

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.350 of 2017**

Arising Out of PS. Case No.-2742 Year-2013 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

Sunil Kumar

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manindra Nath Tiwari
For the Opposite Party/s : Mr.Smt. Rita Verma

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER**

3 28-02-2019 Heard learned counsel for the petitioner as well as
learned A.P.P.

At an earlier occasion on the ground of ailment of learned counsel for the petitioner prayer for adjournment was made and considering the same, adjournment of three weeks was granted, during midst thereof, the report from the lower court with regard to the stage of the case has been sought for and the same is available, communicated vide letter no. 3 dated 23.01.2019 from the Court of Additional Chief Judicial Magistrate IV, Gopalganj. After perusal of the same, it is evident that two witnesses including the complainant have been examined under Section 244 Cr.P.C and then thereafter, the complainant's evidence was closed on 12.12.2017, since thereafter the matter is pending for framing of charge more



particularly in the background of having a petition at the end of the petitioner for discharge in accordance with section 245 Cr.P.C.

In the aforesaid background, now on account of evidence having before charge will certainly eclipse the order of the cognizance and that being so, whatever material before the learned lower court at the stage of 190 Cr.P.C could not be a ground to challenge the order of cognizance, when the evidences in terms of section 244 of the Cr.P.C. came, the matter is to be considered, in the background of having an opportunity to an accused to raise the plea in accordance with section 245 Cr.P.C for discharge. When the evidences whatever been adduced in accordance with section 244 Cr.P.C did not make out any offence for which an accused is to be prosecuted that means to say, no legal material subsists in order to justify framing of charge. That being so, an accused is to be discharged under Section 245 of the Cr.P.C. As such, in the changed circumstances, having a new set of material, to be considered in light of principle governing the issue, the order impugned goes out of consideration. In the aforesaid facts and circumstances, the instant petition loses its vitality, and is accordingly rejected.

However, perceiving the inordinate delay in keeping



the matter pending under Section 245 Cr.P.C., learned lower court is directed to decide the issue by next date after receiving the copy of the order impugned.

Office to communicate.

(Aditya Kumar Trivedi, J)

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