

(2000) 07 AHC CK 0033
In the Allahabad High Court
Case No : Criminal Revision No. 1353 of 2000

Smt. Swarn Manjal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 204, 258, 397
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 166, 167, 176, 201, 219

Citation : (2000) CriLJ 4679 : (2000) 4 RCR(Criminal) 537

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Raghubir Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—This is a revision u/s 397/401, Cr.P.C. The facts giving rise to this revision are as follows :

2. The opposite party No. 2 filed a complaint against the revisionist and three others for offences u/s 406, I.P.C. and 138 N.I. Act which was case No. 792 of 1998 pending before VIth Additional Chief Judicial Magistrate, Agra. The learned Magistrate recorded the evidence under Sections 200 and 202, Cr.P.C. and thereafter passed the order u/s 204, Cr.P.C. summoning the revisionist. In compliance of the process issued against the revisionist, the revisionist appeared and filed objections pleading that no case is made out against her and therefore, the order of summoning her u/s 204, Cr.P.C. be recalled. The application was not considered on the merits. On the other hand, it was rejected only on the ground that objections against the order for issuing summons are not maintainable in view of the decision of Full Bench of this Court in the case of Ranjit Singh v. State of U.P. 2000 (1) JIC 399. Feeling aggrieved by this order, the revisionist has approached this Court.

3. I have heard Sri Raghubir Singh, learned counsel for the revisionist and the

learned A. G. A.

4. This revision involves a question of law only regarding which there are several decisions of this Court and therefore, I think it proper to consider the matter in detail to clarify the law, on the point of the admission stage itself.

5. The important decision on this point was delivered by Hon'ble Mr. Justice S. R. Singh in the well known case of Kailash Chaudhary v. State of U.P. 1993 (30) All CC 665 : 1994 All LJ 174 which was being universally followed by the subordinate courts of Magistrate in this State. Broadly speaking the following two propositions were laid down in the above case :

- 1) That the order u/s 204, Cr.P.C. for issue of process is an interlocutory order and the revision against that order is barred by Clause (2) of Section 397, Cr.P.C.
- 2) The order u/s 204, Cr.P.C. is an interim order which can be varied, rescinded or recalled by the Magistrate and the proceedings could be dropped, if the Magistrate found that no offence was disclosed.

6. This decision of Kailash Chaudhary (Supra) came for consideration before the Division Bench of this Court in Uma Kant Pandey v. Addl. Chief Judicial Magistrate, Karvi 1996 All Cri R 888. The Division Bench of this Court partially overruled the judgment of Kailash Chaudhary (supra). The proposition No. 1 mentioned above was overruled by the Division Bench, but proposition No. 2 was upheld. It was observed by the Division Bench "In view of what we have discussed hereinbefore we find that barring the observations of Hon'ble S. R. Singh, J. that order issuing the processes u/s 204, Cr.P.C. is an interlocutory order against which no revision would lie in the High Courts in view of the bar u/s 397(2), Cr.P.C., rest of the judgment of Brother S. R. Singh, J. in the case of Kailash Chaudhary and others meets our full approval.

7. In the above background I consider the decision of the Full Bench in the case of Ranjit Singh (supra) which has been relied upon by the learned Magistrate to reject the application of the revisionist to recall the order passed u/s 204, Cr.P.C. The question referred to the Full Bench was "Whether a Magistrate/Court before rejecting "Final Report" filed by the Investigating Officer has to hear the accused on his appearing voluntarily or after notice irrespective of the fact whether or not the informant is proposed to be heard with or without a protest petition challenging the said Final Report". The Full Bench considered the various decisions on this question and answered the question as follows :

That there is no scope to uphold that the accused should be afforded an opportunity by the Magistrate/Court before accepting or rejecting a final report submitted by the police after investigation of an F. I. R.

8. The decisions of the cases of Kailash Chaudhary (supra) and Uma Kant Pandey (supra) were incidentally considered by the Full Bench in the above case of Ranjit Singh (supra). Regarding the case of Kailash Chaudhary (supra) it was observed "that the decision is neither correct on facts nor law and does not lay down the

correct law." The decision of Division Bench of Uma Kant Pandey (supra) so far as it confirmed the decision of Kailash Chaudhary (supra) in part was also overruled. Relying on this decision of the Full Bench the learned Magistrate therefore had held that an application to recall the order u/s 204, Cr.P.C. is not maintainable and there is no provision for the same.

9. In the cases noted above reference was also made to the decision of the Hon"ble Supreme Court in the case of K.M. Mathew Vs. State of Kerala and another, and was relied on in the case of Kailash Chaudhary (supra) and Uma Kant Pandey (supra). It was laid down in that case that the Magistrate has jurisdiction to recall the process. However it was observed by the Full Bench that correctness of the decision of the case of K. M. Mathew (supra) was doubted by the Hon"ble Supreme Court in the case of Nilamani Routray Vs. Bennett Coleman and Co. Ltd., . It was observed that "K. M. Mathew case requires re-consideration for it is settled law that a power of review has to be conferred by law specifically and Cr.P.C. does not confer such power". It was further observed that "it is desirable that the matter be heard by a Bench of three Judges". The other reason for not accepting the view expressed by the Apex Court in the case of K. M. Mathew (supra) was that it was a summons trial in which on the appearance of the accused and praying for dropping of proceedings, the Magistrate can exercise powers conferred upon him by the provisions of Section 258, Cr.P.C. It was observed that this provision of Section 258, Cr.P.C. does not apply to warrant trial or the Sessions trial. The law laid down in the case of K. M. Mathew (supra) is regarding summons cases instituted on a complaint.

10. In the present case I am not concerned with the provision of law laid down by the Full Bench on the question referred to it. The consideration before me is the law laid down in the case of Kailash Chaudhary (supra) and Uma Kant Pandey (supra) which have been overruled by the above Full Bench. The decision of the Full Bench was delivered on 12-11-1999. However, it appears that an important decision of the Apex Court on the controversy before me was omitted from the attention of the Full Bench which is of great assistance. That decision is in the case of Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, . It was decided by the Apex Court on 11-2-1999. In that case the appellant before the Hon"ble Supreme Court were accused in a case for offence punishable u/s 500/34, I.P.C. The Magistrate after recording the evidence u/s 200 and 202, Cr.P.C. issued summons to the accused persons to appear to stand trial for offence u/s 500/34, I.P.C. That order of the Magistrate was challenged by the accused in the revision before the Sessions Judge. The learned Sessions Judge set aside the order of the Magistrate issuing process against the accused after coming to the conclusion that the case is covered by exception 8 to Section 499, I.P.C. Aggrieved by the order of the Sessions Judge, the complainant approached the High Court u/s 482, Cr.P.C. The High Court set aside the order of the Sessions Judge on the finding that the order of the Magistrate is an interlocutory order and the Sessions Judge had no jurisdiction u/s 397, Cr.P.C. to interfere with the same. Against that order the accused approached the Hon"ble Supreme

Court by means of an appeal in which it was held by the Hon''ble Supreme Court that the order of the Magistrate directing issuance of the process is not an interlocutory order and therefore amenable to the revisional jurisdiction of the Sessions Judge. Therefore, by this decision proposition No. 1 mentioned above laid down in the case of Kailash Chaudhary (supra) has been overruled by the Apex Court. However, the following observation of the Apex Court in this case is very material and supports the proposition No. 2 laid down in that case. It was observed that "In view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice". By this observation, the Apex Court has recognized the right of the accused to approach the Magistrate afresh for reconsideration of the question of issuance of process with the request to recall the order.

11. Another latest decision of the Apex Court in the case of K.K. Patel and Another Vs. State of Gujarat and Another, is very material regarding this point. In this case the complaint was filed in the Court of Magistrate against the police officers for offences under Sections 166 167 176 201 219 220 342 417 I.P.C. The Magistrate took cognizance of the offences and processes were issued u/s 204, Cr.P.C. to the accused persons. The accused on appearance before the Magistrate filed a petition for discharge briefly for the reason that no sanction was obtained to prosecute them. The Metropolitan Magistrate considered the matter and by very detailed judgment rejected the request for discharge observing that it will be decided on merits after considering the evidence produced by the parties. The accused, therefore, filed revision against that order before the Sessions Judge. The Sessions Judge held that there was no sanction for prosecution and the complaint is also barred by time and therefore, he quashed the complaint and also the summoning order. Thereafter the complainant approached the High Court. The High Court set aside the order of the learned Sessions Judge on the ground that the order was interlocutory and the revision could not be entertained. The accused therefore, approached the Hon''ble Supreme Court in an appeal. The Hon''ble Supreme Court allowed the appeal and restored the order passed by the Sessions Judge dismissing the complaint.

12. Therefore, this case is also an authority on the point that the accused persons on appearance after being summoned u/s 204, Cr. P. C. may file a petition for discharging them. The very fact that the petition for discharging the accused and dismissing of the complaint was allowed by the Apex Court shows that it was held that the application for this purpose is maintainable before the Magistrate passing the summoning order. The contrary view taken by the Full Bench in the case of Ranjit Singh (supra) is not in conformity with the above two decisions of the Apex Court and therefore, cannot be followed.

13. In the light of the above discussions. therefore I find that the decision of the Full Bench in the case of Ranjit Singh (supra) to the extent that it overruled the proposition No. 2 mentioned above of the case of Kailash Chaudhary (supra) is

not a good law. In view of the decision of the Apex Court, the Magistrate has power to recall the summoning order passed u/s 204, Cr. P. C. and can discharge the accused on the request of the accused that no offence is disclosed against them or (he prosecution is barred by any law for the time being inforce.

14. In view of the above the learned Additional Chief Judicial Magistrate, has erred in rejecting the application of the applicant on the ground that it is not maintainable in view of the decision of the Full Bench in the case of Ranjit Singh (supra).

15. The revision is therefore allowed. The learned Magistrate is directed to consider and dispose of the application of the applicant on merits.