

Paper presentation on

DISCHARGE

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1. What is discharge:

The discharge of an accused is a procedural safeguard in criminal law which allows the court to terminate the proceedings against an accused at an early stage when the materials on record do not disclose sufficient grounds to proceed to trial. In simple terms, discharge means the accused is released from the case without a full trial, because the court finds that the allegations and evidence are inadequate to frame charges or to continue the prosecution.

2. What is the need for discharge:

The concept of discharge is based on the principle that "No one shall be compelled to face a criminal trial without sufficient grounds.". Discharge protects the individuals from unnecessary harassment, saves the time of the court and ensures that cases with prima facie basis are only proceeded with.

3. Discharge Provisions in CrPC and BNSS:

- i) Section 227 CrPC and 250 BNSS deals with discharge in sessions cases.
- ii) Section 239 of CrPC and Section 262 of BNSS deals with discharge in warrant case instituted on police report.
- iii) Section 245 of CrPC and 272 of BNSS deals with Discharge in Private complaint cases.
- iv) Section 274 of BNSS deals with discharge in summary cases.

4. Limitation for filing Discharge petitions:

a) In CrPC there is no limitation period for filing Discharge petitions. The new BNSS introduced limitation period for filing Discharge petitions. Section 262 of BNSS says that in warrant cases instituted on police report, application for discharge shall be filed within a period of 60 days from the date of supply of copies or documents under section 230 of BNSS. Section 250 of BNSS says that in Sessions cases discharge applications shall be filed within 60 days from the date of committal. There is no limitation period prescribed for discharge applications in private complaint warrant cases.

b) In **Sanith Vs State of Kerala** reported in **2024 LiveLaw (Kerala) 585**, Hon'ble Kerala High Court has held that the limit of 60 days provided in Section 250 of Bharatiya Nagarik Suraksha Sanhita (BNSS) to file a petition of discharge is directory and not mandatory. The Court further held that the period of 60 days will start from the date of supply of copies of documents to the accused.

c) As per section 250 of BNSS, the 60 days time limit starts from the date of committal. In several sessions cases, such as POCSO, NDPS, SC ST POA Act, there is no question of committal, since the charge sheet will be

filed directly in said special courts. In said cases, the question arises as to from which date limitation starts, as there is no committal in said cases.

d) Same question came before Hon'ble Odisha High Court.

e) Hon'ble Odisha High Court in **Narottam Prusty v. State of Odisha & Anr.** reported in **2025 LiveLaw (Ori) 123** held that Since no commitment procedure has been prescribed in the POCSO Act for the cases triable by the Special Court, the date of appearance before the Special Court or the date on which accused was brought before such court for the first time after cognizance of the offence is taken under Section 33(1) of the POCSO Act, 2012 such date shall be treated as the date of commitment for the purpose of Section 250(1) of the BNSS.

5. Stage when discharge applications can be filed :

In sessions and warrant cases instituted on police report, discharge applications can be filed after supply of case copies and before framing of charges and trial. But in cases instituted on complaint, discharge application can be filed after recording of evidence under section 244 CrPC or section 267 BNSS and before framing charges, as under private complaint cases charges are framed after recording of evidence.

6. Grounds for Discharge:

a) As per section 227 of CrPC Accused can be discharged if there is no sufficient grounds for proceeding against accused. As per section 239 and 245 of CrPC accused can be discharge if Magistrate considers the charge against the accused to be groundless. Although the words used under section 227 and 239 are different but their meanings are one and the same.

b) Hon'ble Supreme Court in **State of Tamil Nadu Vs Suresh Rajan** reported in **(2014) 11 SCC 709** held that notwithstanding the difference in language in sections 227 and 239 CrPC, the approach of the court concerned, is to be common under both provisions.

c) Hon'ble **Supreme Court in Union of India vs Prafulla Kumar Samal & Anr.** reported in **AIR 1979 SC 366** held the following principles to be followed while considering discharge applications

(i) 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:

(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 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.

(iv) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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.

d) Hon'ble Supreme Court in **Manjit Singh Vridi Vs Hussain Sahttaf** reported in **(2023) 7 SCC 633** held that

"The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of chargesheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed."

e) In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court."

7. Maintainability of Discharge application after framing of charges:

Hon'ble Supreme Court in **Ratilal Bhanji Mithani Vs State of Maharashtra** reported in **(1979) 2 SCC 179** held that

"Once a charge is framed, the Magistrate has no power under section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 353 and discharge the accused."

8. Discharge in Summons cases :

a) In **Subramaniam Sethuraman vs. State of Maharashtra and Ors.** reported in **(2004) 13 SCC 324**, the Supreme Court while placing reliance

over Adalat Prasad case held that the accused person doesn't have any right to get discharged once the process is issued against him under section 204 of the Code. The only remedy which the accused enjoys is to challenge the order of issuance of process by filing the petition under section 482 and not by way of an application seeking the discharge which is clearly not given under the Code.

b) As such Discharge applications are not maintainable under Cr.P.C in NI Act cases also as it also comes under summons cases.

c) anyhow in **Meters and Instruments Private Limited and Another v. Kanchan Mehta** reported in **(2018) 1 SCC 560**, Hon'ble Supreme Court held that:

“While it is true that in Subramaniam Sethuraman v. State of Maharashtra this Court observed that once the plea of the accused is recorded under Section 252 CrPC, the procedure contemplated under Chapter XX CrPC has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to the 2002 Amendment. The statutory scheme post-2002 Amendment as considered in Mandvi Coop. Bank and J.V. Baharuni has brought about a change in law and it needs to be recognised. After the 2002 Amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the court in exercise of its inherent power under Section 143 of the Act which is different from

compounding by consent of parties. Thus, Section 258 CrPC which enables proceedings to be stopped in a summons case, even though strictly speaking is not applicable to complaint cases, since the provisions of CrPC are applicable “so far as may be”, the principle of the said provision is applicable to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible i.e. with such deviation as may be necessary for speedy trial in the context.”

c) As such although accused cannot be discharged for NI Act cases, but if accused compensates the complainant to the satisfaction of the Court, the Court can exercise powers under section 258 of Cr.P.C and release the accused which amounts to discharge.

10. Discharge in Summons Cases under BNSS:

BNSS introduced the discharge concept in Summons cases. There is no such provision or concept in Cr.P.C for summons cases. Section 274 of BNSS says that if the magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have effect of discharge.

11. Difference between stoppage of proceedings under section 258 Cr.P.C and Discharge:

As per section 258 of Cr.P.C, the magistrate of first class, may, after recording reasons, stop proceedings at any stage, without pronouncing judgement. If such stoppage is made after recording of evidence of principal witness, judgement of acquittal shall be pronounced and in other cases, accused shall be released and such release shall have effect of discharge.

In **Suo Moto High Court of Kerala v. State of Kerala and Anr.** Reported in 2023 LiveLaw (Ker) 711, Hon’ble Kerala High Court held that proceedings

can be stopped when the Magistrate is satisfied that the presence of the accused cannot be secured before the court owing to the incorrect/fake address of the accused or for any other valid reasons, despite the prosecution having made sincere and earnest efforts.

As such stoppage of proceedings under section 258 cr.p.C can be made on any ground, which magistrate thinks fit. It can be even for non-securing presence of accused despite the sincere efforts of prosecution. Whereas in discharge, it can be granted only when the charges are groundless. Under stoppage of proceedings, accused can be acquitted if evidence of principal witness is recorded. Whereas in discharge, accused cannot be acquitted at any cost.

12. Can accused take plea of Alibi in Discharge application:

Hon'ble High Court of Andhra Pradesh in Court **Sanikommu Vijaya Bhaskar Reddy v. State of Andhra Pradesh**, reported in **2022 LiveLaw (AP) 71** held that a plea of alibi involves contested questions of fact and therefore cannot be adjudicated at the stage of framing charges. The Court further held that

“When the accused has taken a plea of alibi, undoubtedly it is a matter relating to question of fact as to whether the accused was present at the scene of offence at the time of the offence or not. In a way, it amounts to taking a plea of alibi by the accused. It is settled law that the burden of proving the said plea of alibi is on the accused. Therefore, they are all disputed questions of fact which requires evidence and appreciation of the same in the final adjudication of the case.”

13. Whether accused can rely on material other than chargesheet:

Hon'ble Supreme Court in **ME Shivalingamurthy Vs CBI** reported in **(2020) 2 SCC 768** held that the expression record of the case in section 227

CrPC is to be understood as the documents and the articles, if any, produced by the prosecution.

Hon'ble Supreme Court in **State of Orissa vs Debendra Nath Padhi**, reported in **(2005) 1 SCC 568**, held that while considering the prayer for discharge, the Trial Court cannot consider any document which is not part of the charge-sheet.

14. Can accused summon documents for the purpose of discharge:

Hon'ble Supreme Court in **State of Orissa Vs Debendra Nath Padi** reported in **(2005) 1 SCC 568** held that

“Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and relevant is only

the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

15. Difference between Discharge and Acquittal:

The main difference discharge and acquittal is that discharge is based on the material produced by the prosecution at the time of framing of charges whereas acquittal is based on full pledged trial. Further if an accused is discharged and in future, any material against him was found regarding the discharged case, the accused is again liable to face trial. But in case of acquittal, once accused is acquitted, he is not liable for trial at second time even prosecution finds strong and reliable material against accused for the acquitted offence. Article 20 (2) of Indian Constitution and section 300 of Cr.P.C protects the accused from second prosecution. The other differences are explained in tabular form for easy understanding.

Aspect	Discharge	Acquittal
Stage of Proceedings	Preliminary stage before the trial begins; based on initial assessment of prosecution's evidence and documents.	After the trial the completion of trial i.e., after complete evidence has been recorded and evaluated by the court.
Nature of Decision	Procedural decision to terminate proceedings due to lack of prima facie evidence or other legal reasons.	Formal judgment based on merits of the case and evidence presented during the trial.

Basis of Decision	Insufficient evidence to proceed with the trial; determination made without a full trial.	Thorough examination of all evidence during the trial; prosecution has not proven guilt beyond a reasonable doubt.
Legal Implications	Does not exonerate the accused; proceedings halted due to lack of evidence; accused can be re-arrested if new evidence surfaces.	Exonerates the accused; once acquitted, cannot be retried for the same offense (double jeopardy principle).
Judge's Role	Reviews initial evidence to decide if it is sufficient to frame charges and proceed with the trial.	Evaluates all evidence during the trial to decide if the accused is guilty or not.
Recording of Reasons	Judge must record reasons for discharging the accused, explaining the insufficiency of evidence.	Judge records reasons for acquittal, detailing why the prosecution's evidence failed to prove the case beyond doubt.
Opportunity for Defense	Defence may not have a full opportunity to present their case as the decision is made at a preliminary stage.	Defence has full opportunity to present their case, cross-examine witnesses and provide evidence.
Timing	Can occur before framing charges.	Can only happen after charges have been framed and a full trial has taken place.
Proceedings	Occurs at a preliminary stage, halting proceedings due to lack of prima facie evidence.	Requires a full trial and a verdict based on evaluating all evidence presented.
Order of	Not included in the judgment.	In the nature of a judgment.

Judgment

Nature of Release

Releases the accused from a criminal case without a formal declaration of innocence.

Formally declares the accused not guilty.

Verdict vs. Mandate

Mandate indicating inadequate evidence for the case to proceed.

Verdict in a criminal case signifying not guilty.

Impact on Future Prosecution

A discharged individual may face re-arrest and further questioning if new evidence is found.

A person who has been acquitted cannot be prosecuted for the same offence again.