

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 964/2023

Sitaram S/o Shri Balaram, Aged About 40 Years, B/c Jat R/o
Kitasar Bhatiyar Ps Sri Dungargarh Dist. Bikaner Raj.

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp

Smt. S W/o Shri Girdharilal, Aged About 43 Years, B/c Jat
R/o Kitaras Bhatiya Ps Sri Dungargarh Dist. Bikaner Raj.

-----Respondents



For Petitioner(s) : Mr. K.L. Thakur
Mr. M.S. Panwar
For Respondent(s) : Mr. Surendra Bishnoi, PP
Mr. Rakesh Kumar Chotia

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

Reserved On- 18/08/2025

Pronounced On- 27/08/2025

1. By way of the present revision petition, the accused-petitioner has laid a challenge to the order dated 19.07.2023 passed by the Additional Sessions Judge, Sri Dungargarh, District Bikaner in Sessions Case No.02/2023, whereby the learned Trial Court has framed the charges against the accused-petitioner for offences punishable under Sections 452, 341, 323, 354 and 376 I.P.C.

2. Shorn of unnecessary details the facts relevant for adjudication of the present case are that based upon the statement given by the complainant - 'S' an FIR came to be lodged against the accused-petitioner. The complainant in her statement stated that on 7th October, 2022, she was all alone at

her home, her husband - Girdhari Lal was at their agricultural field and her son was at school, at around 08.00 a.m. in the morning, Sita Ram S/o Bala Ram, who is brother-in-law of the complainant along with his wife - Gayatri (who is the real sister of the complainant) entered in the house forcefully and Sita Ram having a *lathi* started assaulting the complainant with *lathi* in the open yard and thereafter, Gayatri also started assaulting complainant with hands and legs.

3. Upon hue and cry made by the complainant, the neighbours Pranhald and Bhawarlal came upon the site and thereafter disentangled both of them. She further stated that Sita Ram assaulted the complainant with the intent to outrage her modesty. She further asserted that Sita Ram was angry with the complainant as she used to go to undertake the work of labourer in the agricultural fields of other persons which he did not like and he threatened to kill her on various occasions.

4. Based upon the FIR so lodged, the police started investigation and the statements of complainant - 'S', her son Madan Lal, neighbours Sada Ram, Bhawar Lal, Sanwar Mal and Nand Lal were also recorded and all supported statement made by the complainant, however, when the victim-complainant was examined by the Special Judge NI Act Cases No. 2, Bikaner under Section 164 Cr.P.C., she stated that three months prior to the date of incident Sita Ram had raped her. Identical statements were given by Sada Ram, Sanwar Mal and Nand Lal under Section 161 Cr.P.C., wherein they stated that the victim - 'S' had informed



them that two months ago Sita Ram had raped her when she was all alone at her house.

5. The police after investigation filed the charge-sheet against the petitioner while considering the entire material available on record collected during the course of investigation and held that offences punishable under Sections 452, 323, 341, 354 and 376 I.P.C. were made out against the accused-petitioner.

6. The learned Trial Court after taking cognizance, proceeded to frame charges against the petitioner for the offences as mentioned above and observed observing that there was no reason to disbelieve the statement given by the complainant -'S' under Section 164 Cr.P.C. and that prima facie there was sufficient material to frame charges against the petitioner. Being aggrieved against the same, present revision petition has been filed.

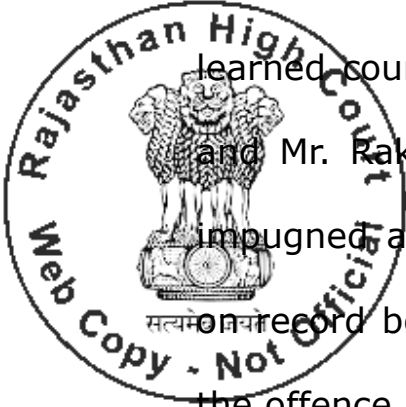
7. The learned counsel for the petitioner submitted that the learned Trial Court has failed to consider that there was not a whisper with regard to the offence of rape at the time when the FIR was lodged based upon statement of complainant herself. Not only this, even in her statement under Section 161 Cr.P.C., there is no reference with regard to the rape being committed upon her. So is the case with regard to statement of her son Madan Lal as also neighbour Bhawar Lal, both of them have remained silent with regard to any assertion of commission of rape. He submitted that a calculated improvement was made by the prosecutrix - 'S' at the time of the statement under Section 164 Cr.P.C. and simply based upon that statement, the charge-sheet has been filed against the petitioner. He further submitted that the learned Trial



Court has not at all applied its mind and has framed the charges while acting as a mouthpiece of the prosecution. He thus submitted that no ingredients of commission of offence punishable under Section 376 I.P.C. been found and therefore, framing of charge for the offence in question has caused grave injustice.

8. Per contra, the learned Public Prosecutor as well as the learned counsel for the complainant, Mr. Surendra Kumar Bishnoi and Mr. Rakesh Kumar Chotia, respectively, supported the order impugned and stated that there was sufficient material available on record before the learned Trial Court to frame the charges for the offence in question. They submitted that the statements of the prosecutrix under Section 164 Cr.P.C. clearly specifies that rape was committed upon her three months prior to the date of the present incident and further the statement of witnesses - Sada Ram, Sanwar Mal and Nand Lal also fortify the above-mentioned fact. They thus submitted that there was sufficient material available before the learned Trial Court for framing of the charge under Section 376 I.P.C. read with other offences against the petitioner. They thus submitted that the order impugned has rightly been passed.

9. Having heard the learned counsel for the parties, and perused the material available on record, this Court is of the definite opinion that as far as the incident in question is concerned as narrated in the FIR, the same is fortified by the medical report and the statements of the witnesses. Simply because the allegation of the rape has been alleged for the first time during the course of statement of the prosecutrix under Section 164 Cr.P.C.



cannot by itself be a reason to discard the same at the stage of framing of charge.

10. The Courts have to ensure that a balance is drawn between the right of accused to get a fair trial and he be not prejudiced after the law has been put into motion to try him for the offence but at the same time it is to ensure that the guilty does not get away from the clutches of law and equal justice is granted to the victims and to the society at large.

11. As far as the stage of framing of charge, discharge is concerned, the provisions in this regard are contained under Sections 227 & 228 of the Code of Criminal Procedure, 1973,

which provides as under:-

"227. Discharge._ *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

228. Framing of charge._ (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] [Substituted by Act 25 of 2005, Section 22 for "and thereupon the Chief Judicial Magistrate" (w.e.f. 23-6-2006).] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

12. The Hon'ble Supreme Court has, time and again, dealt with the powers of the Court while framing charges and the relevant considerations qua the same. In the case of **Sajjan Kumar v.**

Central Bureau of Investigation: 2010 9 SCC 368, the

Hon'ble Apex Court has held as under:-



"Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

21. *On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-*

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

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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

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

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

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

24. At the stage of framing of charge under Section 228 of the Cr.P.C. or while considering the discharge petition filed under Section 227, it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other.”



13. In the case of **M.E. Shivalingamurthy v. Central Bureau of Investigation: 2020 2 SCC 768**, the Hon'ble Apex Court, while dealing with the considerations to be undertaken at the stage of framing of charge, held as under:-

"LEGAL PRINCIPLES APPLICABLE IN REGARD TO AN APPLICATION SEEKING DISCHARGE"

This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., P. Vijayan v. State of Kerala and discern the following principles:-

17.1 *If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.*

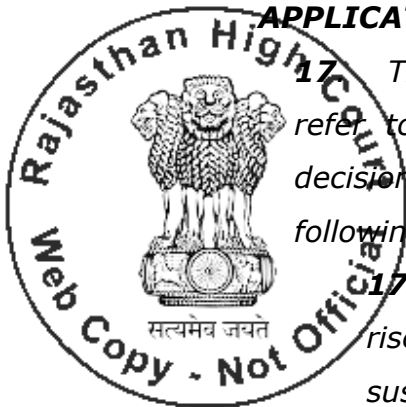
17.2 *The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.*

17.3 *The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.*

17.4 *If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".*

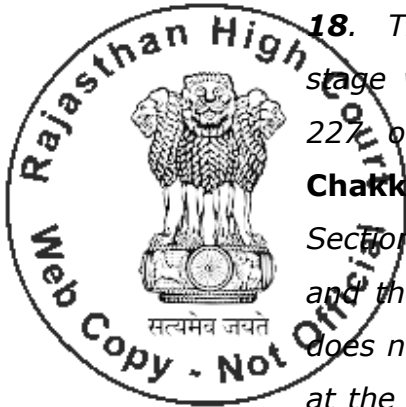
17.5 *It is open to the accused to explain away the materials giving rise to the grave suspicion.*

17.6 *The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.*



17.7 At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8 There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.



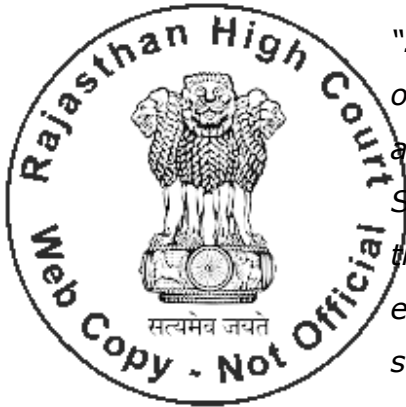
18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.P.C. (**See State of J & K v. Sudershan Chakkar**). The expression, "the record of the case", used in Section 227 of the Cr.P.C., is to be understood as the documents and the 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. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (**See State of Orissa v. Debendra Nath Padhi**)."

14. In the case of **State of Rajasthan v. Ashok Kumar Kashyap: 2021 11 SCC 191**, the Hon'ble Apex Court, while again dealing with the issue, held as under:-

"11.1 In *P. Vijayan (supra)*, this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in

order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2 In the recent decision of this Court in the case of *M.R. Hiremath (supra)*, one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under: (SCC p. 526)



"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 Cr.P.C. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of **[State of T.N. v. N. Suresh Rajan]**, (2014) 11 SCC 709, advertent to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the

accused has committed the offence. The law does not permit a mini trial at this stage."

13. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all."



15. Recently, in the case of **Captain Manjit Singh Viridi v.**

Hussain Mohammed Shattaf & Ors.: 2023 7 SCC 633, the

Hon'ble Apex Court, held as under:-

"11. 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 charge sheet, 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. 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."

16. In the case of **State of Gujarat v. Dilipsinh Kishorsinh**

Rao: 2023 17 SCC 688, the Hon'ble Apex Court, while again

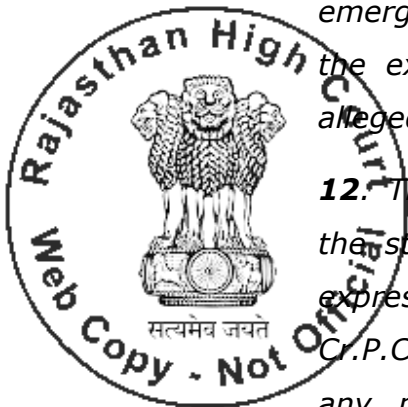
dealing with the issue of relevant considerations at the stage of framing of charge, held as under:-

"10. 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."

12. 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 C.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.

*13. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of **Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659** and the **State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.*

19. The plea or the defence when requiring to be proved during course of trial is itself sufficient for framing the charge. In the instant case, the learned Trial Judge has noticed that explanation provided by the respondent accused pertaining to purchase of shop No.7 of Suman City Complex of plot No.19, Sector-11 from the loan borrowed and paid by



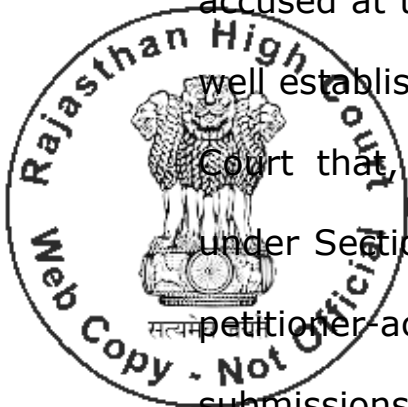
the respondent was outside the check period and hence the explanation provided by respondent is a mere eye wash. This is an issue which has to be thrashed out during the course of the trial and at the stage of framing the charge mini trial cannot be held. That apart the explanation offered by the respondent accused with regard to buying of Maruti Wagon-R car, Activa scooter, purchase of house etc., according to the prosecution are all the subject matter of trial or it is in the nature of defence which will have to be evaluated after trial."



17. Thus, considering the mandate under Section 227 of Cr.P.C., as well as the relevant judgments on the issue in hand, it is clear that at the stage of framing of charge, the power of weighing and sifting the evidence is limited to assess whether a prima facie case is made out against the petitioner-accused. It is further settled that when the material placed before the Court discloses grave suspicion against the petitioner-accused, which has not been properly explained, the Court would be justified in framing charges and proceeding with the trial. In fact, if on the basis of the material available on record the Court forms an opinion that the petitioner-accused might have committed the offence, it can proceed to frame the charge. However, for the purpose of conviction during the course of trial, the offence alleged must be proved beyond reasonable doubt. It is also well settled that at the stage of framing of charges, the probative value of the material on record cannot be gone into. At the same time, the Court cannot act as a mere post office or mouthpiece of the prosecution, it is required to apply its judicial mind to the material placed on record before it.

18. It is thus clear that if the evidence, which the prosecution proposes to adduce to prove the guilt of the petitioner-accused,

even if fully accepted at face value, without being challenged in cross-examination or rebutted by defence, fails to establish that the petitioner-accused has committed the offence, then there exists no sufficient ground for proceeding with the trial. In such a situation, the learned Trial Court ought to discharge the petitioner-accused at the stage of framing of charge itself. Furthermore, it is well established from the guidelines laid down by the Hon'ble Apex Court that, at the stage of framing of charges, the provisions under Section 227 of the Cr.P.C. do not confer any right upon the petitioner-accused to produce any document in his defence. The submissions of the petitioner-accused are required to be confined strictly to the material produced by the prosecution.



19. In the present case, although the prosecutrix has not specified the incident of rape during her statement under Section 161 Cr.P.C. however, the incident of the rape has been specified during the course of her examination under Section 164 Cr.P.C. Not only this, the stand taken by her is supported by the statements of other witnesses under Section 161 Cr.P.C. including those of statements of Sada Ram S/o Surja Ram, Sanwar Mal S/o Hadman Ram and Nand Lal S/o Mansa Ram. The police also after thorough investigation had found the offence in question to be made out against the accused-petitioner. The Hon'ble Apex Court recently in the case of "**Nahar Singh v. State of Uttar Pradesh 2022 5 SCC 295**" while dealing with the similar issue, though at the stage of taking cognizance and in identical circumstances where the accused was not named during the statement under Section 161 Cr.P.C., but was named for the first time by the

prosecutrix in her statement under Section 164 Cr.P.C. has held that the entire record is to be seen and simply because the incident was not narrated in the statement under Section 161 Cr.P.C. would not absolve the accused-petitioner from the offence in question, if in the subsequent statement under Section 164 Cr.P.C. clear statement has been made with regard to the alleged offence being committed by the accused-petitioner. Hon'ble Apex Court held as under:-



30. *In the present case, the name of the accused had transpired from the statement made by the victim under Section 164 of the Code. In the case of Dharam Pal, it has been laid down in clear terms that in the event the Magistrate disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in column (2) of the chargesheet, apart from those who are arraigned as accused in the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. As we have already discussed, this was the view of this Court in Raghubans Dubey. Though this judgment dealt with the provisions of the 1898 Code, this authority was followed in Kishun Singh. For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose."*

20. Thus taking guidelines from the judgment referred to supra, this Court is of the opinion that there was prima facie material available on record before the learned Trial Court to frame the charges for offences punishable under Sections 451, 341, 323,

354 and 376 I.P.C. against the accused-petitioner, based upon the material collected by the police during the course of investigation.

21. The upshot of the above-mentioned observations is that the present Criminal Revision Petition being bereft of merit is hereby dismissed. The order dated 19.07.2023 passed by the learned Additional Sessions Judge, Sri Dungargarh, District Bikaner in Sessions Case No.02/2023 titled as "*State of Rajasthan v. Sitaram*" whereby charges have been framed against the accused-petitioner is upheld. It is, however, made clear that any observation made by this Court while deciding the present revision petition are only prima facie in nature and the learned Trial Court shall not be influenced by the same. The Learned Court shall proceed to determine the outcome of the trial based solely on the material available.

22. All pending applications, if any, stand disposed of accordingly.

(SANDEEP SHAH),J

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