



2026:AHC:182586

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 4922 of 2026

Visarjan Ram

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Sheo Prasad Yadav, Shri Niwash
Yadav
Counsel for Opposite Party(s) : Ankit Shukla, G.A.

Court No. - 87

HON'BLE DIVESH CHANDRA SAMANT, J.

1. This criminal revision has been preferred against the order dated 01.07.2026 passed by the Court of Additional Chief Judicial Magistrate IInd, Jaunpur in Case No. 39 of 2024(Arun Kumar versus Visarjan Ram), under section 323, 504, 506 IPC, P.S. Sikrara, District Jaunpur, whereby discharge application moved by the revisionist-accused has been partly allowed and the accused Visarjan Ram has been discharged from the offence under section 392 IPC and the discharge application has been rejected in regard to the offence under section 323, 504, 506 IPC.

2. Heard learned counsel for the revisionist, learned counsel for the opposite party No.2, learned A.G.A. for the state and perused the record.

3. It has been submitted by the learned counsel for the revisionist that an FIR was registered against the accused-revisionist and another co-accused under section 323, 504, 506 IPC and during the investigation the presence of the accused revisionist was not found at the place of incident and a final report was submitted before the concerned Magistrate. A protest application was filed against the final report whereupon the case has been treated as complaint case and after recording the statements of witnesses under Section 200 and 202 CrPC the accused-revisionist and the co-accused Ashutosh were summoned under sections 323, 392, 504, 506 IPC. It is further submitted that the discharge application filed by the revisionist has been partly rejected by the learned trial court by passing illegal order. The learned trial court did not consider the evidence of CDR

collected by the investigating officer which establishes that the accused-revisionist was not present at the place of incident. It is also not considered by the learned trial court that complaint under section 323, 504, 354 IPC and 3(2)(v) SC/ST Act was filed by the wife of the revisionist and the accused revisionist has been implicated in the present case in a counter blast to that case.

4. It is further submitted that the impugned order has been passed by the learned Magistrate without applying judicial mind. The revisionist is an innocent person having no criminal history. There are contradictions between the averments made in the FIR and the statements recorded by the investigating officer and statement recorded before the court which causes reasonable doubt on the allegations levelled against the accused-revisionist. The impugned order is passed without considering all relevant facts and evidences available on the record and the accused-revisionist is liable to be discharged.

5. Learned counsel for the opposite party No.2 and learned A.G.A. have vehemently opposed the contentions raised by the learned counsel for the revisionist and submitted that there are sufficient material and evidences available on the record for framing of charge against the accused-revisionist under section 323, 504, 506 IPC. The complainant as well as witnesses have supported the case of the complainant by their statements recorded under section 200, 202 and 244 CrPC. The complainant himself has been examined under section 244 CrPC and the accused-revisionist did not cross examine the witness under section 244 CrPC.

6. It is further contended that the revisionist is a police person due to which the investigating officer did not conduct the investigation in proper manner just to favor the revisionist. As a result thereof, final report was submitted by the investigating officer. The opposite party No.2 moved a protest application with the contentions that the investigating officer is favoring the accused-revisionist which has been considered by the learned trial court and the case has been treated as complaint case. The revisionist is a powerful person and neighbor of opposite party No.2 having old enmity. The witnesses of the complainant in their statements under section 200, 202 and 244 CrPC have categorically stated and supported

the complainant's version. The learned Magistrate after considering all the material available on the record partly rejected the discharge application by passing a meticulous and reasoned order which does not warrant any interference.

7. A perusal of the record shows that an FIR was lodged by the opposite party No.2 against the accused-revisionist with the allegation that on 28.02.2023 at 8:55 AM, complainant Arun Kumar was going from Prayagraj to District Court Jaunpur on his bike when at Khana-Patti board, PS Sikrara, accused Visarjan Ram S/o Balchand (Chamanganj, Jhusi, Prayagraj), Ashutosh and others, due to old enmity, waylaid, abused and assaulted him causing injuries. On his alarm, acquaintance Sonu Nigam (Polytechnic Chauraha, Jaunpur) and other passersby intervened, after which the accused threatened to kill him for complaining and fled.

8. A copy of the final report shows that after investigation, the location of the revisionist accused was found at Allahabad and not at the place of incident. After treating the case as complaint case, statement of complainant was recorded under section 200 CrPC and the statements of witnesses PW1 Sonu Kumar and PW2 Pradeep Kumar were recorded and after considering those statements, the accused-revisionist Visarjan Ram and the co-accused Ashutosh were summoned by order dated 02.04.2024 passed by the learned Magistrate.

9. After the appearance of the accused before the trial court, statement of complainant was recorded as PW1 under Section 244 CrPC. A copy of the above statements, available with the record shows that the accused did not cross-examine the PW1. From perusal of statement under Section 244 CrPC of PW1, a prima facie case appears to be made out against the accused-revisionist which is also supported with the statement recorded under Section 200 and 202 CrPC and the facts mentioned in the FIR.

10. Learned trial court relying on the case law of **Umesh@Banti And Others Vs. State of U.P. And Another: 2013(1) JIC 394** and **Ajay Kumar Ghose Vs. State of Jharkhand And Another: (2009) 14 SCC 115** after examining the evidence available on record found that no case

of robbery under Section 392 IPC is made out on the ground that in the FIR there was no mentioning of robbery or snatching of gold chain.

11. In case of **Ajay Kumar Ghose(Supra)** the Hon'ble Supreme Court clarified that under section 245(1) CrPC a Magistrate cannot discharge the accused without giving the complainant an opportunity of leading evidence under section 244 CrPC. The stage of section 245(1) CrPC is reached only after evidence under section 244 CrPC is recorded. The relevant paragraph of the aforesaid judgment is being reproduced as under:

"39. The charge is framed under Section 246(1) CrPC which runs as under:

"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."

The language of the section clearly suggests that it is on the basis of the evidence offered by the complainant at the stage of Section 244(1) CrPC that the charge is to be framed, if the Magistrate is of the opinion that there is any ground for presuming that the accused has committed an offence triable under this Chapter. Therefore, ordinarily, when the evidence is offered under Section 244 CrPC by the prosecution, the Magistrate has to consider the same, and if he is convinced, the Magistrate can frame the charge."

12. In another case law **Sunil Kumar versus State of Gujarat, (2013) 9 SCC 209**, the Hon'ble Supreme Court reaffirmed that in a private complaint the statements recorded under section 200 and 202 CrPC are recorded only for the purpose of issuing process. Once the accused appears, the Magistrate must record evidence under section 244 CrPC afresh, giving the accused right to cross examine. Only this evidence can be considered while deciding the discharge application under section

245(1) CrPC. The relevant paragraph of the aforesaid judgment is being reproduced as under:

" 12. Sections 244 to 246 leave no manner of doubt that once the accused appears or is brought before the Magistrate the prosecution has to be heard and all such evidence as is brought in support of its case recorded. The power to discharge is also under Section 245 exercisable only upon taking all of the evidence that is referred to in Section 244, so also the power to frame charges in terms of Section 246 has to be exercised on the basis of the evidence recorded under Section 244. The expression "when such evidence has been taken" appearing in Section 246 is significant and refers to the evidence that the prosecution is required to produce in terms of Section 244(1) of the Code. There is nothing either in the provisions of Sections 244, 245 and 246 or any other provision of the Code for that matter to even remotely suggest that evidence which the Magistrate may have recorded at the stage of taking of cognizance and issuing of process against the accused under Chapter XV tantamounts to evidence that can be used by the Magistrate for purposes of framing of charges against the accused persons under Section 246 thereof without the same being produced under Section 244 of the Code. The scheme of the two Chapters is totally different. While Chapter XV deals with the filing of complaints, examination of the complainant and the witnesses and taking of cognizance on the basis thereof with or without investigation and inquiry, Chapter XIX Part B deals with trial of warrant cases instituted otherwise than on a police report. The trial of an accused under Chapter XIX and the evidence relevant to the same has no nexus proximate or otherwise with the evidence adduced at the initial stage where the Magistrate records depositions and examines the evidence for purposes of deciding whether a case for proceeding further has been made out. All that may be said is that evidence that was adduced before a Magistrate at the stage of taking cognizance and summoning of the accused may often be the same as is adduced before the court once the accused appears pursuant to the summons. There is, however, a qualitative difference between the approach that the court adopts and the evidence adduced at the stage of taking cognizance and summoning the accused and that recorded at the trial. The difference lies in the fact that while the former is a process that is conducted in the absence of the

accused, the latter is undertaken in his presence with an opportunity to him to cross-examine the witnesses produced by the prosecution."

13. In the light of the above case law, the material available on record shows that the complainant himself has given evidence as PW1 and it also appears from the copy of the statement under Section 244 CrPC that the defence was offered to cross-examine the witness but the defense did not cross-examine PW1. The statement of PW1 under Section 244 CrPC appears to be well supported by the statement of complainant under Section 200 and statement of witnesses recorded under Section 202 CrPC. Therefore, prima facie there appears no ground for discharging the accused revisionist from the charges under Section 323, 504, 506 IPC. On the basis of the fact that the fact regarding robbery/snatching of chain was not mentioned in the first information report, neither it appears to be mentioned in the statement recorded under Section 161 CrPC. The offence under Section 392 IPC appears doubtful.

14. So far as the point regarding presence of the accused is concerned, it is a matter of trial. At the stage of framing of charges or disposing of the discharge application, merely on the basis of CDR, the presence of accused cannot be doubted. This fact has to be tried during the trial after leading the evidences by both the parties.

15. A perusal of the impugned order shows that learned Magistrate has categorically discussed the evidences available on the record supported with the statement of witnesses recorded under section 161 CrPC as well as 200 and 202 CrPC and partly rejected the discharge application of the accused by passing a just and reasonable order.

16. In view of facts and circumstances of the case and the law discussed above, this Court finds no error of jurisdiction, impropriety or illegality in the approach adopted by the learned court below. The impugned order cannot be termed perverse or unjustifiable, warranting interference in the limited revisional jurisdiction of this Court.

17. For the reasons stated above, this court is of the opinion that the Criminal Revision lacks merit and deserves to be dismissed.

18. Accordingly, the instant Criminal Revision is hereby **dismissed**.

19 The observations made herein are limited only for the purpose of deciding the instant Revision and shall not be construed as an expression of opinion on the merit of the case during trial.

(Divesh Chandra Samant,J.)

August 21, 2026
ADY