

(1993) 03 DEL CK 0015

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2107 of 1992

M.S.B. Prasad and Others

APPELLANT

Vs

K.M. Sharma and Others

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Citation : (1993) 50 DLT 167 : (1993) 2 RCR(Criminal) 346

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : K.K. Sharma and D.R. Sethi, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This petition is filed u/s 482 of the Code of Criminal Procedure (Code for short) against an order dated 4.6.92 of the learned M.M. by which he has summoned the petitioners u/s 500 read with Section 34 IPC.

(2) Notice of this petition was issued to the respondent. There was an interim order of stay. I have heard arguments advanced by learned Counsel for the parties. There is a direct ruling now of Hon'ble the Supreme Court in the case of K.M. Mathew Vs. State of Kerala and another, . Fortunately that was also a case in which the learned Magistrate had summoned the accused person u/s 500 IPC. Therefore, there is absolutely no distinction between the present case and that case. In that case an application was made before the Magistrate on behalf of one of the accused persons assuming the allegations in the complaint to be true, no offence was made out against that accused. The Magistrate dropped the proceedings against that accused. The complainant took up the matter in revision. to the High Court. The High Court observed that Magistrate had no power to drop the proceedings against the accused at an interim stage. It was further observed that Magistrate was bound to record the evidence adduced on behalf of prosecution and only thereafter when the evidence was complete, the Magistrate after hearing arguments could acquit the accused. The Hon'ble

Supreme Court in these circumstances observed as under:

"IT is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. 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. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it (does not disclose any offence against the accused.)"

(3) The above quoted authority of Supreme Court clearly points out that the Magistrate even after summoning an accused has power to vary or recall the order of summoning if it can be pointed to him that no case was made out against the accused person. The situation in the present case is also the same. However, learned Counsel for the petitioner contends that if this argument was accepted then Section 482 becomes absolutely redundant and the High Court will have no jurisdiction to pass any order if the interest of justice so required in a particular case. This argument has been mentioned simply to be rejected because it goes against the very verdict of Hon'ble the Supreme Court. It has in most unambiguous language pointed out that Magistrate retains the power to recall or vary the order of summoning passed by him earlier. I see no reason why in that situation such an argument should be accepted. In this situation there is no way except to dismiss this petition which is accordingly dismissed. However, the petitioner will be at liberty to approach learned Magistrate for varying or recalling the order of summoning .