

(2004) 03 DEL CK 0105
In the Delhi High Court
Case No : Criminal Revision 818 of 2003

Y. Sharma

APPELLANT

Vs

Anup Ahuja

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Citation : (2004) 112 DLT 941

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Smriti Sinha and Avanish Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—Short question involved for determination in this petition is whether the accused is entitled to move the Magistrate for dropping the proceedings in a complaint case even if the process of summons has been issued against him. Identical question arose before this Court in *Prakash Industries Ltd. Vs. State and Others*, , and was answered in the affirmative. This proposition of law came up for consideration before the Supreme Court in *KM. Mathews v. State of Kerala*, I (1992) CCR 316 (SC)=1992 (1) SC 217 and answered 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."

2. In die aforesaid Crl. Misc. Petition decided by this Court it was held that the

reliance placed by the learned ASJ upon Nilamani Routray Vs. Bennett Coleman and Co. Ltd., , was misplaced as the said judgment did not lay down the ratio and had only recommended for hearing the proposition of law by a Bench of three Judges. Till date it is KM. Mathews case which is holding field. In view of the unambiguous and clear view taken by the Supreme Court in KM. Mathews case and by this Court in Prakash Industries case, the petition is allowed, the impugned order is set aside.

3. Before parting it may be stated that the observations of the learned ASJ in the penultimate sentence that subsequent directions in certain cases by High Court to lower Courts to dispose of pending application without laying down the law does not mean anything, were uncalled for and fall within the mischief of contempt of Court as direction of the High Court to the lower Court is to be complied by the lower Court in letter and spirit even if those directions do not lay down the law. This is mandate of the Constitution as well as the judicial discipline that every subordinate Court should obey the direction of any kind whatsoever issued by the High Court.