



2024:DHC:1357



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 21.02.2024***

+ CRL.M.C. 933/2022

KAVERI PARASHAR

..... Petitioner

Through: Mr.Mandeep Singh Vinaik,
Ms.Ragini Vinaik,
Mr.Tanglunkim, Ms.Kanishka
Sharma, Advs.

versus

KALIND PARASHAR & ORS.

..... Respondents

Through: Ms.S.A.Sharma, Adv. with
Mr.Braham Raj Sharma, POA
Holder.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 04.12.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Metropolitan Magistrate-05, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in the complaint case filed by the petitioner herein, being CIS No.9295/2017 titled ***Kaveri Parashar v. Kalind Parashar***.
2. The above complaint has been filed by the petitioner under



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Section 200 of the Cr.P.C. alleging the respondent to have committed an offence under Section 494 of the Indian Penal Code, 1860 (in short, 'IPC').

3. Summons were issued by the learned Trial Court in the said complaint vide Order dated 12.02.2018 (in the Impugned Order, it is wrongly mentioned that the charge under Section 494 of the IPC was framed against the respondent by the Order dated 12.02.2018).
4. The respondent, on appearance before the learned Trial Court, moved an application for disposing of the proceedings in the complaint case as being not maintainable due to lack of territorial jurisdiction. The learned Trial Court by the Impugned Order has allowed the said application and disposed of the complaint holding that it lacks jurisdiction to entertain the same.
5. The learned counsel for the petitioner, placing reliance on the judgments of the Supreme Court in *Adalat Prasad v. Rooplal Jindal & Ors.* (2004) 7 SCC 338 and *Subramaniam Sethuraman v. State of Maharashtra & Anr.* (2004) 13 SCC 324, submits that the Impugned Order is passed without jurisdiction. He submits that the learned Trial Court has no power to recall the summons issued against the accused. The only remedy for the accused is to challenge the Summoning Order by way of a revision petition or any other appropriate legal remedy available with the respondent in a Court where such an application/petition against the order of the learned Trial Court can be filed.



6. On the other hand, the learned counsel for the respondents submits that the present petition is not maintainable inasmuch as the petitioner had an efficacious alternate remedy of filing a Revision Petition under Section 397 of the Cr.P.C.. She submits that the petitioner, instead of filing such petition, has moved the present petition. She further submits that the learned Trial Court lacks territorial jurisdiction to entertain the complaint filed by the petitioner and therefore, the complaint has rightly been dismissed by the learned Trial Court by way of the Impugned Order.
7. I have considered the submissions made by the learned counsels for the parties.
8. In **Adalat Prasad** (supra), the Supreme Court, considering the scheme of Chapters XV and XVI of the Cr.P.C., has held as under:

“14. 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 case that 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 on 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 provisions of Sections 200 and 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 the Code.

16. Therefore, in our opinion the observation of this Court in the case of Mathew that for recalling an erroneous order of issuance of process, 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 interlocutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew case that no specific provision is required for recalling an erroneous order, amounting to



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one without jurisdiction, does not lay down the correct law."

9. In ***Subramaniam Sethuraman*** (supra), the Supreme Court, in fact, accepting the above position, remitted the parties back to the High Court, for the respondent to agitate its grievance in the petition under Section 482 of the Cr.P.C..
10. In the present case, summons having been issued against the respondents by the order dated 12.02.2018, the same could not have been recalled by the learned Trial Court on an application filed by the respondents. The respondents had to challenge the said Summoning order in accordance with law, if so advised, before an appropriate court and in an appropriate proceedings.
11. Accordingly, the Impugned Order is set aside and the complaint is restored back to its original number and position before the learned Trial Court.
12. It is made clear that this Court has not expressed any opinion on the merits of the Impugned Order passed by the learned Trial Court.
13. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

FEBRUARY 21, 2024
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Click here to check corrigendum, if any