

M/s. Iris Computers Ltd

v.

M/s. Askari Infotech Pvt. Ltd. & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE RANJAN GOGOI

Criminal Appeal No. 250 Of 2013 [@ Special Leave Petition (Crl.) No. 4984 Of 2012] | 06-02-2013

1. Leave granted.

2. appeal is directed against the judgment and order passed by the High Court of Karnataka at Bangalore in Criminal Petition No.5936 of 2011, dated 01.03.2012. By the impugned judgment and order, the High Court has confirmed the order passed by the learned Magistrate in CC No. 41505 of 2010, dated 22.09.2011, whereby and whereunder the complaint filed by the appellant was returned by the learned Magistrate on grounds of lack of territorial jurisdiction and also recalled the order issuing summons to the respondents on the application filed by the respondents under Sections 202, 203 and 245 of the Code of Criminal Procedure, 1973 ("Code" for short).

3. The facts are: The appellant had filed a private complaint under Section 200 of the Code against the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ("Act" for short). The learned Magistrate, by order dated 04.09.2010, took cognizance of the offence and the complaint was registered as CC No. 41505 of 2010. Thereafter, the learned Magistrate, upon recording the evidence of the appellant and perusing through the documents produced along with the complaint, was satisfied that a prima facie case has been made out for the offence punishable under Section 138 of the Act and issued summons to the respondents by order dated 16.09.2010.

4. After service of summons, the respondents had filed an application under Sections 202, 203 and 245 of the Code questioning the maintainability of the complaint due to lack of territorial jurisdiction of the Court. The learned

Magistrate, after hearing the parties, has allowed the said application and proceeded to recall his previous order issuing summons to the respondents and returned the complaint to the appellant, with a direction to present the complaint before the competent Court by order dated 22.09.2011.

5. Being aggrieved by the aforesaid order, the appellant had filed a petition under Section 482 of the Code before the High Court. The High Court while concurring with the view taken by the learned Magistrate has rejected the said petition.

6. It is the correctness or otherwise of the aforesaid order passed by the High Court that is called in question by the appellant before us.

7. The learned counsel appearing for the appellant would submit that the learned Magistrate was not justified in recalling the order issuing summons and thereafter, returning the complaint under Section 201 of the Code upon an application filed under Sections 202, 203 and 245 of the Code by the respondents. He would further submit that at the said stage of the proceedings the appropriate remedy to be sought, if the order of the learned Magistrate stands vitiated due to lack of territorial jurisdiction, is by filing of an application/petition under Section 482 and not under Section 203 of the Code. He would assert that this aspect of the matter has not been noticed by the High Court while rejecting the petition filed under Section 482 of the Code. In support of his submission, learned counsel has placed reliance upon a three judge bench decision of this Court in the case of Adalat Prasad v. Rooplal Jindal and others, (2004) 7 SCC 338, wherein this Court has observed that the appropriate remedy to be sought in such stage of proceedings is by way of a petition under Section 482 of the Code.

8. Per contra learned counsel appearing for the respondents would submit that the learned Magistrate was justified in returning the complaint under Section 201(1) filed by the appellant since the learned Magistrate did not possess the territorial jurisdiction. He would further submit that the decision of this Court in Adalat Prasad (supra), relied upon by the appellant does not notice Section 201 of the Code and thus requires to be declared as per incuriam by this Court.

9. We have heard the learned counsel for the parties to the lis and perused the judgment and order of the Courts below.

10. The point that would fall for our consideration and decision is, whether the learned Magistrate was justified in recalling the order passed by him issuing summons to the respondents upon an application made by them under Section 202, 203 and 245 of the Code.

11. This Court has dealt with the question of recall of a process issued under Section 204 of the Code in Adalat Prasad case (supra) and opined that the Code does not contemplate or provide for any provisions affording opportunity to the accused until the issuance of process to him under Section 204. This Court has observed that before issuing summons under Section 204 of the Code the Magistrate must be satisfied that there exists sufficient ground for proceeding with the complaint and a prima-facie case is made out against the accused. The said satisfaction should be arrived at by conducting an inquiry as contemplated under Sections 200 and 202 of the Code. The first stage of dismissal of the complaint before the issuance of process arises under Section 203 of the Code, at which stage the accused has no role to play. Subsequent to issuance of process, the question of the accused approaching the Court by making an application under Section 203 of the Code for dismissal of the complaint is impermissible because by then the stage of Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

12. Therefore, the crux of the matter rests into the existence of two different scenarios; the former involving only the complainant's role and the latter introducing the accused. The former constitutes cognizance of the offence on complaint, satisfaction reached by the Magistrate that a prima-facie case is made out and thereafter, issuance of process to the accused. It is only after the aforesaid stages are complete; the next stage is triggered enabling the accused to actively participate in the proceedings. The dismissal of complaint by the Magistrate under Section 203 evidently falls into the former stages of proceedings when the Magistrate has to base his opinion as to the existence of sufficient ground for proceeding towards the second stage on the statements of the complainant and the witnesses alongwith the result of the inquiry conducted under Section 202. It is for obvious reasons that none of the former stages in the Code provide for hearing the summoned accused, the said being only

preliminary stages and the stage of hearing of the accused arising at subsequent stages provided for in the latter provisions in the Code. [See: *Bholu Ram v. State of Punjab*, (2008) 9 SCC 140].

13. Having noticed the aforesaid, this Court in *Adalat Prasad* case (supra) held a contrary view in respect of recalling of erroneous order of issuance of process from the earlier view taken by this Court in *K.M. Mathew v. State of Kerala*, (1992) 1 SCC 217 and opined that the scheme of the Code does not provide for review of order of issuance of process and prohibits interference by the accused at the interlocutory stage under Section 203. This Court, after overruling the view expressed by this Court in *K.M. Mathew* case (supra) has stated as under:

"It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

14. The aforesaid law laid down in *Adalat Prasad* case (supra) has been followed and reiterated by this Court in its subsequent decisions in *Bholu Ram* case (supra), *Subramaniam Sethuraman v. State of Maharashtra*, (2004) 13 SCC 324; *N.K. Sharma v. Abhimanyu*, (2005) 13 SCC 213 and *Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi*, (2007) 5 SCC 54. In our view, the issue that we have raised for our consideration and decision is no more a debatable issue in view of what has been stated by a three judge bench of this Court in the case of *Adalat Prasad* (supra) and therefore, we are of the considered opinion that the High Court is not justified in rejecting the petition filed by the appellant under Section 482 of the Code.

15. In view of the above, while setting aside the impugned judgment and order passed by the High Court and the orders passed by the learned Magistrate, we

now direct the learned Magistrate to restore the complaint to its Board and proceed with the matter in accordance with law. However, we grant liberty to the respondents herein, if they so desire, to question the jurisdiction of the learned Magistrate, while issuing summons to them, before an appropriate Court, including the High Court by filing a petition under Section 482 of the Code. We clarify that all the other contentions of both the parties are left open.

16. Ordered accordingly.