REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SUBRAMANIUM SETHURAMAN V. STATE OF MAHARASHTRA (2004)

BENCH: Mr. Justice N. Santosh Hegde, Mr. Justice S.B. Sinha & Mr. Justice A.K. Mathur

DECIDED: September 17, 2004

RATIO DECIDENDI & PRECEDENTIAL CRUX:
A Magistrate has no inherent power to recall process or review an order issuing summons in a Section 138 complaint; remedy lies in High Court.

1. Factual Matrix & Background:

Upon being summoned in a Section 138 complaint, the accused filed an application before the magistrate praying for recall of the process. The magistrate rejected the application relying on Adalat Prasad v. Rooplal Jindal. The High Court affirmed that the magistrate has no power of review.

2. Substantive Legal Questions Framed:

Whether a magistrate trying a summons case under Chapter XX CrPC in a Section 138 complaint has power to recall process or reconsider the order issuing summons.

3. Analysis & Ratio Decidendi:

The Supreme Court three-judge bench held that the issuance of process under Section 204 CrPC is an interlocutory stage. In the absence of any express provision in the CrPC, a magistrate has no inherent power to review or recall an order issuing summons. The only remedy available to an aggrieved accused is to invoke the revisional jurisdiction under Section 397 or inherent powers under Section 482 CrPC before the High Court.

4. Principles Enunciated:

- 1. Subordinate criminal courts do not possess inherent powers to review or recall orders.
- 2. Order issuing summons under Section 204 CrPC cannot be reviewed by the issuing magistrate.
- 3. Aggrieved accused must approach the High Court under Section 482 CrPC for quashing.

5. Practical Litigation Implications:

- Accused seeking threshold dismissal of a Section 138 complaint must petition the High Court under Section 482 CrPC or CrPC 397 rather than filing discharge/recall applications before the magistrate.

.....J.
[SUPREME COURT BENCH]

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