

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 519 OF 2004

PREM KUMAR Appellant (s)
VERSUS

HIGH COURT OF DELHI TH. R.G. & ORS. Respondent(s)

(With appln(s) for intervention)

WITH CRIMINAL APPEAL NO. 520 of 2004

Date: 20/11/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s)

Mr. Rakesh K. Sharma,Adv.

Mr. Rajiv Nanda, Adv.

For Respondent(s)

Ms. Binu Tamta,Adv. (Not present)

Mr. Annam D.N. Rao,Adv.

Mr. Sudipto Sircar, Adv.

Mr. A. Venkatesh, Adv.

Ms. Neelam Jain, Adv.

Mr. J.S. Attri, Sr.Adv.

Ms. Anjani Ayagari, Adv.

Ms. Sadhna Sandhu, adv.

Ms. Priyanka Bharihoke, Adv.

Mr. D.S. Mahra, Adv.

Mr. Mukeshwar Verma, Adv.

Mrs Anil Katiyar,Adv.

UPON hearing counsel the Court made the following
O R D E R

CRIMINAL APPEAL NO. 519 OF 2004

None appears to argue on behalf of the intervenor. The application for intervention is dismissed.

The appeal is allowed in terms of the signed order.

CRIMINAL APPEAL NO. 520 OF 2004

List this matter on 21st November, 2013.

(Sukhbir Paul Kaur)
Court Master

(Indu Bala Kapur)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.519 OF 2004

PREM KUMAR

Appellant(s)

Versus

HIGH COURT OF DELHI THROUGH REGISTRAR
GENERAL AND OTHERS

Respondent(s)

O R D E R

This appeal is directed against the judgment of the High Court in Criminal Miscellaneous Main Case No. 2816 of 2003 decided on July 17, 2003.

The appellant at the relevant time was the Additional Sessions Judge, New Delhi, before whom Complaint Case No. 527 of 2003 under Section 138 of the Negotiable Instruments Act, 1881 was pending. After the pre-summoning evidence had been recorded, the accused were summoned by order dated 9.7.1979 by the learned Metropolitan Magistrate. Thereafter the file came to be assigned to the Court of the appellant on 28.1.2003. Accused Nos. 1, 3 and 5, on 21.4.2003 filed an application for recalling the summoning orders. Reply to the aforesaid application was filed by the complainant. After hearing the learned counsel for the parties, the appellant dismissed the application. Whilst dismissing the application, the appellant notices the judgment of this Court in K.M. Mathews versus State of Kerala 1992 (1) SCC 217 wherein it had been held that issuance of the process to the accused person would not be a bar to drop the proceedings if the complaint on the face of it does not disclose any offence against the accused. The appellant reproduced the relevant observations of this Court which are 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."

The appellant thereafter notices that the aforesaid judgment has been referred to a larger Bench in the case of Nilamani Routray versus Benett Coleman and Company Limited 1998 (8) SCC 594. The appellant thereafter further makes a note that the High Court in the case of Mohd. Hashim Masood versus State reported in 2000 (1) JCC Delhi 24 has held that once the summoning order has been issued, the Trial Court would have no power to review its earlier order. The appellant also notices that the law declared by this Court under Article 141 is binding on all the Courts below. Thereafter it is observed that similarly the Lower Courts are also bound by the decisions rendered by the High court. Since the High Court, according to the appellant, had in the case of Nilamani Routray case (supra) held that the Trial Court had no power of review, the application made by the accused persons had to be dismissed. Consequently, without going into the merits of the case, the appellant dismissed the application

of the accused for withdrawal of the summoning order. This order was challenged by the accused person

before the High Court in a petition filed under Section 482 of the Criminal Procedure Code. The High Court has allowed the aforesaid petition filed by the accused-respondents and held that the view taken by the appellant was wholly erroneous, unjust and contrary to the law laid down by the Supreme Court in K.M. Mathews Case supra.

Mr. Ashok Grover, learned senior counsel appearing the appellant has submitted that the appellant is not challenging the decision of the High Court on the legal issue. Learned senior counsel has very fairly stated that since the judgment in K.M. Mathews case had been only referred to a larger Bench, it was still a binding precedent and had to be followed.

Therefore, the application of the accused persons for withdrawal of the summoning orders ought to have been decided on merits. Mr. Grover is, however, justly concerned that the High Court while setting aside the order passed by the appellant has unnecessarily made very uncharitable and derogatory remarks which has resulted in the appellant actually seeking voluntary retirement from judicial service. He has submitted that the remarks are such that the appellant has been exposed to, ridicule not only among his peers but also in front of his subordinates. Mr. Grover submitted that the derogatory remarks were not necessary for the decision of the petition under Section 482 Cr.P.C.

Mr. A.D.N. Rao, learned counsel appearing on behalf of the High Court - Respondent No.1 with his usual fairness has submitted that the observations made by the Judge with regard to the conduct of the appellant in deciding the criminal miscellaneous application are insupportable in law.

In that view of the above, we are of the opinion that the appeal has to be allowed to the limited extent that the adverse remarks recorded by the learned Judge are expunged from the impugned judgment passed by the High Court. The adverse remarks recorded are as under :-

"This case demonstrates as to how Shri Prem Kumar, the learned Additional Sessions Judge consciously tried to ignore the verdict given by Hon'ble Supreme Court in K.M. Mathews versus State of Kerala (1992) 1 SCC 217 and dismissed the applications of the petitioners seeking recall of the summoning order for the offence punishable under section 138 of the Negotiable Instruments Act vide order dated 26.4.2003 by conveniently taking the shelter under the judgment of this Court delivered in Mohd. Hashim Masood versus State reported in 2000 (1) JCC Delhi 24 as if he was bound by the view taken by the High Court and not by the Supreme Court on the proposition of law whether the accused is entitled to move the Magistrate for dropping the proceedings in a complaint case even after the process of summon has been issued against him."

"Learned ASJ had the audacity to ignore the dictum of Supreme Court in K.M. Mathew's case."

"Learned ASJ consciously ignored the verdict of the Supreme Court by introducing altogether a new, unknown to the law and wholly misconceived notion of judicial discipline that he cannot ignore or deviate from the judgment of his own High Court."

"But from the tenor of the Court I think the learned ASJ was fully conscious of not only the law of the land but also the constitutional provisions that the law laid down by the Supreme Court is binding on all the Courts

below it including the High Courts and if any High Court has laid down a law contrary to that of the Supreme Court, law laid down by the Supreme Court alone is binding....."

Still he reiterated it by eliciting a filmsy straw that judicial discipline require him to follow the judgment of his own High Court"

"Copy of this order be sent to all the Judicial Officers for their guidance lest any other Metropolitan Magistrate or Additional Sessions Judge ventures to tread the path the concerned learned ASJ has chosen to tread."

The adverse remarks noticed above, which in our opinion, were totally superfluous and not necessary for the decision of the lis, are, hereby, expunged. However, on merits, and on the law, the impugned judgment is upheld.

None appears to argue on behalf of the intervenor. The application for intervention is dismissed.

.....J.
[Surinder Singh Nijjar]

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

New Delhi;
NOVEMBER 20, 2013