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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 5245/2013 and Crl.M.A.Nos.18920-21/2013

% Date of Decision : 16th January, 2014

ARVIND KEJRIWAL & ORS Petitioners
Through : Mr. Shanti Bhushan, Sr.
Adv. with Mr. Rahul Mehra,
Mr. Rohit Singh, Mr. Kartik
Seth, Mr. Rishikesh Verma
and Ms. Neha Rastogi,
Advs.

versus

AMIT SIBAL & ANR Respondents
Through : Mr. N.K. Kaul, Sr. Adv.
with Mr. Madhav Khurana
and Mr. Ajiteshwar Singh,
Advs. for R-1.

**CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT (ORAL)

1. Respondent no.1 instituted a complaint of defamation against the petitioners under Sections 500 and 501 read with Sections 34 and 120B of IPC in which, vide summoning order dated 24th July, 2013, the learned Metropolitan Magistrate issued summons to the petitioners.
2. The petitioners have challenged the summoning order dated 24th July, 2013 on the ground that respondent no.1 is not the

aggrieved person within the meaning of Section 199(1) Cr.P.C. The petitioners are also seeking the quashing of criminal complaint filed by respondent no.1.

3. The notice under Section 251 Cr.P.C. has not yet been framed and the case is listed before the learned Trial Court on 24th January, 2014.

4. This Court is of the view that the petitioners should urge the pleas raised in this petition before the learned Trial Court at the stage of framing of notice under Section 251 Cr.P.C. in terms of the law laid down in the following judgments:

(i) In *Krishna Kumar Variar v. Share Shoppe*, (2010) 12 SCC 485, the accused challenged the summoning order before this Court under Section 482 Cr.P.C. on the ground that the learned Metropolitan Magistrate lacked the territorial jurisdiction. The petition was rejected by the High Court against which the accused filed the special leave petition. The Supreme Court held that in such cases, instead of rushing to the High Court, the accused should file an application before the Trial Court. The observations made by the Supreme Court are reproduced hereunder:-

“2. This appeal has been filed against the impugned judgment and order dated 14-5-2009 of the High Court of Delhi whereby the petition filed under Section 482 CrPC by the petitioner herein has been dismissed.

3. The appellant herein is an accused under Sections 415/420 IPC in which summons have been issued to him by a court at Delhi. He challenged the summoning order on the ground that it is only the court at Bombay which has jurisdiction to try and entertain the complaint. His petition under Section 482 CrPC challenging the summoning order

has been rejected by the High Court by the impugned order. Hence, he is before us in this appeal.

4. In our opinion, in such cases where the accused or any other person raises an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try/entertain a case will, at least in part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case.

5. For the reasons stated hereinabove, the impugned judgment and order is set aside and the appeal is allowed. The appellant, if so advised, may approach the trial court with a suitable application in this connection and, if such an application is filed, the trial court shall after hearing both the sides and after recording evidence on the question on jurisdiction, shall decide the question of jurisdiction before further proceeding with the trial.

(Emphasis supplied)

(ii) In *Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424, the Supreme Court observed that it is the bounden duty of the Trial Court in Section 251 Cr.P.C. to satisfy whether the offence against the accused is made out or not and to discharge the accused if no case is made out against him. The relevant findings of the Supreme Court are reproduced hereunder:-

“20. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a

summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

(Emphasis supplied)

(iii) In *Raujeev Taneja v. NCT of Delhi*, CrI.M.C. No.4733/2013 decided on 11th November, 2013, a summoning order under Section 138 of the Negotiable Instruments Act was challenged before this Court. Sunil Gaur, J. relying upon *Bhushan Kumar* (supra) and *Krishna Kumar Variar* (supra), directed the accused to urge the plea before the learned Trial Court at the stage of framing of notice whereupon the Trial Court shall deal with the pleas raised herein by passing a speaking order and if the Trial Court proceeds to drop the proceedings *qua* petitioners, then the Apex Court's decision in *Adalat Prasad v. Rooplal Jindal*, (2004) 7 SCC 338, would not stand in the way of Trial Court to do so. The relevant portion of the said judgment is reproduced hereunder:-

"In this petition, quashing of impugned order of 5th July, 2012 whereby petitioner has been summoned as accused in a complaint under Section 138 of The Negotiable Instruments Act, 1881 is sought on merits.

At the hearing, learned counsel for petitioner had submitted that there is no specific averment against petitioner in the complaint in question about his being incharge of and responsible for conduct of business of the company and

that petitioner should not be made vicariously liable. Learned counsel for petitioner further contended that the cheque in question was not signed by petitioner.

During the course of the hearing, learned counsel for petitioner informed that Notice under Section 251 of Cr.P.C. has not yet been framed in the complaint case in question.

Since Notice under Section 251 Cr.P.C. has not yet been framed, it is deemed appropriate to relegate petitioners to urge the pleas taken herein before the trial court at the hearing on the point of framing of Notice under Section 251 of Cr.P.C., as the dictum of Apex Court in *Bhushan Kumar and Anr. Vs. State (NCT of Delhi) and Anr.* AIR 2012 SC 1747 persuades this Court not to exercise inherent jurisdiction under Section 482 Cr.P.C. to entertain this petition. Pertinent observations of Apex Court in *Bhushan Kumar (Supra)*, are as under:-

“17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

Further, on this aspect, the dictum of the Apex Court in *Krishan Kumar Variar v. Share Shoppe*, (2010) 12 SCC is as under:-

“4. In our opinion, in such cases where the accused or any other person raises an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try/entertain a case will, at least

in part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case.

5. For the reasons stated hereinabove, the impugned judgment and order is set aside and the appeal is allowed. The appellant, if so advised, may approach the trial court with a suitable application in this connection and, if such an application is filed, the trial court shall after hearing both the sides and after recording evidence on the question on jurisdiction, shall decide the question of jurisdiction before further proceeding with the trial.”

In view of authoritative pronouncement of the Apex Court in Bhushan Kumar and Krishan Kumar (supra) as referred to hereinabove, this petition and application are disposed of while refraining to comment upon merits, lest it may prejudice either side at the hearing on framing of Notice under Section 251 of Cr.P.C., with liberty to petitioner to urge the pleas taken herein before the trial court at the stage of hearing on the point of framing of Notice and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking order.

Needless to say, if the trial court proceeds to drop the proceedings qua petitioners, then the Apex Court’s decision in Adalat Prasad Vs. Rooplal Jindal and Ors. (2004) 7 SCC 338 would not stand in the way of trial court to do so.

Till the trial court decides to frame or not to frame Notice under Section 251 Cr.P.C. against petitioner, petitioner's personal appearance before the trial court be not insisted, provided petitioner is duly represented by counsel, who does not seek adjournment on his behalf. Needless to say that if the trial court chooses to frame Notice under Section

251 Cr.P.C., then petitioner would be at liberty to avail of the remedy as available in the law.”

(Emphasis supplied)

(iv) In *Urrshila Kerkar v. Make My Trip (India) Private Ltd.*, MANU/DE/4138/2013, the accused challenged the summoning order in a complaint of defamation. Sunil Gaur, J. relying upon in *Bhushan Kumar* (supra) and *Krishna Kumar Variar* (supra), directed the accused therein to raise all pleas before the learned Metropolitan Magistrate at the stage of notice under Section 251 Cr.P.C. This Court observed that the learned Metropolitan Magistrate has to apply its mind at the stage of framing of notice under Section 251 Cr.P.C. to find out whether the *prima facie* case is made out or not and in the event of finding that no case is made out against the accused, the Magistrate would be well within its right to drop the proceedings against the accused. This Court observed that the Apex Court's decision in *Adalat Prasad* (supra) cannot possibly be misread to mean that proceedings in a summons complaint case cannot be dropped against an accused at the stage of framing of Notice under Section 251 of Cr.P.C. even if a *prima facie* case is not made out. The relevant portion of the said judgment is reproduced hereunder:-

“1. In criminal complaint No. 1015/2010 titled *Make My Trip (India) Private Ltd. v. Ezeego One Travel & Tours Ltd.* (Annexure P-1 Colly.), petitioner has been summoned vide impugned order of 5th May, 2011 (Annexure P-2) for the offence of defamation in the capacity of her being the Director of both the respondent-accused companies. Quashing of aforesaid complaint (Annexure P-1 colly.) and

impugned order (Annexure P-2) is sought on merits in this petition.

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5. ...In any case, the appropriate stage at which these aspects are required to be considered is the stage of framing of Notice under Section 251 of Cr.P.C. Such a view is taken as trial court is not expected to mechanically frame Notice under Section 251 of Cr.P.C. and has to apply its mind to find out as to whether a prima facie case is made out or not and in the event of finding that no case is made out for proceeding against a particular accused, trial court would be well within its right to drop the proceedings qua such an accused.

6. On this aspect, pertinent observations of Apex Court in Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr. MANU/SC/0297/2012 : AIR 2012 SC 1747 are as under:-

“17. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

7. Further, on this aspect, the dictum of the Apex Court in Krishan Kumar Variar v. Share Shoppe MANU/SC/0330/2010 : (2010) 12 SCC is as under:-

“4. In our opinion, in such cases where the accused or any other person raises an objection that the trial court has no jurisdiction in the matter, the said person should file an application before the trial court making this averment and giving the relevant facts. Whether a court has jurisdiction to try/entertain a case will, at least in

part, depend upon the facts of the case. Hence, instead of rushing to the higher court against the summoning order, the person concerned should approach the trial court with a suitable application for this purpose and the trial court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case.

5. For the reasons stated hereinabove, the impugned judgment and order is set aside and the appeal is allowed. The appellant, if so advised, may approach the trial court with a suitable application in this connection and, if such an application is filed, the trial court shall after hearing both the sides and after recording evidence on the question on jurisdiction, shall decide the question of jurisdiction before further proceeding with the trial.”

8. It is no doubt true that Apex Court in Adalat Prasad Vs. Rooplal Jindal and Ors. : (2004) 7 SCC 338 has ruled that there cannot be recalling of summoning order, but seen in the backdrop of decisions of Apex Court in Bhushan Kumar and Krishan Kumar (supra), aforesaid decision cannot be misconstrued to mean that once summoning order has been issued, then trial must follow. If it was to be so, then what is the purpose of hearing accused at the stage of framing Notice under Section 251 of Cr.P.C. In the considered opinion of this Court, Apex Court's decision in Adalat Prasad (supra) cannot possibly be misread to mean that proceedings in a summons complaint case cannot be dropped against an accused at the stage of framing of Notice under Section 251 of Cr.P.C. even if a prima facie case is not made out. In the aforesaid view, this petition and the application are disposed of without commenting upon the merits of this case and with liberty to petitioner to urge the pleas taken herein before the trial court. Needless to say, the pleas raised by petitioner at the hearing on the point of Notice under Section 251 of Cr.P.C. shall be dealt with by the trial court by passing a reasoned order so that petitioner may avail of the

remedies available in law, if need be. Since the plea pertaining to Section 305 of Cr.P.C. goes to the root of this matter, therefore, till the hearing on the point of Notice under Section 251 of Cr.P.C. is concluded by the trial court, personal appearance of petitioner before the trial court is dispensed with provided petitioner is duly represented by counsel, who does not seek adjournment.”

(Emphasis supplied)

(v) In *S.K.Bhalla v. State*, 180 (2011) DLT 219, Ajit Bharihoke, J. of this Court gave similar interpretation to Section 251 Cr.P.C. The relevant portion of the said judgment is reproduced hereunder:-

“15. Section 251 of the Code of Criminal Procedure deals with the stage subsequent to issue of process under Section 204 Cr.P.C. in a summons trial case. This section casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and ask him whether he pleads guilty. This can be done by the Magistrate only if the charge sheet/complaint/preliminary evidence recorded during enquiry disclose commission of a punishable offence. If the charge sheet/complaint does not make out a triable offence, how can a Magistrate state the particulars of non-existing offence for which the accused is to be tried. Therefore, it is inherent in Section 251 of the Code of Criminal Procedure that when an accused appears before the Trial Court pursuant to summons issued under Section 204 Cr.P.C. in a summons trial case, it is bounden duty of the Trial Court to carefully go through the allegations made in the charge sheet/complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty, otherwise, he is bound to discharge the accused.”

5. The learned Senior Counsel for respondent no.1 submits that the learned Metropolitan Magistrate has no power to discharge the accused at the stage of framing of notice under Section 251 Cr.P.C. It is further submitted that the power to stop the proceedings under Section 258 Cr.P.C. does not apply to summons cases instituted upon complaints. It is further submitted that power to discharge the accused under Section 239 Cr.P.C. applies only to warrant cases. It is lastly submitted that the Supreme Court was dealing with the warrant cases in *Bhushan Kumar* (supra) and *Krishna Kumar Variar* (supra).

6. The summons cases are generally of two categories namely cases instituted upon complaints and those instituted otherwise than upon complaints which would include cases based on police reports. The warrants cases are also of the aforesaid two categories. The proceedings before the Magistrate commence with the issuance of process under Section 204 Cr.P.C. in respect of all the aforesaid categories. At the stage of issuance of process under Section 204 Cr.P.C., the Magistrate has to be satisfied that “there is sufficient ground for proceeding in the matter”. There is a difference in the trial of warrants cases and summons cases by the Magistrate which is noted below:

(i) In warrants cases, whether instituted upon complaint or otherwise, the accused is entitled to seek discharge from the Magistrate under Section 239 Cr.P.C. if no *prima facie* case is made out against him. On the other hand, if the Magistrate is

satisfied that there is ground for presuming that the accused has committed an offence, the charge is framed against the accused under Section 246 Cr.P.C. Section 239 Cr.P.C. is reproduced hereinbelow:

“Section 239. When accused shall be discharged.-If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

(ii) In summons cases, no formal charge is framed as in warrants cases. However, the substance of accusation is put to the accused under Section 251 Cr.P.C. which is technically akin to the framing of a charge in warrants case. The accused is entitled to the hearing at the stage of framing of notice under Section 251 Cr.P.C. The Section pre-supposes that the learned Magistrate must consider whether such allegations are raised which amount to an offence. If no offence is made out, then there are no particulars of offence which have to be read over to the accused and therefore proceeding cannot proceed beyond Section 251 Cr.P.C. which is implied from a reading of Section 251 Cr.P.C. Section 251 Cr.P.C. is reproduced below:

“Section 251. Substance of accusation to be stated.- When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not

be necessary to frame a formal charge.

(iii) In summons cases instituted otherwise than upon complaints which would include cases based on police reports, the Magistrate has power under Section 258 Cr.P.C. to stop further proceedings. The provisions of Section 251 read with Section 258 Cr.P.C. clothe the learned Magistrate in a case instituted on the basis of a police report with the power to discontinue proceedings at the stage of Section 251 Cr.P.C., if there be no sufficient allegations or materials to justify continuance of proceedings for an offence. Section 258 Cr.P.C. is reproduced hereunder:

“Section 258. Power to stop proceedings in certain cases. - In any summons- case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

(iv) In summons cases instituted upon complaints, there is no provision in the Code of Criminal Procedure to discharge the accused at the stage of framing of notice under Section 251 Cr.P.C. even if no *prima facie* case is made out against him. The consequence of this is that even if the accused is able to satisfy the Magistrate that no *prima facie* case is made out against him, the Magistrate has to continue the trial against him.

7. If the Magistrate cannot discharge the accused at the stage of framing of notice, the whole proceedings at the stage of framing of notice under Section 251 Cr.P.C. shall be reduced to mere formality and the accused would be compelled to approach the High Court to challenge the notice which would lead to multiplicity of litigation. It is for this reason, the Supreme Court in *Bhushan Kumar* (supra) and *Krishan Kumar Variar* (supra) has observed that the accused should approach the Trial Court instead of rushing to the higher Court. The Supreme Court has not restricted the directions in the aforesaid two cases to be applicable only to the warrant cases and therefore, the same are applicable to all summons cases including those arising out of complaints. In *Bhushan Kumar* (supra), the Supreme Court has specifically referred to Section 251 Cr.P.C. which deals only with summons cases. Relying on the aforesaid judgments, this Court, in *Raujeev Taneja* (supra) and *Urrshila Kerkar* (supra), has directed the accused to urge his objections before the Trial Court at the stage of framing of notice under Section 251 Cr.P.C.

8. This Court is in complete agreement with the view taken by this Court in *Raujeev Taneja* (supra), *Urrshila Kerkar* (supra) and *S.K.Bhalla* (supra) that at the stage of framing of notice under Section 251 Cr.P.C., the learned Magistrate is not expected to mechanically frame notice under Section 251 Cr.P.C. and has to apply its mind to find out whether the *prima facie* case is made out or not. The learned Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a *prima facie* case

is made out. However, in the event of finding that no case is made out against the accused, the learned Magistrate would be well within his right to drop the proceedings against the accused. This Court also agrees with the view taken by Sunil Gaur, J. in *Raujeev Taneja* (supra) and *Urrshila Kerkar* (supra) that the judgment of the Supreme Court in *Adalat Prasad* (supra) would not stand in the way of the Trial Court to do so because the discharge of an accused at the stage of framing of notice under Section 251 Cr.P.C. does not amount to recall/review of the summoning order as defined in Section 362 Cr.P.C. The two stages in the criminal trial are different. The first is the stage of issuance of process under Section 204 Cr.P.C, when the Magistrate has to satisfy that there are sufficient grounds for proceeding in the matter. The second is the stage of framing of charge/notice when the Court has to be satisfied that a *prima facie* case is made out against the accused. However, since Section 258 Cr.P.C. does not empower the Magistrate to discharge the accused in summons cases instituted upon complaints, this Court considers it necessary to issue directions in this regard in exercise of inherent powers under Section 482 Cr.P.C. read with Section 483 Cr.P.C. and Article 227 of the Constitution.

9. The provisions contained in the Code of Criminal Procedure are not exhaustive. In administering justice as prescribed by Code of Criminal Procedure, there are necessarily two shortcomings: First; there are cases and circumstances, which are not covered by the 'express provisions of the Code', wherein justice has to be

done. The reason is that the Legislature can foresee only the most natural and ordinary events; and no rules can regulate for all time to come, so as to make express provision against all inconveniences, which are infinite in number, and so that their dispositions shall express all the cases that may possibly happen. Second; the prescribed rules of procedure may be abused, or so used as to give a mere formality, the significance of substantive effect and thus obstruct, instead of facilitating, the administration of justice as in the present case.

10. It cannot be said that, in the above circumstances, Courts have no power to do justice or redress a wrong merely because no express provision of the Code can be found to meet the requirements of a case. All Courts, whether civil or criminal, possess, in the absence of express provision in the Code for that purpose, as inherent in its very constitution, all such powers as are necessary to do the right and to undo a wrong in the course of the administration of justice. This is based on the principle, embodied in the maxim '*quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*' – when the law gives a person anything, it gives him that, without which, it cannot exist. The High Court has, in addition thereto, and in view of its general jurisdiction over all the criminal Courts subordinate to it, inherent power to give effect to any order of any such Court under the Code, and to prevent the abuse of process of any such Court, or otherwise to secure the ends of justice.

11. The requirements of justice give an occasion for the

development of new dimension of justice by evolving juristic principles for doing complete justice according to the current needs of the Society. The quest for justice in the process of administration of justice occasions the evolution of new dimensions of the justice. J.S. Verma, J., in his Article “New Dimensions of Justice”, (1997) 3 SCC J-3 observed that:-

“...Justice is the ideal to be achieved by Law. Justice is the goal of law. Law is a set of general rules applied in the administration of justice. Justice is in a cause on application of law to a particular case. Jurisprudence is the philosophy of law. Jurisprudence and Law have ultimately to be tested on the anvil of administration of justice. ‘Law as it is’, may fall short of ‘Law as it ought to be’ for doing complete justice in a cause. The gap between the two may be described as the field covered by Morality. There is no doubt that the development of the law is influenced by morals. The infusion of morality for reshaping the law is influenced by the principles of Equity and Natural Justice, as effective agencies of growth. The ideal State is when the rules of law satisfy the requirements of justice and the gap between the two is bridged. It is this attempt to bridge the gap which occasions the development of New Jurisprudence.

The existence of some gap between law and justice is recognized by the existing law itself. This is the reason for the recognition of inherent powers of the court by express provision made in the Code of Civil Procedure and the Code of Criminal Procedure. The Constitution of India by Article 142 expressly confers on the Supreme Court plenary powers for doing complete justice in any cause or matter before it. Such power in the court of last resort is recognition of the principle that in the justice delivery system, at the end point attempt must be made to do complete justice in every cause, if that result cannot

be achieved by provisions of the enacted law. These powers are in addition to the discretionary powers of courts in certain areas where rigidity is considered inappropriate, e.g., equitable reliefs and Article 226 of the Constitution. ...”

12. Section 482 of the Code of Criminal Procedure empowers this Court to make such orders as may be necessary to secure the ends of justice in exercise of the inherent powers. Section 483 of the Code of Criminal Procedure, 1973 casts a duty upon every High Court to exercise its continuous superintendence over the Trial Courts to ensure that there is an expeditious and proper disposal of cases. Article 227 of the Constitution also confers on this Court the power of superintendence over all subordinate courts in relation to which it exercises jurisdiction. The paramount consideration behind vesting such wide power of superintendence in this Court is to keep the path of justice clear of obstructions which would impede it. It is the salutary duty of this Court to prevent the abuse of the process, miscarriage of justice and to correct the irregularities in the judicial process.

13. The power under Section 482 Cr.P.C. is in its nature extraordinary and is to be exercised ‘*ex debito justitiae*’ to do the real and substantial justice for the administration of which alone Courts exist. The Court, therefore, has to be careful to see that its decision is based on sound general principles of criminal jurisprudence and is not in conflict with the statutory provisions. This provision cannot be invoked to override an express provision of law or when there is another remedy available.

14. The present case does not fall within the aforesaid limitations as there is neither any express provision nor any express bar in the Code of Criminal Procedure for discharge of the accused at the stage of framing of notice under Section 251 Cr.P.C. if no *prima facie* case is made out against him.

15. At the stage of issuance of process under Section 204 Cr.P.C., the Court is only to see whether there are grounds for proceeding in the matter. The accused does not have any right to take part in the proceedings at this stage, as held by the Supreme Court in *Chander Deo Singh v. Prakash Chander Bose*, AIR 1963 SC 1430 and *Dr. S.S. Khanna v. Chief Secretary, Patna*, AIR 1983 SC 595. However, at the stage of framing of notice under Section 251 Cr.P.C., the Court has to satisfy after considering the material on record and hearing the accused that the offence has been committed which can be legally tried. The prosecution may be barred by limitation or bad for sanction or otherwise not sustainable. No adverse order can be passed without giving the affected party, an opportunity of being heard. It would be incumbent upon the Magistrate to drop the proceedings, if he is satisfied that no offence is made out for which the accused could be lawfully tried. If there is no offence for which the accused could be tried, it is implied that the Magistrate has no jurisdiction to proceed with the trial. For framing of notice under Section 251 Cr.P.C., the principles of natural justice require an opportunity of being heard to be given to the affected parties. Even otherwise, the principle of *audi alteram partem*, mandates that no one shall be condemned

unheard. It forms part of the rules of natural justice, as held by the Apex Court in the case of *Maneka Gandhi v. Union of India*, AIR 1978 SC 597. The procedure has to be fair, just and proper. This right of hearing cannot be denied to an accused. It is inherent in any judicial process. No person can be deprived of his life or personal liberty except according to procedure established by law mentioned in Article 21 of the Constitution which has to be a fair procedure. Even if some provision does not provide for an opportunity of being heard, the principles of natural justice have to be read as implicit therein, more so if the order passed affects the life and liberty of the person. It is basic to the human right jurisprudence that any order affecting life or liberty has to be passed by following the principles of natural justice. In *Maneka Gandhi* (supra), the Supreme Court further held that the substantive and procedural laws and action taken under them have to pass the test under Article 14. The tests have to be pragmatic otherwise they would cease to be reasonable. The interests of the accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. Order of framing of notice under Section 251 Cr.P.C. substantially affects the rights of an accused. The non-availability of the remedy of discharge to the accused at the stage of notice under Section 251 Cr.P.C. is therefore discriminatory and arbitrary, considering that the said remedy is available to the accused in warrant cases as well as summons cases based on police reports. For example, in a case of Section 138 Negotiable Instruments Act read with Section 420

IPC, the offence being warrant case, the accused can seek discharge under Section 239 Cr.P.C., whereas in a case of Section 138 Negotiable Instruments Act, being summons case, the accused cannot seek discharge at the stage of notice under Section 251 Cr.P.C.

16. If the Trial Court has to frame the notice under Section 251 Cr.P.C. where no *prima facie* case is made out against the petitioners, the hearing at the stage of notice under Section 251 Cr.P.C. would be a mere farce and would result in failure of justice. In warrant cases whether arising out of police report or complaint, the learned Magistrate is empowered to discharge the accused if no *prima facie* case is made out against him under Section 239 Cr.P.C. whereas in summons cases, such a power is given to the Magistrate only in cases other than complaint cases meaning thereby that the Magistrate has to frame the notice and proceed with the matter even if no *prima facie* case is made out against the accused. As such, the denial of the remedy of discharge to the accused in summons cases at the stage of notice under Section 251 Cr.P.C. is clearly discriminatory and therefore, this case is squarely covered by the principles laid down by the Supreme Court in *Maneka Gandhi* (supra).

17. This Court has also taken note of huge pendency and fresh filing of petitions under Section 482 Cr.P.C. against the summoning orders in summons cases which not only compels the accused to rush to this Court but also results in multiplicity of litigation and delay of trials. As such, non-availability of the

remedy of discharge to the accused before the Trial Court is harsh to the system as well as to the litigants.

18. The power of the Trial Court to discharge the accused at the stage of notice under Section 251 Cr.P.C. is based not only on sound logic but also on a fundamental principle of justice as a person against whom no offence is disclosed cannot be put to face the trial. Added advantage is that the High Court will have the benefit of the considered opinion of the Magistrate, and it can always exercise its inherent power if it feels that the Magistrate had gravely erred but to ask this Court to interfere at the very threshold of the prosecution does not appear appropriate because it practically amounts to shifting of the prosecution case from the competent court of the Magistrate to this Court.

19. On careful consideration of the legal position discussed above, this Court is satisfied that ends of justice are higher than the ends of mere law and therefore, this case warrants the issuance of appropriate directions in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to enable the Magistrate to discharge the accused at the stage of notice under Section 251 Cr.P.C. if no *prima facie* offence is made out.

Conclusion

20. In view of the authoritative pronouncements of the Supreme Court in *Bhushan Kumar* (supra), *Krishna Kumar Variar* (supra) and *Maneka Gandhi* (supra) and of this Court in *Raujeev Taneja* (supra), *Urrshila Kerkar* (supra) and *S.K.Bhalla* (supra), the

accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C in all summons cases arising out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a *prima facie* case is made out against the accused. However, in the event of the learned Magistrate not finding a *prima facie* case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles laid down by the Supreme Court in *Bhushan Kumar* (supra), *Krishna Kumar Variar* (supra) and *Maneka Gandhi* (supra).

21. Applying the aforesaid principles to this case, the petitioners are permitted to urge the pleas raised in this petition before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C. whereupon the learned Metropolitan Magistrate shall consider them and pass a speaking order. The learned Magistrate shall frame the notice under Section 251 Cr.P.C. only upon satisfaction that a *prima facie* case is made out against the petitioners. The learned Magistrate shall be empowered to discharge/drop the proceedings against the petitioners if no case is

made out against them. Needless to say, if the learned Magistrate chooses to frame notice under Section 251 Cr.P.C., the petitioners would be at liberty to avail the remedies as available in law.

22. This petition and the applications are disposed of on the above terms. It is clarified that this Court has not examined the contentions of the parties on merits which shall be considered by the learned Metropolitan Magistrate.

23. The petitioners seek exemption from personal appearance before the learned Trial Court till the passing of the order on notice under Section 251 Cr.P.C. The learned Senior Counsel for respondent no.1 submits that the petitioners should approach the learned Metropolitan Magistrate for exemption from personal appearance under Section 205 Cr.P.C. in view of the judgments of the Supreme Court in *TGN Kumar v. State of Kerala*, (2011) 2 SCC 772 and *Narinderjit Singh Sahni v. Union of India*, (2002) 2 SCC 210. In view of the objections raised, the petitioners are directed to file the appropriate application under Section 205 Cr.P.C. for exemption before the Metropolitan Magistrate and upon such an application, disclosing sufficient grounds, being filed, the learned Metropolitan Magistrate shall not insist the personal appearance till the passing of the order under Section 251 Cr.P.C. subject to the petitioners being represented by a duly authorised counsel who shall not seek any adjournment.

24. Copy of this judgment be given dasti to counsel for the parties under signature of Court Master.

25. Copy of this judgment be sent to all District and Sessions Judges.

J.R. MIDHA, J

JANUARY 16, 2014

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