
(1997) 01 PAT CK 0004
In the Patna High Court
Case No : Criminal Miscellaneous No. 440/92

Smt. Kumkum Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 244, 245, 245(1), 245(2)

Citation : (1997) 1 PLJR 688

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Nand Kishore Prasad Sinha, for the Appellant; B.K.P. Sinha, for the Respondent

Judgement

R.N. Sahay, J.—This is an application u/s 482 Code of Criminal Procedure by the complainant of complaint Case No. 34 (c)/86. The Petitioner has prayed for quashing the order of the magistrate dated 30.9.91 whereby he discharged the accused persons-opposite party u/s 245(2) Code of Criminal Procedure without recording any evidence. The order of discharge was passed because the complainant had failed to examine any witness despite several adjournments. Section 245 Code of Criminal Procedure reads as follows:

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.

2. Section 245, Code of Criminal Procedure contemplates discharge of the accused at two stages; viz.-(i) after recording of all evidence referred to in Section 244 and (ii) at any previous stage of the case.

3. The phrase "at any previous stage" occurring in Section 245 of the Code of Criminal Procedure can only mean that after the stage of Section 203 is passed, but some evidence is recorded u/s 252 and before all the evidence referred to in Section 244 Code of Criminal Procedure is recorded. He cannot dismiss the complaint and discharge the accused before recording any evidence whatsoever u/s 245(1) Code of Criminal Procedure.

4. In P. Ugender Rao and Others Vs. J. Sampoorna and Others, dealing with identical question a learned Judge of A.P. High Court held as follows:

The Magistrate, thus, cannot discharge the accused before recording any evidence whatsoever u/s 244 of the present Code. Exactly same is the observation of the Supreme Court in Cricket Association of Bengal and Others Vs. State of West Bengal and Others, while dealing with the phrase in question occurring in Section 253(2), Code of Criminal Procedure of the old Code. In view of this case law, when even, for purposes of discharging the accused u/s 245, Code of Criminal Procedure it is incumbent upon the Magistrate to record some evidence, though not the entire evidence u/s 244 Code of Criminal Procedure the case for framing of charges u/s 246 Code of Criminal Procedure is an a fortiori one and accordingly unless and until the matter receives consideration u/s 245 Code of Criminal Procedure the charges contemplated by Section 246 Code of Criminal Procedure cannot be framed.

5. The magistrate dismissed the complaint for failure to examine the witnesses. From reading of Sub-section (1) Section 245, Code of Criminal Procedure it appears that were recording of reason in discharge is not sufficient. The magistrate cannot exercise this power unless some evidence has been recorded u/s 244 Code of Criminal Procedure.

6. The order is, therefore, without jurisdiction and is accordingly set aside.

7. The magistrate is directed to proceed with the trial and give opportunity to the Petitioner-complainant to produce the witnesses. The trial must be concluded within three months from the date of receipt of a copy of these order.

8. Let the Petitioner produce certified, copy of the order within two weeks from the date of receipt of the order.