



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

An Analysis of the Admissibility of Evidence presented by the Accused during Cognizance Proceedings

Richa Ayengia^a

^aNational Law University and Judicial Academy Assam, India

Received 24 July 2023; *Accepted* 10 August 2023; *Published* 14 August 2023

This article explores the concept of a fair trial within the Indian Criminal Justice System, with a particular focus on the charge framing stage and the issue of evidence provision from the side of the accused. The principle of receiving a fair trial is universally acknowledged and protected by Article 21 of the Indian Constitution. Regardless, Article 21 of the Indian Constitution universally recognizes and protects the right to a fair trial unequivocally. However, the Code of Criminal Procedure is silent on the matter of furnishing evidence by the accused during the charge framing stage, leading to legal uncertainty and concerns about the fairness of the trial process. This article analyses various views and court judgements, examining the statutory provisions and their current position on the matter. It emphasizes the importance of providing precise information to the accused, eliminating bias or prejudice, and ensuring a fair and impartial trial. The article highlights the need to strike a balance between the right of the accused and the established procedures, ultimately aiming at contributing to the ongoing discourse surrounding the right to a fair trial in India's criminal justice system.

Keywords: *fair trial, charge framing stage, legal uncertainty.*

INTRODUCTION

The global recognition of a fair trial is enshrined in the Universal Declaration of Human Rights. Article 10 of the Universal Declaration of Human Rights¹ affirms the global recognition that every individual is entitled to a fair and public hearing conducted by an impartial and independent tribunal. This provision applies to the determination of their rights, obligations, and any criminal charges brought against them, ensuring transparency and justice in legal proceedings worldwide. In India, the right to a fair trial is enshrined in the Indian Constitution, under Article 21², which ensures the right to life and personal freedom.³ In the case of *Rattiram v State of Madhya Pradesh*⁴, the Supreme Court stressed the paramount importance of a fair trial in criminal jurisprudence. Central to this right is the provision of precise information to the accused regarding the charges they are facing. This ensures transparency, safeguards the accused's rights, and upholds the principles of justice in the legal system. A crucial element is the eradication of bias or prejudice against the accused, witnesses, or the matter being tried. Ensuring fairness and impartiality throughout the trial process is essential for upholding justice and protecting individual rights. The main objective of Indian criminal laws is to protect these rights and guarantee a just and unbiased legal proceeding. Refusing a fair trial is not only unfair to the person facing charges but also to the victim and society as a whole. The accusation in a criminal trial relies on the charge, which serves as the fundamental basis, and it is crucial to accurately formulate it. The evidence should be limited to matters mentioned in the charge and should not tamper with other issues. The court's focus should be on the documents referred to under Section 173⁵. The judge only needs to establish a prima facie case without providing reasons for framing charges. However, if the magistrate decides to discharge the accused, they are required to provide a written order stating the reasons. Therefore, during this stage, cognizance is based on a mere presumption of suspicion. However, the Code of Criminal Procedure 1973 is silent on the matter of furnishing evidence from the side of the accused. This

¹ Universal Declaration of Human Rights 1948, art 10

² Constitution of India 1950, art 21

³ Parul Soni, 'Fair Trial and its principles' (*Law Times Journal*, 13 October 2018) <<https://lawtimesjournal.in/fair-trial-and-its-principles/>>

⁴ *Rattiram v State of MP* (2012) 4 SCC 516

⁵ Code of Criminal Procedure 1973, s 173

silence has resulted in judgments that have raised concerns about the uncertainty and fairness of the trial process. The legal maxim *Justice delayed is justice denied* is relevant to this subject matter, as the number of pending cases in courts across India has exceeded 4.6 crore as of December 2021, according to recent statistics released by the central government. This uncertainty has led to observations regarding the furnishing of evidence, which has been seen as causing a situation akin to a mini-trial, deemed invalid and impermissible under the code. On the other hand, the failure to furnish evidence and subsequent acquittal adds to the injustice faced by the accused due to the biased, slow, and complex legal procedures. This article provides an analysis of various views and court judgments, examining the statutory provisions and the current position of the Matter.

COMPREHENDING THE SCOPE OF THE DISCHARGE PROVISIONS

Throughout the process, starting from the filing of an FIR until the trial takes place, various stages are carefully managed by both the police officer and the magistrate to ensure that a prima facie case exists against the accused. In the investigation stage, as outlined in Section 169⁶, if the police officer in charge determines that there is insufficient evidence or reasonable suspicion to bring the accused before the magistrate, the detained person will be released. This ensures that individuals are not held in custody without a strong basis for their arrest, safeguarding their rights and preventing wrongful detention. This release may happen with or without sureties, as long as a bond is executed. Following the investigation, a 'final report' is submitted to the magistrate under Section 173⁷, presenting the findings and evidence for the magistrate's consideration of whether a prima facie case exists against the accused. Moving on to the stage of charge framing, which is typically done by the magistrate but may, under specific circumstances, require the court of Session to take cognizance, there is a significant possibility of the accused being acquitted and the case being dismissed. Section 227⁸ and Section 239⁹, provide provisions for the dismissal of a case against the accused after careful examination.

⁶ Code of Criminal Procedure 1973, s 169

⁷ Code of Criminal Procedure 1973, s 173

⁸ Code of Criminal Procedure 1973, s 227

⁹ Code of Criminal Procedure 1973, s 239

In essence, from the initial filing of an FIR until the trial, the police officer and the magistrate go through different stages to ensure the presence of a prima facie case against the accused. If there is a lack of evidence during the investigation, the accused may be released. Upon reading up of akin Sections 227 and 228¹⁰ under the Court of Session and Sections 239 and 240¹¹ we see that a case against the accused can be dismissed. At this juncture, the court's primary objective is to assess if the presented evidence, when considered valid, can reasonably establish a link between the accused individual and the committed crime. The core concept lies in the judicial assessment to ascertain if there exists enough evidence to establish a prima facie case against the accused individual. Prior to 1996, we see that the supreme court consistently held the view that, during the process of framing charges, the trial court was limited to examining the materials provided by the investigating agency, as specified in Section 227¹². At this stage, the defence could be heard, but they were not granted an opportunity to present evidence for the court's consideration. However, in the case of *Satish Mehra v Delhi Admn*¹³, a different perspective was presented by a two-judge bench of the court. These judges observed that if the accused is able to present credible evidence during the stage of taking cognizance, which could substantially undermine the case's viability, it would be unfair, in light of the principles enshrined in Articles 14¹⁴ and 21¹⁵, to exclude such evidence from consideration by the court at that particular stage. Hence, it was determined that the trial court possesses the authority to examine any evidence presented by the accused, even during the specific stage outlined in Section 227 of the Code. This departure from the established principle set in the *Satish Mehra* case led to the matter being referred to a larger Bench in the *Debendra Nathi Padhi* case. Subsequently, the issue was addressed by a three-judge bench within the same case.¹⁶ In their evaluation, the three-judge bench considered the relevant sections of the Criminal Procedure Code 1973, including Sections 227 and 228, which pertain to the discharge of the accused in a session's trial. Additionally, they took into account Sections 239 and 240, similar provisions applicable to the trial of warrant cases

¹⁰ Code of Criminal Procedure 1973, s 228

¹¹ Code of Criminal Procedure 1973, s 240

¹² Code of Criminal Procedure 1973, s 227

¹³ *Satish Mehra v Delhi Administration* (1996) 9 SCC 766

¹⁴ Constitution of India 1950, art 14

¹⁵ Constitution of India 1950, art 21

¹⁶ *State of Orissa v Debendra Nath Padhi* (2005) 1 SCC 568

by Magistrates, ensuring comprehensive consideration of relevant legal aspects. The ruling in the Debendra Nath Padhi case clarified that the central issue being addressed in the case pertained to the right of the accused to present evidence for the court's consideration during the charge-framing stage.

Now when we look upon the Discharge Provision of section 227 akin with section 239

Section 227: 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.

Section 239: 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 his reasons for so doing.

Both of these sections provide sufficient guidance regarding the extent of the inquiry for the purpose of discharging. Here in *Stree Atyachar Virodhi Parishad v Dilip Nathumal Chordia*, a detailed interpretation was provided concerning the wording of these provisions. The knowledgeable judges determined that:

The phrase 'the record of the case' mentioned in Section 227 of the Code refers to the documents and evidence related to the case. While the Code does not explicitly define the term 'case', Section 209 offers guidance on its interpretation. As per Section 209 if an offense falls under the exclusive jurisdiction of the Court of Session, the Magistrate must transfer 'the case' to the Court of Session. This transfer includes all records, documents, and evidence relevant to the case. This provision establishes a connection between the record and documents mentioned in Section 227 and those referred to in Section 209.¹⁷

¹⁷ *Stree Atyachar Virodhi Parishad v Dilip Nathumal Chordia* (1989) 1 SCC 285

Essentially, Section 227, when read together with Section 209¹⁸, clarifies that the accused does not possess the right to present any material or document during the stage of charge framing; such rights are only granted during the actual trial proceedings. Furthermore, the phrase 'no sufficient ground for proceeding against the accused' within Section 227 does not refer to grounds for conviction, but rather grounds for initiating the trial process against the accused. It is during the trial that the determination of the accused's guilt or innocence takes place, and not at the stage of framing charges. Therefore, the court is not required to engage in an extensive inquiry to sift through and assess the material presented. The sole duty of this process is to determine whether the presented evidence, if accepted, reasonably establishes a link between the accused and the alleged crime. In the *Sajjan Kumar v CBI* ¹⁹case, after carefully reviewing various judgments concerning the scope of Sections 227 and 228 of the Code of Criminal Procedure 1973 which are akin to Sections 239 and 240, the Court laid down several important principles. The principles stress the importance of considering the unique circumstances of each case when evaluating a prima facie case. If the evidence presented raises significant suspicions against the accused and lacks a reasonable explanation, the court is justified in proceeding with the trial by formally framing charges. The Judge is empowered to scrutinize the evidence and determine whether a prima facie case against the accused has truly been established. Moreover, the court's role extends beyond being a mere conduit for the prosecution; it must consider the overall probabilities of the case, the impact of the evidence and documents, as well as any fundamental flaws that may arise. ²⁰However, it is crucial to bear in mind that, at this stage, the court should exercise caution and avoid embarking on an extensive inquiry or conducting a full-fledged trial to assess the weight of the evidence. When the available evidence indicates the possibility that the accused might be responsible for the offense, it is permissible to proceed with framing charges. However, it is important to note that obtaining a conviction requires establishing proof beyond a reasonable doubt, which is a higher standard of evidence that must be met during the trial proceedings. Before framing charges, the court is to examine the material on record and ensure that it sufficiently supports the possibility of the accused's involvement in

¹⁸ Code of Criminal Procedure 1973, s 209

¹⁹ *Sajjan Kumar v CBI* (2010) 9 SCC 368

²⁰ *Ibid*

the offense. Additionally, the court is to assess the material and documents in a manner that determines whether they establish, on a prima facie basis, the elements of the alleged offense, thereby avoiding a blind acceptance of the prosecution's assertions. In situations where there are two viable perspectives or interpretations of the evidence, and one of them merely raises suspicion without reaching the threshold of serious suspicion, the trial judge retains the power to dismiss the charges and release the accused. This signifies that if there is reasonable doubt regarding the accused's involvement or if the evidence only suggests a slight suspicion rather than a substantial one, the trial judge may decide to dismiss the case against the accused.

STRIKING A BALANCE BETWEEN THE RIGHTS OF THE ACCUSED AND THE ESTABLISHED PROCEDURAL FRAMEWORK

The legal system exhibits considerable elegance through its reliance on judgments, precedents, and diverse interpretations of the laws. It is a well-established principle that court judgments should not be treated as if they were Euclid's Formula.²¹ They are observations made by the court which carry a significant amount of precedential value and should not be mistaken for provisions of the statute. While it is generally true that, in light of the Debendra Nath Padhi case, the court cannot ordinarily examine defence material when framing charges, it cannot be categorically stated that under no circumstances can the court consider the materials presented by the defence during this stage.²² In extremely rare and exceptional cases, there might arise circumstances where specific evidence presented by the defence in the trial court unequivocally establishes that the prosecution's narrative of the events is entirely implausible or ridiculous. In such extraordinary cases, the court may indeed examine the defence material during the process of framing charges or taking cognizance. Relevant to this perspective, we observe that the decision in the Rukmini Narvekar v Vijaya Satardekar²³ case starkly contradicted the ruling made in the Debendra Nath Padhi case. In the Debendra Nath Padhi case, the primary focus

²¹ *State of Haryana v Bhajan Lal* (1992) Supp (1) SCC

²² Aditendra Singh, 'Production of evidence by the Accused at the Pre-Charge Stage: A Right or a Mini-Trial?' (*Law School Policy Review & Kautilya Society*, 22 April 2020) <<https://lawschoolpolicyreview.com/2020/04/22/production-of-evidence-by-the-accused-at-the-pre-charge-stage-a-right-or-a-mini-trial/>> accessed 10 July 2023

²³ *Rukmini Narvekar v Vijaya Satardekar* (2008) 14 SCC 1

was on the accused's right to present evidence during the charge framing stage. Following this, in the *Nitya Dharma Nanda* case, the court sought to find a middle ground by balancing the accused's rights with the established legal procedures. These cases reflect the judiciary's attempt to uphold fairness and justice while navigating the complexities of the legal system. In this particular case, the High Court's verdict in the *Gopal Shellum Reddy v State of Karnataka* case was overturned by the Supreme Court, determining that the defendant did not possess the authority to compel the production of evidence under Section 91 of the Code of Criminal Procedure 1973²⁴. In the context of the accused's entitlement to present evidence, it is firmly established that, as a general rule, during the phase of framing charges, the accused is not typically permitted to invoke Section 91 for that purpose. The primary prerequisite of this section pertains to the document. This section's main requirement is that the document must be necessary or deemed desirable for the case at hand. When evaluating the need or desirability of producing a document, it is crucial to take into account the specific stage at which the request is made. In light of the *Nitya Dharma Nanda* case, it has been observed that during the initial charge framing stage, if a document holds significance or proves advantageous to the defence of the accused, there is no requirement to invoke Section 91. This is because the defence relevance is not directly applicable at that specific phase of the trial. Thus, such a document can be presented without relying on Section 91 of the Criminal Procedure Code. It is pertinent to note that when the section mentions 'investigation, inquiry, trial, or other proceedings'. It denotes that a police officer is authorized to make an application to the court for summoning and producing a document as required, at any of the stages specified within the section.²⁵ Regarding the accused, their right to seek an order under Section 91 typically arises at the stage of the defence. The aforementioned observation emphasizes that the defence of the accused is not relevant during the framing of charges stage. However, if we adhere to this perspective, it raises questions about the validity of the discharge provisions outlined in Section 227 and Section 239 during the charge framing stage. The very essence of these discharge provisions is rooted in the notion that a *prima facie* case does not exist against the accused. Therefore, if there

²⁴ Code of Criminal Procedure 1973, s 91

²⁵ *Nitya Dharmanand v Gopal Sheelum Reddy* (2018) 2 SCC 93

is a necessity and desirability for the defence of the accused, and accordingly it is important to take note of it. Therefore, in this instance, it was determined that the court, bound by its duty to deliver justice and maintain legal principles, is not barred from utilizing its authority when the interests of justice in a specific case require it, regardless of whether the accused lacks the right in invoking Section 91 of CrPC 1973. In order for the court to utilize this authority, it must be thoroughly persuaded that the evidence available to the investigator, which has not been included in the charge sheet, possesses significant relevance and importance in relation to the process of formulating the charges. Generally, the court relies on the material presented in the charge sheet to determine the charge-related matters. However, if the court is firmly convinced that crucial and intentionally withheld evidence exists, it can summon and consider such evidence, even if it is not included in the formal charge sheet. This provision ensures that justice prevails and prevents any attempt to hide significant evidence from the court's consideration. When examining the most recent cases concerning the uncertainty surrounding the accused's submission of evidence during the charge framing stage, it is evident that the primary reliance is placed on the three-judge decision of Debendra Nath Padhi, which has been upheld. Therefore, legal uncertainty still persists, and the preference leans towards the guidance provided by Debendra Nath Padhi's case rather than the dissenting opinion expressed in Nitya Dharma Nanda.

CONCLUSION

The existing legal ambiguity regarding the accused's right to present evidence during the charge-framing stage results from the absence of clear provisions in the law. However, this issue extends beyond the accused's rights; it involves the fundamental concept of a fair trial, crucial for upholding principles of justice. When the police file a charge sheet, it implies a prima facie case against the accused, with records holding substantial evidentiary value. Nevertheless, during the charge framing stage, the court must exercise its judicial discretion to assess the presumption and grounds for the charges, not merely relying on the existing records that establish the accused's liability. By allowing the accused to present credible evidence at this stage, the court ensures fairness and prevents the possibility of an accused facing trial solely on

a skewed initial assessment. Upholding the right to a fair trial becomes essential, encompassing the principles enshrined in Articles 14 and 21 of justice, equality, and due process. The absence of clear provisions warrants a cautious approach that respects the rights of the accused and ensures a just legal process. This highlights the provision of discharge for acquittal when the presumption cannot be made. Nevertheless, it is essential to note that the existence of a discharge provision even before the trial demonstrates the accused's right to be discharged when there is no prima facie case against them. The recent dissenting opinion by Nitya Dharma Nanda aimed to strike a balance between the rights of the accused and established procedures in the legal code, particularly when invoking Section 91 becomes necessary and desirable for the defence. In the absence of explicit provisions, the burden lies heavily on the accused to seek a discharge, as the legal uncertainty surrounding judgments and dissenting opinions permits the accused to present competent evidence that conclusively demonstrates the absence of a prima facie case and the absolute absurdity of the prosecution's version of events.