

THE HIGH COURT OF SIKKIM: GANGTOK

(Criminal Revisional Jurisdiction) CNR: SKHC01-000055-2018

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl.Rev.P.No.01 of 2018

Ms. Hemlata Agarwal,
R/o M.G. Marg,
P.O. & P.S. Gangtok,
East Sikkim-737101.

.....Revisionist/Complainant

Versus

1. Travel Venture International Express P. Ltd.,
Through its Managing Director, Tarun Tirkha,
Having its registered office and residing at
7/6369, Street No.3, Dev Nagar,
Karol Bagh, New Delhi-110005.
2. Varun Tirkha,
Director
Travel Venture International Express P. Ltd.,
Having its registered office and residing at
7/6369, Street No.3, Dev Nagar,
Karol Bagh, New Delhi-110005.
3. Veena Tirkha,
Director
Travel Venture International Express P. Ltd.,
Having its registered office and residing at
7/6369, Street No.3, Dev Nagar,
Karol Bagh, New Delhi-110005.
4. Shikha Tirkha,
Director
Travel Venture International Express P. Ltd.,
Having its registered office and residing at
7/6369, Street No.3, Dev Nagar,
Karol Bagh, New Delhi-110005.
5. Shakti Sharad,
Director
Travel Venture International Express P. Ltd.,
Having its registered office and residing at
7/6369, Street No.3, Dev Nagar,
Karol Bagh, New Delhi-110005.

Also at:125, Vardhman Premium Mall,

Dipali Cwok, Pitam Pura, Delhi-34.

..... **Respondents**

Application under Section 397 and 401 read with section 482 of the
Code of Criminal Procedure, 1973.

Appearance:

Ms. Laxmi Chakraborty, Advocate (Legal Aid Counsel) for the
Revisionist.

Dr. Doma T. Bhutia, Senior Advocate with Ms. K.D. Bhutia and
Mr. Sourav Rai, Advocates for Respondent Nos.1 to 4.

None for Respondent No. 5.

Date of Hearing	:	17.08.2026
Date of Judgment	:	24.08.2026
Date on which uploaded	:	24.08.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The present Criminal Revision Petition invoking the provision of sections 397, 401 read with section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeks to challenge the impugned order dated 29.12.2017 passed by the learned Judicial Magistrate, Chungthang dismissing Private Complaint Case No.05/2014 filed by the revisionist against the respondents under section 200 of Cr.P.C. for alleged commission of offences under sections 420, 468, 409, 471 read with section 120B of the Indian Penal Code, 1860 (the IPC).

2. The impugned order dated 29.12.2017 records the learned Judicial Magistrate's satisfaction that the stage of the case was for examination of the complainant and her witness under section 244 Cr.P.C.. It also records that on 13.12.2017 the complainant (the

revisionist herein) had been examined and cross-examined as well. It further records that the revisionist wanted to examine one witness namely Dilip Kumar Modi, who had failed to appear on 13.12.2017 and had sought exemption on the ground that he had undergone kidney transplant and was therefore, unable to appear. Thereafter, the learned Judicial Magistrate seem to have perused the material on record, considered the pre-summoning evidence of the revisionist and her witness, the records/documents placed by the revisionist, made a detailed analysis of all those and finally came to the conclusion that the accused persons were liable to be discharged under section 245 Cr.P.C.. Accordingly the learned Judicial Magistrate held that the charge was groundless and exercising the power under section 245 of the Cr.P.C., dismissed the complaint and discharged the accused persons.

3. Essentially therefore, the present revision petition concerns the interpretation of sections 244 and 245 of the Cr.P.C. which are reproduced herein below:

"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."

4. The moot issue in the present revision petition in the facts of the case as narrated above, therefore, would be-could the learned Judicial Magistrate exercise power under section 245 (2) of the Cr.P.C. to discharge the accused persons?

5. The question seems to be sufficiently explained and answered by the judgment of the Supreme Court in **Ajoy Kumar Ghose vs. State of Jharkhand & Anr.**¹ relied upon by Dr. Doma T. Bhutia, learned Senior Advocate for the Respondent nos. 1 to 4 accused persons. Paragraphs 24 and 25 of the said judgment which succinctly explains the position is reproduced herein below:

"24. Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC.

25. The situation under Section 245(2) CrPC is, however, different. There, under sub-section (2), the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC "at any

¹ (2009) 14 SCC 115

previous stage of the case”, clearly bring out this position.”

6. The facts reveal that when the impugned order was passed, the accused persons had already appeared or had been brought before the Court and the evidence of the revisionist had also been recorded. Further, the record reveals that the application for exemption from personal appearance on the date and for appearance on the next hearing of the revisionist’s witness-Dilip Kumar Modi was not considered and the witness had not been examined. The record also reveals that the learned Judicial Magistrate has still not considered some applications for additional documents filed by the revisionist. The filing of the applications reflect the intention of the revisionist to lead additional evidence which was possible at the stage of section 244 of the Cr.P.C.. The mandate of section 244 of the Cr.P.C. for the learned Judicial Magistrate was to “..... *take all such evidence as may be produced in support of the prosecution.*” It was necessary therefore, for the learned Judicial Magistrate to take the evidence which the revisionist desired to adduce through those pending applications for additional documents as well as examine the other witness who was yet to be examined. Therefore, the stage when the impugned order was passed was a stage under section 244 of the Cr.P.C. when the evidence taking had begun but had not yet been completed.

7. Section 245 of the Cr.P.C. is a provision for discharge of the accused person. Section 245(1) Cr.P.C. contemplates a stage after the completion of taking all the evidence referred to in section 244 Cr.P.C. thereafter considering whether or not to discharge the

accused persons for reasons to be recorded. This is a stage when the court comes to a conclusion after considering all the evidence available and recorded under 244 of the Cr.P.C. if no case against the accused has been made out which, if unrebutted, would warrant his conviction.

8. Section 245(2) Cr.P.C. on the other hand is a stage of consideration of the learned Judicial Magistrate even before the evidence contemplated under section 244 Cr.P.C. is led. That stage as explained by the Supreme Court is a stage when the accused appears or is brought before the Court or the evidence is led under section 244 Cr.P.C.. This would be clear from the words "*at any previous stage of the case*" found in section 245(2) Cr.P.C.. There is no question of consideration of evidence at that stage because there is none. Therefore, once evidence under section 244 Cr.P.C. has been led or is in the process of being led after examining one witness, like in the present case, the question of resorting to the provision of section 245(2) Cr.P.C. would not arise. The learned Judicial Magistrate was therefore, not correct in examining the pre-summoning evidence recorded at the stage of section 200 Cr.P.C. when the stage of section 244 Cr.P.C. had already commenced. Once the stage of section 244 Cr.P.C. is in process and some evidence was yet to be led by the revisionist, the learned Judicial Magistrate is precluded from resorting to section 245(2) Cr.P.C..

9. This is a fit case in which the revisional powers of this Court under section 397 Cr.P.C. can be exercised. It is a case where the impugned order is found to be incorrect, illegal and improper.

10. I, therefore, have no hesitation to allow the present criminal revision petition, set aside the impugned order dated 29.12.2017 and remand the matter to the Court of the learned Judicial Magistrate, Chungthang Sub-Division, to proceed as per law by allowing the revisionist to lead and close her evidence and thereafter move to the next stage as per law.

**(Bhaskar Raj Pradhan)
Judge**

to Approved for reporting :**Yes**