

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3785 of 2017

**Chandi Charan Patra
Vs.
The State of West Bengal & Anr.**

For the Petitioners : Mr. Swapan Kumar Mallick
Mr. Sayan Mukherjee

For the State : Ms. Sreyashee Biswas
Mr. Manoranjan Mahata

For the Opposite Party no.2 : Mr. Sarbananda Sanyal
Mr. Sounak Mandal

Heard on : 22.07.2025

Judgment on : 31.07.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioner herein has assailed the impugned judgment and order dated 15.07.2017, passed by Learned Additional Sessions Judge, FTC 2nd Court, Tamluk, in Criminal Revision No. 194 of 2016, whereby and whereunder the court below set aside the trial Court's order of discharge passed in favour of

the petitioner herein, dated 28th October, 2016 and thereby requested the trial court to record evidence of the witnesses of the opposite party/complainant and thereafter to pass an order as per the provisions of law.

2. Being aggrieved by the order passed by the court below, learned counsel for the petitioner submits that the petitioner herein by dint of an agreement for sale, filed a suit for specific performance of contract and said suit being Other Suit no. 88 of 1993 was decreed in favour of the petitioner and the court directed the defendant to execute sale deed in favour of petitioner herein in respect of the suit property vide judgement dated 22nd March, 2011. Thereafter failure on the part of the defendant, the deed was executed by the executing court in favour of the petitioner in Execution Case no. 2 of 2012 by an order dated 23rd November, 2012. By dint of that sale deed the petitioner got possession over the suit property with the help of court bailiff on 25th January, 2013. Thereafter petitioner herein Chandi Charan Patra lodged a written FIR to the Panskura Police Station that on 25th January, 2013, he was given possession of the land through the process server of court but on 04.02.2013 at about 4.30 p.m., taking advantages of his temporary absence the opposite party /accused persons broke open the lock so fixed by him of the said house and entered the said house and stolen utensils and valuable gifts and on the basis of such allegations, Panskura Police Station case no. 29 of 2013 dated 04.02.2013 under sections 448/461/380/34 of the IPC was started. After completion of investigation on 31st March, 2013 police submitted charges sheet in the said case. After conclusion of trial the Trial Court convicted offender Mrityunjoy

Sahoo and Dipali Sahoo, being GR case no. 187 of 2013. It is further submitted that challenging the order of conviction dated 06.07.2022 an appeal has been preferred before the learned Sessions Judge, being Criminal appeal no. 4 of 2023.

3. It is alleged by the petitioner herein that as a counter blast, opposite party no. 2 herein lodged a complaint before the Judicial Magistrate, Purba Medinipur under section 156(3) of Cr.P.C., against the petitioner and others and on 14th February, 2013 under the order of jurisdictional Magistrate, the police started investigation being Panskura Police Station Case No. 52 of 2013 under sections 147/ 148/ 149/ 448/ 323/ 380/ 427/ 506(2) of IPC. However, after completion of investigation police submitted final report in the said case stating “mistake of fact” on 07.06.2013.

4. Against that final report, the opposite party no.2 herein filed protest petition (Naraji petition) on 12.11.2013 and the Trial Court on the basis of said objection petition, directed to treat the same as complaint and transfer the case to the judicial Magistrate, 2nd Court Tamluk being CR case No. 280 of 2013 vide order dated 12th November, 2013. Thereafter on 5th August, 2016, petitioner herein filed a discharge application before the Trial Court under section 245(2) of Cr.P.C.

5. Learned trial Magistrate while disposing the said application for discharge came to a finding vide order dated 28th October, 2016 that from the documents, it reveals that as per the order of Civil Court the accused no. 1/ petitioner herein is the owner of the land in dispute and he was also given possession of the land by the order of the court. Now the allegations of the complainant is that accused persons entered into his house and

ransacked his house and took away articles from his house and assaulted them. But from the documents filed by the accused persons it transpires that the owner of the land which complainant claims as his own, actually belongs to accused no.1 and he was in possession of the land as per the order of the Civil Court and therefore, allegation of the complainant that accused persons entered into his house deems to be false and as such he found that the allegations are groundless and therefore, the prayer of the accused persons for discharging them from the case was allowed.

6. Being aggrieved by the said order of discharge, the opposite party herein preferred Criminal Revision before the court below and the court below by the impugned order observed that it is admitted fact that after recording initial ejahar of the witnesses of the complainant, learned court himself was pleased to issue summon against the accused persons not only under sections 448/380/427 of the IPC but also under section 323/506 of IPC. However in the discharge order dated 28th October, 2016, no reason has been assigned by the learned Judicial Magistrate as to why he discharged the accused persons from the allegation of commission of offence under sections 323/506 of IPC. Accordingly the Court below set aside the order of discharge and directed the trial court to record the evidence of the witnesses of the petitioner/complainant and thereafter to pass any order as per the provisions of law.

7. Being aggrieved by the said order Mr. Mallick learned counsel for the petitioner submits that the petitioner became owner of disputed property by dint of aforesaid sale deed executed by the Executing Court namely Civil Judge (Senior Division), Tamluk in favour of the petitioner and thereafter he

obtained possession of the property with the help of the court bailiff. The allegations levelled in the complaint are false and frivolous and has been made just to harass the petitioner and other accused persons. In fact the trial Magistrate rightly discharged the accused persons under the provisions of section 245(2) of the Cr.P.C. which provides that nothing in the said 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. Accordingly the court below has erred in holding that the Trial Court was not justified in discharging the accused person without recording evidence of the complainant side. Mr. Mallick prays that the order impugned passed by the court below is to be set aside and the order of discharge passed by the trial court vide order dated 28.10.2016 be affirmed.

8. Learned counsel appearing on behalf of the opposite party raised objection against the submissions made on behalf of the petitioner and contended that order impugned is fully justified. He further contended that the petitioners themselves admitted that they were dispossessed by the opposite party no.2 and thereafter nothing has been brought before the court to show that their possession was restored by the court and as such the allegation as levelled against the petitioner in the complaint has good grounds to go for trial. Therefore the observation of the trial court in discharging the accused persons is baseless and criminal complaint cannot be automatically quashed by a Magistrate simply because a civil dispute involving the same subject matter is also pending. The key factor is whether a prima facie criminal case is established or not. He further contended that

the initial ejahar (deposition) given by the opposite party no.2 herein and one Laxmi Sahoo corroborates with the aforesaid fact and squarely supports the case of the opposite party no.2 herein. Therefore, the allegations made against the petitioner by the opposite party no.2 herein relating to house trespass/ theft /hurt/ criminal intimidation under sections 448/323/380/506 IPC are prima facie established to proceed with the charges and as such the order impugned does not call for interference by this court.

9. I have considered submissions made by both the parties.

10. Before going to further details let me reproduce section 245 of the Code of Criminal Procedure.

"245. 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 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.

WEST BENGAL.- *After sub-section (2) of the Section 245 insert the following sub-section namely :-(3) If the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused." [W.B. Act 24 of 1988, Section 2]"*

11. From the abovementioned provisions of the Code, it is quite clear that while considering an application under section 245 of the Cr.P.C., the Judge is required to record reason, if he decides to discharge the accused persons with the view that the charge is not required to be framed in respect of which the summons were issued against the accused persons. In the present case admitted position as appearing from the impugned judgment is

that after recording initial ejhar of the witnesses of the complainant, learned court was pleased to issue summon against the accused persons under sections 448/380/427/323/506 of the IPC. From the order of discharge dated 28.10.2016, it is palpably clear that the trial court has dealt with the allegations of the complainant that the accused persons illegally trespassed into the house and such allegation, according to the trial court cannot stand since accused no. 1 got ownership and possession of the land and being owner of the land he cannot trespass his own land and therefore the allegations of 448 of IPC may not stand against the present petitioner. However from the said impugned order of the trial court it is clear that he has not dealt with other part of allegations of the complainant, that the accused persons entered into his house and ransacked his house, took away articles from his house and assaulted them. He only dealt with the issue that accused persons cannot trespass in his own land which is under his possession. Accordingly it is clear that the trial court while discharging the accused persons, he has not dealt with the allegations of commission of offence under the other sections, though after initial deposition he had issued process against the above mentioned sections.

12. Sub section (2) of Section 245 contains the words “at any previous stage of the case” and it further states that the magistrate for “reasons to be recorded” may discharge the accused if he considers the charge to be groundless. The word “groundless” used in sub section (2) signifies that if acting judiciously a magistrate has come to the conclusion that the charge must fail for any reasons, then there is nothing to prevent the Magistrate from discharging the accused at any previous stage of recording evidence,

provided he records reasons for such discharge. In fact, it is well settled that failure to record reasons for discharging the accused vitiates the order of discharge. Therefore, recording reasons, while discharging the accused from a particular offence is mandatory. There must be enough materials in the order to enable a higher court to see if the discharge was proper. However, the reasons need not be recorded in any form and it is enough, if the reasons can be gathered from the order itself.

13. In such view of the matter, I am agreeable with the observation made by the court below that trial Court had not assigned any reasons as to why he has discharged the accused persons from the allegation of commission of offence under the abovementioned sections, besides the allegations of criminal trespass. As I have already stated above that it is obligatory on the part of the trial Court to assign reason while he has decided to discharge the accused persons from each of the allegations, in respect of which he had issued process against the accused persons.

14. However since the prayer is under section 245(2) of Cr.P.C., I am not agreeable with the observation made by the court below where he requested the Magistrate to record the evidence of the witnesses of the petitioners/complainants side and thereafter pass any order as per the provisions of law and therefore that portion of the order passed by the court below is hereby set aside.

15. The order passed by the court below is hereby modified to the extent that the trial court is directed to re hear the petition filed by the petitioners herein under section 245(2) of the Cr.P.C. and to pass a reasoned order if he is in favour of discharging the accused persons from all the allegations in

respect of which he had issued process after taking initial deposition. Such re hearing shall be concluded by the trial court preferably within a period of two months from the date of the communication of this order after giving opportunity to both the parties to contest.

16. CRR 3785 of 2017 is stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)