

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-39213-2015(O&M)

Date of Decision:-28.04.2023

Arun Gupta.

.....Petitioner.

Vs.

J.P. Meena.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Surinder Gandhi, Advocate for the Petitioner.

Mr. Deepak Sabharwal, Advocate for the respondent.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 482 Cr.PC is for setting aside order dated 20.12.2014 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Rohtak vide which the respondent/accused came to be discharged and the order dated 17.09.2015 passed by Additional sessions Judge, Rohtak (Annexure P-7) whereby the order of discharge was upheld with a further prayer that the proceedings be continued against the respondent /accused in furtherance of the complaint dated 23.05.2012 and summoning order dated 29.10.2013.

2. The brief facts of the case are that the petitioner-complainant (hereinafter known as the complainant) filed a complaint under Section 500 IPC and 501 IPC against the respondent/accused (hereinafter known as the accused). The copy of the complaint dated 23.5.2012 is attached as Annexure P-1 to the petition.

The petitioner appeared as CW-1 along with three other

witnesses and got recorded their respective statements before the Trial Court. Based on the said statements, the Judicial Magistrate Ist Class, Rohtak vide order dated 29.10.2013 summoned the respondent for having committed the offence punishable under Sections 199 Cr.PC and Sections 500 & 501 IPC. The copy of the said order is attached as Annexure P-2.

3. The respondent-accused appeared before the Trial Court and moved an application under Section 245 Cr.PC for discharge. The copy of the said application dated 14.09.2014 is attached as Annexure P-3. A reply was filed to the said application which is attached as Annexure P-4. Vide order dated 20.12.2014 the Judicial Magistrate Ist Class, Rohtak accepted the application for discharge. The copy of the said order dated 20.12.2014 is attached as Annexure P-5.

4. The petitioner/complainant filed a criminal revision petition against the said order. The said revision petition was dismissed by the court of Additional Sessions Judge, Rohtak vide order dated 17.09.2015 which is attached as Annexure P-7.

5. The aforementioned orders of discharge (Annexure P-5) and the order vide which the discharge was upheld (Annexure P-7) are impugned in the present petition.

6. The Counsel for the petitioner contends that the accused had moved an application under Section 245 Cr.PC seeking discharge. Section 245 Cr.PC fell in Chapter XIX and pertains to Trial of Warrant Cases by Magistrates. The instant complaint was infact a summons case which was triable by a Magistrate and therefore, the application for discharge, if at all was to be moved under Section 251 Cr.PC which falls under Chapter XX. He, therefore, contends that the impugned orders were liable to be quashed and the Trial ought to proceed against the respondent/accused. Reliance is

placed on the judgments in *Raj Buildcon Constructions Ltd. & Ors. Vs. Kotak Mahindra Bank P. Ltd.* 2015 (8) RCR (Criminal) 698, *Bal Ram Vs. Bses Rajdhani Power Ltd. & Anr.* 2015(9) RCR (Criminal) 903, *Arvind Kejriwal & Ors. Vs. Amit Sibal & Anr.* 2014(9) RCR (Criminal) 1952, *S.K. Bhalla Vs. State & Ors.* 2011(5) RCR (Criminal) 826 & *Dr. Kamala Rajaram Vs. Dy. S.P. Office of the S.P. (Rural) Neyyattinkara & Anr.* 2005(16) RCR (Criminal) 765.

7. The Counsel for the respondent/accused has filed a reply dated 12.03.2018. Reference is made to Section 245 Cr.PC as also certain judgments of Hon'ble Supreme Court. He does not dispute the proposition of law as has been enunciated by the counsel for the petitioner-complainant but contends that the application under Section 245 Cr.PC could be treated as one under Section 251 Cr.PC by this Court and since a detailed order had been passed discharging the accused, the same ought not to be interfered with.

8. I have heard learned Counsel for the parties.

9. Before proceedings further it would be apposite to refer to the relevant provisions of law. The same are reproduced hereinbelow:-

“ Definitions:-

Section 2(w):- summons case means a case relating to an offence and not being a warrant case.

Section 2(x):- warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

Chapter XIX

Trial of Warrant Cases by Magistrates:-

A.-Cases instituted on a police report

Section 238 Cr.PC

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Section 239 Cr.PC

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Section 240 Cr.PC

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Section 241 Cr.PC

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Section 242 Cr.PC

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Section 243 Cr.PC

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B-Cases instituted otherwise than on police report

Section 244 Cr.PC

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Section 245 Cr.PC:-

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 rebutted, 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.

Chapter XX

Trial of Summons cases by Magistrates.

Section 251 Cr.PC:-

Substance of accusation to be stated.-- When in a summons- case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

Section 252 Cr.PC

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Section 253 Cr.PC

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Section 254 Cr.PC

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Section 255 Cr.PC

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Section 256 Cr.PC

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Section 257 Cr.PC

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Section 258 Cr.PC:-

Power to stop proceedings in certain cases.--In any summons- case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

Section 259 Cr.PC

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Sections 499, 500 & 501 IPC are reproduced hereinbelow:-

Section 499 IPC:-

Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Section 500 IPC:-

Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 501 IPC:-

Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

10. The relevant judgments with respect to the interpretation of Sections 251 and 258 Cr.PC are as under:-

The Hon’ble Delhi High Court in **Raj Buildcon Constructions**

Ltd. & Ors. Vs. Kotak Mahindra Bank P. Ltd. 2015(8) Criminal) 698 held as under:-

5. In view of authoritative pronouncement of the Apex Court in *Bhushan Kumar & Krishan Kumar (supra,)* as referred to hereinabove, inherent powers of this Court under Section 482 of the Cr.P.C. are not exercised and petitioners are relegated to urge the pleas taken herein before the trial court at the hearing on the point of framing of Notice under Section 251 of Cr.P.C. and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. At the stage of framing of Notice under Section 251 of Cr.P.C., trial court is not expected to function like a post office and to mechanically frame Notice, but is rather bound by law to apply its mind to find out whether *prima facie* case is made out against the accused or not. Similar view has been already taken by a coordinate Bench of this Court in **S.K. Bhalla v. State and Others 180 (2011) DLT 219.**

6. Needless to say, if the trial court finds that no case is made out against petitioners, then the decision of the Apex Court's in **Adalat Prasad v. Rooplal Jindal and Ors. (2004) 7 SCC 338** will not stand in the way of trial court to drop the proceedings against petitioners and if trial court chooses to proceed against petitioners, then petitioners will have the remedy as available in the law. It is so said because dropping of proceedings at Notice stage cannot possibly be equated with recalling of summoning order.

The Hon'ble Delhi High Court in **Bal Ram Vs. Bses Rajdhani**

Power Ltd. & Anr. 2015(9) RCR (Criminal) 903 held as under:-

‘3. At the outset, it is made clear that learned counsel for petitioner has not been heard on merits. Since petitioner has an alternate and efficacious remedy available to him to urge the pleas taken herein before trial court at the time of framing of Notice under Section 251 of Cr.P.C., therefore, this court finds that inherent powers of this Court under Section 482 of the Cr.P.C. are not required to be invoked to quash the proceedings arising out of the complaint in question. It is being so said in view of dictum of the Apex Court in **Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr. AIR 2012 Supreme Court 1747**, which persuades this Court not to exercise inherent jurisdiction under Section 482 Cr.P.C. to entertain this

petition. The pertinent observations of Apex Court in Bhushan Kumar (Supra), are as under:-

"17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

7. Purely as an interim measure, till the arguments on the point of framing of Notice under Section 251 of Cr.P.C. are concluded, personal appearance of petitioner be not insisted upon by the trial court upon petitioner filing an application under Section 205 of Cr.P.C. along with his affidavit with the following undertaking: -

- a. that the proceedings of the case shall be regularly conducted by counsel (whose name shall be disclosed in application), who shall appear on behalf of petitioner on every hearing and will not seek adjournment;
- b. that petitioner shall not dispute his identity as accused in the case;
- c. that the petitioner shall appear in person as and when directed in future to do so; and
- d. at petitioner shall not raise the question of prejudice in future.

The Hon'ble Delhi High Court in ***Arvind Kejriwal Vs. Amit***

Sibal & Anr. 2014(9) RCR (Criminal) 1952 has held as under:-

" 18. The power of the Trial Court to discharge the accused at the stage of notice under Section 251 Cr.P.C. is based not only on sound logic but also on a fundamental principle of justice as a person against whom no offence is disclosed cannot be put to face the trial. Added advantage is that the High Court will have the benefit of the considered opinion of the Magistrate, and it can always exercise its inherent power if it feels that the Magistrate had gravely erred but to ask this Court to interfere at the very threshold of the prosecution does not appear appropriate because it practically amounts to shifting of the prosecution case from the competent court of the Magistrate to this Court.

20. In view of the authoritative pronouncements of the Supreme Court in *Bhushan Kumar (supra)*, *Krishna Kumar Variar (supra)* and *Maneka Gandhi (supra)* and of this Court in *Raujeev Taneja (supra)*, *Urrshila Kerkar (supra)* and *S.K. Bhalla (supra)*, the accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. in all summons cases arising out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the accused. However, in the event of the learned Magistrate not finding a prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles laid down by the Supreme Court in *Bhushan Kumar (supra)*, *Krishna Kumar Variar (supra)* and *Maneka Gandhi (supra)*.

21. Applying the aforesaid principles to this case, the petitioners are permitted to urge the pleas raised in this petition before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. whereupon the learned Metropolitan Magistrate shall consider them and pass a speaking order. The learned Magistrate shall frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the petitioners. The learned Magistrate shall be empowered to discharge/drop the proceedings against the petitioners if no case is made out against them. Needless to say, if the learned Magistrate chooses to frame notice under Section 251 Cr.P.C., the petitioners would be at liberty to avail the remedies as available in law.

22. This petition and the applications are disposed of on the above terms. It is clarified that this Court has not examined the contentions of the parties on merits which shall be considered by the learned Metropolitan Magistrate.

The Hon'ble Delhi High Court in ***S.K. Bhalla Vs. State & Ors.***

2011(5) RCR (Criminal) 826 has held as under:-

subsequent to issue of process under Section 204 Criminal Procedure Code in a summons trial case. This section casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and ask him whether he pleads guilty. This can be done by the Magistrate only if the charge sheet/complaint/preliminary evidence recorded during enquiry disclose commission of a punishable offence. If the charge sheet/complaint does not make out a triable offence, how can a Magistrate state the particulars of non-existing offence for which the accused is to be tried. Therefore, it is inherent in Section 251 of the Code of Criminal Procedure that when an accused appears before the Trial Court pursuant to summons issued under Section 204 Criminal Procedure Code in a summons trial case, it is bounden duty of the Trial Court to carefully go through the allegations made in the charge sheet/complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty, otherwise, he is bound to discharge the accused.

The Hon'ble Kerala High Court in ***Dr. Kamala Rajaram Vs. Dy. S.P. Office of the S.P. (Rural), Neyyattinkara & Anr. 2005 (16) RCR (Criminal) 765*** has held as under:-

“ 8-9. The larger question whether Section 251 would justify discontinuance of the proceedings in all summons cases, whether instituted on a police report or otherwise need not be considered in this case. Suffice it to say that in a summons case instituted otherwise than upon a complaint, Section 251 read with Section 258, Criminal Procedure Code, 1973 does clothe the learned Magistrate with the requisite power to discontinue further proceedings and release the accused at the stage of Section 251, Criminal Procedure Code, 1973 or later if the learned Magistrate feels that the allegations and the materials placed before him do not justify continuance of the proceedings against the indictee. Directing continuance of proceedings when allegations and materials collected do not justify such continuance will be the worst form of injustice.

10. This petition is, in these circumstances, dismissed but with the above specific observations.

Petition Dismissed.”

11. Coming back to the facts of the present case, the application for discharge under Section 245 Cr.PC is not maintainable in the instant case. Since the Trial is to be conducted by a Magistrate in a summons case, sentence being upto 02 years, the appropriate provisions of law in which an application for discharge can be moved is under Section 251 Cr.PC. The said position of law has been enunciated in the aforementioned judgments. Therefore, there is considerable merit in the arguments raised by the petitioner.

12. In view of the above, the present petition is allowed. The order of discharge dated 20.12.2014 (Annexure P-5) passed by JMIC, Rohtak and the order dated 17.09.2015 (Annexure P-7) passed by the Additional Sessions Judge, Rohtak whereby the order (Annexure P-5) passed by the JMIC has been upheld, are hereby quashed. The case is remanded back to the Trial Court for further proceedings in accordance with law. However, the accused is at liberty to move an appropriate application for discharge under Section 251 Cr.PC. If the said application is moved, the Trial Court shall adjudicate upon the same within a period of 04 weeks from the date of receipt of a certified copy of this order.

13. It is made clear that this Court has expressed absolutely no opinion on the merits of the case. Therefore, the Trial Court is free to adjudicate upon the matter in accordance with law.

14. The petition stands disposed off.

(JASJIT SINGH BEDI)
JUDGE

April 28, 2023
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No