DISCHARGE IN SUMMON CASES: A PROCEDURAL LACUNA

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INTRODUCTION

Even a cursory glance at the Criminal Procedure Code, 1973 will make it very clear that the principle of *audi alteram partem* and the cardinal principle of Criminal Jurisprudence that the person is innocent until and unless proven guilty. Whether it is arrest, issuing summons, registering of FIR, recording confessions, Framing of Charges, collecting evidence, bail, execution of conviction, suspension of conviction and finally appeal against the conviction, in all these events a reasonable opportunity was given to accused and convict to prove himself not guilty.

What about the summons cases, where a private complaint was registered in front of the magistrate, and after examining complaint and witnesses, he issued process under Sec.204, CrPC, is the aforesaid mentioned principles followed in these summons cases. The questions arises does the magistrate has power in summons case to discharge the accused after being satisfied by hearing the accused version as he have in warrant cases under Sec.239, CrPC,1973. It is pertinent to mention that this question attains great significance in criminal cases such as Cheque Bounce and Defamation. In this Paper, the author will specifically dealt with the powers of the Magistrate to discharge accused in summons cases on the basis of complaint, does he has the power

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2 Such cases where punishment is less than 2 years of Imprisonment, Sec.2(w) CrPc,1973
3 Sec.190, Criminal Procedure Code, 1973
4 Sec.200, Criminal Procedure Code, 1973
5 204. Issue of process. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be- (a) a summons- case, he shall issue his summons for the attendance of the accused, or (Contd.)
6 239. 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.
to do so under Sec.251, CrPC, 7 or the only Recourse available to accused is to approach High Court Under Sec. 482, CrPC. 8

ANALYSIS OF AVAILABLE STATUARY PROVISIONS

The Provisions relating to Trial of the Sessions and Warrant cases is clearly defined under XVIII of Criminal Procedure Code. Sometimes it is necessary to discontinue the groundless prosecution half way and discharge the accused to avoid unwarranted trial process which is ultimately result in acquittal.

SESSION CASES

In the cases, triable exclusively by magistrate an ample opportunity was provided to discharge the accused on the grounds of insufficient ground by the virtue of Sec.227, CrPC. 9 In the case of Kewal Krishna v. Suraj Bhan, 10 the Supreme Court explained the Purpose behind this section and held that, this is a beneficent provision to save the accused from the prolonged harassment which is a necessary concomitant of a protracted trial. Furthermore, in the case of Satish Mahra v. Delhi Admn., 11 the Hon’ble Supreme Court held that, the words “not sufficient grounds” clearly shows that the Judge is not a mere 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.

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7 251. 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 defense to make, but it shall not be necessary to frame a formal charge.
8 482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.
9 227. 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.
WARRANT CASES

The Warrant cases which are triable by magistrate, the magistrate is vested by power as similar to session case to discharge under Sec.239, CrPc. In the case of Preeti Gupta v. State of Jharkhand, the Hon’ble Supreme Court held that, “while considering an application for discharge the Court can examine the evidence on record and discharge the accused persons if there is no possibility of the accused being found guilty on the basis of such evidence specially in cases where the accused produces unimpeachable evidence in support of his defense”

GROUND FOR DISCHARGING

In the case of Union of India v. Prafulla Kumar Samal and Anr, Justice Fazl Ali, Summarized the following principle regarding the discharge of an accused:

- 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:
- 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.
- 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.
- That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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

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12 (2010) 7 SCC 667;
13 (1979) 3 SCC 6.
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.

In the case of *Amit Kapoor v. Ramesh Chander*, the Hon’ble Supreme Court held that, “Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

At this stage. The Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

Hence there is specific Provision and judicial decisions which clearly stated that court has the power to discharge in warrant and session cases but the same is not stipulated in the case of summon cases which are of much serious nature and grave intensity.

**Discharge in Summons Case**

Since there are three different categories of cases triable by various courts, there is no provision of discharge in the case of summons case and this is sole controversy regarding the same.

14 (2012) 9 SCC 460
15 *Stree Atyachar Virodi Parishad v. Dilip Nathumal Chordia and Anr.*, (1989) 1 SCC 715
16 *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39
LEGISLATIVE INTENT

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 as conformity to the legislative intent of not having an elaborate hearing at the time of framing of notice. 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.  

JUDICIAL TREND

The issue was first dealt with at length by the Supreme Court in K. M. Matthew v. State of Kerala,18 where the accused had sought recalling of the summoning order in a Summons Case. It was held by the Supreme Court that, “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”

This particular leaves certain important questions to ponder that wouldn’t such an order would amount to the court reviewing its own order. The controversy was settled by the Supreme Court after the period of Twelve Years (12) in the case of Adalat Prasad v. Rooplal Jindal,19 where 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

17 41st Law Commission Report, p. 178, para 22.1
18 (1992) 1 SCC 217
accused.” The Decision was reaffirmed in the case of *Subramaniam Sethuraman v. State of Maharashtra & Anr*,\(^\text{20}\) where the court 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.”

**JUDICIAL DIVERGENCE REGARDING DISCHARGE IN SUMMON CASES**

Though the dispute regarding the discharge was being settled by the court in the case of Rooplal Jindal and the same position was held for a long time but in the case of *Bhushan Kumar v. State (NCT of Delhi)*,\(^\text{21}\) the Supreme Court ruled that magistrate has the power to discharge in Summons case, this decision of Bhushan Kumar case was followed in catena of decisions and in the case of *Urrshila Kerkar v. Make My Trip (India) Private Ltd.*,\(^\text{22}\) and court held that, “It is no doubt true that Apex Court in *Adalat Prasad v. 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, 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.”

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\(^{20}\) (2004) 13 SCC 324

\(^{21}\) (2012) 5 SCC 424

AMIT SIBAL CASE: RECTIFICATION OF DIVERGENCE REGARDING SUMMONS CASE

Recently in the case of Arvind Kejriwal and others v. Amit Sibal & Anr,23 the Delhi High Court held that, "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".

On appeal to the Supreme Court the Court held 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" 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.

Also in the year 2016, the Delhi High Court in the Case of R.K. Aggarwal v. Brig Madan Lal Nassa & Anr,24 the Court held that, "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"

CONCLUSION

The recent Amit Sibal's Case was in conformity with the statutory scheme but that was in from of order of the Supreme Court, hence there is a requirement of a authoritative judicial decision to clear the air. The fact that sessions case and warrant cases are of more serious nature then the warrant cases, in the former the remedy of discharge is available whereas in later no such remedy is available and the sole reliance cannot be on the reason that they be disposed in more speedy manner than the former one, one cannot ignore the intensity and gravity of the offence.

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.

23 (2014) 1 High Court Cases (Del) 719
24 2016 SCC Online Del 3720
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.