

Neutral Citation No. - 2024:AHC-LKO:48068

Court No. - 13

Case :- APPLICATION U/S 482 No. - 6254 of 2024

Applicant :- Komal Gupta

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And Another

Counsel for Applicant :- Mulayam Singh Yadav,Dalganjan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard.

The present application U/s 482 Cr.P.C. read with Section 528 Bharatiya Nagarik Suraksha Sanhita (in short "BNSS") has been filed for quashing the proceeding of the Case No. 37699/2019 (State Versus Komal Gupta) arises out of Case Crime No. 1170/2018, Under Section-338 I.P.C., Police Station- Ghazipur, District-Lucknow.

The impugned order dated 07.06.2023 has been passed by the trial Court by placing reliance on the judgment passed in the case of **Subramaniam Sethuraman vs State Of Maharashtra & Anr** reported in **(2004) 13 SCC 324**.

The relevant para of the judgment passed in the case of **Subramaniam Sethuraman (supra)** is extracted herein-under:

"12. Having considered the argument of the learned counsel for the parties, we are of the opinion that the argument of the learned counsel for the appellant that the decision of this Court in Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] requires reconsideration cannot be accepted. It is true that the case of Adalat Prasad [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] pertained to a warrant case whereas Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] pertained to a summons case. To this extent, there is some difference in the two cases, but that does not, in any

manner, make the law laid down by this Court in Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] a bad law

13. In Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] this Court held that consequent to a process issued under Section 204 by the Magistrate concerned it is open to the accused to enter appearance and satisfy the court that there is no allegation in the complaint involving the accused in the commission of the crime. In such situation, this Court held that it is open to the Magistrate to recall the process issued against the accused. This Court also noticed the fact that the Code did not provide for any such procedure for recalling the process, but supported its reasoning by holding that for such an act of judicial discretion no specific provision is required.

14. In Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] this Court considered the said view of the Court in K.M. Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] and held that the issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the Code for review of an order by the same court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. In that line of reasoning this Court in Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] held: (SCC p. 343, para 16)

"Therefore, we are of the opinion, that the view of this Court in Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law."

15. From the above, it is clear that the larger Bench of this Court in Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] did not accept the correctness of the law laid down by this Court in K.M.

Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] . Therefore, reliance on K.M. Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] by the learned counsel appearing for the appellant cannot be accepted nor can the argument that Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] requires reconsideration be accepted.

16. The next challenge of the learned counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge, cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion.

17. As observed by us in Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.

18. The learned counsel for the appellant then sought leave of this Court to approach the High Court by way of Section 482 petition questioning the issuance of process by the Magistrate. The same was very strongly opposed by the learned counsel for the respondents who contended that the complaint in this case was filed as far back as 24-12-1996 and though there was a direction earlier for an early disposal of the trial, the appellant and the other accused have successfully managed to keep the trial in abeyance by initiating one proceeding after another even up to this Court. He submitted that both this Court as well as the High Court in the earlier proceedings have left the question of validity of statutory notice to be considered at the trial

but the accused persons including the appellant herein are time and again raising the same issue with a view to delay the trial, hence no such permission as sought for by the appellant should be granted.

19. We see that this Court while dismissing earlier SLP as withdrawn had left the question of legality of the notice open to be decided at the trial. Therefore, legitimately the appellant should raise this issue to be decided at the trial. Be that as it may, we cannot prevent an accused person from taking recourse to a remedy which is available in law. In Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] we have held that for an aggrieved person the only course available to challenge the issuance of process under Section 204 of the Code is by way of a petition under Section 482 of the Code. Hence, while we do not grant any permission to the appellant to file a petition under Section 482, we cannot also deny him the statutory right available to him in law. However, taking into consideration the history of this case, we have no doubt that the court concerned entertaining the application will also take into consideration the objections i.e. raised by the respondent in this case as to delay i.e. being caused by the entertainment of applications and petitions filed by the accused."

Undisputedly, the case in issue i.e. Case No. 37699/2019 is a summon case and according to the judgment passed in the case of **Subramaniam Sethuraman (supra)**, the application for discharge would not be maintainable.

To refute the settled proposition of law in the judgment passed in the case of **Subramaniam Sethuraman (supra)**, no judgment has been placed before this Court.

In view of aforesaid, this Court finds that the impugned order is just and proper and no interference is required in the matter. Accordingly, the instant application is rejected.

Order Date :- 16.7.2024/Mohit Singh/-

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