

G.R. 18 of 2022  
Reg. No. 12 of 2024

**Order No. 18**  
**Dated 24.04.24**

Today is fixed for further hearing upon the application dated 23.04.24 of the accused persons.

All the four accused persons on the court bail are present by filing hazira.

The accused persons files another application praying for their discharge on the ground that i) during investigation charges under sec. 354 IPC could not be revealed, so the charge u/s 354 IPC was dropped against the accused persons, ii) the case against one of the accused Arjun Pradhan could not be established and as such the said accused was not sent up for trial with a prayer for his discharge and the court being satisfied dropped the case against Arjun Pradhan after hearing defecto complainant and the accused person and iii) that the materials collected by the IO does not substantiate any case against the accused persons and there is no sufficient materials against the accused persons to frame any charge against them.

The case record is taken up for hearing.

Heard the Ld. Advocate for the accused persons at length.

The Ld. Advocate for the accused persons relied on the following decisions :-

i) Sakiri Basu Vs State of UP and others passed by the Hon'ble Apex Court as reported in AIR 2008 SC 907, ii) Municipal Council Raipur and another Vs State of Madhya Pradesh passed by the Hon'ble Apex Court as reported in (1969) 2 SCC 582, iii) K.M.Mathew Vs State of Kerala and another as reported in AIR 1992 SC 2206, iv) Kamala Rajaram Vs State of Kerala decided by the Hon'ble Kerala High Court as reported in 2005 SCC Online Kerala 302, v) Arvind Kejriwal and others Vs Amit Sibal and another passed by the Hon'ble Delhi High Court as reported in 2014 SCC Online Del 212.

**Now let me discuss as to whether the accused persons can be discharged at the time of their examination under Sec. 251 CrPC ?**

The law envisaged under Sec. 251 CrPC is very clear and the same has been included in Chapter XX of the act which deals with the trial of summons cases by the Magistrates.

The case in hand was initiated under warrant triable offences. Subsequently after investigation, the IO submitted charge-sheet in the offences which requires to be dealt as summons procedure case. Thus cognizance was taken and the case was transferred to the personal file for trial.

Sec. 251 CrPC lays down that “ when in a summons case, the accused persons appears or is brought before the Magistrate, the particulars of the offence of which he is accused **shall** be stated to him and he **shall** be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

The Ld. Advocate for the accused persons contended that the word “shall” does not exclude the liberty of the accused persons to plead for their discharge if no case is made out against them and relied on the aforesaid decisions.

On perusal of the said decisions, I find that the Hon’ble Apex Court has held that “ when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the stature, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

The Hon’ble Kerala High Court while dealing with a case relating to a medical negligence u/s 304A IPC involving a medical practitioner, held that the Ld. Magistrate must consider whether such allegations raised

against the accused and the materials placed before the court as to expose the accused to a criminal prosecution u/s 304A IPC in order to frame a charge or discharge u/s 239/240 CrPC or while considering whether there is any sufficient material to read over the particulars of the offence to the accused at the stage of sec. 251 CrPC . The Hon'ble Court further held that “ if accusations and materials are not sufficient to attract culpability the accused should not be compelled to unnecessarily stand the trauma of trial. The Hon'ble Court further held that “notwithstanding the fact that the formal requirement of framing of a charge is not there, the section presupposes that the Ld. Magistrate must consider such allegations are raised which amount to an offence. If no offence is made out, then there is no particulars of offence which have to be read over to the accused and therefore proceeding can not proceed beyond section 251 CrPC. The provisions of Sec. 251 CrPC read with Sec. 258 CrPC must necessarily be held to clothe the Ld. Magistrate in a case instituted on the basis of a police report with the power to discontinue proceedings at the state of Sec 251 CrPC, if there be no sufficient allegations or materials to justify continuance of proceedings for an offence punishable u/s 304A IPC.”

Therefore, in view of the above decisions, I do concede to the argument of the Ld. Advocate for the accused persons that this court has ample power and scope to stop further proceedings and acquit the accused persons by invoking the provisions of Sec. 258 CrPC at the stage of plea u/s 251 CrPC, if there is no sufficient materials collected by the Investigating Officer, to justify the continuance of the proceedings.

**Now let me discuss as to whether the further proceedings of this case in hand should be stopped and the accused persons be acquitted from this case.**

Heard the Ld. Advocate of the accused persons who contended that the IO dropped the charge u/s 354 IPC against the accused persons and also not sent up one of the accused person with a prayer for his discharge and the Ld. Court discharged the said accused after hearing the defecto

complainant and considering the materials on record. The Ld. Advocate further contended that one of the accused person is old and aged and suffering from ailments. There is property dispute in the between the parties and as such this case has been falsely instituted by the defecto complainant. The Ld. Advocate further contended that there is contradictory statements given by the witnesses u/s 161 CrPC. There is no prima facie materials of the alleged offences. The witnesses have failed to corroborate the FIR. The prosecution has failed to prove the ownership of the disputed plot no. 160 part and therefore, the question of criminal trespass or damage of the fencing of the boundary does not arise. Accordingly, the Ld. Advocate prays for discharge of the accused persons from this case.

Heard the Ld. APP who submits that there is sufficient materials against the accused persons as collected by the IO during the course of his investigation into this case and as such the accused persons should face trial and prays for rejection of the applications submitted by the accused persons dated 23.04.24 and 24.04.24.

Perused the case record, CD and other materials as collected by the IO and also brought on record.

The allegations in the written complaint is that the accused persons on 17.01.2022 at 7.00 am criminally trespassed into the land of the complainant situated at the plot no. 160 part and damaged the fencing/boundary and on protest, the accused persons assaulted the complainant and his old father.

On perusal of the statements of the witnesses as recorded by the IO u/s 161 CrPC prima facie corroborates the allegations of the complainant. The charge sheet also discloses that the occurrence took place on 17.01.2022 when the accused persons entered into the disputed land and damaged the fencing of the disputed land and when the complainant raised objection and tried to stop the accused persons, they threatened the complainant and his father with dire consequences. There has been seizure

of fencing wire and planger two pieces by the IO. The medical papers suggests that the complainant and his father were medically treated for the bodily pain.

Therefore, until and unless, the prosecution is provided with the opportunity to produce evidence before this court, this court is not in a position to arrive at a conclusion that the prosecution has failed to prove their case. The materials brought on record and the material as collected by the IO is sufficient to examine the accused persons under section 251 CrPC and proceeding with this case inviting the prosecution to produce his witnesses to prove his case and thus the accused persons are not entitled to be discharged from this case at this stage.

Hence the two applications submitted by the accused persons dated 23.04.24 and 24.04.24 stands rejected on contest but without any order as to costs.

To **30.04.24** for examination of the accused persons u/s 251 CrPC.

D/Corrected by me

Sd/-  
C.J.M, Darjeeling

Sd/-  
C.J.M,  
Darjeeling