2025:AHC:210522

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1956 of 2025

Padmakar Upadhyay

.....Revisionist(s)

Versus

State Of U.P. And 5 Others

.....Opposite Party(s)

Counsel for Revisionist(s) : Sheshadri Trivedi
Counsel for Opposite Party(s) : Ashok Kumar Singh, G.A., Pratibha Singh

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AFR.

Reserved on 4.11.2025
Delivered on 25.11.2025

Court No. - 91

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Sheshadri Trivedi, learned counsel for the revisionist-complainant, learned AGA for the State as well as Sri Ashok Kumar Singh, learned counsel for opposite party Nos.2 to 6.

2. The revisionist/complainant has filed the present criminal revision being aggrieved by the impugned order dated 11.4.2025, passed by the learned Sessions Judge, Jaunpur, in Sessions Trial No.04 of 2025 (State vs. Subedar Singh and others), arising out of Case Crime No.18 of 2024, under Sections 147, 148, 323, 325, 307, 504, 506 of Indian Penal Code (IPC), Police Station Khutahan, District Jaunpur, whereby the Trial Court has discharged the opposite party Nos. 2 to 6 from the offence punishable under Sections 307 IPC.

3. The brief facts of the case is that FIR dated 20.1.2024 was registered as Case Crime no.18 of 2025, under Sections 395 IPC at Police Station Khutahan District Jaunpur. The FIR was lodged by the

revisionist/complainant with the allegations with regard to the occurrence dated 19.1.2024 at 11.00 p.m. nominating the opposite party nos. 2 to 6 and one Arvind Singh with the narrative that in the night of 19.1.2024, when the revisionist was returning after getting his brothers Sudhakar Upadhayay and Diwakar Upadhayay admitted in a hospital, then the accused persons started chasing them in three vehicles, during which the opposite party No.2/ Subedar Singh resorted to firing upon the revisionist/complainant. Then the revisionist/complainant tried to save his life by taking refuge in Police Station Khutahan; in spite of that, undeterred the opposite party nos. 2 to 6 also forcefully entered into police station. The accused persons started assaulting the revisionist/complainant and his brothers inside the police station with lathi and sticks, but because of the intervention of the police, lives of the revisionist and his brothers were saved. During continuance of said occurrence, the left hand of the revisionist was fractured and Rs.11,000/- was also looted away by the Opposite Party Nos.2 to 6.

4. Leaned counsel for the revisionist has submitted that the impugned order dated 11.4.2025 is bad in the eyes of law, illegal having apparent illegality and jurisdictional error, which is liable to be set aside. Learned counsel for the revisionist has further submitted that injury report of the revisionist/complainant was prepared and four injuries were found in his injury report; the injured-Sudhakar Upadhayay has got two injuries in his injury report and the injured-Divakar Upadhyay has also got two injuries.

5. It is further submitted by the leaned counsel for the revisionist that during the course of investigation, the Investigating Officer recorded the statement of the

revisionist, who categorically stated that the accused persons were firing upon the vehicle of the revisionist with the intention of committing his murder and during the actual course of the occurrence within the police station, it was exhorted that the revisionist and others be done to death. The Investigating Officer recorded the statement of Constable, Sonu Yadav posted at the Police Station Khutahan, who supported the case of the revisionist. On the basis of the said statement and other evidence collected, the Investigating Officer converted the case under Sections 147, 148, 323, 325, 307, 504, 506 IPC. The Investigating Officer also recorded the statement of injured witness Diwakar Upadhayay, who also supported the version of the FIR. The injured-Sudhakar Upadhayay has also recorded his statement that the Opposite Party nos.2 to 6 were involved in the firing upon them and had thereafter they assaulted them inside the police station with the intention to commit their murder. The police has submitted charge sheet under Section 173(2) of Cr. P.C. on 1.4.2024. The case was committed, then the opposite party nos.2 to 5 filed an application (12-Kha) on 13.2.2025, while the opposite party no. 6 submitted his separate application no.20-kha on 24.3.2025 with the prayer that they may be discharged from the offence under Section 307 IPC.

6. Learned counsel for the revisionist has submitted that the learned Sessions Judge has wrongly passed the impugned order dated 11.4.2025 and discharged the opposite party Nos.2 to 6 from the offence under section 307 IPC on the basis of the fact that neither the revisionist nor any other injured person had sustained any life threatening injury, and there was no allegation that any incised weapon or fire-arm had been used to inflict the injuries upon the revisionist and other injured

persons.

7. Learned counsel for the revisionist has further submitted that the learned trial court has held that the injuries caused during the course of occurrence were not of such kind that could have resulted in the death of either the revisionist or other injured persons in the ordinary course of nature, whereas, it had been categorically and consistently stated that the opposite party nos.2 to 6 were resorted to firing upon the revisionist and other injured persons while chasing the vehicles of the revisionist. He further submitted that the learned trial court failed to consider that opposite party nos.2 to 6 were exhorting even inside the police station to commit the murder of the revisionist and other injured persons. The revisionist further submitted that the learned trial court committed serious illegality in conducting a roving inquiry and even a mini trial at the stage of discharge, which is impermissible in the eyes of law as held by the Hon'ble Supreme Court.

8. The revisionist further submitted that the learned trial court failed to consider that the primary consideration at the stage of framing of charge is the test of existence of a prima facie case and at this stage, the probative value of material on record need not be gone into. The court has only to form a presumptive opinion to the existence of factual ingredient constituting the offence and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction or not at the conclusion of the trial. Learned counsel for the revisionist further submitted that it is a settled law that the defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The revisionist further submitted that the opposite party nos. 2 to 6 are

hardened criminals and the opposite party no.2/Subedar Singh is a previous convict in Sessions Trial No.83 of 2013, arising out of Case Crime no.728 of 2012, under Section 302/149, 307/149 and 120B of IPC, Police Station Sardhana District Jaunpur and has a criminal history of 21 cases to his credit.

9. Elaborating further, learned counsel for the revisionist submitted that the opposite party nos.2 to 6 are named in the FIR, which was lodged promptly. The alleged incident took place in the night and when the revisionist along with other have no option and they entered in the Police Station Khutahan, the opposite party nos. 2 to 6 had also entered into the Police Station and continued the offence there. It reflects gravity and intention of opposite party nos. 2 to 6. The complainant/revisionist had suffered four injuries and injury no.1 is 8.0x3.0 cm upper part of left forehead, 5.0 cm above from left wrist. The forehead is a vital part of the body and the injury could be fatal. The other injured Sudhakar Upadhayay and Diwakar Upadhayay had also suffered injuries which is verified by their injury reports.

10. Learned counsel for the revisionist has filed statement of Dr. Sartaj Khan, Medical Officer and the statement of Radiologist, Dr. Arvind Kumar Pandey. Dr. Arif Sarfaraz Khan had verified injury report of injured Padmakar Upadhayay/revisionist that he had suffered four injuries and injury nos.1 and 2 were kept under observation as well as advised for X-ray and referred to District Hospital, Jaunpur. He also verified injury report of injured-Diwakar Upadhayay and Sudhakar Upadhayay. In the statement of Radiologist, Dr. Arvind Kumar Pandey, he has stated that injured revisionist had got left forearm fractured and also fracture in small finger in left hand.

11. As per Section 320 IPC, fractured or dislocation of a bone or tooth has been designated as grievous hurt. The genesis and prima facie case has to be considered. Section 307 IPC defines the offence of attempt to murder, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder…"

12. Learned counsel for the revisionist has further vehemently submitted that as per the law laid down by the Hon'ble Supreme Court in **Tarun Jit Tejpal Vs. State of Goa and another; 2020 (17) SCC 556** that more than prima facie case against the accused for which he is required to be tried. All that the court is to consider is whether evidentiary material on record if had been accepted, would reasonably connect the accused with the crime. The court has not to make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

13. Learned AGA has submitted that the learned trial court entered into the merits of the case and it had evaluated the evidence at the stage of framing of charge. The learned trial court is to see only prima facie case and not to conduct any roving enquiry or make trial. The impugned order is thus liable to be set aside.

14. Learned counsel for the opposite party nos.2 to 6 has submitted that the impugned order is not having any illegality or irregularity as none of the injury is sufficient in ordinary course of nature to cause death. There are no sufficient injuries, which is amounting to attempt to murder. There is no pirma facie evidence of presumption against the opposite party nos.2 to 6 to try them under Section 307 IPC. The impugned order is, therefore, liable to be upheld and the present revision is liable to be

dismissed.

15. Learned counsel for the revisionist has further submitted that opposite party No.2/Subedar Singh had filed Criminal Misc. Bail Application no.6459 of 2025 in the present crime before this Court and this Court was pleased to reject his second bail application vide order dated 17.3.2025 holding that "learned counsel for the first informant submits that the present bail application has been filed almost on identical grounds. The case of the applicant is at no parity with the co-accused, the applicant is a hardened criminal having criminal history 21 cases and in one case being S.T. No. 86 of 2013 arising out of Case Crime no.728 of 2012 under Section 302/149, 307/149 and 120B IPC, Police Station, Sardhana District Jaunpur, the applicant/Subedar Singh has been convicted and sentenced to undergo life imprisonment along with fine. Considering aforesaid submission made by the leaned counsel for the first informant as well as considering the long criminal history of the applicant, this Court found no good ground to interfere in the present second bail application. Accordingly the second bail application was rejected."

16. For proper adjudication of the case, sections 226, 227, 228 Cr.P.C as well as Section 307 IPC are quoted herein below:-

"**226. Opening case for prosecution**.

When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

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, for 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.

307. **Attempt to murder.**

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder. shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life]. or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts. When any person offending under this sec-tion is under sentence of [imprisonment for life), he may, if hurt is caused, be punished with death.]"

17. In the case of **State of Tamilnadu Vs. N. Suresh Rajan (2014) 11 SCC 709,** the Hon'ble Supreme Court discussed the scope of proceeding at the stage of framing of charge under Sections 227/228 Cr.P.C. The Apex Court held that at this stage probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. It is further held that what needs to be considered is whether there is

a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence which does not permit a mini trial at this stage.

18. It is held by the Apex Court in **Sheoraj Singh Ahlawat Vs. State of U.P (2013) 11 SCC 476** that it is trite that at the stage of framing of charge, the court is required to evaluate the materials and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

19. The Apex Court held in **Tarun Jit Tejpal (supra)** as follows:-

"**31.1**. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction".

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak vs. A.R. Antulay [(1986) 2 SCC 716: 1986 SCC (Cri) 256]. The same reads as follows: (SCC pp. 755-56, para 43).

" **43**. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of prima facie case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

20. It is further held in the said case of **Tarun Jit Tejpal (supra)** as follows:-

" **9.2** In the subsequent decision in the case of S. Selvi (Supra) this Court has summarised the principles while framing of the charge at the stage of Section 277/228 of the CrPC. This Court has observed and held in paragraph 6 and 7 as under:

"6. It is well settled by this Court in a catena of judgments including Union of India vs. Prafulla Kumar Samal [Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4: 1979 SCC (Crí) 609], Dilawar Balu Kurane vs. State of Maharashtra [Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135: 2002 SCC (Cri) 310], Sajjan Kumar vs. CBI [Sajjan Kumar vs. CBI, (2010) 9 SCC 368: (2010) 3 SCC (Cri) 1371 1, State vs. A. Arun Kumar [State vs. A. Arun Kumar, (2015) 2 SCC 417: (2015) 2 SCC (Cri) 96: (2015) 1 SCC (L&S) 505], Sonu Gupta vs. Deepak Gupta [Sonu Gupta vs. Deepak Gupta, (2015) 3 SCC 424 (2015) 2 SCC (Cri) 265], State of Orissa vs. Debendra Nath Padhi [State of Orissa vs. Debendra Nath Padhi, (2003) 2 SCC 711: 2003 SCC (Cri) 688), Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76: 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs vs. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs vs. Anil Kumar Bhunja, (1979) 4 SCC 274 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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, where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large 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 rights 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 of the case, the total effect of the statements 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 materials as if he was conducting a trial.

7. In Sajjan Kumar vs. CBI [Sajjan Kumar vs. CBI, (2010) 9 SCC 368: (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to évaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) 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.""

9.3 In the case of Mauvin Godinho (Supra) this Court had an occasion to consider how to determine prima facie case while framing the charge under Section 227/228 of the CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 of the CrPC there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

21. The Apex Court in **Union of India Vs. Prafulla Kumar Samal (1979) 3 SCC 4**, has summarized some of the principles which are as follows:-

"(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 had 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."

22. It is held by the Supreme Court **Prafulla Kumar Samal (supra)** and in **State of Bihar Vs. Ramesh Singh; (1977) 4 SCC 39** that in fact Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused

will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.

23. In view of the facts and genesis of the crime that there is previous enmity between the complainant and the accused persons, the alleged incident took place in the night and the FIR was lodged promptly against the named accused persons/opposite party nos. 2 to 6. The revisionist and other injured persons to save their lives had entered into police station to seek protection, the opposite party nos. 2 to 6 have dare enough to chase the revisionist and other persons into the police station also and continued the offence and beaten them there. The injury report of revisionist, who has got injuries on his left forehead which is a vital part and also got fracture. It is confirmed by the statement of the Radiologist, Dr. A. K. Pandey that he also suffered left forearm fracture and fracture in the small of finger of left hand. The fracture comes within the definition of grievous hurt. The statement of the police officials of concerned police station are also recorded and they confirmed the incident .

24. After a detail investigation, the charge sheet has been filed against the Opposite party Nos.2 to 6 under Sections 147, 148, 323, 325, 307, 504, 506. The entire genesis, the nature of the injury and the offending and heinous nature of opposite party no.2/Subedar Singh, who had already convicted and having a long criminal history of 21 cases, are to be looked into. All these consideration are enough

and prima facie, the sufficient material is there for framing the charge under Section 307 against opposite party nos. 2 to 6.

25. In view of reasons mentioned above, the impugned order dated 11.4.2025, passed by the learned Sessions Judge, Jaunpur in Sessions Trial No.04 of 2025 (State Vs. Subedar Singh and other), arising out of Case Crime No.18 of 2024, under Sections 147, 148, 323, 325, 307, 504, 506 of IPC, Police Station Khutahan, District Jaunpur, whereby the Trial Court has discharged the opposite party Nos. 2 to 6 from the offence under Sections 307 IPC is, hereby **set aside**. The opposite party Nos. 2 to 6 have to be charged also under Section 307 IPC to face trial.

26. With these observation this criminal revision is, hereby, **allowed**.

(Abdul Shahid,J.)

November 25, 2025
sfa/

Digitally signed by :-
SYED FAHEEM AHMAD
High Court of Judicature at Allahabad