

Court No. - 11

Case :- CRIMINAL REVISION DEFECTIVE No. - 153 of 2024

Revisionist :- Saurabh Singh @ Saurabh Kumar Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Another

Counsel for Revisionist :- Prashant Vikram Singh, Akshaya Pratap Singh, Neha Singh

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin, J.

(Order on C.M. Application No.2 of 2024)

1. Heard learned counsel for the revisionist as well as learned A.G.A. for the State-opposite party.
2. This is an application for condonation of delay in filing the revision.
3. Learned A.G.A. states that he does not intend to file any objections to the same.
4. On due consideration, the delay condonation application is **allowed**. The delay is hereby **condoned**.
5. Let the office allot a regular number to the instant revision.

(Order on Memo of Revision)

6. The instant criminal revision under Section 397/401 of the Criminal Procedure Code (hereinafter referred to as "Code") has been filed against the order dated 03.01.2024 passed by learned court of Additional Civil Judge, Senior Division III / A.C.J.M., District Ayodhya in Case No.0563 of 2022 in Re: State Vs. Saurabh Singh, arising out of Case Crime No.516 of 2020, under Sections 394, 324, 504 & 506 of I.P.C., Police

Station Kotwali Bikapur, District Faizabad thereby summoning the revisionist.

7. The contention is that initially an F.I.R. had been lodged against the revisionist and certain other persons on 08.07.2020 by the complainant, a copy of which has been filed as annexure 2 to the revision. The medical examination appears to have been conducted even prior to lodging of the F.I.R. which gave rise to a suspicion that the lodging of the criminal case against the revisionist is simply in order to settle personal vendetta. A charge sheet dated 23.02.2021, a copy of which is annexure 3 to the revision, was submitted. Being aggrieved, a discharge application U/S 245 of Cr.P.C. was filed by the revisionist.

8. Upon the said application being filed, the learned court, vide order dated 03.01.2024, a copy of which has been filed as part of annexure 1 (page 12) to the revision, has rejected the same on the ground that at the stage of hearing of charge, the court is only required to evaluate the material and documents available on record with a view to finding out the if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence.

9. Being aggrieved, the instant revision has been filed.

10. The argument of the learned counsel for the revisionist is that (a) the aforesaid F.I.R. has only been lodged in order to settle personal vendetta between the revisionist and the complainant (b) the medical was conducted even prior to lodging of the F.I.R.

11. In this regard, reliance has been placed in the judgment of the Hon'ble Supreme Court passed in the case of **Sanjay Kumar Rai Vs. State of Uttar Pradesh and Another 2022**

(15) SCC 720.

12. Heard the learned counsels for the parties and perused the record.

13. From a perusal of the record, it emerges that an F.I.R. has been lodged under the provision of Section 394, 324, 504 & 506 I.P.C. against the revisionist and certain others persons for having assaulted the complainant with sharp weapons, hammer and a pistol and having been left the victim at the spot in a near death state. A perusal of the medical report, a copy of which has been filed as annexure 4 to the revision, would also indicate that there are serious wounds which have been caused to the victim.

14. The discharge application was filed by the revisionist which has been rejected by the learned court vide order dated 03.01.2024 by the learned court by contending that at the stage of framing of the charge, the court is required to evaluate the material and documents available on record with a view to finding out if from the facts emerging therefrom, taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

15. In the discharge application filed by the revisionist, it was contended that no such incident ever took place and the said F.I.R. has only been lodged as a personal vendetta against the revisionist.

16. The aforesaid grounds cannot detain the court inasmuch as, once from the perusal of the F.I.R., the medical report as well as the statement of the victim / complainant which is on record, a copy of which has been filed as annexure 7 to the revision, the commission of offence is clearly made out which fact had been considered by the learned court, while passing the order

impugned dated 03.01.2024 that if all such material taken at their face value disclose the existence of the ingredients constituting the alleged offence, consequently, this Court does not find any error having been committed by the learned court in rejecting the discharge application.

17. So far as the judgment of the Hon'ble Supreme Court in the case of **Sanjay Kumar Rai (supra)** is concerned, it would be suffice to state that the Hon'ble Supreme Court in para 15 has category held that the trial court while considering the discharge application is not to act as mere post office and the Court has to sift through evidence in order to find whether there are sufficient grounds to try the suspect. The argument of learned counsel for the revisionist is that it is the evidence which is led by the person / accused filing the application for discharge which has to be sifted by the trial court. The said argument is patently fallacious inasmuch as, the provisions of Section 245 of the Code itself provides as to when the accused shall be discharged. It clearly provides that if upon taking all the evidence **referred to in Section 244**, the Magistrate considers for reasons to be recorded that no case against the accused has been made out, which if unrebutted, would warrant his conviction, the Magistrate shall discharge him. However nothing shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for the reasons to be recorded by such Magistrate, he considers that charge to be groundless.

18. The evidence as per Section 244 of the Code refers to the evidence of the prosecution i.e. when in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be

produced in support of the prosecution.

19. From a perusal of the aforesaid provisions of Sections 244 & 245 of the Code, it is apparent that on an application under Section 245 of the Code it is the evidence, as produced under Section 244 in support of the prosecution, which is to be considered.

20. This aspect of the matter has been considered threadbare by the Hon'ble Supreme Court in the case of **Ajoy Kumar Ghose Vs. State of Jharkhand 2009 (14) SCC 115** wherein the Hon'ble Supreme Court has held as under:-

"23. Essentially, the applicable sections are Sections 244 and 245 Cr.P.C. since this is a warrant trial instituted otherwise than on police report. There had to be an opportunity for the prosecution to lead evidence under Section 244(1) Cr.P.C. or to summon its witnesses under Section 244(2) Cr.P.C. This did not happen and instead, the accused proceeded to file an application under Section 245(2) Cr.P.C. on the ground that the charge was groundless.

24. Now, there is a clear difference in Sections 245(1) and 245(2) of Cr.P.C. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains un rebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) Cr.P.C.

25. The situation under Section 245(2) Cr.P.C. is, however, different. There, under sub-section (2), the Magistrate has the power of discharging accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) Cr.P.C., the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 Cr.P.C. The words appearing in Section 245(2) Cr.P.C. "*at any previous stage of the case*", clearly bring out this position.

26. It will be better to see what is that "*previous stage*". The previous stage would obviously be before the evidence of the prosecution under Section 244(1) Cr.P.C. is completed or any stage prior to that. Such stages would be under Section 200 Cr.P.C. to Section 204 Cr.P.C. Under Section 200, after taking cognizance, the Magistrate examines the complainant or such other witnesses, who are present. Such examination of the complainant and his witnesses is not necessary, where the complaint has been made by a public servant in discharge of his official duties or where a court has made the complaint or further, if the Magistrate makes over the case for

inquiry or trial to another Magistrate under Section 192 Cr.P.C. Under Section 201 Cr.P.C., if the Magistrate is not competent to take the cognizance of the case, he would return the complaint for presentation to the proper court or direct the complainant to a proper court.

27. Section 202 Cr.P.C. deals with the postponement of issue of process. Under sub-section (1), he may direct the investigation to be made by the police officer or by such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 202(1)(a) Cr.P.C., the Magistrate cannot give such a direction for such an investigation, where he finds that offence complained of is triable exclusively by the Court of Session. Under Section 202(1)(b) Cr.P.C., no such direction can be given where the complaint has been made by the court.

28. Under Section 203 Cr.P.C., the Magistrate, after recording the statements on oath of the complainant and of the witnesses or the result of the inquiry or investigation ordered under Section 202 Cr.P.C., can dismiss the complaint if he finds that there is no sufficient ground for proceeding.

29. On the other hand, if the Magistrate comes to the conclusion that there is sufficient ground for proceeding, he can issue the process under Section 204 Cr.P.C. He can issue summons for the attendance of the accused and in a warrant case, he may issue a warrant, or if he thinks fit, a summons, for securing the attendance of the accused. Sub-sections (2), (3), (4) and (5) of Section 204 Cr.P.C. are not relevant for our purpose. It is in fact here, that the previous stage referred to under Section 245 Cr.P.C. normally comes to an end, because the next stage is only the appearance of the accused before the Magistrate in a warrant case under Section 244 Cr.P.C.

30. Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) Cr.P.C., where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) Cr.P.C., and if he comes to the conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him.

31. The situation under Section 245(2) Cr.P.C., however, is different, as has already been pointed out earlier. The Magistrate thereunder has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 Cr.P.C. and till the completion of the evidence of prosecution under Section 244 Cr.P.C. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 Cr.P.C., and makes an application for discharge.

36. The Magistrate has the power to discharge the accused under Section 245(2) Cr.P.C. *at any previous stage* i.e. before the evidence is recorded under Section 244(1) Cr.P.C., which seems to be the established law, particularly in view of the decision in *Cricket Assn. of Bengal v. State of*

W.B., as also the subsequent decision of the Bombay High Court in *Luis de Piedade Lobo v Mahadev Vishwanath Parulekar*. The same decision was followed by Kerala High Court in *Manmohan Malhotra v. P.M. Abdul Salam and Hon'ble Justice K.T. Thomas*, as the learned Judge then was, accepted the proposition that the Magistrate has the power under Section 245(2) Cr.P.C. to discharge the accused at any previous stage. The Hon'ble Judge relied on a decision of the Madras High Court in *Mohd. Sheriff Sahib v. Abdul Karim Sahib*, as also the judgment of the Himachal Pradesh High Court in *Gopal Chauhan v. Satya*.

37. We are convinced that under Section 245(2) Cr.P.C. the Magistrate can discharge the accused *at any previous stage* i.e. even before any evidence is recorded under Section 244(1) Cr.P.C. In that view, the accused could have made the application. It is obvious that the application has been rejected by the Magistrate. So far, there is no difficulty.

43. Further, Section 245 Cr.P.C. also mandates that:

"245. *When accused shall be discharged.*- (1) If, upon taking all the evidence referred to in Section 244 CrPC, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him."

44. In Section 246 Cr.P.C. also, the phraseology is "if, when such evidence has been taken", meaning thereby, a clear reference is made to Section 244 Cr.P.C. The Bombay High Court in *Sambhaji case* came to the conclusion that the phraseology would, at the most, mean that the Magistrate may prefer to frame a charge even before all the evidence is completed. The Bombay High Court, after considering the phraseology, came to the conclusion that the typical clause did not permit the Magistrate to frame a charge, unless there was some evidence on record. For this, the learned Single Judge in that matter relied on the ruling in *Abdul Nabi v. Gulam Murthuza Khan*."

21. Accordingly, keeping in view of the aforesaid discussion as well as the judgement of the Hon'ble Supreme Court in the case of *Ajoy Kumar Ghose (supra)*, no case for interference is made out. The criminal revision is **dismissed**.

Order Date :- 5.8.2024

S. Shivhare