

Nanhe Lal and Others Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jan-16-2014

Judge : Het Singh Yadav

Appeal No. : Criminal Revision No. 3640 of 2013

Appellant : Nanhe Lal and Others

Respondent : State of U.P. and Another

Judgement :

Het Singh Yadav, J.

This criminal revision is directed against the order dated 09.10.2013 passed by the Judicial Magistrate, Nawabganj, Bareilly on the application of the revisionists/accused purported to have been moved under Section 245(2) of the Code of Criminal Procedure (in short the Code) for discharging them.

Heard learned counsel for the revisionists and perused the record.

The short question that falls for determination in this revision is-whether the application of the accused moved under Section 245(2) of the Code to discharge them as the charge against them is groundless, can be dismissed on the ground that the summoning order challenged by the revisionists/accused has been dismissed by the revisional court.

The question arises in the following backdrop:-

The complainant/respondent no. 2 moved the application under Section 156 (3) of the Code before the learned Judicial Magistrate, was treated as complaint case. The Magistrate upon examining the complainant and her witnesses under Sections 200 and 202 of the Code and further being satisfied with an inquiry conducted in terms of Section 202 of the Code, issued process against the revisionists for the offences punishable under Sections 452, 323, 504, 506 I.P.C. The revisionists challenged this order in the court of Sessions Judge, Bareilly. However, the revision was dismissed. Thereafter, the accused/revisionists moved an application under Section 482 of the Code in this Court for quashing the summoning order as well as the order of the revisional court. This Court, however, vide order dated 13.9.2013 finally disposed of the application so moved by the accused/revisionists with the direction to the court below that in case the accused move an application under Section 245(2) of the Code before the Judicial Magistrate concerned within 30 days of the order, the same shall be heard and disposed of expeditiously in accordance with law. Accordingly, the accused/revisionists moved application under Section 245(2) of the Code before the Magistrate concerned alleging that the charge against them is groundless. The Magistrate, however, dismissed the application on the ground that the order of issuing process under Section 204 of the Code challenged by the accused in revision has been confirmed by the revisional court and, thus, the contention of the accused that the charge against them is groundless, has no merit. The accused/revisionists have again challenged this order in this Court.

Chapter XIX of the Code:

Trial of warrant cases by a Magistrate is divided into two categories : (A) cases instituted on a police report; (B) cases instituted otherwise than on police report.

Manifestly, the accused/revisionists have been summoned for the offences punishable under Sections 452, 323, 504, 506 I.P.C. triable as warrant case by a Magistrate. The learned Magistrate has issued process against the accused/revisionists under Section 204 of the Code and, therefore, the case is instituted otherwise than on police report. Thus, the procedure laid down in Part-B

of Chapter XIX of the Code will be applicable.

Before discussing the legal issue involved in this case, it would be expedient to go through the Chapter XIX, Part-B of the Code, particularly Sections 244, 245 and 246 which read as under:-

"244. Evidence for 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.

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.

246. Procedure where accused is not discharged.

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged."

The scheme of Chapter XIX Part-B of the Code laid down as above clearly indicate that in a warrant triable case instituted otherwise than on police report, the complainant gets two opportunities to lead evidence, first before the framing of charge and second after the framing of charge. Section 245(2) of the Code, however, empowers a Magistrate to discharge the accused at any previous stage of the case, if he finds the charge to be groundless. Since, it is a warrant trial instituted otherwise than on police report, therefore, essentially Sections 244 and 245 of the Code are applicable. Thus, there had to be an opportunity for the prosecution to lead evidence under Section 244 of the Code. This did not happen and instead the accused/revisionists proceed to file an application under Section 245(2) of the Code on the ground that the charge against them is groundless in view of the orders of this Court dated 13.9.2013 passed in Application U/S 482 No. 31446 of 2013, Nanhey Lal and others Vs. State of U.P. and another.

On bare reading of Section 245 of the Code, there is clear difference in Section 245(1) and 245(2) of the Code. At the stage of 245(1), the Magistrate has the advantage of the evidence laid by the prosecution before him under Section 244 of the Code and he has an opportunity to consider if the evidence remain unrebutted as to whether the conviction of the accused would be warranted. In case there is no discernible incriminating material and evidence against the accused, then the Magistrate proceed to discharge him under Section 245(1) of the Code.

The situation under Section 245(2) of the Code is, however, different. Sub-section (2) empowers the Magistrate to discharge the accused at any previous stage of the case, even before the evidence under Section 244 is led. To discharge an accused under Section 245(2) of the Code, the Magistrate has to come to a finding that the charge is groundless. The Magistrate can take decision to discharge the accused under Section 245(2) of the Code even before the accused appears or is brought before him or the evidence is led under Section 244 of the Code. Since, at that stage, there is no evidence on record and, therefore, the question of consideration of any evidence does not arise. In this case, the learned Magistrate has rejected the application under Section 245(2) of the Code for the reasons that the revision preferred by the accused, against the summoning order has been dismissed by the learned Sessions Judge, Bareilly and therefore there is sufficient, prima-facie, case against them and as such the charge against them is not groundless. The only point to be considered by the learned Magistrate for the disposal of the application under Section 245(2) of the Code, if moved by the accused, is that whether the charge is groundless or not. The Magistrate can discharge the accused even when he appears in pursuance of the summons or warrants and even before the evidence is led under Section 244 of the Code. If he makes an application for his discharge and the Magistrate is satisfied at any previous stage of the case that the charge is groundless, for the disposal of a discharge application under Section 245(2) of the Code, the Magistrate has to consider the allegations contained in the complaint.

In the case of **Ajoy Kumar Ghose Vs. State of Jharkhand and another, 2009 (14) SCC 115**, the apex court held thus:-

œ..... 31. The situation under Section 245(2) Cr.P.C., however, is different, as has already been pointed out earlier. The Magistrate thereunder, has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 Cr.P.C. and till the completion of the evidence of prosecution under Section 244 Cr.P.C. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 Cr.P.C., makes an application for discharge.

34. When the accused appeared in pursuance to the summons sent to him, under Section 244 Cr.P.C., the defence came out with an application. There can be no difficulty that the discharge application was perfectly in order at that stage. Therefore, what was available before the Magistrate besides this discharge application was, a bare complaint. There was absolutely nothing beyond the complaint available, for the Magistrate to consider the framing of charge. The Magistrate could, undoubtedly, have proceeded under Section 245(2) Cr.P.C., on the basis of discharge application and discharge him. However, he would have been required to give reasons for discharging at that stage, when no evidence or no material, whatsoever, was available with him, excepting a bare complaint.

35. The Magistrate, in this case, not only dismissed the application, but also proceeded to frame the charge, which order was also in challenge in the Writ Petition filed before the Division Bench. We have now to see as to whether the Magistrate was justified in dismissing the discharge application and then straightaway to frame a charge under Section 246(1) Cr.P.C. If under Section 245(2) Cr.P.C., there could be a discharge at any previous stage which we have discussed about, there is a necessary sequel, an application could also be made at that stage. ..?

The ratio laid down in the above cited case has been reaffirmed by the apex court in the case of **Sunil Mehta and another Vs. State of Gujarat and another, Criminal Appeal No. 327 of 2013 decided on 20th February, 2013.**

In view of the legal proposition discussed as above, the impugned order of rejection of application moved by the revisionist passed by the learned Magistrate

is not correct. The impugned order, therefore, deserves to be set aside.

Accordingly, the revision is allowed.

The impugned order dated 09.10.2013 passed by the Judicial Magistrate, Nawabganj, Bareilly in Complaint Case No. 1822 of 2011, Smt. Seema Vs. Ram Pal and others, under Sections 452, 323, 504, 506 I.P.C. is hereby set aside. The learned Magistrate concerned is directed to decide the discharge application under Section 245(2) of the Code of the revisionists afresh in the light of the observations made hereinabove in the body of this judgment.

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