

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1586 of 2011

Dilip Sahoo

-Vs-

The State of West Bengal & Ors.

For the Petitioner : Mr. Debasis Sur
Mr. Hare Krishna Halder

For the Opposite Party No. 2 : Mr. Nanigopal Chakraborty

Heard on : 09.10.2023, 04.01.2024

Judgment on : 13.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner for quashing of proceeding being C.R. Case No. 93/2008 under Section 138 of Negotiable Instruments Act pending in the Court of the Learned Additional Chief Judicial Magistrate, Jhargram, Paschim Medinipur.
2. Petitioner stated that the above mentioned case was initiated on the basis of one complaint filed by the opposite party no. 2 alleging inter alia that the petitioner happened to be his neighbour. The petitioner asked him to render financial assistance for running his business and on an assurance that he would be provided a good plot of land, the opposite party no. 2, handed him an amount of Rupees Five Lakhs Fifteen Thousand only out of which Rupees Thirty Thousand was repaid by the petitioner. Thereafter on persuasion of

the opposite party no. 2, the petitioner issued a post dated Cheque being No. 383388 dated 22.02.08 of Rupees Eight Lakhs which on presentation for encashment was returned unpaid with the endorsement "full cover not received". Thereafter on fulfillment of statutory requirement the complaint was made.

3. The petitioner stated that on receipt of summons from the Learned Court he entered his appearance and pleaded not guilty on being informed of the accusation and as such date was fixed for evidence.
4. At this state after examination of case record the petitioner came to know that the Learned Magistrate without taking cognizance of the offence as alleged, without complying with the provision of Section 200 of the Code of Criminal Procedure, 1973, issued process against him and also proceeded with the case.
5. The petitioner, then, on advice, filed an application before the Learned Magistrate praying for dismissal of the complaint and discharging him from the case on the ground of non compliance of Section 200 of the Code of Criminal Procedure, 1973 and for non-compliance of Section 145 of Negotiable Instrument Act on the part of the opposite party no. 2.
6. The said application was dismissed by the Learned Magistrate on 30.07.2010 inter alia holding that though the contention of the petitioner was true but process had been issued by his predecessor in office and there was no scope of recalling of summons once it was issued or to dismiss the complaint.
7. Learned Advocate for the petitioner submitted that –

- i. The issuance of process in the instant case was illegal, improper and seriously prejudiced the petitioner.
 - ii. There was no statutory provision which enabled the Learned Magistrate to issue process on the complaint filed by a person in his personal capacity without taking cognizance first which was evident from the fact of non-compliance of the provisions of Section 200 of the Code of Criminal Procedure, 1973.
 - iii. Relevant statutory provision mandated the Learned Magistrate to comply with Section 200 of the Code of Criminal Procedure, 1973 before issuing process against any person shown as accused in the complaint.
 - iv. Initiation of proceeding by the Learned Magistrate was unwarranted and suffered from serious illegality.
 - v. The Learned Magistrate ought to have taken note of the fact that there was no compliance with Section 145 of Negotiable Instrument Act, 1973 before proceeding with the case.
 - vi. The compliance with Section 200 of the Code of Criminal Procedure, 1973 was not a mere formality but it was meant to serve several purposes more so it was at the stage which indicated that the Learned Magistrate had taken cognizance of the offence in other words he had applied his mind to the complaint and as such non compliance thereof vitiated the proceeding.
8. The Learned Advocate for the opposite party no. 2 submitted that the petitioner filed the present revisional application before this Hon'ble High Court challenging the order dated 18.02.2011 passed by the Learned

Sessions Judge, Paschim Medinipur in criminal revision no. 284 of 2011 whereby order of the Learned Magistrate was affirmed and for the same reason it was further submitted that the present revisional application was not maintainable in the eye of law.

9. It was further submitted that the petitioner filed an application for quashing of the complaint case in the court below with a prayer for discharging the accused person and same prayer was made in the present revisional application and as such the same was liable to be dismissed with exemplary cost.
10. The Learned Trial Judge passed an order dated 30.07.2010 in C.R. Case No. 93 of 2008 and made observation in the order sheet, which specifically noted that "... It is settled principle of law that once process has been issued under Section 204 of the Cr.P.C., the court has no scope to recall the process for dismiss the complaint by taking recourse of Section 203 of the Cr.P.C. In Cr.P.C. a Magistrate was not empowered to recall his own process and dismiss the complaint as prayed in this case. Moreover in the present case the accused person has been examine under Section 251 of the Cr.P.C. to which he was pleaded not guilty and the case was at the stage of evidence. In many view this court has no scope to dismiss the complaint and discharge the accused person from this case as prayed for the petitioner filed by the accused to that effect was liable to be rejected..."
11. The Learned Sessions Judge passed order dated 30.07.2010 and made observation in the order sheet, which specifically noted that ".... However, I find from the impugned order that the Learned Magistrate has mentioned in

a portion of the said order that at the time of filling the complaint no affidavit as required under Section 145 of the Negotiable Instrument Act was filed by the complaint nor the complaint was examined. But on careful perusal of the L.C.R. I find that such finding of the Learned Magistrate was not consistent with the order dated 13.06.2008 by which the process was issued. From the said order dated 13.06.2008 I find that it has categorically mentioned therein that an Affidavit was filed by the complaint in support of his petition of complaint. Perhaps while passing the impugned order the Learned Magistrate has overlooked the said portion of the order dated 13.06.2008. On careful perusal of the record I find that an affidavit was filed by the complaint – Dilip Kumar Das before the Learned Magistrate on 13.06.2008, which was sworn before the Notary Public, Jhargram wherein he has categorically stated on oath that all the averments made in the petition of complaint are true to his knowledge and belief and the said complaint has been drafted as per his instruction. In my considered view, the said affidavit as filed by the complaint, which was lying with L.C.R. can be said to be the compliance of Section 145 of the Negotiable Instrument Act. On due consideration of all aspects of the materials on record I find that Learned Magistrate has not committed any wrong by not entertaining the application filed by the accused on 01.08.2009 seeking dismissal of the complaint and thereby to discharge the accused. I do not find any illegality or impropriety in the said impugned order passed by the Learned Magistrate. As a result, the instant criminal revision fails ...”

12. The petitioner filed the present revisional application to drag the complaint case opting dilatory tactics.
13. The impugned order passed by the Learned A.C.J.M. states as follows:

“Order Dated 30.07.2010

Today is fixed for passing order arising out of hearing of the petition dated 01.08.2009. The record is taken up for passing order. By filing the aforesaid petition, the accused persons prayed for dismissal of the complaint with a further prayer to discharge him from this case on the grounds inter-alia that in the present case the complainant has neither filed evidence on affidavit as required under Section 145 of the N.I. Act nor examined himself and his witnesses under Section 200 Cr.P.C. before issuance of process under Section 204 of Cr.P.C. It is further contended that the summon issued in this case is unwarranted and uncalled for which gets no statutory force in the eye of law and there is no scope to proceed further with this case.

In course of hearing Learned Lawyer for the accused person submitted that since the process against the accused person has been issued without complying the statutory provisions the Court has little scope to proceed further with this case and the accused person is entitled to get the relief as prayed for.

On the other hand, Learned Counsel for the complainant submitted that once the Court has issued process under Section 204 of Cr.P.C. there is no scope to take recourse of Section 203 Cr.P.C. to dismiss the complaint as prayed for.

He further submitted that in the present case the accused person has already been examined under Section 251 Cr.P.C. and the case is lying at the stage of evidence and in the given circumstances the Court has nothing to do except to proceed further with this case.

Having heard both sides and considering the materials on record, it appears to me that admittedly in the present case the complainant has neither filed his evidence on affidavit as required under Section 145 of the N.I. Act nor examined himself and his witness under Section 200 Cr.P.C. before the issuance of process by this Court. However, process has been issued in the present case by my predecessor in office and the accused person never raised this issue till the case reaches the stage of evidence. It is settled principle of law that once process has been issued under Section 204 of the Cr.P.C. the Court has no scope to recall the process or dismiss the complaint by taking recourse of Section 203 of Cr.P.C. In Cr.P.C., a Magistrate is not empowered to recall his own process and dismiss the complaint as prayed in this case. Moreover in the present case the accused person has been examined under Section 251 Cr.P.C. to which he has pleaded not guilty and the case is lying at the stage of evidence. In my view this Court has no scope to dismiss the complaint and discharge the accused person from this case as prayed for and the petition filed by the accused to that effect is liable to be rejected.

Considering all the above noted facts and circumstances of the case, I am not inclined to allow the aforesaid petition filed by the accused person and the same is hereby dismissed on contest and disposed of.

To 04.09.2010 for evidence.”

14. In the case of **Subramaniam Sethuraman v. State of Maharashtra**, reported in **(2004) 13 SCC 324**, the Apex Court held the following:-

“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.”

15. The Apex Court observed the following in ***Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re***, reported in (2021) 16 SCC 116:-

“17. In *K.M. Mathew v. State of Kerala* [*K.M. Mathew v. State of Kerala*, (1992) 1 SCC 217 : 1992 SCC (Cri) 88] , this Court dealt with the power of the Magistrate under Chapter XX of the Code after the accused enters appearance in response to the summons issued under Section 204 of the Code. It was held that the accused can plead before the Magistrate that the process against him ought not to have been issued and 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. This Court was of the opinion that there is no requirement of a specific provision for the Magistrate to drop the proceedings and as the order issuing the process is an interim order and not a judgment, it can be varied or recalled. The observation in *K.M. Mathew* [*K.M. Mathew v. State of Kerala*, (1992) 1 SCC 217 : 1992 SCC (Cri) 88] that no specific provision of law is required for recalling an erroneous order of issue of process was held to be contrary to the scheme of the Code in *Adalat Prasad v. Rooplal Jindal* [*Adalat Prasad v. Rooplal Jindal*, (2004) 7

SCC 338 : 2004 SCC (Cri) 1927] . It was observed therein that the order taking cognizance can only be subject-matter of a proceeding under Section 482 of the Code as subordinate criminal courts have no inherent power. There is also no power of review conferred on the trial courts by the Code. As there is no specific provision for recalling an erroneous order by the trial court, the judgment in *K.M. Mathew* [*K.M. Mathew v. State of Kerala*, (1992) 1 SCC 217 : 1992 SCC (Cri) 88] was held to be not laying down correct law. The question whether a person can seek discharge in a summons case was considered by this Court in *Subramaniam Sethuraman v. State of Maharashtra* [*Subramaniam Sethuraman v. State of Maharashtra*, (2004) 13 SCC 324 : 2005 SCC (Cri) 242] . The law laid down in *Adalat Prasad* [*Adalat Prasad v. Rooplal Jindal*, (2004) 7 SCC 338 : 2004 SCC (Cri) 1927] was reiterated.

18. It was contended by the learned Amici Curiae that a holistic reading of Sections 251 and 258 of the Code, along with Section 143 of the Act, should be considered to confer a power of review or recall of the issuance of process by the trial court in relation to complaints filed under Section 138 of the Act. He referred to a judgment of this Court in *Meters & Instruments (P) Ltd. v. Kanchan Mehta* [*Meters & Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477] which reads as follows : (SCC p. 568, para 11)

“11. While it is true that in *Subramaniam Sethuraman v. State of Maharashtra* [*Subramaniam Sethuraman v. State of Maharashtra*, (2004) 13 SCC 324 : 2005 SCC (Cri) 242] this Court observed that once the plea of the

accused is recorded under Section 252CrPC, the procedure contemplated under Chapter XX CrPC has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to the 2002 Amendment. The statutory scheme post-2002 Amendment as considered in Mandvi Coop. Bank [Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore, (2010) 3 SCC 83 : (2010) 1 SCC (Civ) 625 : (2010) 2 SCC (Cri) 1] and J.V. Baharuni [J.V. Baharuni v. State of Gujarat, (2014) 10 SCC 494 : (2015) 1 SCC (Cri) 1] has brought about a change in law and it needs to be recognised. After the 2002 Amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the court in exercise of its inherent power under Section 143 of the Act which is different from compounding by consent of parties. Thus, Section 258CrPC which enables proceedings to be stopped in a summons case, even though strictly speaking is not applicable to complaint cases, since the provisions of CrPC are applicable “so far as may be”, the principle of the said provision is applicable

to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible i.e. with such deviation as may be necessary for speedy trial in the context.”

19. *In Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477] , this Court was of the opinion that Section 143 of the Act confers implied power on the Magistrate to discharge the accused, if the complainant is compensated to the satisfaction of the court. On that analogy, it was held that apart from compounding by the consent of the parties, the trial court has the jurisdiction to pass appropriate orders under Section 143 in exercise of its inherent power. Reliance was placed by this Court on Section 258 of the Code to empower the trial courts to pass suitable orders.*

20. *Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply “as far as may be” to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477] insofar as it conferred power on the trial court to discharge an accused is not good law. Support taken from the words “as far as may be” in Section 143 of*

the Act is inappropriate. The words “as far as may be” in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is impermissible. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation [J. Frankfurter, Of Law and Men : Papers and Addresses of Felix Frankfurter.] . The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires [Duport Steels Ltd. v. Sirs, (1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] . The court cannot add words to a statute or read words into it which are not there [Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248] .

21. *A close scrutiny of the judgments of this Court in Adalat Prasad [Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 : 2004 SCC (Cri) 1927] and Subramaniam Sethuraman [Subramaniam Sethuraman v. State of Maharashtra, (2004) 13 SCC 324 : 2005 SCC (Cri) 242] would show that they do not warrant any reconsideration. The trial court cannot be conferred with inherent power either to review or recall the order of issuance of process. As held above, this Court, in its anxiety to cut down delays in the disposal of complaints under Section 138, has applied Section 258 to hold that the trial court has the power to discharge the accused even for reasons other than payment of compensation. However, amendment to the Act empowering the*

trial court to reconsider/recall summons may be considered on the recommendation of the Committee constituted by this Court which shall look into this aspect as well.

22. *Another submission made by the learned Amici Curiae relates to the power of the Magistrate under Section 322 of the Code, to revisit the order of issue of process if he has no jurisdiction to try the case. We are in agreement with the learned Amici Curiae that in case the trial court is informed that it lacks jurisdiction to issue process for complaints under Section 138 of the Act, the proceedings shall be stayed and the case shall be submitted to the Chief Judicial Magistrate or such other Magistrate having jurisdiction.*

23. *Though we have referred all the other issues which are not decided herein to the Committee appointed by this Court on 10-3-2021 [Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, 2021 SCC OnLine SC 354] , it is necessary to deal with the complaints under Section 138 pending in appellate courts, High Courts and in this Court. We are informed by the learned Amici Curiae that cases pending at the appellate stage and before the High Courts and this Court can be settled through mediation. We request the High Courts to identify the pending revisions arising out of complaints filed under Section 138 of the Act and refer them to mediation at the earliest. The courts before which appeals against judgments in complaints under Section 138 of the Act are pending should be directed to make an effort to settle the disputes through mediation.*

24. *The upshot of the above discussion leads us to the following conclusions:*

24.1. *The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.*

24.2. *Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.*

24.3. *For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.*

24.4. *We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.*

24.5. *The High Courts are requested to issue practice directions to the trial courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.*

24.6. *The judgments of this Court in Adalat Prasad [Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 : 2004 SCC (Cri) 1927] and Subramaniam Sethuraman [Subramaniam Sethuraman v. State of Maharashtra, (2004) 13 SCC 324 : 2005 SCC (Cri) 242] have interpreted the law correctly and we reiterate that there is no inherent power of trial courts to*

review or recall the issue of summons. This does not affect the power of the trial court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.”

16. In view of the aforesaid decisions, the Learned Trial Court was justified in rejecting the prayer for recalling as aforesaid.
17. The Learned Trial Court is directed to comply with the provisions under Section 200 and Section 204 of the Cr.P.C. and also to issue necessary orders in compliance of Section 145 of the Negotiable Instruments Act, 1881.
18. In view of the above discussions, the instant criminal revisional application is dismissed.
19. There is no order to costs.
20. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)