

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1127 of 2019

Jashdeep Singh Sood & Anr.

Vs

Viva Sonthalia & Ors.

For the Petitioners : Mr. Dhiraj Trivedi.
Mr. Sunil Gupta.

For the Opposite Parties : None.

Hearing concluded on : 20.11.2023

Judgment on : 24.11.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings as against the petitioner of complaint Case No. C-0075104 of 2016 (previously numbered as 4696 of 2012) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 as amended pending before the learned Metropolitan Magistrate 19th Court at Calcutta and order dated 01.07.2016 and order dated 18.01.2017 passed by the learned Metropolitan Magistrate 19th Court at Calcutta in Complaint Case No. C-0075104 of 2016 (previously numbered as 4696 of 2012).
2. The petitioner's case is that a complaint was initiated under Sections 138/141 of the Negotiable Instruments Act, 1881 by the opposite party against the petitioners.
3. **In spite of service the opposite parties are not represented.**
4. **Mr. Dhiraj Trivedi, learned counsel** has represented the petitioners.
5. On hearing Mr. Trivedi and on perusal of the materials on record, the following facts are before this Court:-

- i. Initially the proceedings was numbered as C-4696/12.
- ii. Vide order dated 17.03.2012, on inquiry the learned Metropolitan Magistrate, 5th Court, Calcutta, held as follows:-

“However at the time of issuance of the cheque in question, it cannot be said the accused persons who were not directors of accused no. 1/Pabanso India Pvt. Ltd. can be held liable U/s 138 read with Section 141 of

*the NI Act. **Accordingly process cannot be issued against accused no. 6 and 7 and they are discharged from the case.***

However materials on the record suggest that all other accused persons have committed an offence U/s 138 of the NI Act read with Section 141 of the NI Act and accordingly issue summons against accused no. 1 to 5.”

- iii. **The accused no. 6 & 7 are the petitioners herein.**
- iv. It is submitted that thereafter the case was transferred to the learned Judicial Magistrate at Surat for trial and disposal. Subsequently on coming into force of Ordinance on 15.06.2015, the said case was once again transferred back to the Court of the Chief Metropolitan Magistrate at Calcutta-700001 and **renumbered** as Case No. 00175104 of 2016 and was subsequently transferred to learned Metropolitan Magistrate 19th Court at Calcutta for trial and disposal. Thereafter the opposite party no. 1 adduced evidence by an affidavit as per provision of Section 145 of the said Act on 01.07.2016 and the learned Magistrate without taking into consideration the previous orders and the fact that the name of the petitioners had been expunged from the array of the accused persons and that they had been discharged from the above case by an order dated 17.03.2014, mechanically issued process against the petitioners on 01.07.2016.

- v. Prayer for expunging the names of the petitioners on the ground of order dated 17.03.2012 was rejected vide order dated 18.01.2017, wherein the Court held as follows:-

“It is a fact that vide order dated 17.03.12 ld. Metropolitan Magistrate, 5th Court, Calcutta was pleased not to issue process against the accused no. 6 and 7 and they were accordingly discharged from the case and thereafter, the said case was transferred before the Ld. Metropolitan Magistrate of Surat (Gujrat) and when the said record was retransferred Ld. C.M.M., Calcutta was pleased to take cognizance of the same and then it was transferred to this Court for disposal of the case and accordingly process was issued against all the accused persons. Thereafter, the said accused no. 6 took bail on 06.12.16 and since the date of taking bail he did not whisper a single word in respect of expunging his name from the cause title of the instant case. In my opinion when the process has already been issued by this Court, this Court does not have any power to review or recall its own order. Hence the instant petition stands rejected.”

- vi. The Court then issued warrant of arrest.

6. The said order is under challenge in this revision.
7. Admittedly its on record that the petitioners had been discharged vide order dated 17.03.12 in the same proceeding.
8. The order dated 17.03.12 was not challenged by the complainant before any forum.
9. Mr. Trivedi has relied upon the Supreme Court’s ruling in ***Adalat Prasad vs Rooplal Jindal & Ors., Appeal (crl.) 91 of 2002, on 25 August, 2004***, wherein the Court held:-

“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."

10. In **Subramaniam Sethuraman vs State of Maharashtra & Anr., Appeal (crl.) 1253 of 2002, on 17 September, 2004**, the Supreme

Court held:-

"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's case requires reconsideration cannot be accepted. It is true that the case of Adalat Prasad pertained to a warrant case whereas in Mathew's case the same 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's case a bad law. .

In Mathew's case this Court held that consequent to a process issued under Section 204 by the concerned Magistrate 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 for such an act of judicial discretion no specific provision is required. In Adalat Prasad's case, this court considered the said view of the court in K.M.Mathew's case 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's case held :

"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 and issuance order amounting to one without jurisdiction, does not laid down the correct law".

From the above, it is clear that the larger Bench of this Court in Adalat Prasad's case did not accept the correctness of the law laid down by this Court in K.M.Mathew's case. Therefore, reliance on K.M.Mathew's case by the learned counsel appearing for the appellant cannot be accepted nor can the argument that Adalat Prasad's case requires reconsideration be accepted. 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 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. As observed by us in Adalat Prasad's case 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."

11. **The facts in the present case** is a little different from the cases considered by the Supreme Court in ***Adalat Prasad vs Rooplal Jindal & Ors.(Supra)*** and ***Subramaniam Sethuraman vs State of Maharashtra & Anr. (Supra)***.
12. It is on record that the petitioners herein (being the accuseds no. 6 & 7) were discharged by the Court in the same proceedings, vide its order dated 17.03.12, wherein the Court also directed that the case would proceed against the other accused persons. The complainant did not challenge the said order.

13. Thus, when the case was returned from the Court at Surat, it was to be proceeded from the stage it was, and not as if it was a freshly initiated case. As the proceedings in the case was a continuing one, the Magistrate erroneously issued summons against the petitioners who had already been discharged in the same proceeding vide a previous order dated 17.03.12 which has not been challenged.
14. The order dated 18.01.17 thus being not in accordance with law in respect of the present petitioners is liable to be set aside.
15. **CRR 1127 of 2019 is allowed.**
16. The order dated 01.07.2016 and order dated 18.01.2017 passed by the learned Metropolitan Magistrate 19th Court at Calcutta in Complaint Case No. C-0075104 of 2016 (previously numbered as 4696 of 2012) are set aside in respect of the petitioners herein. The proceedings in complaint Case No. C-0075104 of 2016 (previously numbered as 4696 of 2012) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 as amended pending before the learned Metropolitan Magistrate 19th Court at Calcutta **is also quashed in respect of the petitioners herein, being the accused no. 6 and 7 namely Jasdeep Singh Sood and Jasmine Kaur.**
17. **The case before the Trial Court shall proceed in accordance with law in respect of the other accused persons.**
18. There will be no order as to costs.
19. All connected Applications, if any, stand disposed of.

- 20.** Interim order, if any, stands vacated.
- 21.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 22.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)