

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.161 of 2023

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IA NO:CRAN/2/2024

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CRAN/3/2025

RAJA CHANDRA GARG & ORS.

VS.

STATE OF WEST BENGAL & ANR.

**For the Petitioners : Mr. Anirban Duta, Adv.
Mr. Sachetan Ghosh, Adv.**

For the State :

Last heard on : 29-01-2026.

Judgement on : 29-01-2026.

Uploaded on : 30.01.2026.

CHAITALI CHATTERJEE (DAS), J. :-

- 1.** None appears on behalf of the opposite parties.
- 2.** This is an application praying for setting aside the order dated December 01, 2022 whereby the learned Judicial Magistrate, 6th Court, Sealdah, dismissed the application under Section 245(3) of the Code of Criminal Procedure filed by the petitioners on March 12, 2019 in connection with Complaint Case No.751 of 2013.

- 3.** The present petitioner nos.1 to 3 are the Directors/occupiers of Auto Carriage Pvt. Ltd. and having the showroom at 135A, S. P. Mukherjee Road, Kolkata-26, which deals in selling, repairing of automobiles and they look after the business of M/s. Auto Carriage Pvt. Ltd. The petitioner no.4 is an employee of such reputed concern as Human Resource Manager of the said company. The opposite party no.2 who was an erstwhile employee under the petitioner nos.1 to 3 worked as Sales Consultant with the said company. Due to certain defalcation caused in the showroom by the opposite party no.2, a complaint was registered with the Airport Police Station Case No.312 of 2013 against the opposite party no.2. Subsequently, as a counterblast to the said proceeding, he lodged the purported complaint in the court of learned Additional Chief Judicial Magistrate, Sealdah, under Section 200 of the Code of Criminal Procedure alleging inter alia that the present petitioners have forced the opposite party no.2 to sign in various fake documents to cover up the trade of some defalcation which was caused by the petitioner nos.1 to 3. Over the same, a complaint was filed under Sections 195(A), 326, 406, 506 Part II read with Section 120B of the Indian Penal Code.
- 4.** The complaint was lodged in the year 2013 and after completion of all formalities, the present petitioners appeared before the court on October 07, 2013. Since therefore, the proceeding is kept pending for evidence of the petitioner no.1 since 2014-2022.
- 5.** The learned advocate appearing on behalf of the petitioners submits that since there was a prolonged delay without any reason causing serious prejudice and

harassment to the mind of the petitioners , One application was filed under Section 245(3) of the Code of Criminal Procedure praying for discharge on the ground that even after more than four years have elapsed, the evidence was not completed and the proceeding was not concluded. It is further submitted that prior to that, one application under Section 205 of the Code of Criminal Procedure was also filed by the petitioners which was allowed dispensing appearance of the petitioners but on account of the absence of the learned advocate of the petitioners only for a day warrant of arrest was issued thus they had to file another application under section 205 Cr.P.C which again kept pending. Both the petitions under Section 245(3) as well as 205 of the Code of Criminal Procedure were pending since 2019 and the petitioners took out one criminal revisional application before this Court and by virtue of the direction passed by a coordinate Bench of this Court on November 15, 2022, the learned Magistrate took up the matter for hearing and passed the order on December 01, 2022 whereby the prayer of the petitioners under Section 245(3) was rejected. It is specifically submitted that the petitioners being the accused have a right to speedy trial which has been violated and in terms of the specific provision; the present petitioners are entitled to be discharged. In support of this contention, a decision has been relied upon by the learned advocates for the petitioners in the case of **State of West Bengal Vs. Gulab Bhai P. Chandrana**¹ .

¹ 2025 SCC Online Cal 5075

6. Since none appears on behalf of the opposite parties despite receiving service, the matter is heard in absence of the opposite parties.

7. Having heard the learned advocate representing the petitioners and on careful perusal of the materials on record, it transpires that refusal to allow the prayer of the petitioners under Section 245(3) of the Code of Criminal Procedure, for discharge on the ground that the trial was not concluded within the statutory period of time has given rise to file this revisional application. The proceeding was initiated on the basis of a complaint lodged by the opposite party no. 2 and the accused persons were before the court long back in October, 2013. On a close scrutiny of the certified copies of the orders filed before this Court it transpires that on number of occasions, the complainant did not turn up before the court which prima facie shows the lackadaisical attitude on the part of complainant in proceeding with the case. It is undisputed that on some occasions, the accused persons also did not turn up, but the certified copies of the orders clearly speak off that even in the event of filing of 317 application on behalf of the accused persons, the further examination of the complainant was not taken up mostly on the grounds of adjournment sought for by the complainant.

8. While passing the order by the coordinate Bench for expeditious disposal of such application the learned Co-ordinate Bench expressed dissatisfaction over the delay in passing order in respect of the applications filed under section 245(3) and 205 of the code of criminal procedure which were kept pending since 2019 to 2022 when an order was passed issuing warrant against the

petitioners. In fact, the order was passed on November 15, 2022 by the coordinate Bench and the order impugned was passed immediately after that, that is, on December 01, 2022 that is within fortnight. The learned Magistrate refused the prayer of the petitioners on analyzing the dates when the accused persons also did not turn which compelled the court to issue Warrant of Arrest and on cumulative consideration of the materials on record, the court was of the view that the delay was caused by the complainant in proceeding with his evidence is attributable not solely owing to the fault on the part of the complainant as alleged by the accused persons .

9. In such factual backdrop let the provision itself be scrutinized.

Section 245(3) with the State amendment is hereby reproduced:

“245. When accused shall be discharged

(1) If, upon taking all 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.

STATE AMENDMENT : SECTION 245

West Bengal

After sub-section (2), the following sub-section shall be inserted, namely :-

“(3) If the evidences 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”. ”

10. It is, therefore, clearly mentioned that on the part of the prosecution an effort should be seen to produce the witnesses within four years from the date of appearance of the accused, and the Magistrate shall discharge the accused unless the satisfactory ground is shown for presuming that it shall not be in the interest of justice to the discharge of the accused. In this case, the complaint was under Section 195A, 326, 206, 506 Part II of the Indian Penal Code but the summons was issued only in respect of Sections 506 Part-II and 120B of the Indian Penal Code.

11. In the decision as relied upon by the learned advocate for the petitioners in the case of **Gulab Bhai P. Chandrana (supra)** where the Special Judge referring the provisions under Section 245(3) of the Code of Criminal Procedure quashed the proceeding and acquitted the respondent from the charge of the case and such order was challenged in the appeal and considering the provisions, the coordinate Bench was of the view that it will not prejudice the respondents even if the service is dispensed with and on consideration of all materials available on record, refused to interfere with such order of acquittal on discharge of the accused persons. It would not be out of place to mention herein that in the impugned order the Magistrate while passing the order assessed the delay caused taking the period of six years from the date of appearance till filing of the application for discharge but the learned Magistrate failed to consider that further three years were added

when the application was taken up for hearing, that too, by virtue of the direction of the coordinate Bench which means altogether there was delay of nine years in taking up the application and till such time the learned court was not precluded in taking up the evidence of the complainant during pendency of the hearing of those petitions .

12. In the aforesaid circumstances, after giving an anxious consideration of the entire matter with the nature of allegations made in the written complaint this Court is of the view that the order passed by the learned Magistrate is to be interfered with and is liable to be set aside. Hence, the prayer stands allowed and the petitioners herein are discharged in view of Section 245(3) of the Code of Criminal Procedure. The petitioners are hereby acquitted from the charges levelled against the petitioners.

13. Hence the revisional application and the connected applications are, accordingly, disposed of.

14. The department is directed to communicate the order to the concerned court for information and necessary compliance.

15. All parties shall act on the server copies of this judgment duly downloaded from the official *website* of this Court.

16. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]