

In the court of Devesh Mishra,
J.M.F.C, COURT No.-8,
Civil Court, Ara (Bhojpur at Ara)
Complaint Case No. 880(C) 2017
Ram Prasad Mishra
Vs
Neeraj Mishra & Ors.

<i>Date</i>	<i>Order with initials of the magistrate</i>	<i>Remarks</i>
06.08.2026	<u>ORDER</u> The case was called out. The complainant is absent. The record is fixed for hearing on point of charge. No one appeared on behalf of the complainant even after repeated calls. From the perusal of the record, it transpires that the complainant has adduced only one before charge evidence on 01.06.2018. Perused the case record. On the perusal, the court finds that the present case arises out of complaint filed by the complainant, on 19.06.2017 u/s 147, 448, 452, 341, 323, 325, 379,504/34 of the Indian Penal Code, 1860 against accused persons named in the complaint petition, upon which a prima facie case was made out u/s 323, 379, of I.P.C. against the accused named in the complaint petition 1. Neeraj Mishra 2. Narayan Mishra and 3. Santosh Upadhyay. Accordingly, then process of appearance of the accused have been issued against the above named accused. It is also apparent from the perusal of the record that neither the complainant himself has appeared in this case since 20.02.2019 nor is represented by his pleader till date. Several directions have been given to the complainant to do proper pairvi in this case, but the same has not been complied with. From the conduct of the complainant, it appears that the complainant himself is not diligent or is not interested in the prosecution of this case. It is well settled principle that in complaint case the onus lies upon the complainant to be vigilant about the prosecution of their case. In the present case in hand, the prosecution is absent continuously for a long time without any reasonable explanation which creates strong presumption that the complainant is no longer interested in the prosecution of his case. In the absence of the complainant the Code of Criminal Procedure, 1973 empowers the court under Section 249 to discharge the accused person. However, it is very clear that such power can be exercised only in complaint cases before framing of charges of the offences which may be legally compoundable or is not a cognizable offence. It is well established that Section 249 applied not only to cases where offence is compoundable one but also where though it is non-compound-	

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able, it is not cognizable. It has been held in ***Kanhei Paradhan vs. Basanti Khati; 1981 C.r.L.J 266,267*** that the power under this section can be exercised in respect of all compoundable offences, whether cognizable or not, and all non-cognizable offences whether compoundable or not. The clauses "and the offence may be lawfully compoundable" and "is not a cognizable offence" are separated by a disjunctive conjunction "or which indicates that they are alternative and not cumulative. Thus, the section applies to cases where the offence is compoundable one as in the instant case alleged sections are compoundable in nature as per provisions of section 320 of Cr.P.C.

The present case in hand is instituted on the basis of complaint filed by the complainant and not on police report. It is also apparent from the perusal of the record that the conduct of the complainant by not appearing in this case since long time shows the willful act on the part of the complainant and culpable negligence in keeping himself away from the court proceeding without any reasonable explanation.

Hence, in the light of the aforesaid discussion and considering the fact that the case is pending since long time and complainant has lost his interest in the prosecution of this case, the court in its considered opinion discharges the accused persons named in the complaint petition under section 249 of Cr.P.C. All the process issued against them are hereby recalled. The O/c is directed to consign the record to the record room accordingly.

Dictated and corrected by,

(Devesh Mishra)
J.M.F.C.
Bhojpur at Ara