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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 23 of 2012
Reserved on: 25.06.2026
Date of Decision: 07.07.2026

Assistant Collector, Customs ...Petitioner

Versus

M/s Seamx Industries Ltd & Ors ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Petitioner	:	Mr Vijay Arora, Senior Counsel with M/s Hitansh Raj and Ankit Chauhan, Advocates.
For Respondents No.1& 2	:	Mr Rakesh Manta, Advocate.
For Respondent No.3	:	Mr Aryan Manta, Advocate, vice Mr T.K. Verma, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the order dated 12.09.2011 passed by the learned Judicial Magistrate First Class, Nahan, District Sirmaur, H.P. (learned Trial Court) vide which the respondents (accused before the learned Trial Court) were discharged. *(The parties shall hereinafter be referred to in the same*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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manner as they were arrayed before the learned Trial Court for convenience)

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint against the accused before the learned Trial Court for the commission of offences punishable under Section 9 read with Section 9AA of Central Excise Act, 1944 for evasion of central excise duty and non-compliance of the final order dated 02.07.2001 passed by Customs Excise and Gold (Control) Appellate Tribunal, New Delhi.

3. It was asserted that the accused No.1 M/s Seamax Industries Ltd. (SIL), was earlier working under the name and style of M/s Seamax Steel Tubes (Pvt) Ltd. (SST). They were the manufacturers of M.S pipes, SS Mast or Towers falling under the Chapter Heading No. 7306.90 and 7308.20 of the Schedule to the Central Excise Tariff Act, 1985. The Structural Galvanising Industry (SGI) was situated inside the factory premises of SIL and was engaged in galvanising. SIL manufactured black pipes and MS pipes, and sent them to SGI for galvanisation without an exit pass/gate pass entry. SGI did not pay any excise duty on the galvanised pipes on the ground that the galvanisation of black pipe did not attract any central excise duty. M.S. Black Pipes were

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exempted from central excise duty till 28.02.1994. Accused nos. 1 to 3 did not enter the galvanised product after galvanisation in the record before its marketing. In this manner, MS pipes/black pipes manufactured by SIL and galvanised by SGI were sent to the market without payment of the excise duty. A search was conducted. Balance sheets were checked, and it was found that there was evasion of the excise duty. A show cause notice was served upon the accused no. 1 to 3, who filed a reply, but it was not found satisfactory. The proceedings were initiated against accused nos. 1 to 3. Commissioner Central Excise Adjudication, Delhi, found accused nos. 1 to 3 guilty and imposed the penalty. Accused Nos. 1 to 3 preferred appeals, and the Customs Excise & Gold (Control) Appellate Tribunal modified the order and gave 8 weeks time to comply with the terms and conditions imposed in the order. However, the terms and conditions were not complied with. The penalty was not deposited. Hence, a prosecution was launched for evasion of the excise duty.

4. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, the pre-charge evidence was recorded. The complainant examined Nitin Wappa (CW1), Jodh Singh (CW2), Umesh Gupta (CW3), Ravi Barman (CW4), Kartar Singh (CW5) and RK Goyal (CW6).

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5. Learned Trial Court held that the complainant relied upon the show cause notice, and the orders passed by various authorities in support of its complaint. A person cannot be held liable merely because of some findings recorded by the Civil Court. The complainant was required to lead proper evidence by producing the documents showing how the evasion had taken place. The witnesses also did not state that they had any personal knowledge of the evasion. The Criminal Court cannot be taken as an executing Court of the orders passed by the Civil Court. Hence, the accused were discharged.

6. Being aggrieved by the order passed by the learned Trial Court, the complainant has filed the present revision asserting that the learned Trial Court erred in discharging the accused. There was sufficient material on record to show the complicity of the accused. The penalties were imposed by the various authorities. The appeal preferred by the accused was dismissed. The testimony of R.K. Goyal (CW6), Assistant Commissioner of Central Excise, was sufficient to frame the charges against the accused. The magistrate has to see a *prima facie* case and not the case that can result in a conviction. The accused can rarely be discharged at the stage of framing the charges. The civil proceedings are distinct from the criminal proceedings, and the judgment of the Civil Court is not

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binding upon the Criminal Court, but the order of adjudication would have a persuasive effect on the criminal proceedings. Therefore, it was prayed that the present revision be allowed and the judgment passed by the learned Trial Court be set aside.

7. I have heard Mr Vijay Arora, learned Senior Counsel, assisted by M/s Hitansh Raj & Ankit Chauhan, learned counsel for the petitioner, Mr Rakesh Manta, learned counsel for respondents No.1 and 2, and Mr Aryan Manta, Advocate, vice Mr T.K. Verma, learned counsel for respondent No.3.

8. Mr Vijay Arora, learned Senior Counsel for the petitioner, submitted that the learned Trial Court erred in discharging the accused. There was sufficient material on record to frame the charges. The Court is concerned with a *prima facie* case while framing the charges, and the material on record *prima facie* established that there was an evasion. Therefore, he prayed that the present revision be allowed and the order passed by the learned Trial Court be set aside. He relied upon the judgment of Hon'ble Supreme Court in ***M/s Rimjhim Ispat Limited and others vs. Union of India and another 2025:INSC:901*** in support of his submission.

9. Mr Rakesh Manta, learned counsel for respondents No.1 and 2, submitted that the Court has to see a case which, if

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unrebutted, would result in the conviction of the accused while framing the charges. The complainant had relied upon the orders passed by the Civil Court, and the learned Trial Court had rightly held that the orders of the Civil Court are not binding upon the Criminal Court. There is no infirmity in the order passed by the learned Trial Court. Hence, he prayed that the present revision be dismissed. He relied upon the judgment of Hon'ble Supreme Court in ***Sunil Mehta and another vs. State of Gujarat and another (2019) 9 SCC 209*** in support of his submission.

10. Mr Aryan Manta, learned counsel for respondent No.3, adopted the submissions of Mr Rakesh Manta, learned counsel for respondents No.1 and 2 and prayed that the revision be dismissed.

11. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was laid down by the Hon'ble Supreme Court in ***State of Gujarat v. Dilip Singh Kishor Singh Rao, 2023 SCC OnLine SC 1294,*** that the Judge has to determine whether or not sufficient grounds exist to proceed against the accused on the basis of the material placed before him. It was observed: -

> "**10.** It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate

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said material in order to determine whether the facts emerging from the material taken on its face value disclose the existence of the ingredients necessary for the offence alleged. This Court in ***State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709***, adverted to the earlier propositions of law laid down on this subject, has held:

> **"29.** We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to finding out whether the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At this stage, the probative value of the materials has to be gone into, and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini-trial at this stage."

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any,

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produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court, by referring to its earlier decisions in the ***State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659** and the ***State of MP* v. *Mohan Lal Soni*, (2000) 6 SCC 338,** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

13. It was held in ***Vishnu Kumar Shukla vs. State of U.P., 2023 SCC OnLine SC 1582***, that the Court has to see a *prima facie* case while framing the charges even in warrants cases instituted otherwise than on a police report. It was observed: -

15. Although the instant case pertains to Trial of Warrant-Cases by Magistrates and is a case instituted on a police report, meaning Sections 239-240, CrPC are relevant, we also propose to glance at Section 245, CrPC (concerning trial of warrant-cases by Magistrates apropos cases instituted otherwise than on police report), as also Sections 227-228, CrPC, which pertain to Trial before a Court of Session.

16. The extent of scrutiny permissible when an application for discharge is being considered has attracted this Court's attention on a number of occasions. It is appropriate to take note of the leading precedents on the subject. Insofar as Section 245, CrPC is concerned, the decision of this Court in

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Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115 is instructive:

> **'19.** The essential difference of procedure in the trial of a warrant case on the basis of a police report and that instituted otherwise than on the police report is particularly marked in Sections 238 and 239 CrPC on one side and Sections 244 and 245 CrPC on the other. Under Section 238, when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like the police report, FIR, statements recorded under sub-section (3) of Section 161 CrPC of all the witnesses proposed to be examined by the prosecution, as also the confessions and statements recorded under Section 164 and any other documents which have been forwarded by the prosecuting agency to the court.
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> **20.** After that, *comes the stage of discharge, for which it is provided in Section 239 CrPC that the Magistrate has to consider the police report and the documents sent with it under Section 173 CrPC and if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of the aforementioned documents, he comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is then that the charge is framed under Section 240 CrPC, and the trial proceeds for recording the evidence.* Thus, in such a trial, the prosecution has only one opportunity to lead evidence, and that too comes only after the charge is framed.
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> **22.** In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities

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to lead evidence, firstly, before the charge is framed and secondly, after the framing of the charge. Of course, under Section 245(2) CrPC, a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.

23. Essentially, the applicable sections are Sections 244 and 245 CrPC since this is a warrant trial instituted otherwise than on police reports. There had to be an opportunity for the prosecution to lead evidence under Section 244(1) CrPC or to summon its witnesses under Section 244(2) CrPC. This did not happen, and instead, the accused proceeded to file an application under Section 245(2) CrPC on the ground that the charge was groundless.

24. Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244, and he has to consider whether the evidence remains unrebutted; the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC.

25. The situation under Section 245(2) CrPC is, however, different. There, under subsection (2), the Magistrate has the power of discharging the accused at any previous stage of the case, i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage because there is none. The Magistrate can take this decision before the accused appears or is brought before the court, or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of the case" clearly bring out this position.

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36. The Magistrate has the power to discharge the accused under Section 245(2) CrPC at any previous stage i.e. before the evidence is recorded under Section 244(1) CrPC, which seems to be the established law, particularly in view of the decision in ***Cricket Assn. of Bengal v. State of W.B. [(1971) 3 SCC 239: 1971 SCC (Cri) 446]***, as also the subsequent decision of the Bombay High Court in ***Luis de Piedade Lobo v. Mahadev Vishwanath Parulekar [1984 Cri LJ 513 (Bom)]***. The same decision was followed by the Kerala High Court in ***Manmohan Malhotra v. P.M. Abdul Salam [1994 Cri LJ 1555 (Ker)]***, and Hon'ble Justice K.T. Thomas, as the learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2) CrPC to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in ***Mohd. Sheriff Sahib v. Abdul Karim Sahib [AIR 1928 Mad 129 (1)]***, as also the judgment of the Himachal Pradesh High Court in ***Gopal Chauhan v. Satya [1979 Cri LJ 446 (HP)]***.

37. We are convinced that *under Section 245(2) CrPC, the Magistrate can discharge the accused at any previous stage*, i.e. even before any evidence is recorded under Section 244(1) CrPC. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty.' (emphasis supplied)

17. Turning to Sections 239-240, CrPC, this Court held as under in ***Minakshi Bala v. Sudhir Kumar, (1994) 4 SCC 142***:

'**6.** *Having regard to the fact that the offences, for which the charge sheet was submitted in the instant case and cognisance taken, were triable as a warrant case, the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 CrPC and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If, on such consideration, examination and hearing, the Magistrate*

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finds the charge groundless, he has to discharge the accused in terms of Section 239 CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him, he has to frame a charge in terms of Section 240 CrPC.

7. If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out — as has been done in the instant case — the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. *To put it differently, once charges are framed under Section 240 CrPC, the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add that even in such exceptional cases, the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.*

8. Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, *we further find that instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding the commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge, the Court cannot usurp the functions of a trial court to delve into*

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and decide upon the respective merits of the case.' (emphasis supplied)

18. With great respect, we express our reservations in fully acceding to what has been stated above. If Paragraph 8 of ***Minakshi Bala*** (supra) is accepted as it is, the necessary concomitant would be that, despite examining the matter in detail, a Court would find its wings clipped to intercede. This would amount to forcing a person to stand trial, even when the overwhelming material points to his/her innocence. Obviously, the hands of a Court ought not to be tied down, and especially not by a higher Court, and more so not against liberty. Paragraph 7 of ***Minakshi Bala*** (supra) does enable examining unimpeachable documents. We are conscious that ***Minakshi Bala*** (supra) has been followed in later decisions by the Court. However, we have chosen to survey the precedents further and then decide on the road we wish to take.

19. In ***Rumi Dhar v. State of West Bengal, (2009) 6 SCC 364***, this Court held that the Judge concerned with an application under Section 239, CrPC has to '*... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.*'

20. In ***State of Tamil Nadu v. N Suresh Rajan, (2014) 11 SCC 709***, it was observed that, notwithstanding the difference in the language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; Union of India v. Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v. Dilip N Chordia, (1989) 1 SCC 715; Niranjan Singh Karam Singh Punjabi v. Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v. State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v. State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v. Shiv Charan Bansal, (2020) 2 SCC 290***. We need only refer to some, starting with ***Prafulla K Samal*** (supra), where,

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after considering ***Ramesh Singh*** (supra), ***K P Raghavan v. M H Abbas, AIR 1967 SC 740*** and ***Almohan Das v. State of West Bengal, (1969) 2 SCR 520***, it was laid down as under:

> '**10.** Thus, on consideration of the authorities mentioned above, the following principles emerge:
>
> (1) *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.*
>
> (2) *Where the materials placed before the Court disclose a 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.*
>
> (3) 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.
>
> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced *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 appearing 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 were conducting a trial.'*(emphasis supplied)

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14. It was laid down by the Hon'ble Supreme Court in ***Vishnu Kumar Shukla v. State of U.P., (2023) 15 SCC 502: 2023 SCC OnLine SC 1582*** that the Court framing the charges has to see a *prima facie* case. It is impermissible to examine the material threadbare to determine whether the accused is likely to be convicted or not. It was observed:

> "**12.** The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court, by referring to its earlier decisions in the ***State of Maharashtra v. Som Nath Thapa*****,** ***(1996) 4 SCC 659*** and the ***State of MP*** **v.** ***Mohan Lal Soni*****,** ***(2000) 6 SCC 338,*** has held that the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

15. It was held in ***Ram Prakash Chadha v. State of U.P.*****,** ***(2024) 10 SCC 651: (2025) 1 SCC (Cri) 253: 2024 SCC OnLine SC 1709*** that the Court can sift and weigh the evidence to determine if a *prima facie* case exists against the accused. It was observed at page 661:

> "**24.** In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case

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> against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227CrPC, and entering into the scope of power under Section 232CrPC, cannot be ruled out, as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in ***Om Parkash Sharma* v. *CBI*, (2000) 5 SCC 679: 2000 SCC (Cri) 1014**. Taking note of the language of Section 227CrPC, is in negative terminology and that the language in Section 232CrPC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232 CrPC, even though the said stage has not been reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232 CrPC, available only after taking the evidence for the prosecution and examining the accused.

16. It was held in ***Yuvraj Laxmilal Kanther v. State of Maharashtra, 2025 SCC OnLine SC 520,*** that the Court is not to undertake a threadbare analysis of the material but to see if there is sufficient material to frame charges. It was observed:

> **"16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the

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> prosecution in this behalf, the judge considers that there are no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, the court is only required to consider whether there are sufficient materials that can justify the launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on the benefit of doubt, or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify the launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused."

17. It was held in ***Tuhin Kumar Biswas v. State of W.B., 2025 SCC OnLine SC 2604***, that if there is a suspicion as opposed to a grave suspicion, the Court has to discharge the accused. It was observed:

> **15.** This Court has recently in ***Ram Prakash Chadha v. State of UP (2024) 10 SCC 651 : (2025) 1 SCC (Cri) 253***, cited with approval earlier decisions of this Court in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285; P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488***; and ***Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609*** as under:—
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> > "21. In the decision in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285***], this Court held that the word "ground" in Section

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227 CrPC did not mean a ground for conviction, but a ground for putting the accused on trial.

22. In ***P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398: (2010) 1 SCC (Cri) 1488],*** after extracting Section 227 CrPC, this Court in paras 10 and 11 held thus: (SCC pp. 401-402)

> "10. ... 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. Further, the words "not sufficient ground for proceeding against the accused" clearly show 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 on the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities, which is really the function of the court, after the trial starts.
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> 11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

23. In para 13 in ***P. Vijayan case [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488],*** this Court took note of the principles enunciated earlier by this Court in ***Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609]*** which reads thus: (***Prafulla Kumar Samal case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Cri) 609***], SCC p. 9, para 10)

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> "10. ... (1) 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.
>
> (2) Where the materials placed before the Court disclose a 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.
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> (3) 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.
>
> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing 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 were conducting a trial."

16. In ***M.E. Shivalingamurthy v. Central Bureau of Investigation Bengaluru, (2020) 2 SCC 768 : (2020) 1 SCC (Cri) 811***, this Court has held as under:—

> "17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz. ***P. Vijayan v. State of Kerala*** and discern the following principles:

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17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed the offence, then, there will be no sufficient ground for proceeding with the trial".

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion that can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see ***State of J&K v. Sudershan Chakkar***). The expression, *"the record of the case", used in Section 227 CrPC, is to be understood as the documents and the articles, if*

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> *any, produced by the prosecution*. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see ***State of Orissa v. Debendra Nath Padhi***)." (emphasis supplied)
>
> **17.** Consequently, at the stage of discharge, a strong suspicion suffices. However, a strong suspicion must be found on some material which can be translated into evidence at the stage of trial.

18. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. The complainant asserted that the accused evaded the excise duty by sending the finished material to SGI, who sent the material to the market after galvanisation without the payment of excise duty by asserting that an act of galvanisation does not attract excise duty. However, these facts were not *prima facie* proved.

20. Nitin Wapa (CW1) stated that an excise duty and a penalty of ₹ 12,00,00,000/- (twelve crore) was payable. He proved the various orders passed by the various authorities under the Excise Act. He admitted in his cross-examination that he had never dealt with the present case.

21. Jodh Singh (CW2) stated in his cross-examination that he had never handled the matter before making the statement on oath, and his statement was based on the record inspected by him

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22. It is apparent from the cross-examination of Jodh Singh (CW2) that he had no personal knowledge about the evasion of the excise duty, and whatever he deposed, he had deposed based on the record. The complainant failed to produce the record before the Court, and the testimony of this witness regarding the information derived from the record is inadmissible[2].

23. Umesh Gupta (CW3) proved the show-cause notice order passed by the authorities. He did not say anything about the evasion. He also admitted in his cross-examination that he had handled the case after 26.08.2011, and no document was produced in his presence. He had no personal knowledge regarding the facts of the case. Again, his testimony does not prove the evasion of the duty.

24. Ravi Burman (CW4) proved the document (Ext.CW3/D) and has not stated anything about the evasion.

25. Kartar Singh (CW5) stated that a complaint was filed regarding the non-payment of the duty and the penalty. He stated in his cross-examination that he had not investigated the matter.

26. R.K. Goyal (CW6) stated that he had investigated the matter. The case pertained to the evasion of excise duty by different methods. The accused had not paid the excise duty of

[2] Murarka Properties (P) Ltd. v. Beharilal Murarka, (1978) 1 SCC 109

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₹6,18,72,793/-. He had forwarded the report to the Assistant Director. A show-cause notice was issued based on the investigation conducted by him. He proved the show cause notice.

27. This witness investigated the matter, but did not say anything about the evasion of the excise duty. He simply stated that excise duty was evaded by various methods without specifying the method. Therefore, his testimony does not establish the evasion of the excise duty.

28. In ***M/s Rimjhim Ispat*** (supra), the Hon'ble Supreme Court held that the proceedings cannot be set aside because the order was set aside. In the present case, the complainant is relying upon the orders passed by various authorities under the Central Excise Act to prove the evasion, and the cited judgment does not apply to the present case.

29. Therefore, the learned Trial Court had rightly held that there was insufficient material to show the evasion of the duties, and the criminal Court could not have convicted a person merely because a show cause notice was issued and penalties were imposed by various authorities. The Criminal Court had to apply its independent mind to determine whether there was evasion and if it was so, whether it constituted any criminal offence or not.

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Therefore, there is no infirmity in the order passed by the learned Trial Court requiring any interference from this Court.

30. No other point was urged.

31. In view of the above, the present revision fails and is dismissed.

32. The present revision stands disposed of, and so are the pending miscellaneous application(s), if any.

33. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

7th July, 2026
(Nikita)