A R.S. MISHRA

v.

STATE OF ORISSA & ORS.

(Criminal Appeal No. 232 of 2005)

B FEBRUARY 1, 2011

[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

Code of Criminal Procedure, 1973:

C *ss. 227 and 228 – Role of the Judge at the stage of framing of charge – Inter-connection between ss.227 and 228 – Held: When the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be* D *recorded disclosing the consideration of the material on record – On the analogy of a discharge order, the Judge must give his reasons atleast in a nutshell, if he is dropping or diluting any charge, particularly a serious one – It is also necessary for the reason that the order should inform the prosecution as* E *to what went wrong with the investigation – Besides, if the matter is carried to the higher Court, it will be able to know as to why a charge was dropped or diluted.*

s.228 – Dereliction of duty by Sessions Judge in framing of correct charge against accused in a criminal case involving F *death of a young person – Judicial order passed by appellant-Sessions Judge diluting the charge against the accused – Suo-moto Criminal revision pursuant to note by the Inspecting Judge – Revisional Court made observations against the appellant for not framing charge under s.302 IPC against the* G *accused and also made suggestion to High Court Administration to take corrective steps with respect to the appellant – High Court Administration examined the record of the appellant and denied him selection grade – Challenge to observations/suggestions of Revisional Court which led to*

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the denial of selection grade – Held: Not tenable – A Judge is expected to look into the material placed before him and if he is of the view that no case is made out for framing of a charge, his order ought to be clear and self-explanatory with respect to the material placed before him – In the present case, all that the appellant stated in his judicial order was, that on consideration of the material available in the case diary, he found no sufficient material to frame the charge under s.302 IPC – He also did not state in his order as to why he was of the opinion that the material available in the case diary was insufficient – Appellant did not even refer to the statement of the injured eye witness, and the supporting medical papers on record – Such a bald order raises a serious doubt about the bona fides of the decision rendered – It was not a case of grave and sudden provocation, thus, there was a prima facie case to frame charge under s.302 IPC – The reason given for dropping the charge under s.302 was totally inadequate and untenable, and showed non-application of mind by the appellant to the statements in the charge-sheet and the medical record – No explanation was given as to why a charge under s.304 IPC was preferred to one under s.302 IPC – It cannot be said that the appellant did not have requisite experience to pass a correct legal order under s.228 CrPC – That apart, the impugned order in Revision contained only a correctional suggestion to the High Court Administration which the Administration accepted – It was not a case of making any adverse or disparaging remarks – The appellant was responsible for unjustified dilution of the charge and, therefore, thorough checking of his service record was necessary which is, what was directed in the impugned order of the Revisional Court – Penal Code, 1860 – ss. 302 and 304.

The appellant is a retired Additional Sessions Judge of the State of Orissa. He challenged the judgment rendered by a Single Judge of the Orissa High Court in *suo-moto* Criminal Revision, arising out of Session Trial

A Case, to the extent the Judge made certain observations against the appellant who had decided that Sessions case. These remarks were made on account of the appellant not framing the charge under Section 302 IPC against the accused in that case. The Single Judge held
B that the appellant had committed a blunder in not framing the charge under Section 302 IPC and made certain observations about the manner in which the appellant had passed the order, and also gave some correctional suggestions about the appellant. The Single Judge,
C however, did not deem it fit to be a fit case for ordering retrial under Section 300(2) CrPC on the ground that the accused had already served the sentence of five years rigorous imprisonment. Subsequent to the observations of the Revisional Court, the High Court Administration
D examined the record of the appellant and denied him the Selection grade. The appellant's representation in that behalf was rejected by the High Court Administration. Aggrieved, the appellant took Voluntary Retirement, and subsequently filed the present appeal.

E The appellant challenged the observations of the Revisional Court which led to denial of his selection grade stating that the judicial order passed by him may be erroneous, but merely for that reason, it was not proper for the Inspecting Judge to direct that a *suo-moto*
F Revision be filed against the same; and that in any case, it was wrong on the part of the Single Judge who heard the *suo-moto* Revision, to make the observations which he made in his order and which caused incalculable harm to the career of the appellant.

G Dismissing the appeal, the Court

HELD:1.1. The provision concerning the framing of a charge is to be found in Section 228 of Cr.P.C. This Section is however, connected with the previous section,
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i.e. Section 227 which is concerning 'Discharge'. From Section 227 it is clear that while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If after such consideration". Thus, these words in Section 228 refer to the 'consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order. [Paras 17, 18] [357-F-G; 358-G-H; 359-A-C]

1.2. A discharge order is passed on an application by the accused on which the accused and the prosecution are heard. At the stage of discharging an accused or framing of the charge, the victim does not participate in the proceeding. While framing the charge, the rights of the victim are also to be taken care of as also that of the accused. That responsibility lies on the shoulders of the Judge. Therefore, on the analogy of a discharge order, the Judge must give his reasons atleast in a nutshell, if he is dropping or diluting any charge, particularly a

A serious one as in the present case. It is also necessary for the reason that the order should inform the prosecution as to what went wrong with the investigation. Besides, if the matter is carried to the higher Court, it will be able to know as to why a charge was B dropped or diluted. [Para 19] [359-D-F]

1.3. At the initial stage of the framing of a charge, if there is a strong suspicion/evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open C to the Court to say that there is no sufficient ground for proceeding against the accused. Further, at the stage of the framing of the charge, the Judge is expected to sift the evidence for the limited purpose to decide if the facts emerging from the record and documents constitute the D offence with which the accused is charged. This must be reflected in the order of the judge. Thus it cannot be disputed that in this process the minimum that is expected from the Judge is to look into the material placed before him and if he is of the view that no case E was made out for framing of a charge, the order ought to be clear and self-explanatory with respect to the material placed before him. In the present case, all that the appellant stated in his judicial order was, that on consideration of the material available in the case diary, F he had found that there was no sufficient material to frame the charge under Section 302 of IPC. This is nothing but a bald statement and was clearly against the statement of the injured eye witness, and supporting medical papers on record. The appellant has not even G referred to the same. He has also not stated in his order as to why he was of the opinion that the material available in the case diary was insufficient. Such a bald order raises a serious doubt about the bona fides of the decision rendered by the Judge concerned. A young

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person had been killed. It was not a case of grave and sudden provocation. The material on record showed that there was an injured eye witness and there was the supporting medical report. The material on record could not be said to be self-contradictory or intrinsically unreliable. Thus, there was a prima facie case to proceed to frame the charge under Section 302 IPC. The reason given for dropping the charge under Section 302 was totally inadequate and untenable, and showed a non-application of mind by the appellant to the statements in the charge-sheet and the medical record. The order does not explain as to why a charge under Section 304 was being preferred to one under Section 302 IPC. In fact, since the material on record revealed a higher offence, it was expected of the appellant to frame the charge for more grievous offence and not to dilute the same. [Paras 20, 21 and 22] [359-G-H; 360-G-H; 361-A-G]

1.4. The impugned order of the High Court deciding Revision notes that the appellant had been functioning in the rank of the District Judge from August 1991 onwards, i.e. for nearly 5 years prior to his judicial order and further states that a Judicial Officer, before being posted as an Additional Session Judge, gets experience of taking the sessions cases as Assistant Session Judge. It cannot, therefore, be said that the appellant did not have requisite experience to pass a correct legal order under Section 228 of Cr.P.C. That apart, all that the impugned order in Revision did was to suggest to the High Court Administration, that if the appellant was not yet confirmed, his probation should wait and if he was already confirmed, his performance be verified before giving him the higher scale. Since the appellant, was already confirmed in service, all that the High Court did on the administrative side was to check his record, and thereafter to deny him the selection grade. The above observation in the impugned order in Revision was a

A suggestion to the Administration of the High Court. It was not a case of making any adverse or disparaging remarks. Having noted that the appellant had failed in discharging his duty in framing the correct charge, and having also noted that his record was not good, the High
B Court could not have granted him the selection grade. The selection grade is not to be conferred as a matter of right. The record of the concerned Judge has to seen, and that having been done in the present case (in pursuance to the observations of the High Court), and
C having noted the serious deficiencies, the High Court had denied the selection grade to the appellant. The impugned order contained nothing but a correctional suggestion to the High Court Administration which the Administration has accepted. [Para 24] [362-C-H; 363-A]

D 1.5. It is only because of the note made by inspecting Judge that the cursory order passed by the appellant in the Sessions case diluting the charge against the accused came to the notice of the High Court Administration. By the time the *suo-moto* Revision was
E decided, the accused had already undergone the punishment of rigorous imprisonment of 5 years and, therefore, the Revisional Court did not deem it fit to reopen the case. The appellant cannot take advantage of this part of the judgment of the Revisional Court, to
F challenge the observations of the Revisional Judge making a suggestion to the High Court to scrutinize appellant's record for the dereliction of duty on his part. The appellant was responsible for an unjustified dilution of the charge and, therefore, thorough checking of his
G service record was necessary which is, what was directed in the impugned order of the Revisional Court/High Court. There is no reason to interfere in the said order making certain observations and suggestions which were necessary in the facts and circumstances of the case.
H [Paras 25, 26] [363-B-F]

In the matter of 'K' A Judicial Officer, **2001 (3) SCC 54;** *V.K. Jain v. High Court of Delhi through Registrar General and Others*, **2008 (17) SCC 538 and** *Prakash Singh Teji v. Northern India Goods Transport Company Private Limited and Anr*, **2009 (12) SCC 577 – distinguished.**

State of Bihar v. Ramesh Singh **AIR 1977 SC 2018;** *Nirmaljit Singh Hoon v. State of West Bengal* **1973 (3) SCC 753;** *Chandra Deo Singh v. Prokash Chandra Bose* **AIR 1963 SC 1430;** *Niranjan Singh v. Jitendra Bhimraj* **1990 (4) SCC 76 – relied on.**

Case Law Reference:

2001 (3) SCC 54	**distinguished**	**Para 12**
2008 (17) SCC 538	**distinguished**	**Para 13**
2009 (12) SCC 577	**distinguished**	**Para 14**
AIR 1977 SC 2018	**relied on**	**Para 20**
1973 (3) SCC 753	**relied on**	**Para 20**
AIR 1963 SC 1430	**relied on**	**Para 20**
1990 (4) SCC 76	**relied on**	**Para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 232 of 2005.

From the Judgment & Order dated 28.10.2002 of the High Court of Orissa in Suo Motu Criminal Revision Petition No. 367 of 1997.

Uday Gupta, D.K. Mishra, Manoj Swarup for the Appellant.

Suresh Chandra Tripathy, Janaranjan Das, Swetaketu Mishra for the Respondents.

The Judgment of the Court was delivered by

A **GOKHALE J.** 1. The appellant in this appeal is a retired Additional Sessions Judge of the State of Orissa. In this appeal by Special Leave, he seeks to challenge the judgment and order dated 20.10.2002, rendered by a learned Judge of the Orissa High Court in *suo-moto* Criminal Revision No. 367 of B 1997, arising out of Session Trial Case No. 187/55 of 1995, to the extent the learned Judge has made certain observations against the appellant who had decided that session case. These remarks were made on account of the appellant not framing the charge under Section 302 of the Indian Penal Code C (IPC) against the accused in that case, when the material on record warranted framing of that charge.

2. The facts leading to this appeal are as follows:

Appellant not framing the charge under Section 302 D **IPC, when warranted.**

The appellant joined the Orissa judicial service in November 1971. In August 1991, he was promoted to the cadre of District Judges. During the period of his service, the E appellant was transferred from place to place, and at the relevant time in March 1996, was posted as the Additional District and Sessions Judge, Rourkela, when the above referred case bearing S.T. No. 187/55 of 1995 was assigned to him.

3. The case of the prosecution in that session case was F as follows. There was a land dispute between one Megha Tirkey (the accused) and one Samara Tirkey, who was alleged to have been murdered by the accused. Jayaram Tirkey is the younger brother of accused. On 25.06.1995, at about 11:00 a.m., Samara Tirkey (the deceased) is said to have abused Smt. G Mangi the wife of Jayaram Tirkey (PW-1) on account of the alleged encroachment of Samara's land by the uncle of Jayaram, one Shri Daharu Kujur. On the next day, i.e. on 26.6.1995, Jayaram Tirkey alongwith his brother Megha Tirkey, the accused went to the house of Samara Tirkey, the deceased. H Initially, Samara Tirkey was not available and Jayaram and

Megha Tirkey enquired about his whereabouts with his wife Hauri (PW-3). In the meanwhile, Samara Tirkey reached over there. Jayaram Tirkey asked Samara as to why he had scolded Jayaram's wife in his absence. Samara Tirkey is said to have raised his hand towards Jayaram when accused Megha Tirkey dealt a lathi blow on the head of Samara Tirkey whereby he fell down. Thereafter, the accused Megha Tirkey gave two more lathi blows on his chest. When Hauri caught hold of the accused, he gave a lathi blow to her also and she received a lacerated wound on her forehead. Samara Tirkey was taken to the Raurkela Govt. Hospital, where he died on 27.6.1995 at about 2:00 p.m.

4. Megha Tirkey was charged under Section 302 and 323 IPC. The matter reached before the appellant on 21.03.1996 when he passed the following order:-

"**Order No.8 dt. 21.03.1996**

The accused is produced in custody by the escort party. Learned Associate Lawyer who represents the State is present. Learned Defence counsel is also present.

Learned Associate Lawyer opens the prosecution case by describing the charges brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. The learned Defence counsel submits that there is complete absence of evidence to frame charge u/s 302 IPC and that the available evidence may bring at-best an offence u/s 304 IPC.

After hearing submissions of both sides in this behalf and on consideration of the materials available in the case diary, I find there is no sufficient material to frame charge u/s 302 IPC but there are sufficient materials against the accused for presuming that he has committed the offence u/s 304 IPC and 323 IPC.

A Hence, charge u/s 304 IPC and u/s 323 IPC are framed against the accused. The charges being read-over and explained, the accused pleads not guilty and claimed to be tried.

B The Defence does not admit the genuineness of the documents filed by the prosecution.

Put up on 25.4.96 for fixing a date of hearing of the Sessions trial

C Sd/-
Addl. Sessions Judge,
Rourkela,
21.3.96"

5. Subsequently, the appellant was transferred from D Rourkela, and the matter proceeded before one Shri S.K. Mishra, the subsequent Additional Sessions Judge at Rourkela. It so happened that during the trial, some of the prosecution witnesses, viz. PW Nos. 2, 4, 5, 6, 7 were declared hostile by the prosecution since they did not support the case. The Judge, E however, found the evidence of Hauri (PW No. 3) wife of Samara Tirkey, the deceased, as acceptable and reliable. Her testimony was supported by the medical evidence. The Doctor found a lacerated injury on her forehead. She stated that the accused had given a lathi blow on the head of the deceased and then on his chest, in her presence. She also stated about F the lathi blow given to her. The post-mortem examination revealed that amongst other injuries, the left side mandible of the deceased was fractured and there was subdural haematoma over the left parietal region of the scalp. The other vital organs like lungs, liver, kidney were all congested. Due to G these injuries, the deceased went into coma and then died. The learned Judge held that the prosecution had established the charges beyond reasonable doubt and found the accused guilty of offences under Section 304 and 323 of IPC, and convicted him accordingly. He sentenced him to undergo Rigorous

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Imprisonment for five years under Section 304 (1) of IPC and for one month for offence under Section 323 IPC, with both the punishments running concurrently.

6. *Note by the Inspecting Judge*

It so transpired that later the inspection of the Court of Additional & District Sessions Judge, Rourkela was carried out by Hon'ble Mr. Justice P.K. Mishra, then a Senior Judge of the High Court of Orissa. At that stage, while going through the file of S.T. No.187/55 of 1995, Mr. Justice P.K. Mishra came across the above referred Order No.8 dated 21.3.1996 passed by the appellant herein. Thereupon Mr. Justice P.K. Mishra made the following note on that file:-

> "In this case, the only accused Megha Tirkey was charge-sheeted under sections-302/323 IPC for clubbing the victim (Samra Tirkey) to death on 26.06.1995 at 3.30 P.M.
>
> The additional Sessions Judge, Rourkela while discharging the accused from the offence under Section – 302 framed charges under sections 304/323 of the Indian Penal Code without recording any reason for discharging the accused from the offence under Section 302 IPC. The order of the Additional Sessions Judge only states that material available in the case diary is insufficient to frame a charge under Section 302 IPC.
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> It is the settled principle of law that while framing charge the Sessions Judge under Section -228 Cr.P.C. need not assign reasons, but he is bound to record reasons while recording a discharge under Section 227 Cr.P.C.
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> In the present case, the widow of the deceased (P.W.3) has testified that the accused dealt a forceful lathi blow on the head of the deceased and two more blows on his chest. The post-mortem examination reveals that

A ramus of the left side mandible of the deceased was fractured on the chin besides left parietal region of the scalp.

Relying on the ocular testimony of widow of the deceased and the post-mortem examination report that lends support to her evidence, the Additional Sessions Judge recorded a conviction under Section 304 (1)/323 of the Indian Penal Code and sentenced the accused to undergo R.I. for five years on the first count and one month R.I. on the second count with a direction for concurrent running of sentences.

It is no body's case that the offence was committed on grave and sudden provocation. The Addl. Sessions Judge should not have nipped the case U/s 302 IPC at the bud by discharging the accused thereof by a non speaking order. This is a fit case for suo-moto revision U/s 401 Cr.P.C."

7. *Suo-moto* Criminal Revision

In view of the note of Hon'ble Justice Mr. P.K. Mishra, the High Court took up a *suo-moto* Criminal Revision against the order dated 21.3.1996, which was numbered as No.187/55 of 1995. The learned Single Judge, who heard the matter, went through the judgment rendered at the end of the trial in Case No.187/55 of 1995, as well as the order of framing charge dated 21.3.1996. He examined the material on record and noted that P.W. No. 3 had come to the rescue of her husband when he received lathi blows. She had also received a lathi blow. Her evidence was, therefore, a credible evidence. He referred to the post-mortem report which stated that out of the four external injuries, injury No. 4, i.e., fracture of ramus of left side mandible, was grievous. On dissection, it had been found by the Doctor that the brain membrane was congested. There was a subdural haematoma over the left parietal lobe and brain was congested. The other vital internal organs like lungs, liver,

spleen, kidney were all congested. The Doctor (P.W. No.8) opined that death was due to coma resulting from injury to brain and scalp bones and the injuries were ante-mortem in nature. On this factual aspect, the learned Single Judge held as follows:-

> *"If the materials in the case diary reveal two distinct offences of the same nature then it is appropriate to frame charge for more grievous offence or to frame charge for both the offences distinctly and separately. That being the settled position of law and the prosecution case stands in the manner indicated above, therefore, there is no hesitation to record a finding that learned Additional Sessions Judge, Rourkela went wrong in framing charge for the offence under Section 304, IPC by declining to frame charge under Section 302 IPC for no reason explained in the order passed under Section 228 Cr.P.C."*

8. *Impugned observation by the Single Judge*

The learned Single Judge, however, noted that by the time he was deciding the Criminal Revision, the accused had already served the sentence of five years of Rigorous Imprisonment. Therefore, he did not deem it to be a fit case for ordering a retrial under Section 300 (2) of Code of Criminal procedure, 1973 ('Cr.P.C.' for short). He disposed of the *suo-moto* Criminal Revision accordingly by his order dated 28.10.2002.

9. The learned Single Judge, however, made certain observations in para 5 of his order which are material for our purpose. This para reads as follows: -

> "5. A Judicial Officer before being posted as Addl. Sessions Judge gets the experience of conducting sessions cases as Assistant Sessions Judge. Therefore, in this case, it cannot be said that the concerned Presiding

A Officer had no requisite experience to deal with a matter relating to consideration of charge and to pass appropriate legal order under Sections 227 and 228 Cr. P.C correctly. When the accused was not charged for the offence under Section 302, IPC and instead he was charged for the
B offence u/s 304 IPC, it was incumbent on the trial court to explain the circumstances and to reflect the same in the order as to what was the reason or lack of evidence not to frame charge for the offence under Section 302 IPC. This Court finds no reasonable excuse for the concerned
C Presiding Officer to commit a blunder in the above indicated manner..... If the said Judicial officer has not yet been confirmed in the cadre of O.S.J.S (S.B.), then before confirming him in that cadre his performance be thoroughly verified and in the event of finding glaring
D deficiency in his performance, as in this case, then he may be kept on probation for a further period as would be deemed just and proper by the High court. If he has already been confirmed in that cadre, then his performance be thoroughly verified before giving him promotion to the higher scale."
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Thus, in first part of this para, the learned Judge has held that the appellant had committed a blunder in not framing the charge under Section 302 IPC. In the latter part of the para, he has made certain observations about the manner in which the
F appellant had passed the order dated 21.3.1996, and also some correctional suggestions about the appellant.

10. Subsequent to these observations in this order dated 28.10.2002, the High Court Administration examined the record
G of the appellant and denied him the Selection grade. The appellant's representation dated 24.09.2003 in that behalf was also rejected by the High Court Administration as per the communication dated 20.11.2003 to the appellant from the Special Officer (Administration). Being aggrieved therewith the
H appellant took Voluntary Retirement on 30.11.2003, and

subsequently filed the present Appeal by special leave on 13.02.2004 to challenge the above order dated 28.10.2002 and the observations made therein.

11. *Submissions on behalf of the Appellant*

Mr. Uday Gupta, learned Counsel for the appellant, submitted that the order passed by the appellant on 21.3.1996 was a judicial order. It is possible to say that this order was an erroneous one, but merely for that reason, it was not proper for the inspecting judge to direct that a *suo-moto* Revision be filed against the same. In any case, it was wrong on the part of the learned Single Judge who heard the *suo-moto* Revision, to make the observations which he has made in the above quoted paragraph 5 of his order which has affected appellant's career. Mr. Gupta submitted that the appellant had otherwise a good service record after his promotion in District Judge's Cadre in August 1991. He had worked initially as an Additional Special Judge (Vigilance) at Bhubaneshwar, thereafter for two years as the Presiding Officer of the E.S.I Court at Rourkela, then as Additional Sessions Judge at Rourkela in 1996 and then for three years as the Presiding Officer of the Central Govt. Industrial Tribunal at Asansol, West Bengal. Subsequently, he became the Additional District Judge and Presiding Officer of the Motor Accidents Claims Tribunal in Cuttack, Orissa from July 1999 to November 1999. From November 1999 to September 2002, he was the Director (Law Studies), Gopabandhu Academy of Administration, Bhubaneshwar, and subsequently the Additional District Judge, Talcher, Orissa, from October 2002 to 30.11.2003. He pointed out that the appellant had participated in various seminars and conferences and presented his papers. His record was otherwise quite good.

12. Mr. Gupta relied upon the judgment *'In the matter of 'K' A Judicial Officer* [2001 (3) SCC 54]'. The concerned judicial officer in that matter was assigned a courtroom which had great infrastructural difficulties. Complaints in that behalf were not being attended in spite of a number of representations to the

A PWD officials. Being dissatisfied by this inaction, the learned Judge issued a notice to the concerned authorities as to why action in contempt should not be taken against them. The PWD acted promptly thereafter, and carried out the necessary repairs. Learned Judge therefore dropped the contempt B proceedings but still held that there was a case to take cognizance under Sections 380, 201 and 120-B of IPC and issued process against the concerned officers. Being aggrieved by that order, the matter was carried to the High Court where the High Court observed that the learned C Magistrate had exceeded her jurisdiction defying all judicial norms to pressurize the officers, and her order was a gross abuse of the process of Court since there was no occasion to invoke the particular sections of IPC. When the Judicial Officer carried the matter to this Court, this Court observed in paragraph 15 of the above judgment that by the observations D of the High Court, the Judicial Officer was being condemned unheard. This Court observed in paragraph 15 that such observations give a sense of victory to the litigant not only over his opponent but also over the Judge who had decided the case against him and the same should be avoided. The E counsel for the appellant relied upon the report of the First National Judicial Pay Commission to submit that at times the Trial Judges are really on trial as observed in the report.

13. The learned Counsel for the appellant then relied upon F the observations in para 13 of the judgment of this Court in *V.K. Jain Vs. High Court of Delhi through Registrar General and Others* [2008 (17) SCC 538] and the principles of law laid down in para 58 thereof. In that matter, the appellant while working as a Judicial Officer in the Higher Judicial Services of Delhi, G vide his order dated 4.3.2002, permitted an accused in a criminal case to go abroad subject to the conditions that the accused would file Fixed Deposit Receipts (FDR) of Rs. one lakh and also surrender passports of his mother and wife. When the said order dated 4.3.2002, was challenged, the High Court found those conditions unacceptable. In its order, the High Court H

made certain observations against the petitioner and in paragraph 15 held that:-

> "5.....This is nothing but a medieval way of administering justice when family members used to be kept as hostages in lieu of either release of their detained kith and kin or procure the surrender of the wanted man."

Being aggrieved by that order the Judicial Officer carried the matter to the Supreme Court, where this Court cautioned against making such strong observations, it expunged those remarks from the order of Delhi High Court. In sub-paragraph IX of para 58, this Court laid down the following principle:-

> *"IX. The superior courts should always keep in mind that disparaging and derogatory remarks against the judicial officer would cause incalculable harm of a permanent character having the potentiality of spoiling the judicial career of the officer concerned. Even if those remarks are expunged, it would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him."*

Mr. Gupta emphasized these observations and submitted that the High Court should not have made the above observations in para 5 of the impugned order which have caused an incalculable harm to the career of the appellant.

14. He then relied upon paragraphs 16 to 20 of the judgment in *Prakash Singh Teji Vs. Northern India Goods Transport Company Private Limited and Anr.* [2009 (12) SCC 577]. In that matter, in the facts of the case the High Court had described the approach of the Judicial Officer concerned as hasty, slipshod and perfunctory. The adverse remarks against the appellant were removed in paragraph 20 of the judgment in the light of the principles laid down in *'K' A Judicial Officer* (Supra). This Court held that harsh or disparaging remarks are not to be made against persons and authorities whose conduct

A comes into consideration before courts of law unless it is really necessary for the decision of the case as an integral part thereof.

15. *Reply by the Respondents*

B The arguments of the appellant were countered by Mr. Janaranjan Das and Mr. Suresh Chandra Tripathy appearing for the respondents. Affidavits in reply have been filed by the State Government and also on behalf of Respondent Nos. 3 and 4 to the appeal, i.e. Registrar (Administration) and C Registrar (Judicial) of High Court of Orissa. It is pointed out in the affidavit on behalf of the High Court that this was not a solitary incident concerning the appellant. Adverse remarks were entered into his confidential record for the years 1973-79 continuously, and again for 1981, 1983, 1987 to 1989, and D 1991. It was also pointed out that in a case under Narcotic Drugs and Psychotropic Substances Act, 1985 (N.D.P.S. Act), the appellant had granted bail in the teeth of the prohibition under Section 37 of that Act. He was, therefore, placed under suspension from 19.12.1992. An inquiry was initiated, though E after considering the report of the inquiry, the proceeding was dropped and the appellant was allowed to resume from 15.8.1994. He was then posted as Additional District Judge, Rourkela where he heard the matter concerning the murder of Samara Tirkey. With respect to this submission of the F respondents, the counsel for the appellant pointed out that after the revocation of suspension, his service record was good, and in fact thereafter the remark of being 'outstanding' was recorded in his service book for a few years. The counsel for the respondents countered this submission by pointing out that G subsequent to the revocation of suspension also there were representations against appellant's honesty and integrity, particularly while working as the Industrial Tribunal cum Labour Court in Asansol, West Bengal. In fact because of that, he was transferred back to Malkanagiri, Orissa where he opted for voluntary retirement.

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16. It was submitted on behalf of the respondents that the case No. 187/55 of 1955 was a serious one concerning the death of a young person aged about 40 years. The deceased was given a lathi blow on his head because of which he fell down, whereafter also two lathi blows were given on his chest. His wife also received a lathi blow and she was an eye witness. Medical Evidence showed that because of these blows the deceased had died. None of these aspects has been considered by the appellant in his order dated 21.03.1996, extracted above. All that the appellant has stated in this order is that he had heard the submissions of both sides, and on the consideration of the material available in the case diary, he found that there was no sufficient material to frame the charge under Section 302 IPC. As against that, according to the respondents there was sufficient material on record to justify the framing of the charge under Section 302 IPC, and in any case while declining to frame the charge under Section 302 IPC, the appellant ought to have discussed as to why according to him the material on record was not sufficient. Absence of reasons in such a case amounts to a dereliction of duty. The order in such a matter has to be a self-explanatory one. Since it is not so, all that the learned Single Judge deciding the Revision has done, is to suggest to the High Court Administration to take corrective steps with respect to the appellant, and the same was justified.

17. *Consideration*

We have noted the submissions of both the counsel. We are concerned with the role of the Judge at the stage of framing of a charge. The provision concerning the framing of a charge is to be found in Section 228 of Cr.P.C. This Section is however, connected with the previous section, i.e. Section 227 which is concerning 'Discharge'. These two sections read as follows:-

Section 227 - Discharge - If, upon consideration of the record of the case and the documents submitted

A 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.

B

Section 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-

C (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 Magistrate3[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief
D 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;

E

(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
F *to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.*

18. As seen from Section 227 above, while discharging
G an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for
H doing the same. Section 228 which deals with framing of the

charge, begins with the words "If after such consideration". Thus, these words in Section 228 refer to the 'consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order.

19. It is also to be noted that a discharge order is passed on an application by the accused on which the accused and the prosecution are heard. At the stage of discharging an accused or framing of the charge, the victim does not participate in the proceeding. While framing the charge, the rights of the victim are also to be taken care of as also that of the accused. That responsibility lies on the shoulders of the Judge. Therefore, on the analogy of a discharge order, the Judge must give his reasons atleast in a nutshell, if he is dropping or diluting any charge, particularly a serious one as in the present case. It is also necessary for the reason that the order should inform the prosecution as to what went wrong with the investigation. Besides, if the matter is carried to the higher Court, it will be able to know as to why a charge was dropped or diluted.

20. The observations of this Court in the case of *State of Bihar Vs. Ramesh Singh* [AIR 1977 SC 2018] / [1977 (4) SCC 39] are very apt in this behalf. A bench of two Judges of this Court has observed in that matter that at the initial stage of the framing of a charge, if there is a strong suspicion/evidence which leads the Court to think that there is ground for presuming

A that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The Court referred to the judgment of a bench of three Judges in *Nirmaljit Singh Hoon Vs. State of West Bengal* [1973 (3) SCC 753], which in turn B referred to an earlier judgment of a bench of four Judges in *Chandra Deo Singh Vs. Prokash Chandra Bose* [AIR 1963 SC 1430], and observed as follows in para 5:-

"5. In Nirmaljit Singh Hoon v. State of West Bengal – Shelat, J. delivering the judgment on behalf of the majority C of the Court referred at page 79 of the report to the earlier decisions of this Court in Chandra Deo Singh v. Prokash Chandra Bose – where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, D 1898 "that the *test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction,* and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the E matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused". Illustratively, Shelat, J., further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically F untrustworthy, process cannot be refused if that evidence makes out a prima facie case".(emphasis supplied)

Further, as observed later in paragraph 6 of a subsequent judgment of this Court in *Niranjan Singh Vs. Jitendra Bhimraj* [1990 (4) SCC 76], at the stage of the framing of the charge, G the Judge is expected to sift the evidence for the limited purpose to decide if the facts emerging from the record and documents constitute the offence with which the accused is charged. This must be reflected in the order of the judge.

H 21. Thus it cannot be disputed that in this process the

minimum that is expected from the Judge is to look into the material placed before him and if he is of the view that no case was made out for framing of a charge, the order ought to be clear and self-explanatory with respect to the material placed before him. In the present case, all that the appellant stated in his order dated 21.03.1996 was, that on consideration of the material available in the case diary, he had found that there was no sufficient material to frame the charge under Section 302 of IPC. This is nothing but a bald statement and was clearly against the statement of the injured eye witness, and supporting medical papers on record. The appellant has not even referred to the same. He has also not stated in his order as to why he was of the opinion that the material available in the case diary was insuffcient. Such a bald order raises a serious doubt about the bona fides of the decision rendered by the Judge concerned.

22. In the instant case, a young person had been killed. It was not a case of grave and sudden provocation. The material on record showed that there was an injured eye witness and there was the supporting medical report. The material on record could not be said to be self-contradictory or intrinsically unreliable. Thus, there was a prima facie case to proceed to frame the charge under Section 302 IPC. The reason given for dropping the charge under Section 302 was totally inadequate and untenable, and showed a non-application of mind by the appellant to the statements in the charge-sheet and the medical record. The order does not explain as to why a charge under Section 304 was being preferred to one under Section 302 IPC. In fact, since the material on record revealed a higher offence, it was expected of the appellant to frame the charge for more grievous offence and not to dilute the same.

23. The impugned order of the learned Single Judge deciding Revision notes that the appellant had been functioning in the rank of the District Judge from August 1991 onwards, i.e. for nearly 5 years prior to his order dated 21.3.1996. The

A impugned order further states in para 5, that a Judicial Officer, before being posted as an Additional Session Judge, gets an experience of taking the sessions cases as Assistant Session Judge. It cannot, therefore, be said that the appellant did not have requisite experience to pass a correct legal order under
B Section 228 of Cr.P.C.

24. That apart, all that the impugned order in Revision has done is to suggest to the High Court Administration, that if the appellant is not yet confirmed, his probation should wait and if he has already been confirmed, his performance be verified
C before giving him the higher scale. Since the appellant, was already confirmed in service, all that the High Court has done on the administrative side is to check his record, and thereafter to deny him the selection grade. The above observation in the impugned order in Revision is a suggestion to the
D Administration of the High Court. It is not a case of making any adverse or disparaging remarks as in the three cases cited on behalf of the appellant. In fact, in the first judgment cited by the appellant, in the case of V.K. Jain (supra), the observation of this Court in clause No. I of para 58 is very significant, namely
E that the erosion of the credibility of the judiciary in the public mind, for whatever reason, is the greatest threat to the independence of judiciary. Having noted that the appellant had failed in discharging his duty in framing the correct charge, and having also noted that his record was not good, the High Court
F could not have granted him the selection grade. The selection grade is not to be conferred as a matter of right. The record of the concerned Judge has to seen, and that having been done in the present case (in pursuance to the observations of the learned Single Judge), and having noted the serious
G deficiencies, the High Court has denied the selection grade to the appellant. Interestingly enough, in this Appeal by Special leave, the appellant is not directly seeking to challenge the denial of selection grade. He is challenging the observations in the impugned order which led to denial of the selection grade.
H In our view, the impugned order contained nothing but a

correctional suggestion to the High Court Administration which the Administration has accepted. A

25. It is only because of the note made by inspecting Judge that the cursory order passed by the appellant in the Sessions case diluting the charge against the accused came to the notice of the High Court Administration. It is contended on behalf of the appellant that in any case the *suo-moto* Revision has not led to the reopening of the case under Section 401 of the Code of Criminal Procedure. In this connection, we must note that by the time the *suo-moto* Revision was decided, the accused had already undergone the punishment of rigorous imprisonment of 5 years. Therefore, the Revisional Court did not deem it fit to reopen it. The appellant cannot take advantage of this part of the judgment of the Revisional Court, to challenge the observations of the learned Revisional Judge making a suggestion to the High Court to scrutinize appellant's record for the dereliction of duty on his part. The appellant was responsible for an unjustified dilution of the charge and, therefore, the thorough checking of his service record was necessary which is, what is directed in the impugned order. B C D E

26. For the reasons stated above, we find no reason to interfere in the impugned order making certain observations and suggestions which were necessary in the facts and circumstances of the case. The appeal is therefore, dismissed, though there will be no order as to the costs. F

B.B.B. Appeal dismissed.