

**A.F.R.**

**Neutral Citation No. - 2024:AHC-LKO:3587**

**Court No. - 28**

**Case :- APPLICATION U/S 482 No. - 206 of 2024**

**Applicant :- Nitin Tiwari And Another**

**Opposite Party :- State Of U.P. Thru. Addl. Chief Secy.  
Home And Another**

**Counsel for Applicant :- Nadeem Murtaza, Aditi  
Tripathi, Brij Mohan Sahai, Sudhanshu S. Tripathi**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Arun Kumar Singh Deshwal, J.**

1. Heard Sri Brij Mohan Sahai along with Sri Nadeem Murtuza, Sri Sudhanshu Shekhar Tripathi, Ms Snigdha Singh and Ms Akanksha Bajpai, learned counsel for the applicants, Sri Vikas Singh, along with Sri Sourabh Rastogi, learned counsel for opposite party no.2 and Sri Vinay Kumar Shahi, learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 13.12.2023 passed by Additional Sessions Judge/Special Judge (E.C. Act), Court No.4, Sultanpur, as well as the impugned order dated 02.08.2023 passed by the learned Sessions Judge, Sultanpur in Sessions Trial No.119 of 2023 (State of U.P. v. Brijesh Kumar Yadav and Ors.) arising out of case crime no.78 of 2022, under Sections-147, 148, 149, 302, 307, 504, 506, 34, 120-B IPC, Police Station-Amethi, District-Amethi, pending in the Court of Additional Sessions Judge/Special Judge (E.C. Act), Court No.4, Sultanpur.

3. The factual matrix of the case is as follows:

The FIR was lodged on 16.03.2022 against the applicants and other co-accused persons u/s 147, 148, 149, 302, 307, 504, 506, 34, 120-B IPC, in case crime no.78 of 2022, Police Station-Amethi, District-Amethi. Police, after investigation, prepared the first chargesheet dated 22.05.2022, though it is disputed that this chargesheet was not submitted at that time by the police. But on the direction of the Superintendent of Police, a further investigation was also conducted. It is relevant to mention here, in the first chargesheet, which was mentioned as chargesheet no.156, applicants were also named as accused and the same was filed along with subsequent chargesheet no.156A, which was filed in the Court on 14.06.2022. Applicants were also named as accused in that supplementary chargesheet, but one of the co-accused, Ram Shankar Tiwari, was exonerated. Subsequently, on the direction of the Principal Secretary, Government of U.P., the order was issued by the Superintendent of Police, Amethi, to conduct further investigation. After obtaining permission from the Court, the Investigating Officer again conducted the investigation and submitted third chargesheet bearing no.156B on 10.01.2023. In that chargesheet, the applicants' names were deleted, and certain sections were removed, including the section of 120-B IPC, it was filed against the other accused persons. Thereafter, the Investigating Officer, based on the third police report dated 10.01.2023, also applied to cancelling the warrant against the applicants who were in jail. The learned Chief Judicial Magistrate rejected that application by order dated 13.01.2023, and he also rejected the supplementary report dated 10.01.2023 and directed the case to be committed to Sessions Judge. After that, vide a separate order dated 16.01.2023, the case was also committed to Sessions Judge. The applicants and other accused persons have challenged the order dated 13.01.2023 before this Court by way of Revision no.113 of 2023, which is still pending. Thereafter, the present applicants moved a Discharge application dated 03.05.2023 u/s 227 Cr.P.C. on the ground that in

the subsequent police report, the applicants were exonerated; therefore, there is no evidence against them, and on considering the subsequent police report, they may be discharged. The learned Sessions rejected this discharge application Judge by the order dated 16.05.2023. Thereafter, charges were also framed on 02.08.2023 against the applicants by the learned Sessions Judge u/s 228 Cr.P.C. In the meantime, the applicants had filed Application u/s 482 No.7193 of 2023 challenging the criminal proceeding of Sessions Trial No.119 of 2023 of the present case crime number. But in that 482 application, order of rejecting of discharge application dated 16.05.2023 was not challenged. This Court disposed of this application by order dated 30.08.2023 rejecting the prayer for quashing the proceeding of Sessions Trial No. 119 of 2023. However, the Court directed that in view of the law laid down by the Hon'ble Supreme Court in the case of **Vinay Tyagi Vs. Irshad Ali alias Deepak and Others reported in (2013) 5 SCC 762**, at the time of the proceeding of trial, the Court should consider both the police reports to evaluate all evidence collected by the Investigating Officer. In the aforesaid two chargesheets i.e. 14.06.2022 as well as 10.01.2023, it is relevant to mention here that the order in application u/s 482 no.7193 of 2023 was reserved on 28.07.2023 and delivered on 30.08.2023. Thereafter, the applicants had filed second discharge application on 02.09.2023 on the ground that the Hon'ble High Court in Application u/s 482 No.7193 of 2023 directed to consider both the police reports, therefore, both the police reports should be considered before framing any charge. This second discharge application was rejected by the impugned order dated 13.12.2023.

4. The order dated 13.12.2023 by which the discharge application of the applicants was rejected, as well as an order dated 02.08.2023 by which the charges were framed against the applicants was challenged through the present application u/s 482 Cr.P.C.

5. Contention of learned counsel for the applicants is that while passing the impugned order, there is an appreciation of fact because it considered the chargesheet dated 22.05.2023 as the first chargesheet, though this chargesheet was never filed before the second chargesheet, but it was subsequently filed along with supplementary chargesheet dated 14.06.2022; therefore, the same cannot be treated as a chargesheet, but only the document sent with the second chargesheet. It was also submitted that the Court below also failed to consider the law laid down by the Hon'ble Supreme Court in **Vinay Tyagi's case (supra)**, (Paragraph no.42) as well as paragraphs nos.13, 15 and 16 of **Luckose Zachariah alias Zak Nedumchira Luke and others Vs. Joseph Joseph and others** reported in **2022 SCC OnLine SC 241**. It was also submitted by learned counsel for the applicants that the Court below has also illegally framed charges on 02.08.2023 because prior to that date, judgment in Application u/s 482 No.7193 of 2023 was reserved, and same was delivered on 30.08.2023, and it was incumbent upon the Court below to wait till the delivery of the judgement.

6. Learned counsel for the opposite party No. 2 had submitted that this Application u/s 482 is itself not maintainable because against the rejection of the discharge application, revision is maintainable and this is an abuse of process of law on the part of applicants themselves. In support of this contention, learned counsel for the opposite party no.2 has relied upon the judgement of the Hon'ble Supreme Court in **Madhu Limaye Vs. State of Maharashtra reported in 1997 (4) SCC 551**, paragraph no.15 as well as judgement of **Ram Shanker Singh Vs. State of U.P. And Another** passed by the Division Bench of this Court in **Application u/s 482 No.27288 of 2016** decided on **04.01.2017**, paragraphs nos.7, 8 and 9 and **Shailendra Agrawal And Another Vs. State of U.P. and Another** in **Application u/s 482 No.24354 of 2023**.

7. The second argument submitted by learned counsel for the opposite party no.2 is once the discharge application of the applicants was rejected on 16.05.2023, and the same was not challenged before the High Court, the second discharge application itself was not maintainable and it was further submitted that in paragraph no.7 of the earlier discharge application dated 03.05.2023, specific ground for consideration of two police reports was raised and same was considered by the Court in its order dated 16.05.2023 and after rejecting the discharge application, direction was also made to frame the charges and this order itself became final.

8. The third point raised by learned counsel for the opposite party no.2, it is very clear from perusal of Section 228 Cr.P.C. that immediately after discharge application, this Court is bound to frame the charges. Therefore, no question of waiting for the delivery of judgement arises at all. It was also submitted by learned counsel for the applicants that in earlier Application u/s 482 No.5578 of 2023 filed by co-accused Ram Shankar Tiwari, this Court had clearly directed by order dated 21.03.2023 that the trial may proceed in accordance with the law against the rest of the accused persons. Therefore, once there is direction of the Court itself, then question of waiting to frame charges till the delivery of judgment and disposal of Application u/s 482 No.7193 of 2023 does not arise once it is admitted that the discharge rejection order dated 16.05.2023 was not challenged in Application u/s 482 No.7193 of 2023.

9. Another argument raised by learned counsel for the opposite party no.2 is that it is established legal position that once the charge has been framed, then the discharge application itself is not maintainable, and in support of his contention, he has relied upon paragraph no.29 in the judgement of **Ravindra Pratap Shahi @ Pappu Shahi Vs. State of U.P. & Another** delivered in **Criminal Revision No.2183 of 2021**.

10. The last argument of learned counsel for the opposite party no.2 is that the present 482 application is virtually the second 482 application challenging the discharge rejection order because in the first application under section 482 filed by the applicants bearing no.7193 of 2023, the order rejecting the discharge application was not challenged, though that remedy was available to the applicants. Now the applicants have again challenged that discharge rejection order. In support of his contention, learned counsel for the applicants has relied upon the judgment of **Bhisham Lal Verma Vs. State of U.P. & Another** reported in **2023 SCC OnLine SC 1399**.

11. Learned AGA while adopting the argument of learned counsel for the opposite party no.2 had also submitted that there is no illegality in the impugned orders as the applicants were named in the FIR and chargesheet but on the basis of further investigation, they somehow succeeded to get them exonerated in second supplementary chargesheet and it was lastly argued by learned counsel for the State that this 482 application against the rejection of discharge application is not maintainable because the impugned order itself is reviseable.

12. In reply to the contention of learned counsel for the opposite party no.2 and learned AGA, learned counsel for the applicants submits that the Hon'ble Supreme Court in paragraph no.10 of **Vijay and Another Vs. State of Maharashtra and Another** reported in **(2017) 13 SCC 317**, as well as in the case of **Sanjay Kumar Rai Vs. State of Uttar Pradesh and Another** reported in **(2021) SCC OnLine SC 367**, has observed that an alternative remedy of filing revision is not a bar for filing the 482 application if, in appropriate cases, it is just in the interest of justice.

13. After considering the argument of the parties, the following question arises for determination:

(I) Whether the present application u/s 482 Cr.P.C. is maintainable against the rejection of discharge application and framing of charge despite the fact that both the orders are revisable?

(II) Whether the framing of charge on the part of Sessions Judge on 02.08.2023 is proper once the proceeding itself was under challenge in application u/s 482 no.7193 of 2023, and the matter was heard on 28.07.2023, and judgement was reserved, which was subsequently delivered on 30.08.2023?

(III) Once the discharge application dated 03.05.2023 of the applicants was rejected on 16.05.2023, which was not challenged and charges were framed on 02.08.2023, then subsequent discharge application dated 02.09.2023 is maintainable, which was rejected by the impugned order dated 13.02.2023.

(IV) Whether the present 482 application is the second application against the rejection of discharge application of the petitioner once applicants failed to challenge the earlier rejection of discharge application in their earlier application, having no.7193 of 2023?

(V) While passing the impugned order, rejecting the discharge application dated 02.09.2023, learned Sessions Judge has failed to consider two contradictory police reports in light of the judgement of the Hon'ble Supreme Court in **Vinay Tyagi's case (supra)** as well as judgement of **Luckose Zachariah's case (supra)**.

14. Insofar as the (I) question is concerned in support of his submission, learned counsel for the applicants has already relied upon paragraph no.10 of **Madhu Limaye's case (supra)**, which is being quoted as below:

*"10. As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the*

*harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases, would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."*

15. Similarly, the judgement of **Prabhu Chawla Vs. State of Rajasthan And Another** reported in **(2016) 16 SCC 30**, Hon'ble Supreme Court observed that remedy of revision is not an absolute bar for exercising power u/s 482 Cr.P.C. where abuse of process of Court or other extraordinary situation warrants the exercise of inherent jurisdiction, paragraph no.6 of the said judgement is being quoted as below:

*"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:*

*"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."*

*A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.*

*"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more". (Raj Kapoor V. State, (1980) 1 SCC 43)*

*We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable."*

16. Similarly in the case of **Vijay's case (supra)** relied upon by learned counsel for the applicants, Hon'ble Supreme Court observed that availability of alternative remedy cannot be a ground of disentitlement of the relief u/s 482 Cr.P.C. Paragraph nos.7 and 8 of the said judgement is being quoted as below:

*"7. After hearing the counsel and also after perusing the impugned order, we are of the considered opinion that the order of the High Court has no legs to stand in view of the law laid down by this Court in Prabhu Chawla. In the above referred case, in view of the divergent opinions of this Court in Dhariwal Tobacco Products Ltd. and Mohit v. State of U.P, the matter was placed before the three-Judge Bench of this Court. The three-Judge Bench took the view that Section 482 CrPC begins with a non obstante clause to state:*

***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."*

*As Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation which is wholly unwarranted and undesirable. The three-Judge Bench has confirmed the law laid down by this Court in Dhariwal Tobacco Products Ltd.*

*8. In view of the above settled law, mere availability of alternative remedy cannot be a ground to disentitle the relief under Section 482 CrPC and, apart from this, we feel that the learned Judge without appreciating any of the factual and legal position, in a mechanical way, passed the impugned order, which warrants interference by this Court. Accordingly, the order of the High Court is set aside and the matter is remanded to the High Court for reconsideration in the light of the settled legal position."*

17. In the judgement of **Sanjay Kumar Rai's case (supra)**, Hon'ble Supreme Court again observed that framing of charge or refusing discharge are neither interlocutory nor final in nature, therefore, remedy of revision u/s 397 Cr.P.C. will not be a bar to exercise inherent jurisdiction to prevent abuse of process and to secure ends of justice. Paragraph no.16 of the above judgement is being quoted as below:

*“16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated Jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.”*

18. Similarly in the case of **Ram Shanker Singh's case (supra)**, Division Bench of this Court in paragraph nos.7, 8 and 9 clearly observed that rejecting of discharge application is revisable, therefore, there is no reason to approach the High Court u/s 482 Cr.P.C. against that order. Paragraph nos.7, 8 and 9 of the above judgement are being quoted as below:

*“7. It is at this stage that the revisionist Ram Shanker Singh has filed this application under section 482 Cr.P.C. for quashing of the charges, leveled against the petitioner, as well as the order dated 16.2.2016 whereby the discharge application was rejected. It has further been prayed that the proceeding of Case No.235 of 2010 may be quashed. In paragraph 28 of the present application it has been stated that the other co-accused A.S. Chauhan has preferred Criminal Revision No.822 of 2016. What is the status of the said Criminal Revision is not known.*

*8. However the applicant, Ram Shanker Singh, in his wisdom has decided to approach this Court under section 482 Cr.P.C The contention raised on behalf of the applicant for not preferring criminal revision after he felt aggrieved by the order, rejecting the discharge application and after framing of the charge is that since against the order framing charge no criminal revision would be maintainable, the appellant has decided to approach this Court by means of this present application.*

*9. At the very outset we may record that the order rejecting the discharge application was made in the month of February, 2016 while the charge has been framed under order dated 24.8.2016. These are two distinct orders. The order rejecting the discharge application was admittedly revisable. Why the applicant did not think it proper to challenge the order rejecting the discharge application for more than six months, has not been explained. Against the order rejecting the discharge application, a criminal revision would be maintainable, there is little or no reason for the accused to approach this Court under section 482 Cr.P.C. against the said order.”*

19. Similarly, in the case of **Shailendra Agrawal's case (supra)**, a coordinate Bench of this Court observed that against the order of discharge, there is a remedy of criminal revision; therefore, there is no reason to entertain 482 application against that order. Paragraph no.6 of the above judgement is being quoted as below:

*"6. As in this application, legality and propriety has been challenged against the order of discharge, there lies an alternative remedy of criminal revision which has not been availed by the applicants."*

20. From the above-mentioned judgement, it is clear, though, that there is no absolute bar against entertaining 482 application against the rejection of discharge application as well as against framing of charge despite the fact that both the orders are revisable, but as observed in the cases mentioned above, such exercise should be adopted only in appropriate cases where the situation demands to exercise such power to prevent abuse of the process of the Court or other extraordinary situation. Therefore, the law is clear on this point that against the rejection of discharge application and/or against framing of charge, normally revision should be filed, but application u/s 482 Cr.P.C. is maintainable in appropriate cases. **Therefore, whether the application u/s 482 Cr.P.C. should be entertained against the rejection of discharge application or framing of charges despite the remedy of revision will depend on the facts and circumstances of the cases which the Court itself could decide.**

21. In the present case, the impugned order rejecting the discharge application of the applicant was passed in pursuance of an order dated 31.07.2023 passed in application u/s 482 no.5578 of 2023. Even though earlier discharge application of the applicants was rejected on 16.05.2023; therefore, **in such circumstances, present 482 application against the impugned order rejecting the second discharge application and framing of charge is maintainable because of the peculiar circumstances of the case.**

22. So far as the (II) issue is concerned, in reply to that issue, learned counsel for the opposite party no.2 has submitted that once the discharge application is rejected u/s 227 Cr.P.C. after hearing the parties, then the learned Sessions Judge has no option except to frame charges u/s 228 Cr.P.C. and learned counsel for opposite party no.2 has also placed reliance on the petition filed by the co-accused,

Ram Shankar Tiwari u/s 482 application having No.5578 of 2023 against his summoning in the present case crime number and in that case while passing the order dated 31.07.2023, the coordinate Bench though, stayed the proceeding against the co-accused Ram Shankar Tiwari but also permitted the trial court to proceed in accordance with law in relation to the rest of the accused persons. Sections 227 and 228 of Cr.P.C. are being quoted as below:

*“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 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 such 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.”*

23. From the perusal of Sections 227 and 228 of Cr.P.C., it is clear that once the the court heard the accused person and prosecution u/s 227 Cr.P.C. and rejected the discharge application of the applicants, then Court is bound to frame charge u/s 228 (b) Cr.P.C., if same is exclusively triable by Sessions court and with further duty that after framing of charge, Sessions court will read and explain the charges to the accused persons, and the Court will also ask him whether he pleaded guilty of charge or claims to be tried. In the present case, after rejecting the discharge application of the applicants on 16.05.2023, learned Sessions Judge framed charge on 02.08.2023 in the presence of the applicants, taking into consideration the order dated 31.07.2023 passed by this Court in application u/s 482 no.5578 of 2023 and also rejected the application dated 02.08.2023 of the

applicants that till delivery of judgement in application u/s 482 no.7193 of 2023; charge may not be framed. Therefore, charges were framed by applying the provision of Section 228 Cr.P.C. Therefore, this Court is of the view that once the discharge application of the applicants was rejected on 16.05.2023, which was not challenged by the applicants, then there was a statutory duty on the part of Sessions Judge to frame charge u/s 228 Cr.P.C. and merely because judgment has been reserved in application u/s 482 no.7193 of 2023 against the criminal proceeding of session trial, there is no reason to wait till the delivery of judgment, once the rejection of discharge application on 16.05.2022 was not challenged by the applicants in application u/s 482 no.7193 of 2023, and there was clear permission of this Court in application u/s 482 no.5578 of 2023 filed by the co-accused Ram Shankar Tiwari for the trial court to proceed against all accused persons, including the applicants. **Therefore, this Court holds that there is no illegality in framing the charge against the applicants on 02.08.2023, and this Court also holds that once the discharge application of an accused is rejected u/s 227 Cr.P.C. then unless the order rejecting the discharge application was challenged and stayed by higher Court, the Sessions Judge is under statutory duty to frame charges u/s 228 Cr.P.C.**

24. So far as the (III) issue is concerned that when the charge has been framed after rejecting the discharge application, then second discharge application is maintainable or not. This point was concerned in the case of **Ravindra Pratap Shahi's case (supra)** by the coordinate Bench of this Court and after relying upon several judgements of the Hon'ble Supreme Court held that after the framing of charge, issue relating to the discharge of the accused cannot be considered. Paragraphs nos.28 and 29 of the judgement mentioned above are being quoted as below:

*“28. Having noted the law regarding exercise of jurisdiction under Section 227 Cr.P.C., this Court is further required to examine as to whether after charges have been framed*

*the issue relating to discharge of an accused can be considered by court or not. Aforesaid issue is no longer res-integra and stands concluded by the judgement of Supreme Court in **Ratilal Bhanji Mithani Vs. State of Maharashtra and others (1979) 2 SCC 179**, paragraph 28, which has been followed in **Bharat Parikh Vs. C.B.I. and another, (2008) 10 SCC 109**, paragraph 16, **State through C.B.I. New Delhi Vs. Jitendra Kumar Singh, (2014) 11 SCC, 724**, paragraph 40, **Hardeep Singh Vs. State of Punjab, (2014) 3 SCC, 92**, paragraph 31.*

*29. It is thus apparent that once charges have been framed, the issue of discharge becomes redundant, as Courts have no jurisdiction to allow discharge after charges having been framed. After charges have been framed, Court can either convict or acquit an accused. Admittedly, in the present case, charges have been framed, vide order dated 04.09.2021. Resultantly, this Court now cannot examine the veracity of order dated 02.09.2021, whereby discharge application filed by applicant was rejected.”*

**25. In the case of Ratilal Bhanji Mithani Vs. State of Maharashtra & Others reported in 1979 (2) SCC 179**, this question was considered by the Hon'ble Supreme Court and observed that once a charge is framed, the Magistrate has no power u/s 227 Cr.P.C. or any other provision of Cr.P.C. to cancel the charge. Paragraph no.28 of the aforesaid judgement is being quoted as under:

*“28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the code to cancel the charge, and reverse the proceedings to the stage of Section-253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections-254 to 258 to a logical end.”*

**26. Similarly in the case of Bharat Parikh Vs. Central Bureau of Investigation & Another 2008 (10) SCC 109**, Hon'ble Supreme Court has observed that once the charge has been framed, an accused pleads not guilty then Magistrate is required to proceed with the trial to its logical end and he has no power to discharge the accused. He can either convict or acquit the accused. Paragraph no.17 of the above judgement is being quoted as below:

*“17. Of the two propositions raised in this appeal, the first proposition has been completely answered in Debendra Nath Padhi case regarding the trial court's power to recall its order framing charge against an accused. Having regard to the language of Sections 207 and 227 of the Code of Criminal Procedure, while framing charges the trial court can only look into the materials produced by the prosecution while giving an opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge. The decision in Satish Mehra case having been overruled in Debendra Nath Padhi case the contention of Mr Desai that the Magistrate should have reopened the matter on the basis of the documents produced by the prosecution at the instance of the accused, is no longer res integra. The question of discharge by the learned Magistrate after framing of charge does not, therefore, arise, notwithstanding the submissions advanced with regard to denial of natural justice and a fair and speedy trial*

*as contemplated under Article 21 of the Constitution, which have no application whatsoever to the facts of this case.”*

**27. In view of the above legal position, it is clear that once the charge has been framed after rejecting the discharge application of the applicants, second discharge application is not maintainable** but even then the Court below has decided the second discharge application of the applicants because of the direction of this Court in application u/s 482 no.7193 of 2023, to consider both the reports in light of the judgement of the Hon'ble Supreme Court in the case of **Vinay Tyagi's case (supra)**, even from the perusal of the order of this Court in application u/s 482 no.7193 of 2023 from Eagle's Eye; there is no specific direction to decide second discharge application of the applicants, but there was a simple direction that during trial, the Court below should consider both the police report and material collected during the investigation.

28. So far as the (IV) question is concerned, whether the present 482 application and second 482 application against the rejection of discharge application is concerned, from the perusal of the record, it is clear that in earlier application u/s 482 Cr.P.C., the proceedings of Session trial was challenged without challenging the rejection of discharge application dated 16.05.2023. Though, in the present case, the applicants have challenged the order passed on the second discharge application which was passed virtually in the garb of the order dated 30.08.2023 passed in application u/s 482 no.7193 of 2023. Therefore, even if the issue is the same but the order is different; therefore, present application u/s 482 cannot be said to be a second application u/s 482, therefore the same is very well maintainable.

29. So far as the (V) question regarding the consideration of contradictory police report in light of the judgement of **Vinay Tyagi's case (supra)** is concerned, from the perusal of the impugned order, it is clear that the learned Sessions Judge clearly considered the police report/supplementary chargesheet dated 14.06.2022 and 10.01.2023

as well as the first chargesheet dated 22.05.2022 which was subsequently filed along with supplementary chargesheet dated 14.06.2022. For framing of the charge, the police report, as well as all documents, are to be considered as per the judgement of Hon'ble Supreme Court in the case of **Vinay Tyagi's case (supra)** and **Luckose Zachariah's case (supra)**. In paragraph no.53 of the judgement of **Vinay Tyagi's case (supra)**, it was observed that the competent Court is duty-bound to consider all reports, entire records and documents submitted therein by the investigating agency as its report in terms of Section 173 (2)Cr.P.C. **It was further observed that in the aforesaid judgement in paragraph no.60 that once the report u/s 173(2) Cr.P.C. has been filed, it cannot be cancelled by the investigating agency by submitting a contradictory report because the same power lies with the Court itself not on the investigating agency.** Paragraph nos.53 and 60 of the aforesaid judgement of **Vinay Tyagi's case (supra)** are being quoted as below:

*“53. The court of competent jurisdiction is duty-bound to consider all reports, entire records and documents submitted therewith by the investigating agency as its report in terms of Section 173(2) of the Code. This rule is subject to only the following exceptions:*

*(a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;*

*(b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on "fresh investigation" or "reinvestigation" or any part of it be excluded, struck off the court record and be treated as non est.*

*60. Once a report under Section 173(2) of the Code has been filed, it can only be cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the police nor a specialised investigating agency has any right to cancel the said report. Furthermore, in the present case, the High Court had passed no order or direction staying further investigation by Delhi Police or proceedings before the court of competent jurisdiction. On the contrary, the Court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a "supplementary report". Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law. It is also interesting to note that CBI itself understood the order of the Court and conducted only "further investigation" as is evident from the status report filed by CBI before the High Court on 28-11-2007.”*

30. Similarly in the case of **Luckose Zachariah's case (supra)**, Hon'ble Supreme Court has again reiterated the observations of the case of **Vinay Tyagi (supra)** and observed that Court concerned in case of two different reports must have due regard to both the reports and thereafter formed his opinion in accordance with law. Paragraph no.16 of the judgement of **Luckose Zachariah's case (supra)** is being quoted as below:

*"16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhal Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. While the High Court has relied upon the decision in Vinay Tyagi (supra), it becomes necessary for this Court to set the matter beyond any controversy having due regard to the fact that the Sessions Judge in the present case had while remitting the proceedings back to the Magistrate relied on the judgment of the Single Judge of the Kerala High Court in Joseph (supra) which is contrary to the position set out in Vinay Tyagi. Hence, the JFCM-I Alappuzha shall reexamine both the reports in terms of the decisions of this Court in Vinay Tyagi v. Irshad All alias Deepak and Vinubhai Haribhai Malaviya v. State of Gujarat as noted above and in terms of the observations contained in the present judgment. The Magistrate shall take a considered decision expeditiously within a period of one month from the date of the present order."*

31. Therefore, from the above-mentioned legal position, it is clear that while framing charges, the Court must consider all the police reports, and the same were duly considered in the impugned order dated 13.12.2023 and merely making reference of the first chargesheet dated 22.05.2022, which was earlier not filed in Court but subsequently filed along with the supplementary chargesheet dated 14.06.2022 will not make the impugned order perverse. Therefore, this Court holds that there is sufficient compliance with the direction of Hon'ble Supreme Court in the case of **Vinay Tyagi' case (supra)** and **Luckose Zachariah's case (supra)** while passing the impugned orders.

32. In view of the above observations and findings, this Court is of the view that there is no illegality in the impugned order dated 13.12.2023, as well as order dated 02.08.2023; therefore present application is **rejected** with a further direction to the Court below to

conclude the trial as expeditiously as possible without giving unnecessary adjournment to any of the parties and decide the same in time-bound manner, preferably within a period of one year.

**Order Date :- 12.1.2024**

S.Chaurasia