



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl. R.C. (MD)No.63 of 2016

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Duraipandi Nadar

.. Petitioner/Complainant

Vs.

1. Dhanaraj

2. Abraham

.. Respondents/Accused

**Prayer :** This Criminal Revision is filed under Sections 397 r/w. 401 of Cr.P.C., to call for records pertaining to the order discharging the accused passed in S.T.C.No.1898 of 2014 on the file of the Judicial Magistrate, Sattankulam dated 06.11.2015 and set aside the same.

For Petitioner: Mr.T.A.Ebenezer

For R-2 : Mr.C.K.M.Appaji

**ORDER**

Heard the learned counsel on either side.

2. The revision petitioner Thiru.Duraipandi Nadar is the complainant in S.T.C.No.1898 of 2014 on the file of the Judicial Magistrate, Sathankulam. The respondents herein were shown as accused in the said case.

3. The case of the complainant is that the respondents have defamed him. That is why he filed a complaint under Section 500 of I.P.C. Summons were issued to the accused and the complainant was examined as P.W.1. Thereafter, the learned trial Magistrate passed the order dated 06.11.2015 discharging the accused under Section 245 (1) of Cr.P.C. The same is put to challenge in this revision case. As rightly pointed out by the learned counsel appearing for the revision petitioner, the case on hand being a private complaint treated as summon case, the question of discharging the accused after the issuance of summons does not arise at all. He drew my attention to the decision of the Hon'ble Supreme Court reported in AIR 2004 SC 4674 (Adalat Prasad V. Rooplal Jindal). The Hon'ble Supreme Court in the said decision overruling the earlier case reported in 1992 1 SCC (K.M.Mathew V. State of Kerala and Another) held as follows:-

"14. ... It is true as held by this Court in

Mathew's case before issuance of summons the

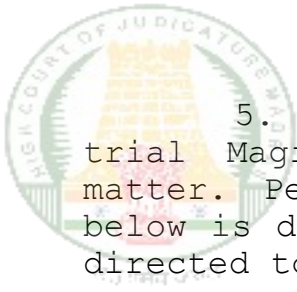


Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under sections 200 and 202, and the only stage of dismissal of the complaint arises under section 203 of the Code 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.

15. 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.

16. 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."

4. In the case on hand, the learned Magistrate had invoked Section 245(1) of Cr.P.C. to discharge the respondent. It has been held by the Hon'ble Supreme Court in Adalat Prasad V. Rooplal Jindal reported in AIR 2004 SC 4674, Section 245(1) of Cr.P.C., cannot be invoked in the case of this nature. Therefore on the face of it, the order impugned in this criminal revision is set aside. This criminal revision case is allowed.



5. S.T.C.No.1898 of 2014 is restored to file. The learned trial Magistrate shall endeavour to expedite and conclude the matter. Personal appearance of the respondents before the Court below is dispensed with. They need to appear only when specifically directed to do so by the Court below.

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Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate,  
Sattankulam.
- 2.The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.(2 Copies)

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NR (06/01/2020) 3P : 4C