

Court No. - 29**Case :-** CRIMINAL REVISION No. - 1142 of 2019**Revisionist :-** Ram Lal Verma**Opposite Party :-** State Of U.P. And Anr.**Counsel for Revisionist :-** Ganesh Kumar Gupta**Counsel for Opposite Party :-** G.A.**Hon'ble Mrs. Renu Agarwal,J.**

The present revision under Section 397/401 of the Code of Criminal Procedure has been filed against the judgment and order dated 27.05.2019 passed by the learned Civil Judge (Senior Division) Fast Track/ Additional Chief Judicial Magistrate, Ambedkar Nagar in Complaint Case No. 1130 of 2018 (Old Complaint No. 15040 of 2008) under Section 419, 420, 504 IPC.

It is submitted that the applicant moved an application for discharge in light of the order of High Court dated 25.03.2019 by which the applicant was given an opportunity to file a discharge application through counsel within 30 days from the date of order. Learned trial court rejected the above mentioned application on the basis of irrelevant consideration as well as against the provisions of Section 245(2) Cr.P.C as well as spirit of order dated 25.03.2019 passed by the High Court only on the ground that the evidence under Section 244 Cr.P.C is remained in the proceedings and also that the revisionist had never taken bail. It is also submitted that the revisionist had served as Branch Manager in the U.P. Co-operative Village Development Bank Limited Branch Tanda, Ambedkar Nagar. He joined the said bank on 29.08.1998 and served till 18.08.2003. The revisionist superannuated from his post on 31.07.2004 from the Jalalpur Branch. After superannuation the revisionist left district Ambedkarnagar and started living at his home in district Basti. The revisionist never served the Bank

U.P. co-operative Village Development Bank Limited Branch Tanda District Ambedkar Nagar at the time when the alleged loan transaction took place i.e. 25.05. 1998 and after his relieving he never served at that said bank.

It is also submitted that the complainant filed a complaint on 15.12.2007 arraying the revisionist as opposite party No.4. After recording the statement under Sections 200 and 202 Cr.P.C, the trial court summoned the revisionist by order dated 15.06.2009 under Section 419, 420, 504 IPC. It is also submitted that no case is made out against the revisionist under Section 419, 420, 504 IPC as such on the perusal of the statement under Sections 200 and 202 Cr.P.C no ingredients has been found for cheating by impersonation. Thereafter trial court issued warrant against the applicant by order dated 08.09.2018. In the month of March, 2019 revisionist filed Criminal Misc. Case No. 1940 of 2019 (Ram Lal Verma Vs. State of U.P and others) against the summoning order dated 15.06.2009 in which the Hon'ble Court was pleased to pass the order dated 25.03.2019 and directed the learned trial court that the discharge application of the applicant shall be heard and decided expeditiously after hearing the parties in accordance with law. The revisionist filed application under Section 245 Cr.P.C and disclosed true material facts. Learned trial court rejected the application ignoring the fact that the allegation against the revisionist is groundless and the case of the revisionist is fully covered by Section 245 (2) Cr.P.C. It is also submitted that the learned trial court failed to appreciate that the proceedings under Section 245 (2) Cr.P.C is to be followed than the provisions provisions under Section 245(1) Cr.P.C. Section 245(2) Cr.P.C dealt with power of trial court discharging an accused even before evidence under Section 244 Cr.P.C is lead. Learned trial court failed to exercise its jurisdiction under Section 245 (1) Cr.P.C. It is submitted that

the learned trial court has rejected the applicant even the case is fully covered by Section 245(2) Cr.P.C, hence it is prayed to set aside the impugned order. Lastly, learned counsel for the revisionist has relied upon the judgment of this Court in the case of Manoj Kumar and others Vs. State of U.P. and others reported at 2016 (3) JIC 329 (Alld) to contend that Section 245(2) Cr.P.C is a stage before the evidence of the prosecution under Section 244(1) is completed or any stage prior to that; such stages would be under Section 200, Cr.P.C to Section 204 Cr.P.C because the next stage is only the appearance of the accused before the Magistrate in a warrant case under Section 244 Cr.P.C and the Magistrate can take decision under Section 245(2) before the accused is brought before the Court or before the evidence is led under Section 244, Cr.P.C. There is no question of consideration of evidence at that stage.

None appeared for the private respondent, learned A.G.A for the State submitted that the order passed by the learned trial court is within the purview of jurisdiction of the Court. The revisionist moved an application for discharge at the premature state before recording of the statement of the complainant under Section 244 Cr.P.C which was duly rejected by the learned trial court.

I have heard the rival submissions and perused the record.

From the perusal of record, it appears that learned trial court after hearing the parties rejected the application on the ground that the application under Section 244 Cr.P.C is not recorded, the revisionist had not appeared in the court, the contention of the revisionist that he joined as Branch Manager in the U.P. Co-operative Village Development Bank Limited Branch Tanda, Ambedkar Nagar on 29.08.1998 and was relieved from the aforesaid branch on 18.08.2003. Thereafter the revisionist joined branch at Jalalpur.

Learned trial court held that this fact is to be proved by evidence and relying on the case of **Adalat Prasad Vs. Roop Lal Jindal and others 2005 (JIC) SC** and also on the order passed by this Court in the case of **Attar Singh Vs. State of U.P. (2010)(2) DNR page 558** rejected the application. Before proceeding further, it will be appropriate to reproduce Section 245(2) Cr.P.C which runs under:

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

A bare perusal of Section goes to show that once a case is instituted upon the private complaint, after recording the evidence, discharge application can be entertained. In police case there will be only one cross examination however in private complaint case, there will be two cross examinations. The major classification of criminal cases in Code of Criminal Procedure are:

- (1) Case instituted on the basis of police report (Section 238 to 243).
- (2) Case instituted otherwise than on police report based on complaint Sections (244 to 247)

In the case of **Vijayan Vs. State of Kerals and another (2010) SCC 398** and in the case of **Union of India Vs. Prafulla Kumar Samal and another AIR 1979 SC 366** wherein the Hon'ble Supreme Court has formulated the following guiding principles:

"1. The judge while considering the question of framing the charges U/Sec. 227 Cr.P.C has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case

against the accused has been made out. To determine prima facie case would depend upon the facts of each case.

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

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

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

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

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

7. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused irrespective of the result of the trial."

There are major distinction as regards discharge of accused from warrant case instituted upon police report and warrant case instituted upon private complaint filed under Section 200 Cr.P.C. In **Ajay Kumar Gosh Vs. State**

of Jharkhand and other 2009 (14) SCC 115, Hon'ble Apex Court has held that there is clear difference in Section 245 (1) and 245 (2) Cr.P.C. In Section 245(1) Cr.P.C Magistrate has to consider evidence lead by prosecution before him under Section 244 and he is to consider whether if the evidence remain unrebutted, conviction of accused would be wanted. If there is no discernible incriminating material in evidence, then the Magistrate proceed to discharge the accused under Section 245(1) Cr.P.C.

The situation under Section 245(2) Cr.P.C however, is different. Under Section 245 (2) the Magistrate has power to discharge the accused at any previous stage of the case even before such evidence is led. However for discharging an accused under Section 245(2) Cr.P.C the Magistrate has come to a finding that the charge is groundless. There is no question of any consideration of the evidence at this stage because no witness will be examined on behalf of the complainant except the sworn statement under Section 200 Cr.P.C. The Magistrate can take this decision before the accused appears or brought before the Court or the evidence is led under Section 244 Cr.P.C. The word appearing in Section 245 (2) Cr.P.C " At any previous stage of the case" clearly shows different position. Now the question arise as to what the previous stage is. The previous stage would obviously be before evidence of prosecution under Section 244 (1) Cr.P.C is completed or at any stage prior to that. This stage may be under Section 200 Cr.P.C to Section 204 Cr.P.C in the case in hand the court had find the evidence which was lead by complainant under Section 200 and 202 Cr.P.C and conclusion reached to the conclusion that the revisionist may be summoned under Section 203 Cr.P.C. Notice were also sent to the revisionist under Section 204 Cr.P.C. However, revisionist instead of appearing in the court moved the petition under Section 482 Cr.P.C challenging the summoning order. Vide order dated 25.03.2019 a Co-

ordinate Bench of this Court did not find any abnormality, in the impugned order of summoning the accused, therefore, the order was upheld, however, the revisionist was given the relief that no coercive action shall be taken against the applicant if he appears before the court in 30 days and move an application for discharge through counsel.

It transpires from the impugned order that the complainant had not lead evidence under Section 244 (1) Cr.P.C and the discharge application is moved at the prior stage, hence, the case of the present applicant is covered under Section 245 (1) Cr.P.C. In **Satish Mehra Vs. Dehli Administration and others** reported in **(1996) 9 SCC 766**, Hon'ble Apex Court held that under Section 239 Cr.P.C the Magistrate has to give the prosecution and the accused a fair chance of being heard besides taking cognizance of the police report and document. The Magistrate has to apply its judicial mind while considering the discharge application. If the accused brings any trustworthy material at that stage or it drastically effect even a very fesibility of the case, it would be very improbable to recommend that no such material would be taken into consideration by the court at this stage.

Hon'ble Apex Court has held that if the accused produces any evidence material at the stage of framing of charge which might drastically effect very sustainability of the case it infer that no such material should be considered into by the court at this stage.

In the given case, the plea of revisionist is that he joined as Branch Manager of Tanda Branch on 29.08.1998 and relieved for Jalalpur Branch on 18.08.2003, however, the incident occurred when he has been relieved for Jalalpur Branch and the revisionist was not posted in the branch when the incident occurred. The incident is not itself challenged by the

revisionist he moved an application for discharge on the ground that he was not posted at the branch at the relevant point in time.

Trial Court must consider the fact that whether the accused revisionist was posted at the relevant point in time in the Tanda Branch. Nothing has been disclosed in the impugned order whether the revisionist was posted at Tanda Branch when the incident occurred. The Court had liberty to discharge the applicant under Section 245 (1) even prior to the evidence led under Section 244 Cr.P.C. If the revisionist was not posted at the date of incident, the revisionist cannot be forced to face the trial to which he has no concerned. Hence the court should consider the preliminary objection of the applicant that whether he was posted at the relevant point in time or not at the Tanda Branch.

In view of the above discussions, this Court finds that impugned order dated 27.05.2019 passed by learned Civil Judge (Senior Division) suffers with material lacunae which was not considered by the Court.

Hence the impugned order dated is quashed

The matter is remitted to the court concerned. The trial court shall consider the fact whether the revisionist was posted at the relevant point in time in Branch Tanda or not and if it is found that he was not posted and and he has no complicity, then he consider the application of discharge of the revisionist. The trial court is also directed to give opportunity of hearing to the parties.

(Renu Agarwal,J.).

Order Date :- 4.1.2024
Nadeem