

**2025 LiveLaw (SC) 1159**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

***NONGMEIKAPAM KOTISWAR SINGH; J., MANMOHAN; J.***

**December 02, 2025**

**CRIMINAL APPEAL NO. 5146 OF 2025 (Arising out of Special Leave Petition (Crl.) No. 3002/2024)**

**TUHIN KUMAR BISWAS @ BUMBA *versus* THE STATE OF WEST BENGAL**

**Criminal Procedure Code, 1973 - Section 227 (Discharge) - Test for Framing of Charge - Supreme Court reiterated the legal principles for deciding an application seeking discharge under Section 227 of Cr. P.C. - Held, the Judge 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 - 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 - Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge - The test to determine a *prima facie* case would naturally depend upon the facts of each case, but if two views are equally possible and the Judge is satisfied that the evidence produced gives rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused - The Judge cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities, the total effect of the evidence and the documents produced, and any basic infirmities appearing in the case - There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused. [Relied on *Ram Prakash Chadha v. State of UP* (2024) 10 SCC 651; *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715; *Vijayan v. State of Kerala*, (2010) 2 SCC 398; and *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4; Paras 15-17]**

**Indian Penal Code, 1860 - Section 354C (Voyeurism) – Held, the FIR and chargesheet did not disclose an offence under Section 354C of the IPC - Voyeurism is defined as an act of a man watching or capturing the image of a woman engaging in a 'private act' in circumstances where she would usually have the expectation of not being observed - A 'private act' includes an act of watching carried out in a place reasonably expected to provide privacy, where the victim's genitals, posterior or breasts are exposed or covered only in underwear, or the victim is using a lavatory, or the victim is doing a sexual act not ordinarily done in public - Since there was no allegation in the FIR and chargesheet that the complainant was watched or captured while engaging in a 'private act', the offence was not disclosed. [Paras 19-21]**

**Administration of Criminal Justice - Supreme Court emphasized that where there is a pending civil dispute and a prior subsisting injunction order, the Police and Criminal Courts must be circumspect in filing a chargesheet and framing charges respectively - The decision to file a chargesheet should be based on whether the evidence provides a reasonable prospect of conviction - The Police and Criminal Court must act as initial filters ensuring that only cases with a strong suspicion should proceed to trial to maintain the efficiency and integrity of the judicial system - The tendency of filing chargesheets where no strong suspicion is made out clogs the judicial system, diverts limited judicial resources, and compromises the right to a fair process - Held that in this case, the absence of strong suspicion was evident**

**due to the pending civil dispute, the subsisting injunction, and the complainant's refusal to make any judicial statement - Appeal allowed. [Paras 28, 29]**

*For Petitioner(s) Mr. V. Somnath Ghoshal, Adv. (argued by) Anupama Chakraborty, Adv. Mr. Sahid Uddin Ahmed, Adv. Mr. Towseef Ahmad Dar, AOR Ms. Zinat Sultana, Adv.*

*For Respondent(s) Mr. Kunal Mimani, AOR (argued by) Mr. Prashant Alai, Adv.*

## **J U D G M E N T**

**MANMOHAN, J.**

1. Leave granted.

2. The present Appeal has been filed challenging the judgment dated 30<sup>th</sup> January 2024 passed by the Calcutta High Court, whereby the revision petition filed by the Appellant-accused against the order dismissing the discharge application filed by the Appellant in FIR No.50/2020 dated 19<sup>th</sup> March 2020 lodged with police station Bidhannagar North, was dismissed.

### **FACTS**

3. On 19<sup>th</sup> March 2020, the complainant-Ms. Mamta Agarwal, an alleged tenant of Mr. Amalendu Biswas, one of the co-owners of the property at CF-231, Sector I, Salt Lake, Kolkata 700064 ("the property") filed a complaint/FIR under Sections 341, 354C, 506 of Indian Penal Code ('IPC'). The complainant alleged that on 18<sup>th</sup> March 2020, when the complainant along with her friend and workmen tried to enter the property, the Appellant-accused intimidated them and restrained them from entering the property. The complainant further alleged that the Appellant-accused intimidated the complainant by clicking her pictures and making her videos on his mobile without her consent and by doing so, he intruded upon her privacy and outraged her modesty.

4. Upon completion of investigation, a chargesheet dated 16<sup>th</sup> August 2020 was presented against the Appellant-accused for offences punishable under Sections 341, 354C and 506 of IPC. It is stated in the chargesheet that the complainant expressed her unwillingness to make a judicial statement. The relevant portion of the chargesheet in question is reproduced hereinbelow: -

*"17. Brief facts of case: Bidhannagar North P.S. Case No:50/2020 Dated 19.03.2020 U/S 341/354C/506 IPC has been started on the basis of written Complaint of one Mamta Agarwal of I/B, Kustia Road, Kolkata – 700039. The fact in brief is that on 19.03.2020 at about 15.00 hrs. while she along with her friend were entering into the premise, located at CF-231, Sector-1, Salt Lake, Kolkata-700 064, PS BDN(N), they were restrained by one Tuhin Kr. Biswas @ Bumba. Some argument took place between them. Said Tuhin Kr. Biswas snapped some photographs and recorded video, which caused outrage of female modesty of the complainant. Being endorsed by IC, Bidhannagar North PS, I took up its investigation.*

*During investigation all follow-up actions were taken. Notice u/s 41A Cr.P.C. was complied with by the accused but he didn't surrender before Ld. Court. The complainant expressed her unwillingness to make judicial statement.*

*Discussed with IC, Bidhannagar North PS and considering all aspects, he opined to submit Charge Sheet in this case.*

*Hence, I do submit Charge sheet vide BDN(N) PS CS No.128/2020 Dated 16.08.2020 u/s 341/354C/506 IPC against accused Tuhin Kr. Biswas @ Bumba S/O Bimanlendu Biswas of CF-231, Sector-1, Salt Lake Kolkata-700 064, PSBDN(N) to stand his trial in the open Court of law.*

*The witnesses, noted in Col. No.14, will prove the charge during trial. They may kindly be summoned. Kept the complainant informed about the result of investigation."*

5. Thereafter, the Appellant-accused, who is son of one of the co-owners of the property in question filed an application seeking discharge, which was dismissed by the Trial Court vide order dated 29<sup>th</sup> August 2023. The revision petition against the order dated 29<sup>th</sup> August 2023 was dismissed by the learned Single Judge vide the impugned judgment.

**ARGUMENTS ON BEHALF OF THE APPELLANT**

6. Learned counsel for the Appellant-accused stated that the two brothers (Mr. Bimalendu Biswas and Mr. Amalendu Biswas) are the joint owners of the property in question and one of the brothers, being Mr. Amalendu Biswas, had tried to dispossess the other brother without due process of law. He stated that said other brother, being father of the Appellant-accused, filed a civil suit being Title Suit No. 20 of 2018 with respect to the property in question against Mr. Amalendu Biswas. He pointed out that vide order dated 29<sup>th</sup> November 2018, the learned Civil Judge directed the parties to maintain joint possession of the property as well as not to alienate the property and/or not to create any thirdparty interest in the property. He emphasized that the said injunction was prevalent on the date of the incident which led to filing of the FIR. The relevant portion of the injunction order dated 29<sup>th</sup> November 2018 is reproduced hereinbelow:-

*“....Both the parties should maintain a joint possession in the suit property. Both parties are hereby restrained from disturbing the joint possession of the other in the suit property and from alienating the suit property or creating 3<sup>rd</sup> party interest in the suit property till disposal of the suit...”*

7. He alleged that the FIR in question had been registered at the behest of Mr. Amalendu Biswas, who attempted to dispossess the Appellant-accused and his father from the property in violation of the injunction order passed by the Trial Court.

8. He contended that on the date of the incident, the complainant had entered the property with anti-social elements in a bid to dispossess the Appellant-accused's father. He pointed out that the complainant-Ms. Mamta Agarwal is a habitual offender and has been charged with offences under Sections 302 & 307 of IPC in one case, and offences under Sections 323, 341, 506(II) & 114 of IPC in another case. He emphasised that the complainant is not a tenant in the property. He further stated that in the chargesheet, the investigating agency has not adduced any document pertaining to tenancy of the complainant.

9. He alleged that the other side, i.e., Mr. Amalendu Biswas was in the process of creating third-party rights in violation of the injunction and mere protest against creation of such third-party rights by the other litigant over the property did not attract Section 341 or 506 of IPC.

10. He stated that the allegations in the FIR did not disclose the commission of an offence under Section 354C of IPC. He stated that no photographs or seizure had been placed on record to substantiate the allegations of voyeurism. He submitted that despite the finding given by the learned Single Judge that the allegation in the FIR did not disclose any offence under Section 354C of IPC, the learned Single Judge did not quash the FIR or discharge the Appellant qua the said offence. He stated that the complaint was silent with respect to the threatening language allegedly uttered by the Appellant-accused.

11. He stated that there are no statements under Section 161 of Code of Criminal Procedure ('Cr.P.C'). of the alleged friend accompanying the complainant or her workmen. He further stated that the complainant had also expressed her unwillingness to get her statement recorded under Section 164 of Cr.P.C., thereby indicating the falsity of her allegations in the FIR.

12. He contended that the allegations in the FIR are false and even if they are accepted at face value, no case is made out against the Appellant-accused.

### ARGUMENTS ON BEHALF OF THE RESPONDENT-STATE

13. *Per contra*, learned counsel appearing for the Respondent-State stated that the complainant was only a prospective tenant. He pointed out that in his statement, the other co-owner of the property, being Mr. Amalendu Biswas had stated that the complainant had come to see the ground floor of the property. He emphasized that there was sufficient material on record which made out a prima facie case against the Appellant-accused for offences punishable under Sections 341 and 506 of IPC. He relied upon the following observations and findings of the High Court in the impugned Judgment:-

*“14. With regard to truthfulness, sufficiency or admissibility of the charge under Section 341/506 of the IPC made in the FIR, it cannot be said to be a matter falling within the domain of exercising jurisdiction under Section 227 of the Code of Criminal Procedure at the time of consideration of a prayer for discharge.*

*15. On careful scrutiny of the order impugned, I find no reason to interfere with the order whereby Ld. Magistrate refused to discharge the accused and fixed a date for framing of charge and hearing of the petition.*

*16. Thus, the revision application being no. CRR 3443 of 2023 is hereby dismissed. Ld. Trial Court is directed to frame charge, keeping an eye on the observation made by this Court after giving an opportunity of hearing to both the parties.”*

### REASONING

#### ABSENT A STRONG SUSPICION, AN ACCUSED CAN BE DISCHARGED

14. Having heard the learned counsel for the parties, this Court is of the view that before proceeding with the matter, it is essential to outline the legal principles to be kept in mind by the Court while deciding an application seeking discharge.

15. This Court has recently in **Ram Prakash Chadha v. State of UP (2024) 10 SCC 651**, cited with approval earlier decisions of this Court in **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715**; **P. Vijayan v. State of Kerala, (2010) 2 SCC 398**; and **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4** as under: -

*“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 227CrPC, 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 227CrPC, 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 to 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.*



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)

“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 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 was conducting a trial.”

**16. In *M.E. Shivalingamurthy vs. Central Bureau of Investigation Bengaluru*, (2020) 2 SCC 768, 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:

**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 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 which 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 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. Keeping in view the aforesaid principles of law, this Court will have to assess as to whether there are sufficient grounds for proceeding against the Appellant-accused for the offences alleged in the FIR.

#### **FIR AND CHARGESHEET DO NOT DISCLOSE AN OFFENCE UNDER SECTION 354C IPC**

19. Section 354C of IPC defines voyeurism as an act of a man watching or capturing the image of a woman engaging in a ‘*private act*’ in circumstances where she would usually have the expectation of not being observed. ‘*Private act*’ has been defined in Explanation 1 as an act including “*an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.*”

20. Upon a perusal of the FIR and chargesheet on record, this Court is unable to conclude the same disclose an offence under Section 354C of the IPC since there is no allegation in the FIR and chargesheet that the complainant was watched or captured by the Appellant-accused while she was engaging in a ‘*private act*’. The learned Single Judge, in the impugned judgment, has concluded with respect to the offence under Section 354C as under: -

*“11. Allegation made in the written complaint, in my opinion, did not disclose any offence under Section 354C...”*

12. *From the bare reading of the aforesaid provision, **it is clearly intelligible that the allegation of clicking pictures and making video made in the written complaint cannot be said to be an offence within the meaning of Section 354C of IPC.***

(emphasis supplied)

21. Consequently, the learned Single Judge in the impugned order itself concluded that the allegations in the FIR and the material on record did not disclose an offence under Section 354C of IPC.

### INGREDIENTS OF CRIMINAL INTIMIDATION ARE NOT ATTRACTED

22. Further, in order to constitute an offence of criminal intimidation punishable under Section 506 of IPC, it must be shown that the person charged, threatened another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm. Except for the bald allegation that the Appellant-accused intimidated the complainant by clicking her photographs, the FIR and chargesheet are completely silent about the manner in which the complainant was threatened with any injury to her person or her property. The words, if any, uttered by the complainant are not mentioned in the FIR. Additionally, as stated above, the complainant or her associates never made a statement to substantiate her allegations. Consequently, in the present case, even if the allegations in the FIR are taken at face value, the ingredients of offence of criminal intimidation are not attracted.

### OFFENCE OF WRONGFUL RESTRAINT IS NOT MADE OUT

23. Section 341 of IPC provides punishment for the offence of wrongful restraint, which has been defined in Section 339 of IPC as under:

*“339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.*

*Exception— The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.”*

24. The ingredients essential to constitute an offence of wrongful restraint are that there should be an obstruction which prevents a person from proceeding in *any* direction in which the person has a *right to proceed*. The exception to the offence of wrongful restraint provides that no offence of wrongful restraint is committed if the person alleged of obstruction, in good faith, believes that he has a lawful right to obstruct. Therefore, the evidence required to establish the offence of wrongful restraint is that the *person alleging obstruction has a right to proceed* in such direction and the *person obstructing has no lawful right to cause obstruction*.

25. In the present case, the perusal of the FIR reveals that the alleged offences were committed when the complainant attempted to enter the property. The right of the complainant to enter the property stems from the virtue of being a purported tenant of Mr. Amalendu Biswas. However, no material has been placed on record along with the chargesheet which indicates that the complainant was a tenant in the property at any point of time. Surprisingly, the complainant has not even given a statement in pursuance to her complaint. On the contrary, the said Amalendu Biswas in his statement has stated that the complainant had come to see the property, meaning thereby that the complainant was not a tenant in the property but only a prospective tenant when the FIR was registered. Therefore, the material on record indicates that on the date of the alleged offence, the complainant had no right to enter the property. In fact, the induction of the complainant as tenant in the property would have been in violation of the injunction passed by the Trial Court.

26. In view of the aforesaid, this Court is of the opinion that all that the Appellant-accused did was to enforce what he bonafidely thought was his lawful right over the property in terms of the injunction order passed by the Trial Court. This Court is also of the opinion that the allegations in the FIR and the material on record at best constitute a cause of action for filing a suit for injunction and/or an application seeking modification of

the interim order already in subsistence or an application for the relief of ingress and egress in the pending suit.

**27.** Consequently, this Court is of the view that criminal proceedings against the Appellant-accused for offences punishable under Sections 341, 354C, 506 of IPC cannot be permitted to continue.

**TENDENCY OF FILING CHARGESHEETS AND FRAMING CHARGES IN MATTERS WHERE NO STRONG SUSPICION IS MADE OUT CLOGS THE JUDICIAL SYSTEM**

**28.** Before parting with this case, this Court would like to emphasise that where there is a pending civil dispute between the parties, the Police and the Criminal Courts must be circumspect in filing a chargesheet and framing charges respectively. In a society governed by rule of law, the decision to file a chargesheet should be based on the Investigating Officer's determination of whether the evidence collected provides a reasonable prospect of conviction. The Police at the stage of filing of Chargesheet and the Criminal Court at the stage of framing of Charge must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. The tendency of filing chargesheets in matters where no strong suspicion is made out clogs the judicial system. It forces Judges, court staff, and prosecutors to spend time on trials that are likely to result in an acquittal. This diverts limited judicial resources from handling stronger, more serious cases, contributing to massive case backlogs. Undoubtedly, there can be no analysis at the charge framing stage as to whether the case would end in conviction or acquittal, but the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as it compromises the right to a fair process.

**29.** In the present case, the Police and the Trial Court should have been cognizant that as there was a pending civil dispute with regard to the property in question as well as a prior subsisting injunction order and the complainant had refused to make any judicial statement, strong suspicion founded on legally tenable material/evidence was absent.

**CONCLUSION**

**30.** Keeping in view the aforesaid, the present Appeal is allowed and the impugned Judgment and Order is set aside as well as the Appellant-accused is discharged from G.R. Case No. 223 of 2020 (arising out of Bidhannagar North Police Station FIR No. 50 of 2020).

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