

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CRIMINAL REVISION CASE No.790 of 2014**

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**ORDER:**  
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Aggrieved by the order dated 13.01.2014 passed in Crl.M.P.No.2474 of 2013 in C.C.No.521 of 2008 on the file of the Judicial First Class Magistrate, Bodhan, the present revision is filed by the petitioners, who are accused Nos.1 to 6 in the above case.

The facts in issue are as under:

On the basis of report given by one Smt. Swetha a case in Crime No.257 of 2008 of Bodhan Police Station, came to be registered for the offences punishable under Sections 406 IPC and Section 6 of the Dowry Prohibition Act. Police investigated into the crime and referred the case as false. Subsequently, the first respondent herein filed a protest petition, pursuant to which sworn statement of the victim was recorded and the case was taken on file against the petitioners for the offences punishable under Sections 498-A and 506 IPC and Section 4 of the Dowry Prohibition Act, 1961. Later summons were issued to the accused. While things stood thus, the petitioners herein filed Crl.P.No.9771 of 2009 seeking quashing of the proceedings, which was dismissed for non-prosecution. Later, accused Nos.1 to 6 again filed Crl.Petition No.9760 of 2013 which was also rejected giving liberty to the petitioners to file an application for discharge if the charges are not framed.

Thereafter, the petitioners filed Crl.M.P.No.2474 of 2013 before the trial Court for discharge. The said application was dismissed insofar as petitioner Nos.4 to 6 on the ground that the case is posted for evidence before charge as such it is premature to discharge accused Nos.4 to 6. However, accused Nos.1 to 3 were discharged as they were already tried for the same charges. Challenging the said order, accused Nos.4 to 6 filed the present revision.

Learned counsel for the petitioners submits that even accepting the allegations in the complaint and the statement of witnesses to be true, no offence is made out against the petitioners. According to him, under Section 245 Cr.P.C. the Court can discharge the accused at the initial stage itself as such, the impugned order is contrary to the provisions of the Act. In support of the same, he relied upon the judgment of the Apex Court in *Amitbhai Anilchandra Shah v. Central Bureau of Investigation and another*<sup>[1]</sup>.

Per contra, Sri M.Raja Malla Reddy, learned counsel for the first respondent submits that question of invoking the power under Section 245 Cr.P.C. does not arise at this stage as all the witnesses cited in the complaint are not yet examined and the case is posted for evidence before charge.

Section 245 Cr.P.C. reads as under:

245 Cr.P.C. when accused shall be discharged. (1) 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.

(2) 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 reading of Section 245 Cr.P.C. makes it clear that an application for discharge under the said Section would arise only after recording of all the evidence adduced by the prosecution.

The scope of Section 245 (2) Cr.P.C. came up for consideration before this Court in **Anil Kumar Aggarwal v.**

**K.C.Babu and others**<sup>[2]</sup>, wherein this Court held as under:

“The application before the trial Court was for discharge under Section 245 Cr.P.C. The circumstances under which the trial Court can discharge an accused under Section 245 Cr.P.C. are very limited. It is only when the trial Court, upon taking all the evidence referred to in Section 244 Cr.P.C., and for reasons to be recorded, finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, that it can discharge the accused.”

In the present case, the evidence of some of the witnesses is yet to be recorded. It is not in dispute that under Section 245 (2) Cr.P.C., an exception is carved out which empowers the Magistrate to discharge the accused at any previous stage, if he considers that the charge is groundless. Basing on the said proviso the Court has already discharged accused Nos.1 to 3, since they were already tried and convicted for the same offence. Since the complainant is yet to lead the entire evidence, before charge it may not be proper for this Court to invoke the power under Section 245 (2) Cr.P.C.

and discharge the accused.

A perusal of the contents in the protest petition and also the impugned order would show that all the witnesses cited by the complainant are not yet examined. The trial Court while rejecting the application categorically held that the case is still at the stage of recording evidence before charge. Therefore, merely because the case against accused Nos.1 to 3 was thrown out on the ground that they are already prosecuted for identical offence in other crime the same does not by itself warrant discharge without giving an opportunity to the complainant to lead evidence. The same would be totally contrary to the spirit of Section 245 (2) Cr.P.C. Hence, the judgment relied upon by the counsel for the petitioners may not be any helpful to him.

Giving liberty to the petitioners to renew their application after recording the statements of all the witnesses, the present Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, shall stand closed.

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**JUSTICE C. PRAVEEN KUMAR**

04.03.2015

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[\[1\]](#) 2013 (3) SCJ 595

[\[2\]](#) 2003 (2) ALD (Cr.) 828 (A.P.)