



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.356 of 2025

Niranjan Jena

....

Petitioner

Mr. S. K. Dwibedi, Advocate

-Versus-

**Bishnu Prasad Mohapatra &
another**

....

Opposite Parties

Mr. B. Mohanty, Advocate (O.P. No.1)

Mr. P.P. Behera, Advocate (O.P. No.2)

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

17.12.2025

Order No.

08.

1. Heard learned counsel for the respective parties.
2. Instant revision petition is filed by the petitioner assailing the correctness of the impugned order dated 2nd June, 2025 passed in connection with 1.C.C. No.627 of 2021 as at Annexure-1 by the learned J.M.F.C.-III (Cog. Taking), Cuttack on the grounds stated therein.
3. Mr. Dwibedi, learned counsel for the petitioner submits that the learned court below is grossly at fault in discharging the opposite parties in terms of Section 245(2) Cr.P.C. in absence of any evidence before charge. The submission is that no evidence was received from the side of the petitioner and in absence of the same, discharge under Section 245(2) Cr.P.C. is not permissible and in support of such contention, a decision of the Apex Court in **Ajaya Kumar Ghose Vrs. State of Jharkhand & another (2009) 43 OCR (SC) 228** is placed



reliance on. The further submission is that the learned court below directed supply of a copy of the complaint and other documents filed therewith in terms of Section 207 Cr.P.C. and it was complied with and in the objection to such an application from the side of the opposite parties, while demanding supply of complaint, the petitioner requested for a direction to call for Bank statements and without disposing of the same, it was followed by the order of discharge under Section 245(2) Cr.P.C. According to Mr. Dwibedi, learned counsel, there has been no evidence received from the side of the petitioner and the opposite parties as a result have been discharged by the impugned order dated 2nd June, 2025 i.e. Annexure-1, which is not legally tenable and hence, liable to be interfered with and set at naught.

4. Mr. Behera, learned counsel for opposite party No.2, on the other hand, submits that the petitioner did not lead evidence despite ample opportunity provided as the proceeding in 1.C.C. No.627 of 2021 suffered number of adjournments as revealed from the order sheets of the learned court below. Furthermore, the submission is that the learned court below did possess the power to discharge the opposite parties in terms of Section 245(2) Cr.P.C. at any stage even before receipt of evidence under Section 244 thereof, hence, rightly passed the impugned order at Annexure-1. In support of the contention advanced, Mr. Behera, learned counsel cited a decision of this Court in **Agadhu Das Vrs. Baban Parida and others 1987 Criminal Law Journal 555** and other case laws. The submission is that a court has the jurisdiction to discharge an accused, which is not



barred in view of Section 245(2) Cr.P.C as the language employed therein is to the effect that nothing in sub section(1) shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if for the reasons to be recorded by such Magistrate, who considers the charge to be groundless. The contention is that the exercise of jurisdiction while discharging the opposite parties is in accordance with law and as per Section 245(2) Cr.P.C. and therefore, the impugned order dated 2nd June, 2025 at Annexure-1 does not suffer from any legal infirmity.

5. On perusal of the order sheets as at Flag-F, it is made to reveal that on 31st July, 2024, the learned court below directed compliance of Section 207 Cr.P.C. and thereafter, proceeded to fix the hearing on 17th August, 2024 for evidence before charge and on the date fixed, received the application under Section 245 Cr.P.C and it was finally disposed of vide Annexure-1.

6. In course of hearing, Mr. Behera, learned counsel for opposite party No.2 would submit that the petitioner is at default in leading evidence and that apart, the learned court below found the charge to be groundless, hence, the discharge directed under Section 245(2) Cr.P.C. But, in **Ajaya Kumar Ghose** (supra), it has been held and observed that the clause with the expression 'at any previous stage of the case' would only mean that even with a single witness, the Magistrate may proceed to frame the charge and while reaching at such a conclusion, an earlier case law in **P Ugender Rao & others Vrs. J. Sampoorna and others** 1990 Criminal Law Journal



762 has been quoted with approval. On the other hand, Mr. Behera, learned counsel for opposite party No.2 refers to a decision of the Apex Court in **Vishnu Kumar Shukla and another Vrs The State of Uttar Pradesh & another** in SLP (C) No.8658 of 2017 dated 28th November, 2023 to contend that at any stage even before receiving evidence, jurisdiction under Section 245 (2) Cr.P.C. can be exercised. On a reading of the said judgment, the Court further finds that the decision in **Ajaya Kumar Ghose** (supra) has been referred to and therein, discharge was directed with the observation that one should be protected against vexatious and unwarranted criminal prosecution and from unnecessarily made to go through the rigours of an eventual trial. But on a sincere reading of the decision in **Ajaya Kumar Ghose** (supra), it has been made clear that any such discharge shall have to be with evidence received under Section 244 Cr.P.C.. It is held therein that the interpretation on the words ‘at any previous stage of the case’ occurring in Section 246(1) Cr.P.C. is in consonance with the other provisions of the Code, as such provision stipulates a procedure to be followed by the accused if not discharged and the same would come into play only after the matter is examined in the light of Section 245 Cr.P.C and therefore, it is incumbent upon the Magistrate to examine the case for the purposes considering the question, whether, the accused could be discharged and only when, it finds otherwise, to resort to Section 246 Cr.P.C.. Considering the above case law cited by Mr. Dwibedi, learned counsel for the petitioner, which virtually overruled the decision in **Agadhu Das** (supra), the Court is of



the view that power under Section 245(2) Cr.P.C. is exercisable at any stage prior means with some evidence on record and not in absence thereof.

7. In fact, the exercise is undertaken by a Magistrate upon receiving a complaint with the issuance of notice under Section 244 Cr.P.C. and receiving such evidence produced from the side of the complainant, discharge of the accused would arise only if upon taking all such evidence received, the Magistrate considers that no case against the accused has been made out, which if unrebutted would warrant his conviction. As to sub-section (2) of Section 245 Cr.P.C., though, a Magistrate has the powers to deal with discharge an accused at any stage before but in view of the decision in **Ajaya Kumar Ghose** (supra), it has to be held that he has the jurisdiction to do so only after receiving some evidence under Section 244 Cr.P.C..

8. In the case at hand, as it appears, after the order dated 31st July, 2024, the learned court below proceeded to fix the matter on 17th August, 2024 with a direction to the petitioner to adduce evidence before charge but as earlier stated, on the said date, the application under Section 245 Cr.P.C. was received from the opposite parties, whereafter, the impugned order dated 2nd June, 2025 at Annexure-1 has arrived. Under the above circumstances, it cannot be said that the petitioner was at default or was not inclined to adduce evidence or deliberately avoided to lead evidence. Furthermore, any such discharge under Section 245(2) Cr.P.C. is only upon a satisfaction reached at by a Magistrate that the charge to be groundless.



Such an exercise is undertaken by a Magistrate upon receiving the evidence not on account of any such default by the complainant. Considering the submissions of learned counsel for the respective parties and in view of the decision in **Ajaya Kumar Ghose** (supra), the Court is of the humble view that the impugned order dated 2nd June, 2025 at Annexure-1 cannot be sustained in law, hence, it has to be interfered with followed by a consequential direction issued in that regard.

9. Accordingly, it is ordered.

10. In the result, the revision petition stands allowed. As a necessary corollary, the impugned order at Annexure-1 in 1.C.C. Case No.627 of 2021 is hereby set aside with a direction to the learned J.M.F.C.-III (Cog.Taking), Cuttack to receive evidence from the side of the petitioner under Section 244 Cr.P.C. and thereafter, to proceed to dispose of the complaint as per and in accordance with law. It is further directed that the petitioner shall lead evidence before charge within three weeks to commence after 2nd January, 2026 and learned court below shall do well to avoid unnecessary adjournments and thereafter to deal with any such application in terms of Section 245(1) Cr.P.C. in case filed by the opposite parties with an order thereon at the earliest on merits in accordance with law.

11. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

Balaram

Signature Not Verified

Digitally Signed
Signed by: BALARAM BEHERA
Reason: Authentication
Location: OHC, CUTTACK
Date: 19-Dec-2025 19:43:43

