

State Vs. Raaj Kumar Anand (MLA) & Ors.

29.04.2023

Present:- Sh. Ratnesh Kumar Gupta, Ld. Substitute APP for the State.
IO/SI Bajrang Bayla, PS Patel Nagar is absent.
Accused Raaj Kumar Anand with Sh. Rajesh Kumar Maurya, Ld. Counsel for accused.
Accused Ankush Narang with Sh. Manmohan Singh Narula, Ld. Counsel for accused.

1. Matter is listed for furnishing of surety bonds/serving of notice of accusation U/s 251 Cr.P.C. upon the accused persons/further proceedings.
2. Surety bonds furnished on behalf of accused Raaj Kumar Anand and Ankush Narang. Considered and accepted.
3. Brief arguments have been addressed by Ld. Counsel for the accused persons seeking discharge of the accused persons stating that the complaint has been filed only for meeting the political agenda and also that there is no public witness in the list of witnesses which can prove the case against the accused persons. Further, it is argued that there are no photographs of the alleged incident placed on record which itself shows that the case filed by the prosecution is false.
4. On the other hand, Ld. Substitute APP for the State has strongly opposed the submissions of Ld. Counsel for the accused persons and stated that at this stage, the Court is only required to see as to whether prima-facie case is made out against the accused persons or not and Court cannot sift and weigh the evidence at this stage. Moreover, Ld. Substitute APP for the State has argued that this is a summons triable case and there is no occasion for the Court to discharge the accused persons at the time of serving of notice U/s 251

Cr.P.C.

5. Submissions heard. Record perused.

6. At the outset, it is pertinent to mention here that law is settled on the issue as to whether in a summons case, accused persons can be discharged or not after having being summoned in the Court. The leading judgments of Hon'ble Supreme Court as well as Hon'ble High Court of Delhi have already expounded the law in this regard and the same is given in the following paras for perusal.

7. In the matter titled as ***Subramaniam Seturaman v. State of Maharashtra & Anr. [(2004) 13 SCC 324]***, upholding the law laid down in the case titled as ***Adalat Prasad v. Roop Lal Jindal [(2004) 7 SCC 338]***, it was held that:

From the above, it is clear that the larger Bench of this Court in Adalat Prasad's case did not accept the correctness of the law laid down by this Court in K.M.Mathew's case. Therefore, reliance on K.M.Mathew's case by the learned counsel appearing for the appellant cannot be accepted nor can the argument that Adalat Prasad's case requires reconsideration be accepted. 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 contemplates 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 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. As observed by us in Adalat Prasad's case 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.

8. Further, Constitution Bench of the Supreme Court of India in its decision dated 16.04.2021 titled as ***In Re.: Expeditious Trial of Cases under Section 138 of N.I. Act 1881(supra)*** upholding the ***Adalat Prasad Judgment*** and ***Subramaniam Sethuraman judgment*** has held that :

Judgments of this Court in ***Adalat Prasad*** (supra) and ***Subramaniam Sethuraman*** (supra) 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."

9. Also, recently, in its **order dated 20.04.2022**, a Division Bench of the High Court of Delhi has specifically held in the matter titled as ***Court On Its Own Motion vs. State (Supra)*** that:

"A plain reading of the paragraphs extracted hereinabove leaves no manner of doubt that in terms of the judgment of the Hon'ble Supreme Court in Adalat Prasad Vs. Rooplal Jindal and Others (2004) 7 SCC 338 and Subramaniam Sethuraman Vs State of Maharashtra and Another, (2004) 13 SCC 324, the Trial Court cannot be conferred with inherent powers, either to review or recall the order of issuance of process. As held in Adalat Prasad (supra) and Subramaniam Sethuraman (supra), the Magistrate is deluded with the power to revisit the order of issue of process, except to the limited extent that the Court has no jurisdiction to try the case. In other words, the Trial Court has no inherent jurisdiction to revisit the order of issue of process within the meaning of the provisions of Section 258 Cr.P.C.

.....

In view of the foregoing, we are of the considered view that Question No.1 in the present reference is to be answered in the negative. The Court of a Magistrate does not have the power to discharge the accused upon his appearance in Court in a summons trial case based upon a complaint in general, and

particularly in a case under Section 138 of the N.I. Act, once cognizance has already been taken and process issued under Section 204 Cr.P.C.”

From bare reading of the above extracts, it is amply clear that there is no scope of discharge in summons triable cases.

10. From the above quoted decisions of the Apex Court of India and the Delhi High Court, there remains no scope of doubt that law is settled on this aspect that this court has no power to discharge the Accused at the stage of serving of notice u/s 251 Cr.P.C. Hence, this Court finds no merit in the arguments of the Ld. Counsel for the accused persons and proceeds to service notice U/s 251 Cr.P.C. to the accused persons.

11. Accordingly, notice of accusation U/s 251 Cr.P.C. has been served upon both the accused persons to which they both have pleaded not guilty and claimed trial.

12. Also, vide their separate statement recorded U/s 294 Cr.P.C, both the accused persons have admitted to registration of FIR and the Certificate U/s 65-B of the Indian Evidence Act annexed therewith, the complaint U/s 195 Cr.P.C. and DD entry No. 52-A dated 28.03.2022 PS Patel Nagar. **In view of the same, ASI Bajrang and HC Kala Ganesh are dropped from the list of witnesses.**

13. **Let witnesses namely Neeraj Choudhary and Ct. Mahesh be summoned through SHO PS concerned for next date of hearing.**

14. **Matter be put up for PE on 09.05.2023 at 11:30 AM.**

(Vidhi Gupta Anand)
ACMM-01/RADC/New Delhi
29.04.2023