

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

237

CRM-M-26801-2013 (O&M)

Date of decision: 16.01.2023

BUDH RAM

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Parmod Parmar, Advocate
for respondents No.2 & 3.

Mr. Anil Ghanghas, Advocate
for respondents No.4 & 5.

DEEPAK MANCHANDA, J.(ORAL)

This petition has been filed for setting aside the order dated 17.05.2013 passed by Sessions Judge, Bhiwani in Criminal Revision No.20 of 2011 and order dated 18.01.2011 passed by Judicial Magistrate Ist Class, Siwani vide which respondents No. 2 to 5 are wrongly discharged under Sections 420, 467, 471, 323, 452, 506, and 34 of IPC with the further prayer that present petition be accepted and respondents No.2 to 5 be charge sheeted for facing trial on merits in the complaint case.

Brief facts of the present petition are that the petitioner had filed a criminal complaint No.2-1C dated 14.01.2005 alleging therein that petitioner/complainant is in possession of the land measuring 30 bighas 13 biswas as per the Jamabandi for the year 1994-95 situated in the Revenue Estate, Siwani.

In the month of September, 2002, respondents No. 2 and 3 namely Nar Singh and

Banarsi Dass, respectively threatened the petitioner to sell the suit property after taking the possession and on 03.10.2002, they tried to take the possession with the help of other persons upon which complainant filed a civil suit on 04.10.2002, which is pending for adjudication. As per allegation in the complaint dated 02.01.2005 at around 06.00 PM, all the accused came to the house of the petitioner with common intention and having lathis in their hands, respondent No.3 caught hold the neck of the petitioner and pushed him, who fell down. The accused further gave a Lalkara that the land be vacated and the case be withdrawn. On hearing this, the other persons came there to save the complainant from accused. After recording preliminary evidence, the accused-respondents No.2 to 5 were summoned under Sections 323, 452, 506 read with Section 34 IPC by the trial Court vide order dated 03.03.2007, whereas no offence prima facie was found against the accused under Sections 420, 467 & 471 IPC. In pre-charge evidence, petitioner examined as many as four witnesses, where he got examined himself as PW-3 and his precharge evidence was closed by order of the Court.

After hearing both the sides and going through the precharge evidence, trial Court discharged the accused vide impugned order dated 18.01.2011.

Thereafter, revision petition was preferred against the order dated 18.01.2011, which was dismissed by revisional Court vide impugned order dated 17.05.2013.

Learned counsel for the petitioner contends that the trial Court illegally closed the pre-charge evidence of the complainant vide order dated 10.01.2011. He submits that the petitioner/complainant appeared as PW-3 on 16.11.2010 and his examination-in-chief was recorded but same was deferred along with other remaining evidence for 29.11.2010. On 29.11.2010, no cross-

examination of petitioner was conducted and the case was adjourned to 13.12.2010. On 10.01.2011, although the petitioner was present in the Court and was also ready to face cross-examination, but the trial Court passed the order by mentioning therein that in spite of availing several opportunities, no evidence of the petitioner is present and closed the precharge evidence of the petitioner. He also submits that thereafter, vide impugned order dated 18.01.2011 respondents No.2 to 5 were wrongly discharged by the trial Court. He further contends that the Courts below have not appreciated the precharge evidence and entered into the detailed discussions on the merits and demerits of the case where there was sufficient evidence against the respondents No. 2 to 5 to chargesheet and to frame charges against them, but have been wrongly discharged and again prays for setting aside the orders dated 18.01.2011 and 17.5.2013 passed by the Judicial Magistrate as well as the Revisional Court.

Learned State counsel while referring to the short reply dated 07.05.2015 on behalf of the State submits that after adducing precharge evidence, the trial Court discharged the private respondents from the charges vide order dated 18.01.2011 and thereafter, revision against the said orders was also dismissed vide order dated 17.05.2013 and submits that both the orders passed by the Courts below have been rightly passed.

Learned counsels for the respondents No. 2 and 3 and respondents No.4 & 5 submit that respondents No. 2 to 5 have been rightly discharged by the trial Court and the Revisional Court has also rightly dismissed the revision petition filed by the petitioner as after recording his examination-in-chief, the petitioner never appeared in the witness box to face the cross-examination. So his evidence cannot be considered as legal evidence in the eyes of law and cannot be taken into consideration for deciding the question. He further argues that a civil litigation is

pending between the parties and petitioner filed suit for injunction against the respondents No. 2 to 5 in which stay application was also dismissed, and thereafter appeal filed against the said order was also dismissed. Hence, complaint filed by the petitioner was only a pressure tactic where there is no substance, and trial Court has rightly discharged all the respondents vide order dated 18.01.2011.

Having heard learned Counsel for the parties at length and considered all materials furnished before this Court, the question that falls for consideration before this Court is whether the trial Court rightly discharged the accused from the offences. As per order dated 17.05.2013 in precharge evidence in order to prove his ownership on suit land the petitioner/complainant examined his son as PW1- Mahender Singh, PW2- Kitab Singh, official of consolidation office, Hissar, PW3- Budh Ram, petitioner himself and PW4-Ramphal, registration Clerk, Tehsil Siwani but the trial Court while passing the order observed that petitioner was not the owner of the said suit land and even did not deny the ownership of the respondents and only claimed himself to be the cultivator of the land as tenant. Moreover, the said sale was never challenged by the complainant nor any document was produced showing that petitioner was cultivating the same in any capacity. Hence in such circumstances, petitioner failed to prove the allegations of cheating and forgery against the respondents No.2 to 5. It is further observed in the order that petitioner appeared as PW-3 in witness box and his examination-in-chief was recorded on 16.11.2010 but was deferred and thereafter, petitioner never appeared in the witness box for his cross-examination and said statement could not be read against the respondents No.2 to 5. Accordingly, the same was discarded. The revisional Court while dealing with the issue mentioned that the only statement against the respondents No.2 to 5 for framing charge is PW-1 namely Mahender son of the petitioner who in his statement supported the allegations, whereafter

from the cross-examination of the said Mahender, it had been proved that the complaint was filed only to pressurize the respondents No.2 to 5 as the civil litigation was pending between the parties. The Revisional Court concluded that respondents have rightly been discharged as there was no material on record to frame the charges under Sections 323, 452 and 506 of IPC read with Section 34 of IPC and observed that even if the entire evidence of the petitioner remained un rebutted, still it was not sufficient to warrant the conviction of the respondents No.2 to 5.

The Hon'ble Supreme Court, in the matter of **Ajoy Kumar Ghose v. State of Jharkhand & Anr, bearing Criminal Appeal No.485 of 2009 decided on 18.03.2009**, observed as under:-

“14. However, in a warrant trial instituted otherwise than on a police report, when the accused appears or is brought before the Magistrate under Section 244(1) Cr.P.C., the Magistrate has to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. In this, the Magistrate may issue summons to the witnesses also under Section 244(2) Cr.P.C. on the application by prosecution. All this evidence is evidence before charge. It is after all this, evidence is taken, then the Magistrate has to consider under Section 245(1) Cr.P.C., whether any case against the accused is made out, which, if unrebutted, would warrant his conviction, and if the Magistrate comes to the conclusion that there is no such case made out against the accused, the Magistrate proceeds to discharge him. On the other hand, if he is satisfied about the prima facie case against the accused, the Magistrate would frame a charge under Section 246(1) Cr.P.C. The complainant then gets the second opportunity to lead evidence in support of the charge unlike a warrant trial on police report, where there is only one opportunity. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence,

firstly, before the charge is framed and secondly, after the charge. Of course, under Section 245(2) Cr.P.C., a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.

16. Now, there is a clear difference in Sections 245(1) and 245(2) of the 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 unrebutted, 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. 17. The situation under Section 245(2) Cr.P.C. is, however, different. There, under sub-Section (2), the Magistrate has the power of discharging the 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. It will be better to see what is that "previous stage". 18. 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. 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 sessions. Under Section 202(1)(b) Cr.P.C., no such direction can be given, where the complaint has been made by the Court. 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. On the other hand, if he 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. 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. 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., makes an application for discharge.”

Further, in the matter of **Sajjan Kumar v. Central Bureau of Investigation, 2010 (9) SCC 368**, the Hon'ble Supreme Court observed as under:-

- “17)Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.*
- On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-*
- (i) The Judge while considering the question of framing the charges under Section 227 of the 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. The test to determine prima facie case would depend upon the facts of each case.*
 - ii) 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.*
 - iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
 - iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required*

to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) 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 and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Further, this Court in the matter of **Surinder Kumar alias Palu Singh & Others** decided on 17.05.1983 passed in Criminal Revision No.1574 of 1982, observed as under:-

“6. Sections 245 and 246 of the Code of Criminal Procedure are found in Chapter XIX-B of the Code. They apply to cases instituted otherwise than on police report. An analogous set of provisions is sections 239 and 243 found in Chapter XIX-I of the Code pertaining to cases instituted on a police report. So far as the trial before a Court of sessions is concerned, whether it be instituted on a police report or a complaint, the relevant provisions of law are Sections 227 and 228 of the Code. For the stage of the aforesaid three sets of twin provisions, the legal position uniformly understood is that the Court has to apply the test whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction,

*and when there is prima facie evidence the matter has to be put to even though the person charged of an offence might have a plausible defence. In **State of Bihar v. Ramesh Singh**, AIR 1977 SC 2018, their Lordships of the Supreme Court, taking note of **Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and another**, AIR 1963 SC 1430, observed as follows :-*

"Reading these two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor purpose to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilty or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

*But in Ramesh Singh's case (supra), it was also noted that in **Nirmaljit Singh Hoon v. The State of Bengal and others**, AIR 1972 SC 2639 Shelat, J., had illustratively further added "Unless, therefore, the Magistrate finds that the evidence led before him is self- contradictory or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case". Neither of these cases is that of section 245 of the Code of Criminal Procedure.*

7. But the expression "if unrebutted would warrant his conviction" is perhaps a pointer towards proper interpretation of section 245 of the Code. Such an expression is significantly not employed either in sections 239/240 or sections 227/228 of the Code. Here, by cross-examining the complainants witnesses material can obviously be brought in to innately rebut the prosecution evidence and thereby claim that it has become "self contradictory or intrinsically untrustworthy" as the expression was employed by the Supreme Court in Chandra Deo Singh's case (supra). The Court at that stage, to my mind, is entitled to see whether there are inherent weaknesses, basic infirmities and improbabilities in the prosecution case. But, in coming to that conclusion, the trial Magistrate is of course required to record reasons for the purpose. Even in sub-section (2) of section 245 of the Code, the Magistrate can, at any previous stage of the case, discharge the accused if he considers the charge to be groundless. Therefore, in my view even, at the stage of section 245 of the Code, the Magistrate can take into account the material introduced during cross- examination of the witnesses and, if a plausible defence has been introduced, weigh the case in its entirety and say that the prosecution case is intrinsically untrustworthy and suffers from infirmities and improbabilities"

Further, this Court in the matter of ***Subhash Chander v. State of Punjab, passed in Criminal Misc. No.3240-M of 1996***, it was observed as under:-

“(8) From the bare perusal of Section 245 of the Code, it is evident that before framing a charge, it is the paramount duty of the Court to consider the evidence produced by the prosecution/complainant and to see whether the same constitute prima facie case against the accused. The scope of Section 245 of the Code does not speak about meticulous consideration of evidence, but it definitely mandates a sincere and honest application of mind to the allegations made and that the Court shall find out that the grounds or ingredients of an offence alleged are made out. This Section does not contemplate a

*mechanical approach, but it expects a reasonable and judicious approach to know the existence of grounds and establishment of a prima facie case. If there is no prima facie case, or sufficient and strong grounds to proceed against the accused are not made out and the allegations are baseless or the proceedings are mainly aimed at harassing an accused, under such circumstances it is just and proper for the Court to discharge the accused and thus prevent abuse of the process of the Court. In **Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra AIR 1972 SC 545**: it was held:*

It cannot be said that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution."

20. A perusal of the same shows that the Court is not expected to act as a post office and the Judge has to sift and weigh the evidence as well as the material placed before it. Hence, even though Court may not get into the probative value of the evidence at the stage of framing of charge/discharge, if there are two views that are possible and only one of them gives rise to a suspicion, the Judge would be empowered to discharge an accused. Law would permit the Court to examine the evidence, without going into the probative value thereof, and to determine whether the same, if un-rebutted, is prima facie sufficient to lead to a conviction."

Having carefully perused the evidence on record and the principles of law laid down by the Hon'ble Supreme Court in the Judgments referred to supra, this Court is of the considered opinion and reiterate here that in terms of Section

245 of the Cr.P.C., the trial Court is indeed required to examine whether any case against the accused has been made out which if unrebutted, would warrant his conviction and in such a circumstances, the Magistrate should discharge him.

In light of the evidence, as well as the perusal of orders passed by the Revisional Court as well as the Judicial Magistrate in the present case, they have carefully considered the provisions of Sections 244 and 245 of the Cr.P.C and correctly concluded that no material exist prima facie to frame charges against the Respondents No.2 to 5. Consequently, the present petition does not survive, hence the same is dismissed.

Pending application(s), if any, stands disposed of.

January 16, 2023
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(DEEPAK MANCHANDA)
JUDGE

<i>Whether reasoned/speaking?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>