

**(2011) 09 PAT CK 0164**

**Patna High Court**

**Case No:** Criminal Revision No. 433 of 2002

Yamuna Singh, Mahendra Singh  
and Anil Kumar Singh

APPELLANT

Vs

The State of Bihar and Suresh  
Choudhary

RESPONDENT

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**Date of Decision:** Sept. 28, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 245

**Hon'ble Judges:** Amaresh Kumar Lal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Amaresh Kumar Lal, J.

The accused petitioners have preferred this revision application against the order dated 5.03.2002 passed by the learned 3rd Additional Sessions Judge, Aurangabad in Cr. Revision No.76/2000 by which the order dated 19.05.2000 passed by the learned Judicial Magistrate, Aurangabad in Complaint Case No.35/1998, Trial No.387/2000 whereby the petitioners have been discharged u/s 245 Cr.P.C. has been set aside and the learned Magistrate has been directed to pass fresh order in accordance with law after hearing both the parties.

2. The prosecution case, in brief, is that on 15.01.1998, the accused petitioners after breaking open the lock of the rented room of the complainant, opposite party no.2, took away the Chara Machine and weight and other articles from the room. The said room was taken by the father of the complainant on rent for installation of Chara Machine at the rate of Rs.150/-per month. Father of the complainant was paying rent regularly to the father of the accused and thereafter the complainant was paying rent up to December, 1997 to the accused petitioner no.1 Yamuna Singh and on 14.01.1998, complainant after locking the room went to his house and on the following day when the complainant came back to his business place, he found the

lock of the room broken and the accused were collecting the materials and the Chara Machine with intention to commit theft. On the protest by the complainant, the accused threatened. The complaint case no.35/98 was filed by the complainant. After inquiry, cognizance was taken against the petitioners. At the time of framing of charge, both the parties were heard and the learned Magistrate held that there was no material for framing of charge against the petitioners and they were discharged u/s 245 Cr.P.C. vide order dated 19.05.2000 by the learned Magistrate. The complainant opposite party no.2 filed Cr. Rev. No.76/2000 against that order before the learned Sessions Judge, which has been heard by the learned 3rd Additional Sessions Judge and has passed the impugned order setting aside the order of discharge passed by the learned Judicial Magistrate.

3. It appears from the record of complaint case that four witnesses have been examined on behalf of the complainant and they have supported the prosecution case, but the learned Magistrate has discarded their evidence and has come to the conclusion that there is no ground for framing of charge against the accused and as such, the accused have been discharged. On perusal of the material on the record, it appears that the learned Magistrate has meticulously examined the evidence adduced on behalf of the complainant. The learned Magistrate is not required to weigh as to whether the evidence adduced on behalf of the prosecution would lead to the conviction of the accused or not. The learned Magistrate is only required to see as to whether there is ground for presuming that the accused has committed the offence or not. The learned appellate court has carefully examined the evidence on the record and has found that the order passed by the learned Magistrate is not in accordance with law and as such, the order passed by the learned Magistrate has been set aside and has directed to pass orders in accordance with law after hearing both the parties.

4. Considering the facts and circumstances stated above, I do not find any ground to interfere with the impugned order. This petition is dismissed.