

(1997) 08 PAT CK 0079
In the Patna High Court
Case No : Criminal Revision No. 67 of 1990 (R)

State Bank of India

APPELLANT

Vs

Nakul D. Kamani

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245, 245(1), 248
Penal Code, 1860 (IPC) — Section 420, 468

Citation : (1997) 08 PAT CK 0079

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Kameshwar Prasad, S.K. Sinha and Rajesh Kumar, for the Appellant;
T.R. Bajaj and K.M. Verma, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—This revision application is directed against the order dated 5.2.1990, passed by the learned Sub-divisional Judicial Magistrate, Jamshedpur, in C/1 Case No. 2 of 1988/T.R. No. 1786 of 1989 by Which the learned Magistrate in exercise of his power u/s 245 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has discharged the accused-opposite party from the charges under Sections 420 and 468 of the Indian Penal Code. It appears that a complaint petition was filed by the complainant-petitioner against the accused-opposite party for an offence under Sections 420 and 468 of the Indian Penal Code alleging therein, inter alia, that accused-opposite party Nakul D. Kamani was the Chairman-cum-Managing Director of Friends Press Metal Private Ltd. and in such capacity he took over charge from Mrs. Sarswati Devi on 2.6.1986. The accused was authorised by a resolution of the said concern to operate all the Bank accounts of the Company, which was in the State Bank of India, Bistupur Branch, Jamshedpur. The accused started operating all the accounts of the Company in the Bank, as he was also major share holder of the Company. On 15.5.87, the complainant-petitioner received a letter from one P. Guha Thakurta, General Manager-cum-Director of the Friends Press Metal Pvt.

Ltd., along with the copy of resolution of the Company, from which it was gathered that the accused had resigned from the Board of Directors of the said Company and also from the post of Chairman-cum-Managing Director with effect from 6.4.87, and his power to operate the Bank accounts was also revoked and the same was delegated upon P. Guha Thakurta. It is alleged that the copy of the said resolution was deliberately not sent to the complainant with an ulterior motive and in the meantime the accused-opposite party managed to withdraw a sum of Rs. 4,13,481.80 paise from the Cash Credit Account of the Company by issuing nine cheques. Again the accused even knowing that he was not the Managing Director of the Company signed and issued cheques on 8.4.1987, 10.4.1987 and 11.4.1987 and operated the account of the Bank and withdrew a sum of Rs. 14,383.80 paise, Rs. 15,000/- and Rs. 10,000/-, respectively, from the Cash Credit Account. Again on 10.4.1987 after antedating cheque No. 111017, the accused-opposite party withdrew a large amount of Rs. 2,95,000/-. It is further alleged that though the accused was not authorised to operate the Bank Account, he presented a number of bills for its purchase by the complainant and on 11.4.1987 and 13.4.1987, the complainant-Bank in good faith purchased the bills and had paid two sums of Rs. 20,841.36 paise and Rs. 51,362.20, which was 90% of the bills amount of the Company of the accused and thus the accused-opposite party dishonestly and fraudulently cheated the complainant-Bank by suppressing the resolution of the Company, by which he was not entitled to operate the Bank accounts. Thus the accused-opposite party for wrongful loss and wrongful gain committed an offence of forgery, as the Complainant-Bank has suffered substantial financial loss because of the deceptive role played by the accused-opposite party.

2. Pursuant to the complaint, the complainant was examined on solemn affirmation and cognizance of the offence was taken by the learned Magistrate and processes were issued to the accused-opposite party, who appeared before the learned Magistrate and filed a petition for his discharge from the case. The prosecution examined as many as five witnesses before framing of the charge. The learned Magistrate considering the petition filed by the accused-opposite party and also the evidence on record passed the impugned order discharging the accused-opposite party in purported exercise of its power u/s 245 of the Code.

3. Mr. Kameshwar Prasad, Learned Counsel appearing on behalf of the petitioner, submitted that the learned Magistrate could not have passed the order impugned as there was sufficient materials, which has come on the record by way of evidence to proceed against the accused and the learned Magistrate, while passing the order impugned has allowed the accused to file affidavit in support of its case and thus adopted a procedure quite unknown to law.

4. Mr. Kameshwar Prasad, Learned Counsel, with reference to the evidence on record submitted that the witnesses have proved that the accused operated the Bank account even though he was not authorised to do so as he had ceased to

be one of the Directors and Chairman-cum-Managing Director of the Company from 6.4.1987, and as such the accused-opposite party committed forgery with a view to cause wrongful gain and wrongful loss. Mr. Prasad further submitted that in view of the evidence, the learned Magistrate had no option but to proceed with the case and could have framed charges against the accused-opposite party and thereafter he should have taken recourse to law available to it as envisaged u/s 248 of the Code.

5. Mr. T.R. Bajaj, Learned Counsel appearing on behalf of the accused-opposite party, however, submitted that the procedure adopted by the learned Magistrate was quite permissible in law and he was entitled to consider the affidavit filed by the accused-opposite party. Learned Counsel further submitted that even at the face of the evidence of the witnesses examined before charge, sufficient materials were not there to proceed against the accused-opposite party and the learned Magistrate, therefore, has rightly exercised his power and has discharged the accused from the case.

6. I have perused the order impugned and I find that the learned Magistrate while considering the evidence of the prosecution witnesses has also taken into consideration the affidavit filed by the accused-opposite party and has categorically held that the documents of defence cannot be thrown, as it will be an abuse of the process of law if the court shuts its eye from such document because this will deter the court from arriving at a substantive conclusion. The court, therefore, held that the document of unimpeachable character of defence can be looked into.

7. Section 245 of the Code empowers a Magistrate to discharge an accused, when upon taking all the evidence referred to in Section 244, the Magistrate after judicial consideration of the matter if arrives at a conclusion no case has been made out against the accused which, if un-rebutted. would warrant his conviction. It further empowers the learned Magistrate not to discharge an accused, when there are sufficient materials to proceed against him.

8. For better appreciation of the provisions laid down u/s 245 of the Code, it would be necessary to see the provisions laid down u/s 244 of the Code. Section 244 of the Code reads as under : -

Evidence of prosecution.-(1) When in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. (2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Section 244 of the Code empowers the Magistrate in any warrant case instituted otherwise than on a police report to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution after the appearance of the accused.

9. Section 245 of the Code, which envisages power of discharge reads as under :-

When accused shall be discharged- (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reason to be recorded, that no case against the accused has been made out which, if un-rebutted, 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.

10. It appears that Section 245 of the Code empowers the Magistrate to discharge an accused only upon taking all the evidence referred to in Section 244 of the Code and only when the Magistrate finds, that no case against the accused has been made out which, if un-rebutted, would warrant his conviction, the Magistrate shall discharge him. Here emphasis has been made "if un-rebutted." Inference necessarily, therefore, will be that the accused shall have no chance of rebuttal of the evidence adduced by the prosecution at this stage, and the learned Magistrate shall have to decide the matter only on the basis of evidence led by the prosecution. This question has also been set at rest in the case of Lal Babu vs. Daulat Ram Khanna and others (1980 BBCJ 598). After noticing the provisions aforesaid, there is no doubt in my mind that the stage at which the Magistrate is required to consider the question of framing of charge u/s 245(1) of the Code is a preliminary one and the test of "prima facie" case has to be applied. The legal position is that if the trial court is satisfied that a prima facie case is made out, charges has to be framed.

11. On bare perusal of the order impugned, it appears that the learned Magistrate has not proceeded in exercise of his power u/s 245 of the Code only on the basis of the evidence produced by the prosecution, rather has also allowed the defence to have its say by filing affidavit and the learned Magistrate was candid in saving by the impugned order that he has jurisdiction to look into the defence for coming to a correct conclusion. The procedure adopted by the learned Magistrate, therefore, is wholly without jurisdiction as the same is unknown to law. The order impugned, therefore, is not sustainable in law.

12. Now coming to the submission made by Mr. Bajaj, Learned Counsel appearing for the opposite party, that even on the basis of the evidence adduced by the prosecution, no case is made out, it appears to be that the prosecution has examined five witnesses and on careful consideration of the evidence I am satisfied that there are sufficient materials making out an offence against the petitioner and thus in my considered view it was a fit case to proceed against the accused opposite party. The submission made on behalf of the accused-opposite party, therefore, is wholly misconceived.

13. Since I have already appraised the evidence on record and I am satisfied that an offence is made out against the accused-opposite party, it will be a futile exercise to remit back the matter to the learned Magistrate to proceed with the

matter afresh in exercise of his power u/s 245 of the Code. In that view of the matter and finding sufficient materials against the accused-opposite party to proceed against him, I allow this application and set aside the impugned order and direct the learned Magistrate to proceed with the matter in accordance with law.