Right of Accused at Discharge Stage of Criminal Trial: Some Reflections

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Harold Garfinkel has described criminal trials as status degradation ceremonies.[2] Criminal trial is a method by which the society, despite its difference with another society, expresses social control over a deviant behaviour. The purpose of conducting a criminal trial is to ascertain the guilt of the accused by following a fair procedure and giving equal opportunity to both - the prosecutor and the accused. The framing of charge is an important stage in a criminal trial. Before the framing of charge the presiding judicial officer has to dispose of the application of discharge, if any, filed by the accused. The determination of the issue whether the trial court at the time of framing the charge has the power to receive the material filed by the accused has recently drawn the attention and attept has been made to evaluate the effect of providing the opportunity to the accused to adduce material at this stage of trial.

Till 1996 the Supreme Court of India was consistent in its view that at the time of framing charge the trial court can consider only such materials that were placed before it by the investigating agency and at this stage the defence (accused) could only be heard but has no opportunity to produce evidence for consideration of the court.[3] But it was the case of *Satish Mehra v. Delhi Administration*[4] where the Supreme Court observed that if the accused were able to produce any reliable material at the stage of taking cognizance or framing of charge which might fatally affect the very sustainability of the case, it is unjust to suggest that no such material should be looked into by the court at that stage. The trial court would be well within its power to consider even material which the accused may produce at the stage contemplated in Section 227 of the Criminal Procedure Code, 1973. In this back drop, an attempt has been made here to analyse the approach of the Supreme Court.

There are two provisions under the Criminal Procedure Code, 1973 which deal with discharge of accused. While Section 227 provides for discharge of accused in trial before the

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[2] Garfinkel, Harold, Conditions of Successful Degradation Ceremonies, American Journal of Sociology (1965) Vol. 61 pp. 420-424

[3] State of Bihar v. Ramesh Kumar Singh AIR 1977 SC 2018; Superintendent & Legal Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja AIR 1980 SC 52; State of Maharastra v. Priya Sharan Maharaj AIR 1997 SC 2041; State of M.P. v. S.B. Johari AIR 2000 SC 665; State of Delhi v. Gyan Devi AIR 2001 SC 40

[4] (1996) 9 SCC 766

Sessions Court, Section 239 deals with discharge in trial of warrant cases by Magistrate.[5] The provisions of Sections 227 and 239 of the Criminal Procedure Code, 1973 are beneficent in nature so as to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial.[6]

The Supreme Court in *Minakshi Bala v. Sudhir Kumar*[7] explained the scope and ambit of Section 239 and 240 of the Criminal Procedure Code, 1973. The court observed:

> 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 finds the charge groundless he has to discharge the accused in terms of Section 239 CrPC; conversely, if he finds there is ground for presuming that the accused has committed an offence triable by him he has to frame the charge in terms of Section 240 CrPC.[8]

In *Satish Mehra case*,[9] the relation between the appellant husband and the respondent wife were not cordial and the wife with a view to put pressure upon the appellant so that he could not claim over bank account fastened him for the offences under section 354, 376/511 and 498-A of the Indian Penal Code by lodging an FIR. It was contended by the respondent wife that her husband, inter alia, had sexually assaulted his daughter. The appellant wanted to adduce certain material at the stage of discharge but the same was denied and the High Court did not give him any relief on this issue. Then the appellant filed an appeal by special leave. On the issue whether or not the accused could adduce material at the time of discharge, the Court observed:

> If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the court at that stage.

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[5] 226. 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.
239. When accused shall be discharged – If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record the reason for doing so.

[6] See, Kewal Krishna v. Suraj Bhan 1980 Cri LJ 1271 (SC)

[7] (1994) 4 SCC 142

[8] Id at 144

[9] Supra note 2

> Here the "ground" may be any valid ground including insufficiency of evidence to prove charge.[10]

Thomas, J. explaining the object of the provision of section 227 of the Criminal Procedure Code, 1973 observed:

> The object of providing such an opportunity as is envisaged in section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves such human efforts and cost. If the material produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need to be produced only after wasting a lot more time in the name of trial proceedings.[11]

Further,

> When the judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted by holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date . . . If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate to snip the proceedings at the stage of Section 227 of the Code itself.[12]

In *State Anti Corruption Bureau v. P. Suryaprakasan*[13], a case under Section 5 (2) of the Prevention of Corruption Act, 1947 was registered against the respondent and on completion of investigation the charge sheet was submitted after obtaining sanction from the government. The Special Judge took the cognizance and issued process. The respondent filed an application seeking discharge under Section 239 of the Criminal Procedure Code, 1973 on the ground, inter alia, that government did not consider the explanation and the said application was rejected by the Special Judge. The respondent thereupon moved a revision petition before the High Court and allowing the revision, the High Court quashed the proceeding against the respondent. The High Court observed that while framing charges, the court should apply its mind and consider the entire materials not only produced by the prosecution but also the explanation and materials produced by the accused. But in this case, the lower court has utterly failed to do so, the High Court pointed out.

The appellant thereupon filed a special leave petition against the order of the High Court. Reversing the order of the High Court, the Supreme Court held that at the time of

[10] Id at 771 per K. T. Thomas and M. M. Punchhi, JJ.
[11] Ibid.
[12] Ibid.
[13] (1999) SCC (Cri) 373

framing the charge, the trial court is required to and can only consider the police report referred to in section 173 of the Code and the documents sent with it. The court emphasised that only right which the accused has at this stage is only the right of being heard and nothing beyond that. In other words, at the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.[14]

The matter came up again before a bench comprising three judges in *State of Orissa v. Debendra Nath Padhi*[15] where it was held that at the time of framing of charge or taking cognizance the accused has no right to produce any material and the Satish Mehta case holding that the trial court has power to consider even materials which the accused may produce at the stage of Section 227 of the Code was not correctly decided. In this case, on behalf of the State it was argued that the observation made in *Satish Mehta* case run counter to the view expressed by the Supreme Court in large number of decisions given over a period of time and it amounted to unsettling well settled legal proposition and would, ultimately, result in conducting a mini trial at the stage of framing of charge or taking cognizance. It was contended that the view taken in *Satish Mehta* case would not only be contrary to the object and scheme of the Code but would result in total wastage of the court time because of conducting two trials; first at the stage of framing charge and the other after the charge is framed. Thus, the true construction of Section 227 according to the State was that only the material sent by the prosecution along with the records of the case and the documents sent with it may be considered by the trial court at the time of framing of the charge and consequently the accused has no right to place any material before the trial court at this stage.

On behalf of the accused, on other hand, it was argued that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution because that would result in the accused having to face the trial for long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material. The construction that the accused has no right to produce material at the stage of framing the charge may be declared *ultra vires* of Articles 14 and 21 of the Constitution and that construction should be preferred which saves the provision from being declared unconstitutional. It was contended on behalf of the accused that to save the provision of Section 227 of the Code from being declared *ultra vires*, the accused should be given a right,

[14] Id at 375 per M. K. Mukherjee and S. P. Kurdukar, JJ.
[15] AIR 2005 SC 359 Bench comprised Sabharwal, Dharmadhikari and Tarun Chatterjee, JJ

of course only a limited right, to produce unimpeachable and unassailable materials in order to show his innocence even at the time of framing of charge.

The contention on behalf of the accused was rejected on the ground that the expression "hearing the submission of the accused" in Section 227 of the Code cannot mean opportunity to file the material by the accused. Thus, at the stage of framing of charge hearing the submission of the accused has to be confined to the material produced by the police. The Supreme Court observed:

> It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of . . . the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence.[16]

In *Palvinder Singh v. Balvinder Singh*[17], the trial judge dismissed the discharge application of the respondent-accused in exercise of its jurisdiction under section 227 of the Criminal Procedure Code, 1973. It was contended by the respondent accused that as the dying declaration of the deceased victim was not properly recorded and there were contradictions in two dying declarations given by the victim. Both of the grounds were rejected by the trial court. Then the respondent – accused filed a criminal revision before the High Court and it allowed the discharge application of the accused. Thereupon the appellant, the husband of the deceased victim, challenged the correctness of the discharge of the respondent – accused. The Supreme Court setting aside the impugned judgment of the High Court observed that:

> "the High Court committed a serious error in passing the impugned judgment in so far as it entered into the realm of appreciation of evidence at the stage of framing of charge itself. The jurisdiction of the learned Sessions Judge while exercising power under section 227 of the Criminal Procedure Code is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not the domain of the court at that point of time."[18]

Again, in *Rukmini Narvekar v. Vijaya Satardekar*[19] two judges took different views on this issue. While accepting the submission that at the time of framing of the charges only the material produced by the prosecution side can be looked into by the court and the material produced by the defence cannot be looked into Altmas Kabir, J. observed that:

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[16] Id. At 365
[17] AIR 2009 SC 887
[18] Id. At 889 per S. B. Sinha and Cyriac Joseph, JJ.
[19] AIR 2009 SC 1013

> "there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in section 227 Cr. P.C. can be taken into consideration by the learned magistrate at that stage . . . ."[20]

Justice Katju took a different view on the issue and opined that in exceptional and very rare circumstances such material may be produced by the defence and he observed that:

> while it is true that ordinarily defence material cannot be looked into by the court while framing of charges . . .there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charge or taking cognizance.[21]

Katju, J. further observed:

> It cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of charges, though it should be done in very rare cases, i.e., where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted . . . in some very rare cases the court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution is totally absurd, preposterous or concocted.[22]

The judge is not a mere post office to frame the charges at the behest of the prosecution but has to exercise the judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution.[23] At the stage of Section 227 of Cr.P.C. 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. The accused if afforded an opportunity to adduce which is of unassailable nature there should not be any bar to defer such evidence for another appropriate stage of trial.

The criminals are generally considered lower on the social scale than a non - criminal. The maintenance of a non - criminal image thus is important to most of the people. The self - identity of a person may be threatened by use of criminal process. Criminal trial may be visualised as a ritualistic status degradation ceremony in which public identity of the person

[20] Id. At 1015
[21] Id. at 1018
[22] Ibid.
[23] See, P. Vijayan v. State of Kerala AIR 2010 SC 663

is lowered on the social scale.[24] Crime is not the criminal act of the accused which causes harm rather it is a label which the criminal justice system pastes on the person. The labeling theorist of criminology believes that the criminal justice system is dangerous in the sense that it casts the net of social control too widely. The State intervention is inherently criminogenic in its ultimate effect. The criminal trial is, in fact, 'dramatization of evil'[25]. The process of tagging, defining, identifying, segregating and describing any individual for special treatment becomes a way of stimulating, suggesting and evoking the very trait complained of. The trial makes the person a 'thing' but describes him as a 'being'. The label of "criminal" confers master status to the person and this master status controls the way the person is identified in public. After acquiring such master status other status, e.g. son, parent, or worker, are not considered in public.[26] Since the criminal justice system puts label on the criminal thus the trial should be conducted only when there is sufficient ground to proceed with otherwise trial may be a futile exercise and may cause undue harassment to the accused beside wastage of time and human efforts.

The concept of social justice has generally been viewed the proper distribution of benefits and burdens among the members of the society.[27] This understanding of social justice ignores the relation between the criminal justice system and the criminal. In human relations the existence of domination and oppression should be regarded as anti thesis of justice. It is quite possible that there exist certain institutions and procedures which fail to take care of the criminal. The social justice, in this context, can be better understood if its meaning is extended to the elimination of institutionalized domination and oppression.[28] The interpretation and understanding or the provisions of law which may provide an opportunity of domination and exploitation may be suitably modified in order to attain justice.

The view taken by the court that at the time of framing the charge, the trial court cannot take the material of the defence does not treat the accused and the prosecution with equality. The prosecution has a better right as it gives a right to submit the records of the case and relevant documents along with the right of being heard on their submission. The accused, on the other hand, is given only the right of being heard and not to produce even any

[24] See, Vold, George B. *Theoretical Criminology*, Second Edition, Oxford University Press (1979) pp. 263-264; Williams, Katherine S., *A Text Book on Criminology*, Third Edition, Universal Law Publishing Co. Pvt. Ltd. (2001) pp. 411-434
[25] Tannenbaum, Frank, *Crime and the Community*, Colombia University Press (1938)
[26] Id.
[27] Rawls, John, *A Theory of Justice*, Oxford University Press (1971)
[28] Young, Iris Marion, *Justice and the Politics of Difference*, Princeton University Press (1990)

unimpeachable and unassailable material before the judges at this stage. Such a situation may be regarded as in violation of equality. It may also affect the fairness of the trial in the sense that the prosecution is at higher pedestal in comparison to the defence while fair trial presumes equal opportunity to all the parties – prosecution, accused, victim and the society.

The interpretation of Section 227 Criminal Procedure Code, 1973 in *Debenedra Nath Padhi* case is contrary to the concept of justice as it suggests a procedure which unnecessarily puts the prosecution, at the stage of discharge, in dominant position and it oppresses the accused by not permitting him to adduce unassailable and unimpeachable material in his favour. The opinion of Justice Thomas and Justice Katju is better as the justice can be done to the accused when the opinion in *Satish Mehra* and the opinion in *Rukmini Narvekar* are preferred over *Debendra Nath Padhi* case. In case the defence is given, in exceptional case, an opportunity to adduce unimpeachable and unassailable material at the time of framing the charge such an interpretation would not only save the time of the court but it would also save the accused from being harassed unnecessarily and also will be saved from protracted trial and the label of criminal status attached to him. Moreover, the trial court will exercise, to some extent, its discretion and it may generate confidence among the judicial officers involved in dispensation of criminal justice at this level and they will be more responsive to the needs of the society. The society may get an impression of speedy justice. The number of pending trials and piling of criminal trials would be reduced considerably. The lifting of such a barrier allegedly created by Section 227 and 239 of the Criminal Procedure Code, 1973 will, resultantly, pave the path for speedy justice.