

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20895 of 2023

Arising Out of PS. Case No.-1515 Year-2017 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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KUMARI SANDHYA SUMAN WIFE OF AJIT KUMAR RESIDENT OF VILLAGE - JADUA, P.S. - HAJIPUR TOWN, DISTT. - VAISHALI AND AT PRESENT RESIDING AT DAUGHTER OF LATE ANANT KUMAR PRASAD @ ANANT PRASAD, VILL. - LAWAPUR, WORD - 13, P.S. -MAHNAR, DIST. - VAISHALI.

... .. Petitioner/s

Versus

1. The State of Bihar
2. AJEET KUMAR SON OF MANGAL BHAGAT RESIDENT OF VILLAGE - JADUA, P.S. - HAJIPUR TOWN, DISTT. - VAISHALI
3. MANGAL BHAGAT SON OF LATE SHAVIR BHAGAT RESIDENT OF VILLAGE - JADUA, P.S. - HAJIPUR TOWN, DISTT. - VAISHALI
4. SHANTI DEVI WIFE OF MANGAL BHAGAT RESIDENT OF VILLAGE - JADUA, P.S. - HAJIPUR TOWN, DISTT. - VAISHALI
5. SANJAY KUMAR SON OF MANGAL BHAGAT RESIDENT OF VILLAGE - JADUA, P.S. - HAJIPUR TOWN, DISTT. - VAISHALI

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Niraj Kumar, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, APP
For the Complainant	:	Mr. Awadhesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 29-08-2023 1. Heard learned counsel for the petitioner and learned APP for the State along with learned counsel for the complainant.

2. The learned counsel for the petitioner submits that the present application has been filed seeking quashing of the order dated 17.06.2022 passed by the learned Sub-Divisional Judicial Magistrate, Hajipur, Vaishali in Complaint Case No.



1515 of 2017 whereby the learned Sub-Divisional Judicial Magistrate has been pleased to close the evidence before charge of the complainant and further to quash the consequential order dated 12.07.2022 passed in the case whereby all the accused persons have been discharged invoking the provision of Section 245 of the Cr.P.C.

3. The learned counsel for the petitioner has raised a legal issue and submits that the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.') contains provision which deals with the question of framing of charge or discharge. It is next submitted that Sections 227 and 228 of the Cr.P.C. deal with discharge by the Sessions Judge in a case related to Session Trial and Section 228 of the Cr.P.C related to framing of charge. Similarly, Section 239 Cr.P.C. incorporates discharge relating to warrant trials and Section 240 Cr.P.C. similarly relates to framing of charge. It is next submitted that Section 245(1) Cr.P.C. deals with summon trials and Section 245(2) Cr.P.C. relates to discharge of an accused. It is next submitted that discharge of an accused in cases instituted otherwise than on a police report are covered under Section 245 Cr.P.C.

4. The learned counsel for the petitioner next submits that the power to discharge under Section 245(1) Cr.P.C is



exercisable, when the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which if un-rebutted would warrant his conviction. It is further submitted that Section 227 and Section 239 Cr.P.C. respectively provides for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 Cr.P.C. is reached only after the evidence referred to in Section 244 Cr.P.C. has been taken.

5. The learned counsel for the petitioner further submits that in the present case, the evidence from the side of the complainant and her witnesses were not taken and thereafter the same was made a ground for discharging the accused under Section 245 Cr.P.C. It is further submitted that from perusal of the order dated 12.07.2022, it would manifest that the learned Magistrate has recorded that the accused persons have been acquitted, though, the Magistrate was considering their



application for discharge under Section 245 Cr.P.C. It is next submitted that instead of closing the evidence of the complainant, the Court could have imposed heavy cost and thus would have allowed the complainant to bring her evidence on record when already an application seeking time was there on record from the side of the complainant.

6. The learned A.P.P. for the State, Mr. Jharkhandi Upadhyay along with learned counsel for the complainant vehemently opposes the submissions made by the learned counsel for the petitioner and submits that the order dated 12.07.2022 has to be read in its context and one word from the order cannot be culled out to submit that the accused persons were acquitted. It is thus submitted that accused persons were discharged under Section 245 of the Cr.P.C., though, the word recorded in the order is acquitted.

7. The learned A.P.P., Mr. Jharkhandi Upadhyay, at this stage, very fairly submits that from perusal of the order impugned, it would manifest that same is not based on any evidence recorded under Section 244 Cr.P.C. which is mandatory for exercising power under Section 245(1) of the Cr.P.C.

8. Considering the submissions made by the learned



counsel for the petitioner, the order dated 17.06.2022 passed by the learned Sub-Divisional Judicial Magistrate, Hajipur, Vaishali in Complaint Case No. 1515 of 2017 and the order dated 12.07.2022 discharging all the accused persons by the learned Sub-Divisional Judicial Magistrate, Hajipur, Vaishali in Complaint Case No. 1515 of 2017 are hereby set aside and the matter is remanded back to the learned Trial Court to act in accordance with law.

(Satyavrat Verma, J)

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