

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1067 of 2018

Arising Out of PS. Case No.-857 Year-2013 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Niraj Kumar and Ors S/o Gyaneshwar Das,
 2. Gyaneshwar Das S/o late Baldeo Das,
 3. Bimla Devi W/o Gyaneshwar Das, All R/o Mohalla- Hussainganj, P.O. P.S.- Barh, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr.
2. Rekha Kumari W/o Niraj Kumar, R/o Mohalla- Hussainganj, P.O. P.S.- Barh, District- Patna, present Address D/o Vijay Das, Vill.- Khawasa, P.O.- Chero, P.S.- Harnaut , District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the O.P. No.2	:	Mr. Krishna Deo Raj, Advocate
For the State	:	Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 15-02-2024 By an order dated 9th July, 2018, the learned S.D.J.M., Nalanda at Biharsharif in C.R. Case No. 857(C)/2013 rejected an application under Section 245 of the Code of Criminal Procedure filed by the accused Niraj Kumar, Gyaneshwar Das and Nirmala Devi.

2. The said order dated 9th July, 2018 is under challenged in the instant Revision.

3. Section 245 of the Code of Criminal Procedure relates to discharge of an accused in respect of the cases instituted otherwise than police report, after recording evidence



for the prosecution. The provision runs thus :-

Section 245. When the 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.

4. Thus, precondition of application of Section 245 of the Code of Criminal Procedure is that the Magistrate will have to take evidence of the witnesses on the basis of the prosecution under Section 244 of the Cr.P.C. Secondly, the Magistrate shall have to consider the evidence on record before charge. And if the learned Magistrate finds that no case against the accused has been made out, which, if unrewarded would warrant the conviction of the accused. The Magistrate shall record the reasons and discharge the accused.

5. In the instant Case, it is contended on behalf of the petitioners that all the witnesses on behalf of the complainant are interested witnesses. They are the family members of the paternal home of the complainant. Marriage of accused Niraj Kumar with the complainant was solemnized in



the year 2010. On 17th January, 2012, the said Niraj Kumar filed an application before the Human Rights Commission, Bihar alleging, inter alia, that his wife is quarrelsome lady, she did not perform her obligation as a wife, she did not attain different festivals and performance of pooja etc. celebrated in her matrimonial home. During holidays, she being a teacher of a school used to visit her paternal home and did not come to the house of the petitioner. It was also lodged that the wife of the petitioner did not give any share of her income at her matrimonial home.

6. The Human Rights Commission passed an order directing the police authority to settle the dispute by way of Mediation, and subsequently, being a matrimonial dispute, it was rejected.

7. Now comes the question as to whether the above mentioned points are sufficient to discharge an accused under Section 245 of the Cr.P.C. It is already settled that in a matrimonial proceeding, the family members of the complainant cannot be said to be interested witnesses, and as a result of interestedness, their evidence cannot be thrown away. On the contrary, in a dispute between a husband and wife which generally remains in closed door, the family members are the



best witnesses. The learned Magistrate considered the evidence of the complainant and other witnesses to happens to be the family members of the complainant. At this stage, the learned Magistrate has no right and authority to discovered the evidence and witnesses on the ground of interestedness of the family members of the complainant. Whether the witnesses on behalf of the complainant described true affairs of the incidents or not can be tested in the touchstone of the cross-examination. Without cross-examination, evidence of no witness can be held to be false that would warrant discharge of an accused.

8. The learned Magistrate in the impugned order stated that the complainant has produced five witnesses namely, Rekha Kumari, Santosh Kumar, Sanjay Kumar, Urmila Devi and Vijay Das on the point of charge. It further appears that the witnesses are supported the allegations against the above accused as prima facie found by the court. At the time of consideration of charge, the trial court will consider prima facie case.

9. The word “Prima Facie Case” has not been disclosed in any statute. However, going to the judicial president, it means the facts and incidents concerning a case which lead the complainant to go for trial. Evidence before



charge under Section 244 of the Cr.P.C., is not the stage to consider as to whether proposed charge has been proved or not. The said fact will be available after cross-examination of the witnesses on behalf of the prosecution, after consideration of charge.

10. On perusal of the evidences on record, which is made part of the record by filing a counter affidavit by the petitioners, this court also finds that prima facie case has been established against the petitioners. Therefore, I do not find any merit in the instant Revision and the same is dismissed on contest.

(Bibek Chaudhuri, J)

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