

GJGS040024312023

C.C. No. 1857/2023



ORDER ON EXH.60

1. The present application is preferred by the accused under Section 245 of the Code of Criminal Procedure seeking their discharge from the present complaint case on the ground that, even after completion of the evidence under Section 244 of the Code, no case has been made out against them which, if left unrebutted, would warrant their conviction and that the charge against them is groundless.
2. The complainant has filed a reply vide Exh. 63 opposing the present application and has prayed for its dismissal. It is contended that the evidence adduced during the pre-charge evidence, when appreciated in its entirety, sufficiently establishes the involvement of the accused in the alleged incident. According to the complainant, the oral testimony of the witnesses, duly corroborated by the medical evidence and other material on record, discloses sufficient grounds for proceeding against the accused. It is, therefore, urged that the application under Section 245 of the Code of Criminal Procedure is devoid of merit and deserves to be rejected.
3. Learned advocate appearing for the accused has contended that the complainant as well as the other witnesses examined during the course of the inquiry have failed to attribute any specific overt act or injury to any of the accused. It is submitted that the complainant himself, in his deposition at

Exh.43, has not stated as to which accused caused which injury or how each accused participated in the alleged assault. It is further contended that the medical evidence merely proves the existence of injuries and does not establish their authorship. Therefore, it is argued that the evidence recorded under Section 244 Cr.P.C., even if accepted in its entirety, does not disclose a prima facie case against the accused warranting framing of charge, and consequently the accused deserve to be discharged under Section 245 of the Code.

4. Per contra, learned advocate appearing for the complainant has vehemently opposed the application and submitted that the evidence adduced during the pre-charge evidence, when read as a whole, clearly discloses a prima facie case against the accused. It is contended that the complainant as well as the supporting witnesses have consistently deposed regarding the illegal detention and assault by the accused police personnel, and the medical evidence lends due corroboration to the ocular version. It is further submitted that at the stage of Section 245 of the Code of Criminal Procedure, the Court is not required to meticulously appreciate the evidence or evaluate its probative value as would be done at the conclusion of the trial. According to the complainant, the evidence already brought on record is sufficient to warrant framing of charge, and therefore the application for discharge deserves to be rejected.
5. I have carefully considered the complaint, the oral evidence adduced by the complainant and witnesses, the medical evidence, the inquiry conducted pursuant to Paragraph 14 of

the Criminal Manual and the submissions advanced by both sides.

6. Before advertng to the merits of the discharge application, this Court has kept in view the nature and gravity of the allegations as well as the fact that the complaint is triable as a warrant case instituted otherwise than on a police report. The accused are alleged to have committed offences including one punishable under Section 323 IPC. In order to ensure that no legitimate prosecution is scuttled at the threshold, this Court has already afforded the complainant a full and fair opportunity to substantiate the allegations by leading elaborate pre-charge evidence under Section 244 of the Code of Criminal Procedure. The complainant examined himself as well as all material witnesses, including the Medical Officer, and the evidence was recorded at considerable length. Thus, the complainant has availed every reasonable opportunity to place all material in support of the complaint. It is only after a comprehensive consideration of the entire evidence adduced at the pre-charge stage, and not on a superficial or technical consideration, that this Court proceeds to determine whether the requirements of Section 245 of the Code stand satisfied.
7. Before considering the application for discharge, it is necessary to note that the present case is instituted otherwise than on a police report, and, therefore, the trial is governed by the procedure prescribed for warrant cases instituted otherwise than on a police report. The present application has been filed under Section 245(1) of the Code and not under Section 239 of the Code. Though both provisions deal with the discharge of the accused, their field of operation and the standard of

consideration are materially different. Section 239 applies to warrant cases instituted on a police report, where the magistrate considers the police report, documents forwarded under Section 173 CrPC, and the submissions of the parties and may discharge the accused if the charge appears to be groundless. On the other hand, Section 245(1) applies to warrant cases instituted otherwise than on a police report, where evidence has been recorded under Section 244 CrPC. At that stage, the Court is required to consider whether the evidence adduced by the complainant, if left unrebutted, would warrant a conviction of the accused. Therefore, discharge under Section 245(1) cannot be equated with discharge under Section 239 CrPC, as the former is based upon pre-charge evidence, whereas the latter is based mainly upon the police report and accompanying material.

8. It is further required to be clarified that Section 245(2) of the Code stands on a different footing from Section 245(1). Section 245(2) empowers the Magistrate to discharge the accused at any previous stage of the case if, for reasons to be recorded, the charge is found to be groundless. In that sense, the nature of consideration under Section 245(2) is comparatively closer to Section 239 of the Code, because both provisions use the concept of a groundless charge and both enable the Court to prevent an accused from being unnecessarily subjected to a trial where the basic material does not disclose sufficient ground to proceed. However, when the Court is considering discharge under Section 245(1), the position is materially different. At that stage, the complainant has already been afforded an opportunity to lead evidence under Section 244 of the Code, and therefore the

Court is not merely examining the complaint or preliminary material, but is required to assess the pre-charge evidence actually recorded before it. **The test under Section 245(1) is whether such evidence, if left unrebutted, would warrant conviction of the accused. If the evidence so recorded does not disclose the essential ingredients of the alleged offence, or does not connect the accused with the commission of the offence in a legally sustainable manner, the accused is entitled to be discharged. Conversely, if the unrebutted evidence is capable of warranting conviction, the Court may proceed to frame charge under Section 246 of the Code. Thus, while Section 245(2) operates at an earlier and more preventive stage on the groundlessness of the charge, Section 245(1) requires a judicial evaluation of the pre-charge evidence on the touchstone of whether such evidence, if unrebutted, can legally warrant conviction.**

9. The scope of Section 245(1) of the Code of Criminal Procedure is well settled. After taking all the evidence referred to in Section 244 Cr.P.C., if 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 accused is entitled to be discharged. At this stage, although a meticulous appreciation of evidence is impermissible, the Court is nevertheless required to ascertain whether the evidence recorded discloses the essential ingredients of the alleged offences against the accused.
10. In the present case, the complainant has been examined at Exh.43. A careful reading of his deposition shows that while he has alleged that he was intercepted by the police and

subsequently sustained injuries, he has not attributed any overt act to any of the accused persons. He has not stated as to which accused assaulted him, who inflicted which injury, or how each of the accused participated in the alleged assault. His evidence is completely silent regarding the individual role of any accused.

11. The other witnesses examined by the complainant also do not improve the prosecution case. Their evidence merely establishes that the complainant and others were brought to the police station and were subsequently released. None of them claims to have witnessed any assault by any particular accused or identifies the accused as the authors of the injuries found on the complainant.
12. The medical evidence only establishes the existence of certain simple injuries on the body of the complainant and the other witnesses. Medical evidence is essentially corroborative in nature. In the absence of reliable ocular evidence connecting those injuries with the accused persons, the medical evidence by itself cannot establish criminal liability. The doctor has merely proved the nature and age of the injuries and has not connected the same with the acts of any particular accused. The inquiry conducted pursuant to Paragraph 14 of the Criminal Manual is also of no assistance to the complainant for the purpose of framing charge. Such inquiry was ordered only to ascertain the factual allegations made before the Court and cannot substitute substantive evidence establishing the ingredients of the alleged offences. The inquiry report does not furnish any independent evidence identifying the accused as the perpetrators of the alleged assault.

13. Significantly, there is no evidence whatsoever regarding common intention or common object. The complainant has neither pleaded nor deposed that all the accused jointly assaulted him pursuant to any pre-arranged plan or meeting of minds. In the absence of evidence establishing participation of each accused either individually or with the aid of Section 34 IPC, criminal liability cannot be fastened merely because they were present at the police station.

14. The evidence led under Section 244 Cr.P.C., even if accepted in its entirety and left unrebutted, does not establish the essential ingredients of the offences alleged against the accused. At the highest, it raises a suspicion that the complainant sustained injuries at that time. However, suspicion, however strong, cannot substitute proof of the basic foundational facts required even for framing of charge where the evidence under Section 244 has already been recorded. The evidence fails to establish a prima facie nexus between the injuries and the acts of the accused. Consequently, this Court is satisfied that no case has been made out against the accused which, if unrebutted, would warrant their conviction, and the charge against the accused is, therefore, groundless within the meaning of Section 245(1) Cr.P.C. Hence, in the interest of justice the court proceeds to pass the following order:

ORDER

1. Accordingly, the application preferred by the accused under Section 245 of the Code of Criminal Procedure is allowed.

2. The accused are hereby discharged from the offences alleged in the complaint.

Record and proceedings be consigned to the Record Room after due compliance.

Pronounced in open Court on this 28th day of July, 2026.

Date- 28/07/2026

Place- Una

(Mr. Neeraj Kumar Yadav)
2nd Additional Chief Judicial Magistrate
Una Ta. Una District Gir Somnath
GJ 01409