



**In The Court of Additional District and Sessions Judge /Special Judge
[Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act] Etah**

Present: Ashok Kumar XIII H.J.S. (J.O. Code – UP2392)

Criminal Revision No. 315 of 2025

Dinesh Swaroop Saxena, aged about 68 years, son of Shri Harishankar Saxena, resident of House No. 4/77, Bajariya Harlal, Police Station- Farrukhabad, Tehsil and District- Farrukhabad. ...

Revisionist

Versus

1. **Vedprakash**, son of Shri Lallan Babu.
2. **Sandeep**, son of Shri Vedprakash.
3. **Sudesh alias Pappu**, son of Shri Chandraprakash.

All residents of Mohalla Chaturbhuj, Aliganj, Tehsil and District- Etah.

4. **Arvind**, son of Ghanshyam Das, resident of Mohalla Qazi, Kasba Aliganj, District- Etah.
5. **Rakesh Singh alias Akhilesh Chandra** son of Shri Natthulal.
6. **Gyanesh** son of Rakesh Singh.

Both Residents of Aliganj, District- Etah.

7. **State of Uttar Pradesh**, through District Government Counsel (Criminal).

... Respondents

JUDGEMENT

1. The present criminal revision petition has been preferred by the Revisionist, Dinesh Swaroop Saxena, challenging the legality, propriety, and correctness of the order dated 20.11.2024 passed by the Learned Additional Chief Judicial Magistrate, Court No. 18, Etah, in Criminal Case No. 7530 of 2023. By the impugned order, the learned Trial Court, while exercising powers

under Section 245 of the Code of Criminal Procedure, 1973, allowed the application 41-B filed by the accused persons and discharged them from the offences punishable under Sections 457, 380, 504, 506 of the Indian Penal Code due to a complete lack of evidence. The Revisionist seeks the setting aside of the said discharge order on the grounds that it is contrary to law and was passed without following due process.

2. The factual background of the case indicates that the Revisionist filed a complaint on 16.06.2012, leading to the summoning of the Opposite Parties No. 1 to 6 via an order dated 04.02.2013 for offences involving house-trespass and criminal intimidation. The accused persons subsequently challenged the summoning order before the Hon'ble High Court under Section 482 of the Code of Criminal Procedure, but the Hon'ble High Court affirmed the summoning order. Thereafter, the trial reached the stage of recording evidence before charge under Section 244 of the Code of Criminal Procedure. The record reveals that the accused Gyanesh remained absconding for a significant period, but eventually appeared on 28.06.2024 and was released on bail on 12.07.2024. The matter was fixed for evidence of the complainant on several dates, yet no witnesses were produced to support the allegations.
3. The Revisionist has assailed the impugned order primarily on the grounds of procedural irregularity and violation of natural justice. It is contended that the learned Trial Court failed to provide a copy of the discharge application 41-B to the Revisionist's counsel or to the Assistant Prosecution Officer, thereby denying them an opportunity to file a rebuttal. Furthermore, the Revisionist argues that the presence of statements recorded under Sections 200 and 202 of the Code of Criminal Procedure constituted sufficient material to proceed, and the closure of the opportunity to lead evidence under Section 244 was premature and illegal. The Revisionist also claims that he only learned of the discharge order in March 2025 through his counsel, which resulted in an irreparable loss to his legal rights.
4. Conversely, the Opposite Parties/Respondents argue that the Trial Court's order is well-reasoned and legally sound. They emphasize that the case had been pending for over a decade and the complainant was provided multiple opportunities to produce evidence under Section 244 of the Code of Criminal Procedure. They contend that on 24.10.2024, the Trial Court

specifically granted a final opportunity to the complainant, but neither the complainant nor any witnesses appeared in court. Consequently, on 13.11.2024, the Trial Court closed the evidence stage and subsequently passed the discharge order on 20.11.2024 as there was no evidence on record to justify framing charges. They argue that the complainant's repeated absence and failure to lead evidence left the Trial Court with no option but to discharge the accused.

5. The primary issue for determination in this revision is whether the learned Trial Court committed any jurisdictional error or illegality in discharging the accused persons under Section 245 of the Code of Criminal Procedure.
6. Under the statutory framework of a warrant case instituted on a complaint, Section 244 requires the Court to take all such evidence as may be produced in support of the prosecution. Section 245(1) further mandates that if, upon taking all such evidence, the Magistrate considers that no case has been made out which would warrant a conviction, the Magistrate shall discharge the accused. In the present matter, the case had been pending since 2012, and the record clearly demonstrates that despite several years of opportunity, the complainant failed to examine even a single witness at the pre-charge stage.
7. A perusal of the Trial Court record confirms that the complainant was absent on multiple crucial dates and did not utilize the final opportunity granted on 24.10.2024. While the Revisionist argues that the discharge application 41-B was not served upon him, it is pertinent to note that the discharge under Section 245(1) is a consequence of the failure of the prosecution to lead sufficient evidence, regardless of a formal application by the accused. Once the opportunity for evidence under Section 244 was legally closed due to the complainant's persistent default, the Trial Court was under a legal obligation to assess the existing record. In the absence of any evidence led under Section 244, there was no material before the court that could sustain the framing of charges under Section 246.
8. The contention that the statements recorded under Sections 200 and 202 should suffice for framing charges is legally untenable in a warrant case. The purpose of Section 244 is to allow the accused to see the evidence against them before a charge is framed, and the complainant must prove his case at this stage to justify a trial. The Revisionist's failure to appear and testify,

despite the matter being decades old, indicates a lack of diligence in prosecuting the case. The learned Trial Court's decision to terminate the proceedings after providing a final opportunity is consistent with the principle of ensuring a speedy trial and preventing the harassment of accused persons through indefinite litigation.

9. Consequently, this Court finds no perversity, illegality, or manifest error in the impugned order dated 20.11.2024. The learned Trial Court followed the prescribed procedure under the Code of Criminal Procedure and correctly concluded that in the absence of any evidence, the accused were entitled to be discharged. The Revisionist has failed to show any valid reason for his failure to produce witnesses during the lengthy period the case remained at the stage of Section 244. The revisional jurisdiction of this Court is limited to checking the legality and propriety of the order, and in this instance, the Trial Court has acted within its jurisdiction to prevent the abuse of the process of law.

ORDER

Accordingly the Criminal Revision No. 315 of 2025 is hereby **Rejected**.

The impugned order dated 20.11.2024 passed by the Learned Additional Chief Judicial Magistrate, Court No. 18, Etah, in Complaint Case No. 7530 of 2023, is affirmed and the revision petition stands dismissed.

Send a copy of this order to the Ld. Trial Court forthwith for information and necessary compliance. The revision file be consigned to the Record Room after due compliance.

Date: 17.03.2026

(Ashok Kumar XIII)
Special Judge [SC/ST (PA) Act]
Etah