

Bindeshwari Prasad Singh

Vs

Kali Singh

Criminal Appeal No. 74 of 1976

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

05.08.1976

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave exhibits the careless and cavalier manner in which the Sub-Divisional Magistrate appears to have dealt with the complaint filed before him as far back as February 21, 1966. The complaint itself contains allegations of a very petty nature, of which hardly any cognizance could have been taken and which would be a trivial act under Section 95 of Indian Penal Code for which no criminal proceedings could be taken. There were proceedings under Section 107 between the parties and both parties applied for copies of these proceedings on December 20, 1965. It is alleged in the complaint that the appellant got the copy which was meant of the complainant, be signing his name. The complainant also got his copy a few days after eventually. Such a small matter could have been resolved by the magistrate himself if he had perused the complaint carefully and was certainly not a matter for which a detailed inquiry under Section 202, Code of Criminal Procedure, 1898 was called for. It appears, however, that the magistrate tossed the complaint from one magistrate to another for inquiry and report, without conclusive result, starting from February 21, 1966 to November 23, 1968, that is, for a period of more than two years. Ultimately, on November 23, 1968 the complaint was dismissed under Section 203 of the Criminal Procedure Code on the ground that the complainant was absent and did not show any interest in the inquiry ordered by the court.

2. On December 7, 1968 the respondent appeared before the magistrate and filed an application for recalling his order. The magistrate passed no orders on this application but he sent the case for inquiry to Mr. K. P. Sinha, another magistrate. Thereafter, the matter was sent to Mr. S. N. Dube on October 30, 1969. Mr. Dube reported that the inquiry had been completed and hence he returned the papers of inquiry to the magistrate. On December 9, 1970, the magistrate recalled the inquiry from Mr. K. P. Sinha and transferred to Mr. A. R. Ansari and on the basis of his report, the learned Magistrate passed the order taking cognizance of the case and summoned the accused by his order dated May 3, 1972, and issued processes against the appellants. It would thus appear that a very petty matter was allowed to have a long and chequered career because the magistrate refused to apply his mind either to the allegations made in the complaint or to control the proceedings before him.

3. In support of the appeal Mr. Nag has submitted a short point. He has contended that the magistrate had no jurisdiction to recall the order dated November 23, 1968, by which he had dismissed the complaint under Section 203 of the Code of Criminal Procedure. In fact, there was no express order recalling the order dismissing the complaint, but by a process of deeming fiction the

magistrate thought that the order dismissing the complaint stood recalled.

4. We might mention that the order dated November 23, 1968 was a judicial order by which the magistrate had given reasons for dismissing the complaint. Even if the magistrate had any jurisdiction to recall this order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the Code of Criminal Procedure of 1898 (which applies to this case) empowering a magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact after having passed the order dated November 23, 1968, the Sub-Divisional Magistrate became functus officio and had no power to review or recall that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, recalling order dismissing the complaint, was entirely without jurisdiction. This being the position, all subsequent proceedings following upon recalling the said order, would fall to the ground including order dated May 3, 1972 summoning the accused which must also be treated to be a nullity and destitute of any legal effect. The High Court has not at all considered this important aspect of the matter which alone was sufficient to put an end to these proceedings. It was suggested by Mr. D. Goburdhan that the application given by him for recalling the order of dismissal of the complaint would amount to a fresh complaint. We are, however, unable to agree with this contention because there was no fresh complaint and it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. This has been held by this Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* [1962 Supp 2 SCR 297 : AIR 1962 SC 876 : (1962) 1 Cri LJ 770]. For these reasons, therefore, the appeal is allowed. The order of the High Court maintaining the order of the magistrate dated May 3, 1972 is set aside and the order of the magistrate dated May 3, 1972 summoning the appellant is hereby quashed.

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