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**PAPER PRESENTATION ON THE TOPIC OF
DISCHARGE**

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DISCHARGE OF ACCUSED

The word 'discharge' has not been defined under BNSS or Cr.PC. It means releasing accused from accusation of offence without conducting trial. Where there is no prima facie material in the evidence of prosecution to frame charge, court shall discharge accused. The provisions regarding discharge are provided in various sections namely 250, 262, 268, 273, 274 of BNSS or 227, 239, 245, 250 of Cr.P.C.

The concept of 'fair trial' is right of accused. Framing charge and proceeding with trial on insufficient or groundless material is futile exercise and it is nothing but violation of 'fair trial' concept. The accused has right to ask for discharge before framing charge. The concept of discharge is right of accused. He can exercise this right where the material of prosecution fails to establish prima facie case to frame charge against him.

The provisions of discharge are enabling provisions for accused protecting him from facing trial. It is statutory right of accused to file discharge petition. The accused cannot be denied from exercising this right.

The purpose of framing charge is to ensure that the Court should be satisfied that the allegations made against the accused are not frivolous and that there is some material for proceeding against the accused person.

The court may refuse to proceed against the accused in the absence of prima facie case against him and discharge him. Refusing to proceed further after issue of process is discharge. The intention of the legislature in enacting provisions for discharge of accused prior to framing charge is to protect innocent persons from harassment by unscrupulous persons by filing frivolous cases.

The trial courts like sessions court and magistrate court can discharge the accused where there is no material in the prosecution evidence to frame charge against the accused.

Discharge of accused by Court of Session

Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provides discharge in sessions cases. It reads as follows:

(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232 of BNSS.

(2) 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 doing so.

It is for sessions court to see whether there is sufficient material in the evidence of prosecution to proceed further against accused. After hearing prosecution and defence, if the Court considers that there is no sufficient ground to proceed against the accused, the court shall discharge him by recording reasons for doing so. There is no scope for examination of any witness but there is scope for both sides to argue their case in favour of framing charge or discharge.

Similar provision is provided under section 227 of Code of Criminal Procedure (CrPC), but time limit of 60 days is not there. The trial judge is required to discharge the accused if the judge considers that there is no sufficient ground for proceeding against the accused.

T.V.Sarma Vs. R.Meeraiah and others, AIR 1980 AP 219:

In this case, a full Bench of A.P. High Court held that the Sessions Judge is bound to discharge the accused if he considers that there is no sufficient ground for proceeding against the accused.

The criteria for discharge of accused before sessions court is lack of sufficient ground to proceed against him. The expression 'sufficient ground' is not explained in the provision. If the court is able find grave suspicion to establish the offence in the evidence of prosecution, it can be said that there is sufficient ground.

Discharge of Accused before Magistrate in warrant cases instituted on police report, (Sec.262 of BNSS. Sec.239 of Cr.P.C):

After filing charge sheet and after furnishing copies of documents to accused, question of discharge arises. The Magistrate shall consider the record of the case and to make such examination of the accused as is necessary and shall hear the arguments, if any, of both the parties in support of their respective case to find out prima facie case against accused. In other words, before discharge is ordered, three preliminary steps are gone through: a) consideration of police report and the documents which are furnished to the accused; b) examination, if any, of the accused as the Magistrate thinks necessary; and c) giving prosecution and the accused an opportunity of being heard and then to consider whether the charge is groundless. The discharge contemplated under section 262 of BNSS or section 239 of Cr.P.C is a statutory right of accused and a third party or co-accused cannot have any role in the matter. If the Magistrate, considers the accusation against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. An accused seeking discharge before appearing in the court on framing of charges will not be entitled for discharge.

Section 262 BNSS provides that:

- (1) The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under section 230.
- (2) If, upon considering the police report and the documents sent with it under section 193 and making such examination, if any, of the accused, either physically or through audio – video electronic means, 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.

As per section 262 of BNSS accused may file discharge petition within 60 days from the date of supply of copies of documents. This time limit is not there under section 239 of Cr.PC. The magistrate after hearing prosecution and defence considers the accusation against the accused is groundless, he shall discharge the accused and record reasons for so doing.

The magistrate dealing with warrant case instituted on police report can discharge the accused if the material of prosecution is groundless to frame charge.

Section 262(2) of BNSS is similar to section 239 Cr.PC but section 262 of BNSS provides an opportunity to the learned Magistrate to examine the accused either physically or through audio – video electronic means. Further, it stipulates a time limit of 60 days from the date of supply of documents under section 230 of BNSS within which an application for discharge should be filed by the accused.

Discharge of Accused before Magistrate in warrant cases instituted otherwise than on police report, (Sec.268 of BNSS. Sec.245 of Cr.P.C):

Section 268 of BNSS provides that:

(1) If, upon taking all the evidence referred to in section 267, 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, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

The magistrate dealing with warrant case instituted otherwise than on police report can discharge the accused, if unrebutted evidence of prosecution does not make out case against accused to warrant conviction.

Upon taking evidence, if 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, the Magistrate shall discharge the accused person. [S.268 (1) of BNSS. S.245 (1)Cr.P.C] Even at any previous stage of the case, the Magistrate can discharge the accused, if he considers the charge to be groundless [S.268 (2) of BNSS. S.245 (2) of Cr.P.C]. In either case of the order of discharge, the Magistrate is required to record reasons. In every such case, the Magistrate should exercise his power to discharge the accused judiciously and not arbitrarily or capriciously. Where a prima facie case is made out against the accused, his discharge under section 268 of BNSS or section 245 (2) of Cr.P.C is improper.

Distinction between discharge under section 245 (1) and 245 (2) CrPC

In a warrant case trial instituted otherwise than on a police report, the Magistrate has to hear the prosecution and take all such evidence, as may be produced under section 244 CrPC. Then the Magistrate has to consider said evidence under section 245 (1) CrPC to find out any case against the accused, which if unrebutted, would warrant conviction, and if the Magistrate comes to the conclusion that there is no such case made out against the accused, the Magistrate proceeds to discharge him. It was explained that the complainant then gets the second opportunity to lead evidence in support of the charge unlike a warrant trial on police report, where there is only one opportunity. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the charge and a Magistrate can discharge the accused at any previous stage of the case under section 245 (2) CrPC, if he finds the charge to be groundless. Explaining the difference between sections 245 (1) and 245 (2) CrPC the Hon'ble Supreme Court of India was pleased to hold that the Magistrate has to consider whether if the evidence led by the prosecution before him under section 244 remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under section 245(1) CrPC.

It is explained under sub-section (2) of section 245 CrPC that the Magistrate has power of discharging the accused at any previous stage of the case, i.e., even before such evidence is led. There is no question of any consideration of evidence at that stage, because there is no evidence. The Magistrate can take decision before the accused appears or is brought before the Court or before evidence is led under Section 244 CrPC.

Sections 250 and 262 of BNSS or sections 227 and 239 Cr.P.C. 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. But the stage of discharge under section 268 of BNSS or section 245 Cr.P.C., on the other hand, comes only after the evidence referred in section 267 of BNSS or section 244 of Cr.P.C. (pre-charge evidence) is taken.

Scope of enquiry under discharge petition

Scope of enquiry under discharge petition is very limited. There are no specific circumstances where accused can be discharged. It depends on facts and circumstances of each case. The court shall apply judicious mind to decide discharge petition. A strong suspicion from prosecution material is enough to frame charge. The court need not into the material warranting conviction. If the material is sufficient to raise grave suspicion, court shall frame charge. Though different expressions like 'no sufficient ground', 'groundless' and 'no case' are used in sections 250, 262 and 268 of BNSS or sections 227, 239 and 245 of Cr.P.C. the Court is required to see, at the time of framing of charge, whether there is a prima facie case for proceeding against the accused. The main intention of giving a chance to the accused is to assist the Court to determine whether it is required to proceed to conduct the trial. The prosecution need not show evidence warranting conviction. The material placed by prosecution shall only be considered. The material placed by accused shall not be considered.

Case study on discharge

In the case of **Union of India Vs. Prafulla Kumar Samal and another.(AIR 1979 SC 366)** the Hon'ble Supreme Court formulated the following 7 guiding principles.

1. The judge while considering the question of framing the charges U/Sec. 227 Cr.P.C 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. To determine prima facie case would depend upon the facts of each case.

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 court can not act merely as a post office or a mouth piece of the prosecution but it has to consider the broad probabilities of the case. There cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if a trial was being conducted.

4. On the basis of material on record if the court could form an opinion that the accused might have committed the offence, it can frame the charge.

5. At the time of framing of the charges, the probative value of the material on record can not be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission by the accused was possible.

6. At the stage of Sec.227 and 228 Cr.P.C, the court is required to evaluate the material and documents on record with a view to find out the existence of all the ingredients constituting the alleged offence but the court cannot be expected to presume that the prosecution story is gospel truth.

7. 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 irrespective of the result of he trial.

In State of Rajasthan vs. Ashok Kumar Kashyap, (2021) 11 SCC 191 while setting aside an order of discharge, the Hon'ble Supreme Court of India held that at the stage of section 227 Cr.P.C., the judge has to merely sift evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It was held that while exercising judicial mind to facts of the case in order to determine whether case for trial has been made out by prosecution, it is not necessary for court to go deep into the evidence.

The Hon'ble Supreme Court of India in ***Kanchan Kumar vs. State of Bihar***, (2022) 9 SCC 577 was pleased to hold that a simple and necessary inquiry should be conducted for a proper adjudication of an application for discharge for coming to a conclusion that a prima facie case is made out for the accused to stand trial. It held that the threshold of scrutiny required to adjudicate an application under Section 227 CrPC is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case.

The accused is entitled for discharge if he is able to demonstrate that even after considering the prosecution material, there is no use at all in proceeding with such case. An order of discharge can only be passed if sufficient grounds do not exist for proceeding against the him on a general consideration of the materials placed before it by the investigating agency. The Court has to consider while ordering discharge of accused, whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. If trial would be an exercise in futility, it should be brought to a quick end.

At the time of considering an application for discharge, the Court is required to consider the evidence of prosecution to the limited extent to find out whether there is prima facie evidence against the accused to believe that he has committed any offence as alleged by the prosecution; if prima facie evidence is available against the accused then there cannot be an order of discharge.

The accused would be entitled for discharge if evidence (i.e., statements by police or documents concerned), which prosecution proposes to adduce to prove the guilt of accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence, cannot show that the accused committed the offence. However, the defence of the accused cannot be looked into at the stage of discharge. The accused has no right to produce any document at that stage.

In ***State of Tamil Nadu v N Suresh Rajan***, (2014) 11 SCC 709 it was observed by the Hon'ble Supreme Court of India that notwithstanding the difference in language of sections 227 and 239 CrPC, the approach of the Court concerned is to be common under both provisions.

The accused has to be heard on the basis of the record filed by the prosecution and documents submitted therewith, but it cannot mean opportunity to file documents should be granted to the accused.

In ***Asim Shariff vs. National Investigation Agency***, (2019) 7 SCC 148 the Hon'ble Supreme Court of India held that It is expected from the trial Judge to exercise his judicial mind to determine as to whether a case for trial has been made out or not. The Court is not expected to hold a mini trial by marshalling the evidence on record.

The expression "record of the case" used in section 227 CrPC was considered by the Hon'ble Supreme Court of India in ***M.E.***

Shivalingamurthy vs. Central Bureau of Investigation, (2020) 2 SCC 768 is to be understood as the documents and the articles, if any, produced by the prosecution.

In ***State of Orissa vs. Debendra Nath Padhi***, (2005) 1 SCC 568 the Hon'ble Supreme Court held that the expression 'record of the case' means material produced by prosecution alone that is required to be considered by the Court and not the material produced by the accused. Right of accused to seek discharge by filing unimpeachable and unsustainable material of sterling quality and invocation of Article 21 of the Constitution of India, is a misplaced process. At the stage of framing charge, defence of accused could not be put forth and therefore, hearing the submission of the accused has to be confined to the materials produced by the police. The accused has no right to seek an order under section 91 of the Code would ordinarily not arise till the stage of defence.

The Court has to pass a reasoned order of discharge after considering the material on record.

The Hon'ble High Court of Andhra Pradesh in ***Penumatcha Lakshmi Narayanaraju vs Padala Chellareddy and others***, AIR 1961 AP 117 was pleased to hold that it is necessary for a Magistrate to give reasons for discharging the accused.

In ***State of Karnataka vs. L. Muniswamy***, AIR 1977 SC 1489 held that the trial Court should assign reasons for an order passed in an application filed under section 227 Cr.P.C. to enable the superior Courts to examine the correctness of the reasons for which the Sessions Judge has held that there is no sufficient ground for proceeding against the accused. If the trial Court decides to frame a charge there is no legal requirement that it should pass an order specifying the reasons as to why he opts to do so.

The recording of reasons while discharging an accused was re-emphasised by the Hon'ble Supreme Court of India in ***Kanti Bhadra Shah vs. State of West Bengal, (2000) 1 SCC 522***. It held that if the Magistrate considers that there are grounds to discharge the accused he must record the reasons for doing so.

It is only when the Sessions Judge decides to discharge the accused under section 227 CrPC that he has to assign the reasons and not when he decides to frame the charge under section 228 CrPC as held by the Hon'ble Supreme Court of India in ***Smt. Om Wati and another vs. State, through Delhi Admn and others. (2001) 4 SCC 333***.

The Court of Sessions or the Magistrate has to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge or the Magistrate has thereafter to pass an order either of discharge or frame charges against the accused. If the Court finds that there is no sufficient ground for proceeding against the accused or that the charge against the accused is groundless, it shall discharge the accused and record its reasons for doing so as required by the Code. If on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame the charge in writing against the accused. Therefore, at the time of framing of charge, the Court is not required to meticulously judge the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce at the trial. It is not obligatory for the Court at that stage to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or

whether the trial is sure to end in his conviction. If there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it will not be open for the Court to say that there were no sufficient grounds for proceeding against the accused. Appreciation of evidence meticulously at this stage is impermissible.

Defence of accused cannot be considered in discharge application

The Hon'ble Supreme Court of India in State of Gujarat vs. Dilipsinh Kishorsinh Rao, 2023 INSC 894 held that at the time of framing of charge, the accused has no right to produce any material or call upon the Court to examine the same. Elucidating the principles to consider an application for discharge, it held that it is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and 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. The submission of the accused is to be confined to the material produced by the investigating agency.

In the case of State represented by Inspector of Police, CBI, Visakhapatnam vs. Eluri Srinivasa Chakravarthy and others, Hon'ble Supreme court held that while dealing with discharge petition court shall consider the material of prosecution only but not the material relied by accused.

The Hon'ble Supreme Court of India in ***Rajnish Kumar Biswakarma vs. State of NCT of Delhi and another, 2024 Live Law (SC) 937 the Hon'ble Supreme Court of India*** held that the trial Court cannot consider any document which is not part of the charge-sheet. It disapproved the Hon'ble High Court directing the learned trial Court to consider documents which are not part of charge-sheet at the time of framing of charge.

Invalidity of sanction not be considered in application for discharge

In ***Central Bureau of Investigation vs. Mrs. Pramila Virendra Kumar Agarwal***, (2020) 17 SCC 664 the Hon'ble Supreme Court of India that though the absence of sanction can be agitated during stage of discharge application, but the issue of invalidity of the sanction is to be raised during the trial. An appeal was filed by CBI challenging the order of the Hon'ble High Court confirming the order of discharge passed by the learned trial Court in respect of offence punishable under sections 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988. the Hon'ble Supreme Court allowed the appeal and held that that though the absence of sanction can be agitated during stage of discharge application, but the issue of invalidity of the sanction is to be raised during the trial.

Once charge is framed, there can be no discharge:

In ***Bharat Parikh vs. CBI***, (2008) 10 SCC 109 the Hon'ble Supreme Court of India held that One important position that should be kept in mind is that once the charge is framed under section 228

Cr.P.C. or other provisions relating to criminal trial, the Court has no power to go back for any reason and cancel or drop the charge and discharge the accused.

Similarly in ***Ratilal Bhanji Mithani vs. State of Maharashtra***, (1979) 2 SCC 179 it was held that once a charge is framed, a Magistrate has no power to discharge the accused.

Inconsistencies in prosecution case cannot be considered at the stage of framing of charge:

In Ghulam Hassan Beigh Vs Mohammad Maqbool Magrey, 2022 SCC OnLine SC 913 the Hon'ble Supreme Court of India was unimpressed by order of the trial Court discharging the accused of the offence punishable under section 302 I.P.C. based on postmortem examination report. The Hon'ble Supreme Court held that the prosecution should have been given opportunity to prove the relevant facts including postmortem report during through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It is too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no injuries were noted in the postmortem report, the death of the deceased on account of cardio- respiratory failure cannot said to be having any nexus with the incident in question.

In ***Bihari Lal vs. State of Rajasthan***, AIR 2019 SC 1995 the Hon'ble Supreme Court of India was pleased to set aside the order of discharge passed by trial Court and affirmed by the Hon'ble High Court. The Hon'ble Supreme Court of India was pleased to hold that the stage to appreciate the evidence with a view to find fault or/and inconsistencies in the medical reports would arise only when the prosecution leads evidence by examining the doctors in support of the medical reports and not at the state of framing a charge.

The Hon'ble Supreme Court of India in ***State of Rajasthan vs. Ashok Kumar Kashyap, (2021) 11 SCC 191*** held that a mini trial is not permissible at the time of considering the discharge application. It was held that defence on merits is not to be considered at the stage of framing of charge and/or at the stage of discharge application.

In Sanikommu Vijay Bhaskar Reddy vs. State of Andhra Pradesh, 2022 Live Law (AP) 71 the Hon'ble High Court of Andhra Pradesh was pleased to hold that the plea of alibi taken by the accused is a matter relating to a question of fact as to whether the accused was present at the scene of the offence at the time of offence or not. It held that the disputed questions of fact required evidence and appreciation of the same in final adjudication of case and the ground that the accused was somewhere else could not be a ground to discharge him from the said case.

An accused added under section 358 B.N.S.S or Section 319 CrPC cannot seek discharge

The Hon'ble Supreme Court of India in ***Jogendra Yadav vs. State of Bihar, (2015) 9 SCC 244*** was pleased to interpret and distinguish sections 227 and 319 CrPC. It was held that the standard of proof for summoning a person as an accused under section 319 CrPC is higher than the standard of proof employed for framing a charge against an accused. A person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof cannot be allowed to be discharged from the proceedings on the basis of lesser standard of proof such as prima facie connection with the offence necessary for charging the accused.

The Hon'ble Supreme Court of India was pleased to hold that a person who is added as an accused under section 319 CrPC ought

not to be given an opportunity to avail the remedy of discharge under section 227 CrPC.

Difference between discharge and acquittal:

Discharge of an accused is entirely different from acquittal of accused. The accused can be discharged where there is no prima facie case against him. The accused need not enter into defence. The question of discharge arises prior to framing of charge. An acquittal takes place when prosecution failed to prove the guilt beyond reasonable doubt. The accused has been called upon to enter his defence. After framing charge, the question of acquittal arises.

A person who is discharged may again be charged with the same offence, if other material is discovered subsequently. A person who is acquitted of an offence cannot be put on trial again for the offence of which he has been acquitted.

Remedy against discharge order.

The dissatisfied party can prefer revision against discharge order.

In ***Municipal Corporation of Delhi vs. Girdharilal Sapuru, (1981) 2 SCC 758*** it was held that an order of discharge terminates the proceedings and therefore it is revisable order under section 397 (1) CrPC.

In ***Sanjay Kumar Rai vs. State of Uttar Pradesh***, AIR 2021 SC 2351 the Hon'ble Supreme Court of India by placing reliance on ***Madhu Limaye vs. State of Maharashtra***, (1977) 4 SCC 551 held that order framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of the Code of Criminal Procedure.

Award of Compensation while passing discharge order. (Sec. 273 of BNSS. Sec.250 of Cr.P.C):

The court can award compensation while passing discharge order. The section 273 of BNSS or section 250 of Cr.P.C empowers the Magistrate to award compensation to the accused. Where accusation is made without reasonable cause, the Magistrate may acquit or **discharge** him and may also order such person making the accusation to pay compensation. The amount of compensation shall not exceed the fine, which the magistrate is empowered to impose. In case of default, such person has to undergo simple imprisonment for a period not exceeding 30 days.

Whether accused can be discharged in a summons cases

In summons case trial, there is no provision for discharge because there is no need to frame charge.

In Subramaniam Sethuraman v. State of Maharashtra, (2014) 13 SCC 324 a three Judge Bench of the Hon'ble Supreme Court of India was pleased to hold that a summons case which is covered by Chapter XX CrPC which does not contemplate a stage of discharge like section 239 which provides for a discharge in a warrant case. It was held that the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion. The remedy under section 482 CrPC with the High court would still be available to the accused.

The BNSS provides provision under 274 for discharge of accused in summons case.

When in a summons case the accused appears or is brought before the Magistrate, the particulars of offence of which he is

accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

Provided that if the Magistrate considers the accusation as groundless, he shall after recording reasons in writing, release accused and such release shall have the effect of discharge.

Whether time limit prescribed for filing discharge petition under BNSS is mandatory:

Under Cr.P.C there is no time limit to file discharge petition. As we all know, discharge petition shall be filed before framing charge. However, time limit is prescribed under BNSS.

Section 250(1) BNSS prescribes time period of 60 days from the date of committal of the case for filing application for discharge by the accused in sessions cases. Section 262(1) BNSS also prescribes a time period of 60 days from the date of supply of copies of documents under section 230 for filing discharge petition in warrant cases instituted on a police report before Magistrate. Though time limit is prescribed, it is not mandatory and it is directory. Even after the said prescribed time limit, discharge petition can be maintained.

In ***Sajith vs. State of Kerala***, **2024 LiveLaw (Ker) 585** the Hon'ble High Court of Kerala considered section 250 BNSS. It is held that use of word 'may' in section 250(1) BNSS is directory but not mandatory. The Court can extend the time line under the same provision i.e., section 250(1) BNSS. Therefore, the Court can consider an application for discharge even after expiry of sixty days since the time limit. The object of providing time limit is to put a rider on accused to avail opportunity of discharge within a particular time frame.

Discharge of one or two accused where there are more accused than one.

In case of multiple accused and one or more of such accused are discharged, court shall proceed against accused who are not discharged.

Discharge of one or two offences where there are more offences than one.

Where there are multiple offences and one or more of such offences are discharged, court shall proceed for the offences which are not discharged.

Successive discharge petitions:

A second discharge petition is generally not maintainable on the same grounds that were taken in the earlier petition. However, second petition is maintainable in specific and limited circumstances like withdrawal of earlier petition with the leave of the court, introduction of new facts, dismissal of earlier petition on technical issues and etc.,

Conclusion

The provisions of discharge either under BNSS or Cr.P.C create a kind of right to accused. They are aimed to protect accused from facing trial where there is no prima facie case against him. These provisions ensure that no person is put to trial on insufficient, baseless and groundless evidence. On the other hand, provisions of discharge save the precious time of the court.
