994 (India).

⁹ Rashmi Kumar v. Mahesh Kumar Bhada (1997) 2 SCC 397.

¹⁰ The Code of Criminal Procedure, 1973, ss 211-214, no. 2, Acts of Parliament, 1994 (India). (The sections are construed together).

¹¹ K.P. Raghavan v. M.H. Abbas [1967] AIR SC 740.

¹² State of Maharashtra v. Somnath Thapa (1996) 4 SCC 659.

¹³ Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4.

¹⁴ State of Orissa v. Debendra Nath Pathi (2005) 1 SCC 568.

solely upon the police report and the documents submitted therewith. The police are required to submit only those documents on which the prosecution wishes to rely to raise a grave suspicion in the mind of the magistrate to frame a charge against the accused.¹⁵ In addition to this, pursuant to the submission of statements of the witnesses¹⁶, the police are required to submit only those statements that the prosecution seeks to produce in court.

The accused has no right to provide the court with any evidence.¹⁷ His submissions are limited to the ones submitted by the prosecution.¹⁸ The defense of the accused is considered to be irrelevant and as a matter of fact, inconsequential.¹⁹ The court is under no legal compulsion to attach any weight to the defense of the accused.²⁰ The courts in a catena of its judgments have held that during the framing of charges, the courts do not have the authority to carry out roving and fishing inquiry into the credibility, truthfulness, or sufficiency of the evidence produced by the prosecution, and the same must not be viewed scrupulously.²¹ Upon production of evidence by the prosecution, without meticulously diving into the veracity of the same, if the judge is of the opinion that there exists a *prima facie* case, he may be justified to frame the charge.

While few may believe that during the framing of charges, the court might have the tendency to be swayed by the prosecution completely, and pay minimal or no attention to the accused, this is not the case. Although, during this stage, as highlighted, the accused does not possess any real rights and the chance of having a fake case filed is high, there is a huge burden that the prosecution needs to rightly dispose of first. It is necessary that the allegations are sufficient to show that a *prima facie* case²² can be made against the accused. This places a burden on the prosecution to satisfy the judge that the evidence is believable when seen through a judicial mind.²³ The evidence produced must be capable of raising a *grave suspicion*²⁴ in the mind of the judge. In addition to this, if the judge is convinced that the evidence raises some suspicion,

¹⁵ The Code of Criminal Procedure, 1973, ss 173, no. 2, Acts of Parliament, 1994 (India).

¹⁶ The Code of Criminal Procedure, 1973, ss 161, no. 2, Acts of Parliament, 1994 (India).

¹⁷ Debendra Nath (*supra*).

¹⁸ Bharat Parikh v. Central Bureau of Investigation (2008) 10 SCC 109.

¹⁹ Debendra Nath(*supra*).

²⁰ State of Bihar v. Ramesh Singh [1977] 4 SCC 39.

²¹ State v S. Bangarappa [2001], State of M.P. v Dr. Krishna Chandra Saksena [1996] 11 SCC 439, Supdt. & Remembrancer of Legal Affairs, West Bengal v Anil Kumar Bhunja [1980] AIR SC 52, Sonu Gupta v Deepak Gupta [2015] 3 SCC 424, State of Bihar v Ramesh Singh [1977] 4 SCC 39, State of M.P. v Mohanlal Soni [2000] Cri.LJ.

²² Martin Burn Ltd. v. R.N. Banerjee [1958] AIR SC 79

²³ State of Maharashtra v. Somnath Thapa [1996]4 SCC 659.

²⁴ Dilawar Balu Kurane v. State of Maharashtra [2002] 2 SCC 135.

the nature of which is not intense, he is powered to discharge the accused²⁵. In **R.S Nayak v. A.R Antulay**,²⁶ the court held that under section 227²⁷ of CrPC, the mere presence of a “ground” to discharge is not adequate, the “sufficiency” of the same must be proved. The section obligatory demands the judge to not blindly accept the story intertwined by the prosecutor²⁸, and not be a “recording machine” while framing charges. If the evidence so presented is challenged in cross-examination or by the defense evidence and fails to show the possibility that the accused might be guilty, the judge in writing can discharge the accused.²⁹ The level of judicial percipience that is required at this juncture ensures that a fatuous and superficial charge will not surpass the sagacity poised by the judge, thus providing a great level of protection to the accused³⁰ from total false cases.

Other remedies that are present with the accused are sections 397 and 91 of the CrPC. The remedy of revision under Section 397 of the CrPC³¹ protects him against any order framing charges *otiose*.³² The section acts as a check on the trial courts which imposes a strict obligation on them to carry out their duty with utmost precision. The accused has the right to file a review petition under the said section, wherein the superior court scrutinizes the legality or rectitude of any sentence, finding, or order passed.³³ Thus, when he believes that the order passed is egregiously wrong, or the evidence is not sufficient, ignored or any power is exercised excessively or restively³⁴, he can exercise his remedy under the section mentioned herewith. Additionally, in the case of **Nitya Dharmananda v. Gopal Sheelum Reddy**³⁵ held that in order to uphold justice and fairness, the accused has the right to call upon section 91³⁶ of CrPC *de hors* satisfaction of the court³⁷, in instances where any material of sterling quality³⁸ was left out either deliberately or unintentionally by the police and not made part of the charge sheet, or rapaciously by the prosecutor. An alternative is also present under section 311 of CrPC

²⁵ Prafulla Kumar Samal (*supra*).

²⁶ R.S Nayak v A.R Antulay [1988] AIR SC 1531

²⁷ The Code of Criminal Procedure, 1973, ss 227, no. 2, Acts of Parliament, 1994 (India).

²⁸ K.P. Raghavan v. M.H. Abbas [1967] AIR SC 740; Prafulla Kumar Samal (*supra*); Almohan Das v. State of West Bengal, (1969) 2 SCR 520.

²⁹ State of Bihar v. Ramesh Singh [1977]4 SCC 39, 42.

³⁰ R.S. Nayak (*supra*).

³¹ The Code of Criminal Procedure, 1973, ss 397, no. 2, Acts of Parliament, 1994 (India).

³² *Ibid*.

³³ *Ibid*.

³⁴ Amit Kapoor v. Ramesh Chander & Anr. (2012) 9 SCC 460, State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198.

³⁵ Nitya Dharmananda v. Gopal Sheelum Reddy, (2018) 2 SCC 93.

³⁶ The Code of Criminal Procedure, 1973, ss 91, no. 2, Acts of Parliament, 1994 (India).

³⁷ *Ibid*.

³⁸ *Ibid*.

which grants the court discretionary powers to examine any material or summon any person at the stage of framing charges if such information so obtained is essential to the case. This helps the accused against hostile prosecutors and provides him with a chance to escape unwarranted trials. He also has the inherent right to cross-examination under section 244 of the CrPC wherein, if he is capable of showing that there exist no grounds against him, before the framing of charges by the court, no trial would lay against him.³⁹

FACTS OF THE BHAWNA BAI CASE

The appeal stems from the High Court of Madhya Pradesh's judgment and final decision in a criminal revision petition, in which the high court invalidated the charges established by the trial court against the respondents. The defendants Ghanshyam and Bhagwan went plowing in Ghanshyam's fields with the deceased Gopal Saran. He was last seen with their company, and all three of them consumed liquor. Both Ghanshyam and Bhagwan reached their home at night, but there was no information regarding Gopal, later he was found dead in Ghanshyam's field, and the same was not informed by Ghanshyam to others. When Gopal's wife Bhawna tried to go to the deceased body, she was stopped and confined in a room by Ghanshyam. It was also established that the respondents had an earlier fight with the deceased, which showed a probable motive for the crime.

The trial court determined that there were adequate grounds to proceed against the accused and, in accordance with section 228 of the CrPC charged the respondents under section 302 read with section 34 of the IPC. The respondents filed a revision before the high court, contending that while framing charges, the court should apply the judicial mind and give reasons in a concise manner and that the trial court failed to apply its mind while framing charges. The High Court quashed the charges against the respondents and discharged them in the impugned order. Being dissatisfied, the appellant filed an appeal with the Supreme Court.⁴⁰

FINDINGS OF THE APEX COURT- A CRITICAL ANALYSIS

After the matter reached the Apex Court, it immediately reversed the decision of the High Court and held that no detailed reasons were to be provided by the court during the framing of the charges. The relevant paragraphs of the Supreme Court judgment are enumerated hereunder-

³⁹ Ajoy Kumar Ghose v. State of Jharkhand, Shashi Kant Singh v. Tarkeshwar Singh & Anr. [2002 (5) SCC 738],

⁴⁰ Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217.

“13. ... At the time of framing the charges, only the prima facie case is to be seen; whether the case is beyond a reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”⁴¹

“17. ... upon hearing the parties and considering the allegations in the charge sheet, the learned Second Additional Sessions Judge was of the opinion that there were sufficient grounds for presuming that the accused had committed the offense ... The order dated 12-12-2018 framing the charges is not a detailed order. For framing the charges under Section 228 CrPC, the Judge is not required to record detailed reasons. ... The impugned order cannot, therefore, be sustained and is liable to be set aside.”⁴²

There is no disagreement with the premise that just a prima facie case is to be observed at the stage of charge framing, and the probative value of the evidence is not to be considered. The Court does not need to be convinced that the case will end in a conviction; it just needs to be convinced that the accused committed the crime. It is also generally established that, in order to form a prima facie opinion, there must be adequate grounds to proceed against the accused, and the court must genuinely use its judicial intellect and make an opinion. According to the Apex Court, "at the stage of framing of charge, the court is required to evaluate the material and documents on record" to determine whether a prima facie case exists. As a natural conclusion, this judicial process of evaluating the information on record should be represented in the order of formulating charges by means of reasons and explanation, at the very least. This is consistent with the old saying that "justice must not only be done but also seen to be done."

The Apex Court determined in a previous judgment *RS Mishra*⁴³ that the "consideration" alluded to in Sections 227 and 228 of the CrPC must be expressed in the order framing charges. It highlighted that section 228 which deals with charge framing begins with the words "If, after such consideration." Thus, these terms in Section 228 correspond to the "consideration" under Section 227, which must consider the case record and the materials presented with it. Sections 227 and 228 are linked together by these words. While Section 227 requires the recording of the reasons for discharging an accused, and while Section 228 does

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ R.S. Mishra Vs. State of Orissa (2011) 2 S.C.C 689.

not, it is safe to assume that when a charge under a particular section is dropped or diluted (but the accused is not discharged), some minimum reasons, in a nutshell, are expected to be recorded disclosing the consideration of the material on record. Thus, in *RS Mishra (supra)*, the Court correctly observes that an order stating charges should be plain and self-explanatory, and the sifting of materials must be represented therein. This stance is consistent with an accused's legal entitlement to appeal an order framing charges under Section 397 of the CrPC. Only if there is an illegality or perversity in the order setting charges can a modification be requested.

If the legal argument pronounced in the *Bhawna Bai (supra)* case legal argument is accepted, the order will never be illegal or perverse, because it will simply be a simple parrot-like repetition of the words "there is sufficient material to proceed against the accused." This would render the revision recourse under Section 397 of the CrPC (and even Section 482 of the CrPC) against the order framing charges void. The legislator could hardly have intended for the stage of charge formulation to be reduced to such a mechanical function. In this regard, it may be appropriate to recall the Supreme Court's landmark decision on charge framing in the case of *Prafulla Kumar Samal*⁴⁴, in which it determined that "the Judge is not merely a post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution."

Journal of Legal Research and Juridical Sciences

The fact that the legislature specifically incorporated Sections 239, 228, 245, and 251 in the CrPC - which lay down the different standards applicable to charge framing for different types of trials - shows that the legislature was aware of the benefits of using charge framing as a pre-trial filter to weed out wrongful prosecutions and protect the rights of the accused. The Apex Court's ruling in *Bhawna Bai (supra)* not only ignores *RS Mishra (supra)* and *Prafulla Kumar Samal (supra)* (and hence may be *per incuriam*) but also relies on an earlier decision - *Kanti Bhadra Shah*⁴⁵. In this instance, it was decided that judges only needed to offer reasons when discharging the accused, not while accusing them, because "why should the already burdened trial courts be overburdened with such extra work?"⁴⁶ Without a doubt, the decision in *Kanti Bhadra Shah (supra)* was misguided, relying on an overly utilitarian rationale that prioritized

⁴⁴ Union of India v Prafulla Kumar Samal 1979 (3) SCC 4.

⁴⁵ Kanti Bhadra Saha & Anr. v. State of West. Bengal [2000 (1) SCC 722].

⁴⁶ *Ibid.*

the issue of the "overburdening of trial courts" over the constitutional rights of the accused and natural justice principles.

CONCLUSION

By endorsing *Kanti Bhadra Shah (supra)*, *Bhawna Bai (supra)* has prepared the door for a dangerous practice in which trial judges will no longer provide grounds in orders filing charges. This is likely to have major consequences for an accused, who will now have to fight a potentially wrongful, illegitimate, and malicious prosecution until the end of the trial. In fact, this will raise the load on trial courts and High Courts (which, ironically, contradicts the court's objective in *Kanti Bhadra Shah (supra)*). Because *Bhawna Bai (supra)* refers to Sessions Trials under Chapter XVIII of the Code - the most serious offenses under the CrPC - its repercussions will be felt even in warrants, summons, and complaints cases. Scuttling such a vital right granted by the CrPC in the aim of a quick trial is not only misguided, but also misconceived, and should be reconsidered.

