Adalat Prasad vs Rooplal Jindal & Ors on 25 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4674, 2004 (7) SCC 338, 2004 AIR SCW 5174, 2004 AIR - JHAR. H. C. R. 2834, 2004 (8) SRJ 268, 2004 CRI(AP)PR(SC) 640, 2004 (6) ACE 691, 2004 (7) SCALE 137, 2004 ALL MR(CRI) 3131, 2004 CALCRILR 1001, 2004 SCC(CRI) 1927, (2004) 2 JCJR 174 (SC), (2004) 4 CTC 608 (SC), (2004) 4 MPLJ 1, (2004) 7 JT 243 (SC), (2005) 1 CGLJ 268, 2004 (2) ALL CJ 2067, (2004) 24 ALLINDCAS 120 (SC), 2004 (2) UJ (SC) 1342, 2004 (6) SLT 353, 2004 CRILR(SC MAH GUJ) 800, 2004 UJ(SC) 2 1342, (2004) 2 CURCRIR 376, (2004) 113 DLT 774, (2005) 1 GUJ LR 546, (2004) 3 KER LT 382, (2005) MAD LJ(CRI) 167, (2004) 4 MAH LJ 274, (2004) 3 RAJ CRI C 829, (2004) 4 RECCRIR 1, (2004) 3 CURCRIR 176, (2004) 7 SCALE 137, (2004) 4 JLJR 46, (2004) 76 DRJ 694, (2004) 77 DRJ 440, (2004) 4 PAT LJR 124, (2004) 6 SUPREME 371, (2004) 50 ALLCRIC 924, (2005) 58 ALL LR 158, (2004) 3 CHANDCRIC 12, (2004) 4 ALLCRILR 376, (2004) 2 KER LJ 727, (2004) 3 CRIMES 350, (2004) 29 OCR 264, (2004) 2 UC 1236, (2004) 2 BOMCR(CRI) 857, (2004) 22 INDLD 425, (2004) 113 DLT 356, 2004 (2) ALD(CRL) 855

Bench: N. Santosh Hegde, S.B. Sinha, A.K. Mathur

CASE NO.:
Appeal (crl.) 91 of 2002

PETITIONER:
Adalat Prasad

RESPONDENT:
Rooplal Jindal & Ors.

DATE OF JUDGMENT: 25/08/2004

BENCH:
N. Santosh Hegde, S.B. Sinha & A.K. Mathur

JUDGMENT:

J U D G M E N T SANTOSH HEGDE, J.

This is an appeal by leave against the judgment of the High Court of Delhi at New Delhi in Criminal Revision No.127 of 1995 whereby the High Court allowed the said revision petition, setting aside the order of the trial court dated 28.1.1995 and remanded the matter to the Court of Magistrate for disposal in accordance with law. Brief facts necessary for the disposal of this case are as follows :

> The 1st respondent herein filed a complaint under sections 120A, 120B, 405, 406, 415, 420, 463, 465 and 468 of the IPC against the appellant and other respondents herein alleging that the respondents have cheated and defrauded him. Taking cognizance of the said complaint on 26.5.1992 the learned Metropolitan Magistrate summoned the appellants herein and other accused by issuing process under section 204 of the Code of Criminal Procedure (the Code) for offences confined to section 420 read with 120B IPC.
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> Being aggrieved by the said order of issuance of process the appellant and some of the accused moved the High Court and the High Court in the said petition directed the petitioners therein to move the trial court against the order of summoning. Pursuant to the said order of the High Court the appellant herein filed an application purported to be under section 203 Cr.P.C. on 10.3.1993 and the learned trial Judge by his order dated 28.1.1995 after hearing the parties recalled the said summons.

The said order of the learned Magistrate recalling the summons originally issued by him was challenged before the High Court on the ground that the Magistrate had no jurisdiction to recall a summons issued under section 204 of the Code. The High Court by the impugned order has allowed the revision petition holding that while the trial court was justified in taking cognizance of the offences punishable under section 420 read with 120B IPC it erred in recalling the consequential summons issued because the said court did not have the power to review its own order.

It is against the said order of the High Court as stated above, the appellant is before us in this appeal.

When this appeal came up for preliminary hearing on 13.11.2002 learned counsel appearing for the appellant relied on a judgment of this Court in the case of K.M. Mathew v. State of Kerala & Anr. (1992 1 SCC

217) wherein it was held that it was open to the court issuing summons to recall the same on being satisfied that the issuance of summons was not in accordance with law. The court which heard this matter at the preliminary stage doubted the correctness of the judgment in Mathew's case (supra) hence referred that case of Nilamani Routray v. Bennett Coleman & Co. Ltd. (1998 8 SCC 594) to a larger Bench. However said case of Nilamani (supra) got settled out of court hence the issue involved in Mathew's case (supra) was not decided by the larger Bench. Therefore on 3.12.2002 this Court directed that the present appeal be placed before a 3-Judge Bench with a view to consider the correctness of the law laid down by this Court in Mathew's case (supra). It is in this background this appeal has now come up for our consideration.

As noticed above it is the correctness of the view expressed by this Court in Mathew's case which is now to be considered by us.

It was held in Mathew's case (supra) that section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance and issue of summons to the accused.

When the accused enters appearance in response to the summons the Magistrate has to take proceedings under Chapter XX of the Code. It was further held that the need to try the accused arises only when there is an allegation in the complaint that the accused has committed the crime. Hence, if there is no allegation in the complaint involving the accused in the commission of the crime it is implied that the Magistrate has no jurisdiction to proceed against the accused. In that background this Court held that it is open to the accused served with summons to plead before the Magistrate that the process against him ought not to have been issued and if the Magistrate is satisfied with such an argument, he may drop the proceedings on reconsideration of the complaint on the ground that there was no offence for which accused could be tried. This Court further observed in Mathew's case, such power is Magistrate's judicial discretion and no specific provision is required for the Magistrate to drop proceedings or rescind the process. It also held that the order of issuing process being an interim order and not a judgment, it can be varied or recalled. The Court also held that the fact that the process has been already issued is no bar to drop the proceedings, if the complaint on the very face of it does not disclose any offence against the accused.

It is thus seen that in Mathew's case (supra) this Court held that after issuance of summons under section 204 of the Code, it was open to the Magistrate on being satisfied at the instance of the summoned accused to reconsider its decision of issuing summons under section 204. This Court in that case also held that the Magistrate issuing the summons can do so only on there being material to issue summons hence summons erroneously issued can be recalled by the Magistrate for which no specific provision is required.

Having heard the learned counsel for the parties and having considered the judgment of this Court in the case of Mathew (supra) we are unable to agree with the law laid down by this Court in the said case.

If we analyse the reasons given by this Court in the said case of Mathew then we notice that the said view is based on the following facts :

(a) The jurisdiction of the Magistrate to issue process arises only if the complaint contains the allegations involving the commission of a crime;

(b) If the process is issued without there being an allegation in the complaint involving the accused in the commission of a crime it is open to the summoned accused to approach the court issuing summons and convince the court that there is no such allegation in the complaint which requires his summoning;

(c) For so recalling the order of summons no specific provision of law is required;

(d) The order of issuing process is an interim order and not a judgment hence it can be varied or recalled.

We will examine the above findings of this Court in the background of the scheme of the Code which provides for consideration of complaints by Magistrates and commencement of proceedings before

the Magistrate which is found in Chapters XV and XVI of the Code;

Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses has not made out sufficient ground for proceeding. Per contra if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage has materials to proceed, he can proceed to issue process under Section 204 of the Code Section 202 contemplates: postponement of issue of process : It provides that if the Magistrate on receipt of a complaint if he thinks fit, to postpone the issuance of process against the accused and desires further inquiry into the case either by himself or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, he may do so. In that process if he thinks it fit he may even take evidence of witnesses on oath, and after such investigation, inquiry and the report of the Police if sought for by the Magistrate and if he finds no sufficient ground for proceeding he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under section 203 of the Code.

But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under section 204 of the Code. Therefore what is necessary or a condition precedent for issuing process under section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under sections 200 and 202, and the only stage of dismissal of the complaint arises under section 203 of the Code at which stage the accused has no role to play therefore the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under section 203 of the Code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 & 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of Code.

Therefore, in our opinion the observation of this Court in the case of Mathew (supra) that for recalling an order of issuance of process erroneously, no specific provision of law is required would run counter to the Scheme of the Code which has not provided for review and prohibits interference at inter-locutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew's case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.

In view of our above conclusion, it is not necessary for us to go into the question whether order issuing a process amounts to an interim order or not.

For the reasons stated above we are in agreement with the judgment of the High Court impugned herein. This appeal fails and the same is dismissed.