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**ILR 2014 KAR 3286**

**S.N. SATYANARAYANA, J**

**Ravi and Others vs. State of Karnataka, by  
Jeevanbhima Nagar P.S. and Another\***

**CRIMINAL PROCEDURE CODE, 1973 – SECTIONS 227  
AND 228 – Discharge and Framing of the charges –  
HELD, Reasoning is required to be given while framing the  
charges and not while rejecting the prayer for discharge –**

**FURTHER HELD,**

- (a) On going through entire Section 227, it is seen that, the later portion of Section 227 would clearly indicate that in the event of Sessions Judge coming to a conclusion that no triable charge could be made out against accused, “ he shall discharge the accused and record his reasons for so doing”. When it comes to Section 228, it says that after consideration and hearing regarding the offence, if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, then he can straight away proceed to frame charges. (Para 6)**

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**\*Crl. P. No. 6492/2009, Dated: 6<sup>th</sup> day of March, 2014.**

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**(b) It is made clear that what is required to be looked into by the Court below is on the basis of material on record to segregate the acceptable evidence from non acceptable evidence, like segregating the grain from chaff and thereafter, proceeding to decide whether charges should be framed or the same should be decided in letting off the accused. For that, the order should indicate that there is application of mind. – In the instant case, the material available on record is sufficient to frame charges and not for the discharge of accused.** (Paras 7, 8)

**Criminal Petition is Dismissed.**

***CASES REFERRED***

***AT PARA***

1. (2010) 2 SCC 398  
*P. Vijayan vs. State of Kerala* (Ref) 4
2. 2014 AIR SCW 942  
*State of Tamil Nadu vs. N. Suresh Rajan*  
*connected with State vs. K.Ponmudi & Ors.,* (Ref) 4

Sri H.S. Chandramouli, Advocate for petitioners ;  
Sri B.J. Eshwarappa, HCGP for R1 ; Sri K.V. Narasimhan, Advocate  
for R2.

**ORDER**

**Satyanarayana, J**

Accused 1 to 7 in SC.No.737/2009 on the file of FTC-XV, Bangalore, have come up in this petition under Section 482 of Cr.P.C., seeking quashing of Order dated 9.11.2009 rejecting their prayer for discharge under Section 227 of Cr.P.C.

2. Admittedly, petitioners 1 to 7 are charged with an offence, which is punishable under Section 304-B r/w 34 IPC pursuant to crime registered in FIR.No.188/2008 with Jeevanabhima Nagar Police within the jurisdiction of X ACMM, Bangalore. When said FIR was committed to Sessions Court, the Court below has proceeded to frame charges holding that *prima facie* there is sufficient material regarding the possibility of an offence being committed by accused 1 to 7 punishable under Section 304-B r/w 34 of IPC, which is challenged by accused 1 to 7 in this proceeding.

3. Sri.Chandramouli, Learned Counsel appearing for petitioners, would submit that there is a patent error on the part of Sessions Judge in not giving proper reasons for accepting that there is a triable case as against accused 1 to 7 while framing the charges. It is his case that when the matter was heard for framing of charges, he relied on several judgments and also referred to documents, which

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were filed by prosecution into the Court to demonstrate that a triable offence is not made out as against accused 1 to 7, which is not properly appreciated by the Learned Sessions Judge, which has resulted in charges being framed erroneously against all the accused. Learned Counsel would submit, even assuming that, the Court below has come to a conclusion with the available material in framing the charges against accused 1 to 3, there should be some semblance of acceptable reason for framing the charges in the said order, whereas a serious error is committed in framing charges against accused 4 to 7 also. It is also his submission that though there is no material to substantiate offence as against all the accused, at the most the Court could have restricted itself to accused 1 to 3, for the reason that, available material may indicate the involvement of accused 1 to 3, but not against all the accused. It is also his grievance that no reason is assigned by the Learned Sessions Judge for framing charges.

4. Heard the Counsel for petitioners as well as Learned Government Pleader appearing for respondent-State. Perused the Order dated 9.11.2009 as well as the judgments referred by the Learned Counsel for petitioners, which are in the matter of *P.VIJAYAN vs. STATE OF KERALA*<sup>1</sup>, and in the matter of *STATE OF TAMIL NADU vs. N. SURESH RAJAN CONNECTED WITH STATE vs. K.PONMUDI & ORS.*<sup>2</sup>. Placing reliance on these two judgments, he tried to demonstrate that

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2. 2014 AIR SCW 942

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Learned Sessions Judge while declining to consider his prayer for discharge under Section 227 is required to give reasons for such refusal.

5. In this context, it is necessary to cull out the relevant provisions of Section 227 and Section 228 of Cr.P.C., which deals with discharge and framing of charges. It reads 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.”

**“228. Framing of charge.-**

(1) If, after such consideration and hearing as aforesaid, the Judge, is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, (or any other

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Judicial magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

6. On going through entire Section 227, it is seen that, the later portion of Section 227 would clearly indicate that in the event of Sessions Judge coming to a conclusion that no triable charge could be made out against accused, “he shall discharge the accused and record his reasons for so doing”. When it comes to Section 228, it says that after consideration and hearing regarding the offence, if the Judge is of the opinion that there is ground for presuming that the accused has

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committed an offence, then he can straight away proceed to frame charges. Mere reading of these two Sections would clearly indicate that reasoning is required to be given while framing charges and not while rejecting discharge.

7. In fact, the aforesaid two judgments, which are rendered by the Apex Court and relied on by the Learned Counsel for the petitioners would demonstrate that the view taken by the Learned Sessions Judge in rejecting the prayer for discharge and not giving any reasons is just and proper. In fact in both the judgments, it is clearly observed by the Apex Court that while considering the application for discharge no mini trial is required to be conducted. It is made clear that what is required to be looked into by the Court below is on the basis of material on record to segregate the acceptable evidence from non acceptable evidence, like segregating the grain from chaff and thereafter, proceeding to decide whether charges should be framed or the same should be decided in letting off the accused. For that, the order should indicate that there is application of mind.

8. In the instant case, it is clearly seen that while framing charges and considering the prayer of petitioners for their discharge, the Learned Sessions Judge has not only looked into the material available on record, but he has taken pain to go through the judgments, which were placed before him to consider their prayer for discharge. After giving due consideration, he has rightly come to the conclusion that, in

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the instant case, the material available on record is sufficient to frame charges and not for the discharge of accused. In that view of the matter, this court is of the opinion that the order impugned dated 9.11.2009 rejecting the prayer of petitioners herein for their discharge of offences alleged against them, is just and proper.

9. In the absence of illegality or irregularity in the order impugned, which calls for interference of this Court and considering the rejection of same being just and proper, the petition filed seeking quashing of said order cannot be sustained. Accordingly, this criminal petition is dismissed.

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