The recent order by the Hon’ble Supreme Court in Amit Sibal v. Arvind Kejriwal1, has again brought to the forefront, the short but extremely important question as to: Whether the magistrate, in a ‘summons case based on a complaint’ has the power to drop proceedings and discharge an accused, or not?

The question assumes great practical significance insofar as many criminal cases such as defamation, dishonour of cheques, amongst other cases of relatively private character are triable as summons cases (based on private complaints, as opposed to investigation and charge-sheet by the police2).

To set the context right for the discussion, it would be apposite to recapitulate that, earlier in 2014, in Arvind Kejriwal and others versus Amit Sibal & Anr3 (in a case alleging defamation by Delhi Chief Minister Mr. Arvind Kejriwal) a Single Judge of the Hon’ble High Court of Delhi had ruled that the ‘Magistrate has the power to hear the accused at the time of explanation of substance of the accusation, and if no offence is made out, to drop proceedings against him at that stage itself, and the court need not, in all cases, take the matter to a full blown trial’.

Aggrieved by this decision, the matter was carried by the complainant (Mr. Amit Sibal) to the Supreme Court. The main ground of attack was that ‘The Magistrate, in a Summons Case, has no power to drop proceedings, in absence of a specific provision in the CrPC to that effect’ Pending hearing on the matter, the Supreme Court had stayed the operation of the High Court decision. The Respondents (representing the accused) did not dispute this legal position (as to CrPC not stipulating a ‘discharge scenario’ in summons cases) and the Supreme Court apparently agreed with this proposition and matter was remanded to the High Court for fresh consideration from the viewpoint of Section 482 of the CrPC, effectively implying that Trial Court would have no such power.

Since the order of the Supreme Court is basically in the nature of a ‘consent order’, an independent discussion of the legal position in this regard becomes extremely important and this is what the authors seek to do, by way of this article.

An Overview of the Statutory Realm

Speaking purely in terms of statutory provisions, an examination and juxtaposition of the provisions relating to trial of ‘Warrants Cases’ and ‘Summons Cases’ would quickly reveal that as far as Trials of Sessions and Warrants cases (for offences punishable with imprisonment of 2 years or more) are concerned, there are specific provisions in the form of Section 227 and 239 CrPC, respectively, which stipulate affording an opportunity to the accused to make submissions on the point of charge and seek discharge at the very threshold. This is similar to a ‘no case to answer’ motion, wherein accused argues that even if the prosecution case is accepted at face value and taken to be correct, no case is made out against the accused. This opportunity is specifically provided vis-à-vis Warrants Cases. However, there is no analogous provision as far as Summons Cases are concerned.

Chapter XX specifically deals with the procedure relating to trial of Summons cases by Magistrates. Section 251 of the CrPC reads as follows ::

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.

[1]
Even on a bare reading, it becomes apparent that there is no specific power of discharge or dropping of proceedings available with the Magistrate in a Summons Trial. However, the judicial opinion on this aspect is far from consistent and the position of law has meandered a great deal. A short chronology of decisions dealing with this aspect would be apposite.

Judicial Interpretation of Section 251 of the CrPC

The issue was first dealt-with at length by the Supreme Court in *K.M. Matthew v. State of Kerala* where the accused had sought recalling of the summoning order in a Summons Case.

The facts of the case lie in very narrow conspectus; the accused (who was a Chief Editor of a daily newspaper) was summoned for an offence u/s 500 of the Indian Penal Code, 1860 ("IPC") (defamation). The Chief Editor, on appearance, moved an application seeking ‘dropping of proceedings’ on the premise that there was no specific allegation against him and offence against him was not made out. The Magistrate had accepted this plea and held that complaint, insofar as it concerned the Chief Editor, could not be proceeded with.

On the matter finally reaching the Supreme Court, it was held that:

"If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused. 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"

With these observations, the proceedings against the accused were dropped. This judgment gave rise to many questions such as, would not such a decision amount to the court reviewing its own order.

The correctness of the legal proposition set out above in *K.M.Mathew (supra)* came up for consideration before the Supreme Court in *Adalat Prasad v. Rooplal Jindal & Ors* wherein a three judge bench was specially constituted since the validity of *K.M.Mathew (supra)* was open to question. The Court held that "If the Magistrate issues process without any basis, the remedy lies in petition u/s 482 of the CrPC, there is no power with the Magistrate to review that order and recall the summons issued to the accused"

The decision in Adalat Prasad was reaffirmed by the Supreme Court in *Subramanium Sethuraman v. State of Maharashtra & Anr* (which was a Summons Case relating dishonour of cheque u/s 138 of the Negotiable Instruments Act, 1881 - "NI Act"), wherein it was held that: Discharge, Review, Re-Consideration, Recall of order of issue of process u/s 204 of the CrPC is not contemplated under the CrPC in a Summons Case. Once the accused has been summoned, the trial court has to record the plea of the accused (as per Section 251 of the CrPC) and the matter has to be taken to trial to its logical conclusion and there is no provision which permits a dropping of proceedings, along the way.

An Aberration

This position held sway for a long time, till the Supreme Court in *Bhushan Kumar v. State (NCT of Delhi)* ruled that the Magistrate has the power to discharge an accused in a Summons Case. The relevant observations of the Court are as under:

"It is inherent in Section 251 CrPC that when an accused appears before the trial court pursuant to summons issued under Section 204 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 CrPC"

The above observation raises more questions than it answers:

- Firstly, if one delves into the facts of Bhushan Kumar (supra) it is revealed that the case concerned an FIR u/s 420 of the IPC, which is punishable with upto 7 years of imprisonment, and was therefore, a Warrants Case and not a Summons Case; in such a factual background, the discussion of Section 251 of the CrPC seems inappropriate as Section 251 of the CrPC applies only qua a Summons Case;
Secondly, in the context of a Summons Case, the applicability of words ‘discharge’ and Section 239 of the CrPC is questionable; Section 239 of the CrPC figures in a separate and dedicated chapter (Chapter XIX) and applies only with respect to a Warrants case and not a Summons case (Chapter XX). The case before the court was a warrants case. In a matter triable as Warrants Case the possibility of discharge was never in question.

Therefore, the question as to whether the Magistrate is empowered to discharge an accused in a Summons Case never really arose before the court in this case. In fact, the case involved only the following two questions:

a. Whether taking cognizance of an offence by the Magistrate is same as summoning an accused to appear?

b. Whether the Magistrate, while examining the question of summoning an accused, is required to assign reasons for the same?

c. Therefore, in absence of this question arising before the court, and the case in question being a Warrants Case which specifically provides for ‘discharge’, Bhushan Kumar (supra) may not have precedential value for the following reasons:

d. Observations qua Summons Case cannot be considered to be the ‘ratio decidendi’ as the immediate case before the court was one triable as a Warrants Case.

e. The court’s attention not having been drawn to previous decisions in Adalat Prasad, Subramanium Sethuraman etc, and for that reason, the decision may be per incuriam.

f. being incongruent with the clear scheme of CrPC and procedure to be adopted in a Summons Case (expressly set out in Chapter XX of the CrPC)

The decision of the court in Bhushan Kumar (supra) was followed in a catena of decisions including Urrshila Kerkar v. Make My Trip (India) Private Ltd with the following observations:

"9. 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."

Course Correction

The recent order of the Supreme Court in Amit Sibal (supra), appears to be the much needed course correction and seems to suggest that the trial court has no power to drop proceedings/discharge in a Summons Trial. This also appears to be in sync with the settled judicial view and also the scheme of CrPC, wherein separate and distinct procedures have been laid down for Warrants, as opposed to Summons Cases (or those cases triable summarily for that matter).

The Delhi High Court recently in R.K. Aggarwal v. Brig Madan Lal Nassa & Anr expressly recognised the absence of power of discharge in a summons case by holding:

"There is no basis in the contention of the petitioners for discharge for the reasons that firstly, there is no stage of discharge in a summons case. Under Chapter XX of Cr.P.C, after filing a private complaint, in a summons case, the accused is either convicted or acquitted. There is no stage of discharge of an accused at any stage under Chapter XX of Cr.P.C"

Analysis

The very fact that in a Summons Case there is no specific provision of a discharge, as opposed to a Warrants Case (S.227/239/245 of the CrPC) speaks volumes as to the legislative intent of not having an elaborate hearing at the time of framing of notice. What also deserves to be borne in mind is the fact that Summons Cases were not envisaged to be as long-drawn out as Warrants Case and the need for a specific discharge hearing was ousted.

It was expected that, since Summons Cases relate to offences of relatively lesser gravity and capable of being completed expeditiously, having a dedicated charge hearing would only delay matters unnecessarily, without any corresponding benefit. The legislative intent to have a relatively abridged form of trial in Summons Cases is writ large on the face of the provisions.
The latest decision in Amit Sibal (supra) is in perfect harmony with the statutory scheme. However, since the decision is more in the nature of a consent order, the authors feel that an authoritative judicial decision that examines the nuances of the issue is required. The decision should also take into account the fact that Summons Cases, for which a separate and abridged form of trial has been envisaged, now for all practical purposes take as long as Warrants Cases, and there is no ostensible reason as to why the accused should not be able to argue for a discharge in such cases and has to mandatorily face a protracted trial.

Conclusion

A decision which reads into Section 251 itself 'the power of discharge' may be required. One way in which the same can be done is by holding that the power to frame notice in a case, has implicit within itself the power not to frame a notice when no case is made out against the accused. Such a judicial pronouncement is required to clear the air on this issue. Amendment of the law is, of course, the more appropriate way of bringing about a change, wherein the desirable results may be achieved without having to stretch the language of the section unnecessarily.

Till then, reliance on Subramanium Sethuraman (supra) (supported broadly by Amit Sibal v. Arvind Kejriwal - supra) and the bare provisions of CrPC constrain us to conclude that there is no such provision in CrPC that permits a 'discharge' or 'dropping of proceedings' in a Summons Case. Having said that, the remedy of filing a revision u/s 397 of the CrPC and/or a petition seeking quashing of proceedings u/s 482 of the CrPC before the Hon'ble High Court is always available with the accused, who can argue, in appropriate cases, that the continuance of proceedings against him amounts to abuse of process of law, and ends of justice demand that proceedings are quashed.

Footnotes

1. 2016 SCC OnLine SC 1516
2. In contrast to Summons Cases based on private complaint, in cases based on FIR (culminating into a Police Report u/s 173 of the CrPC), Section 258 of the CrPC specifically provides for dropping of proceedings. However, a similar provision is conspicuously absent in Summons Cases based on a private complaint.
3. (2014) 1 High Court Cases (Del) 719
4. (1992) 1 SCC 217
6. It should be noted that in Adalat Prasad (supra), the case against the accused was triable as a Warrants Case and not a Summons Case. It is pertinent to flag that in a warrants case the accused gets an opportunity to argue that no case is made out against him and seek a discharge, to protect himself from the rigmarole of a full-fledged trial, which might take years. Whereas, there is no analogous provision as far as Summons Cases are concerned, as demonstrated above.
8. Though there is no provision for discharge in such cases, but the dual remedy of invoking Section 482 as well as revisional jurisdiction u/s 397 of the CPC was clarified by the Supreme Court in Dhariwal Tobacco v. State of Maharashtra (2009) 2 SCC 370.
10. 2013 SCC OnLine Del 4563. To the same effect, also see: Raujeev Taneja v. NCT of Delhi (Crl.M.C. No.4733/2013 decided on 11th November, 2013)
12. 41st Law Commission Report, p. 178, para 22.1

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.