

Supreme Court of India

Nilamani Routray vs Bennett Coleman & Co. Ltd. on 30 January, 1996

Equivalent citations: (1998) 8 SCC 594

Bench: M Mukharji, B Kirpal

ORDER

1. On a complaint filed by the appellant herein, the respondent-Company and two others were summoned by the learned Sub-Divisional Magistrate, Bhubaneswar to stand trial for an offence punishable under Section 500 of the Indian Penal Code. After entering appearance, the respondent-Company filed an application for recalling the process issued against it for reasons mentioned therein. In opposing the application, the appellant contended, inter alia, that once process was issued against an accused, the court had no power to recall or review it. The learned Magistrate rejected the above contention of the appellant relying upon the following passage from the judgment of this Court in *K.M. Mathew v. State of Kerala*, "8. It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact the process has already been 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."

and allowed the application on its merits.

2. Assailing the above order of the learned Magistrate, the appellant moved the High Court by filing a revision petition which was rejected in view of the above judgment of this Court. Hence this appeal.

3. It has been contended on behalf of the appellant that *KM. Mathew Case* (Supra) requires reconsideration for it is settled law that a power of review has to be conferred by law specifically or by necessary implication and the CrPC does not confer such power. Since we find that there is some substance in the above contention, it is desirable that the matter be heard by a Bench of three Judges. Let the papers be placed before the learned Chief Justice for necessary orders.