

CRR 2889 of 2017

**M/s. Adservice Limited
Vs.
M/s. Bhawani Textiles Pvt. Ltd. & Ors.**

1. When the matter is called on for hearing, there is no appearance on behalf of the petitioner.
2. This revisional application, challenging the order of discharge dated 12th May, 2017, passed by the Learned Metropolitan Magistrate, Calcutta, in Complaint Case No. C/22976 of 2012, has been pending before this Court for nearly nine years. Despite numerous opportunities granted for prosecution, the petitioner has remained persistently absent. Given the vintage of this litigation and the consistent failure of the petitioner to represent its case, this Court finds it neither feasible nor in the interest of justice to keep this matter pending any longer. Accordingly, the Court proceeds to dispose of this matter on its merits based on the materials available on record.
3. The petitioner, a company engaged in publicity and advertisement, had initiated a complaint case against the opposite parties (M/s Bhawani Textiles Pvt. Ltd. and its Managing Director) alleging offences under sections 409 and 420 of the Indian Penal Code, claiming outstanding dues of Rs.14,42,508/- for services rendered. The learned Magistrate, after conducting an initial inquiry and issuing process, reached the stage of framing of charges under section 244 of the Code of Criminal Procedure. However, following the examination of the first prosecution witness, the accused moved an application for discharge under

section 245(1) of the Cr.P.C. The learned Magistrate, by the impugned order, allowed the discharge, observing that the complainant failed to exhibit foundational documents, such as work orders or bills or produced any corroborating evidence during the examination of PW1.

4. The core issue for determination is whether the Learned Magistrate correctly exercised the power of discharge under Section 245(1) of the Cr.P.C. A Magistrate is duty-bound to discharge an accused if, upon taking the evidence referred to under Section 244, the Magistrate concludes that no case has been made out which, if unrebutted, would warrant a conviction. This is a vital statutory safeguard intended to ensure that criminal processes are not misused for recovering civil debts where there is no evidence of *mens rea* or criminal breach of trust.
5. Upon a fresh review of the materials, it is evident that the complainant, despite alleging serious criminal offences, failed to place foundational evidence on record. While the complainant alleged that the accused withheld payment for advertisement services, the testimony of PW1 (the authorized representative) was not supported by the formal marking of any work orders, invoices, or legal notices as exhibits. The Learned Magistrate correctly noted that documents merely mentioned or filed with a list (*firisti*) do not constitute evidence unless they are formally produced and marked in Court. In the absence of such evidence, the essential ingredients of Sections 409 and 420 of the I.P.C. remained unproven.

6. Furthermore, the petitioner's grievance regarding the non-service of the discharge application is belied by the record, which indicates that the matter was heard on its merits. The Learned Magistrate, having considered the evidence adduced, concluded that the case lacked the requisite substance to proceed to trial. It is a settled principle of law that the burden of proof at the stage of framing charges rests on the prosecution to show a *prima facie* case. The failure to do so, especially when the complainant remains absent and fails to lead necessary evidence through other witnesses, leaves no ground for this Court to interfere with the Learned Magistrate's order.
7. In view of the above discussions, the instant revisional application, being C.R.R. No. 2889 of 2017, is hereby dismissed.
8. The order of discharge dated 12th May, 2017 passed by the learned Metropolitan Magistrate, Calcutta, is sustained.
9. Interim order/s, if subsisting, is/are stands vacated.
10. Photostat copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)