SUPREME COURT OF INDIA

Mahesh Chand

Vs.

B. Janardhan Reddy

Crl.A.No.1276 of 2002

(M. B. Shah, D. M. Dharmadhikari and S. B. Sinha JJ.)

04.12.2002

JUDGEMENT

S. B. Sinha, J.

1. Leave granted.

2. The complainant is the appellant herein. He lodged a First Information Report against the respondent on 19th July, 1997, alleging, inter alia, therein that a sale deed and acknowledgment purported to have been executed by him were forged and fabricated documents and the respondent wrongfully trespassed into the lands bearing Survey Nos. 100/1 and 101/1 situate at Serlingampaly in the District of Ranga Reddy, Andhra Pradesh. The Forensic Science Laboratory to whom the said sale deed and acknowledgement were sent for a scientific opinion allegedly in its opinion dated 31st October, 1997 stated that the said sale deed and acknowledgment were forged documents.

3. However, in the meanwhile being not satisfied with the investigation carried out by the police authorities, he filed a criminal complaint in the Court of the Additional Judicial First Class Magistrate, (West and South), Saroornagar in the District of Ranga Reddy against the respondent herein, alleging commission of offences under Sections 420, 426, 447 and 448 of the Indian Penal Code. It is admitted that two civil suits are also pending between the parties. The Investigating Officer, however, upon investigation of the matter came to the conclusion that the dispute between the parties was a civil dispute. He also arrived at a conclusion that the appellant herein had executed the acknowledgment. A case disposal report on the said basis was filed before the learned Magistrate.

4. The appellant herein on or about 2nd September, 1998 filed a protest petition.

5. The case disposal report filed by the police was accepted by the learned Magistrate. The complaint case filed by the appellant was also closed. The said order has not been questioned by him.

6. On or about 8th November, 2002, a third complaint was filed by the appellant herein purported to be under Section 200 of the Code of Criminal Procedure whereupon summons were issued upon the respondent.

7. Questioning the said order, the respondent filed an application under Section 482 of the Code of Criminal Procedure before the High Court of Judicature at Andhra Pradesh which was marked as Criminal Petition No. 591 of 1999. By reason of the impugned judgment dated 31st August, 2001, a learned single Judge of the High Court held that having regard to the police report in Cr. No. 206 of 1997 dated 29th July, 1997 that the dispute between the parties was of civil in nature and further having regard to the dismissal of the protest petition filed by the appellant herein on 2nd September, 1998, a fresh complaint on the self-same allegations, was barred.

8. Mr. P. S. Narasimha, the learned counsel appearing on behalf of the appellant in support of the appeal, would, inter alia, submit that the High Court committed a manifest error in arriving at the said conclusion as there does not exist any legal bar in filing a second complaint. Strong reliance, in this connection, has been placed on a judgment of the Patna High Court in *Munilal Thakur and others, etc. v. Nawal Kishore Thakur and another*[1] and a decision of a learned single Judge of the Orissa High Court in *The District Manager, Food Corporation of India, Titilagarh v. Jayashankar Mund and another*[2].

9. Mr. Ramakrishna Reddy, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would submit that the criminal complaint filed by the appellant herein was a verbatim reproduction of his earlier complaint petition and in that view of the matter unless a special case was made out, the learned Magistrate could not have entertained the said criminal contempt nor could issue processes upon the respondent relying on the basis thereof.

10. Strong reliance, in this connection, has been placed on *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar*[3]*, and Bindeshwari Prasad Singh v. Kali Singh*[4].

11. The learned counsel sought to place before us an authenticated copy the said complaint petition with a view to show that the same was almost a verbatim reproduction of the earlier complaint petition.

12. There cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition, but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised.

13. The law in this behalf is no longer res integra.

14. In Pramatha Nath Taluqdar's case (supra), Kapur, J. speaking for himself and Hidayatullah, J. as he then was, observed:

". . . .Therefore, if he has not misdirected himself as to the scope of the enquiry made under S. 202, Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under S. 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, i.e., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into *Allah Ditta v. Karam Baksh*[5]; *Ram Narain Chaubey v. Panachand Jain*[6]; *Hansabai v. Ananda*[7]; *Doraisami v. Subramania*[8]. In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in cases above-quoted and adopted the opinion of Macleam, C. J. in *Queen Empress v. Dolegobinda Das*[9], affirmed by a Full Bench in *Dwarka Nath Mandal v. Benimadhab Banerji*[10]. It held, therefore, that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming."

S. K. DAS, J. delivering the minority judgment also observed:

"The question was then considered by a Full Bench of the Calcutta High Court in *Dwarka Nath Mandal v. Beni Madhab Banerjee*[11] and it was held by the Full Bench (Ghose, J. dissenting) that a Presidency Magistrate was competent to rehear a warrant case triable under Ch. XXI of the Code of Criminal Procedure in which he had earlier discharged the accused person. Nilratan Sen's case and Kamal Chandra Pal's case were referred to in the arguments as summarized in the report, but the view expressed therein was not accepted. Dealing with the question Prinsep, J. said : Para 21

"There is no bar to further proceedings under the law, and therefore, a Magistrate to whom a complaint has been made under such circumstances, is bound to proceed in the manner set out in S. 200, that is, to examine the complaint, and, unless he has reason to distrust the truth of the complaint, or for some other reason expressly recognized by law, such as, if he finds that no offence had been committed, he is bound to take cognizance of the offence on a complaint, and unless he has good reason to doubt the truth of the complaint, he is bound to do justice to the complainant, to summon his witnesses and to hear them in the presence of the accused."

15. The same view was expressed by the Madras High Court In re : Koyassan Kutty and it was observed that there was nothing in law against the entertainment of a second complaint on the same facts on which a person had already been discharged, inasmuch as a discharge

was not equivalent to an acquittal. This view was reiterated in *Kumariah v. Chinna Naicker*[12], where it was held that the fact that a previous complaint had been dismissed under S. 203 of the Code of Criminal Procedure was no bar to the entertainment of a second complaint. In Hansabai Sayaji v. Ananda Ganuji the question was examined with reference to a large number of earlier decisions of several High Court on the subject and it was held that there was nothing in law against the entertainment of a second complaint on the same facts. The same view was also expressed in Ram Narain v. Panachand Jain; Ramanand v. Sheri and Allah Ditta v. Karam Baksh, in all these decisions it was recognized further that though there was nothing in law to bar the entertainment of a second complaint on the same facts, exceptional circumstances must exist for entertainment of a second complaint when on the same allegations a previous complaint had been dismissed. . . . . .I accept the view expressed by the High Courts that there is nothing in law which prohibits the entertainment of a second complaint on the same allegations when a previous complaint had been dismissed under S. 203 of the Code of Criminal Procedure. I also accept the view that as a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under S.204(1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations; in other words, there must be good reasons why the Magistrate thinks that there is "sufficient ground for proceeding" with the second complaint, when a previous complaint on the same allegations was dismissed under S. 203 of the Code of Criminal Procedure."

15. The learned Judge posed the question as to what would be those exceptional circumstances. Noticing the decisions in *Queen Empress v. Dolegobinda Dass*[13], *In re: Koyassan Kutty*[14], *Kumariah v. Chinna Naicker*[15], and several other decisions, the learned Judge came to the conclusion:

> "It will be noticed that in the test thus laid down the exceptional circumstances are brought under three categories; (1) manifest error, (2) manifest miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfil the test. In Ram Narain v. Panachand Jain it was observed that an exhaustive list of the exceptional circumstances could not be given though some of the categories were mentioned. One new category mentioned was where the previous order of dismissal was passed on an incomplete record or a misunderstanding of the nature of the complaint. This new category would perhaps fall within the category of manifest error or miscarriage of justice.
>
> It appears to me that the test laid down in the earliest of the aforesaid decisions. Queen Empress v. Dolegobind Dass is really wide enough to cover the other categories mentioned in the later decisions. Whenever a Magistrate is satisfied that the previous order of dismissal was due to a manifest error or has resulted in a miscarriage of justice, he can entertain a second complaint on the same allegations even though an earlier complaint was dismissed under S. 203 of the Code of Criminal Procedure..."

> Yet again in Bindeshwari Prasad's case (supra), this Court followed Pramatha Nath Taluqdar's case (supra) holding:-
>
> ". . . . . 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. .."

16. In Munilal Thakur's case (supra), the Division Bench of the Patna High Court was concerned with the question as to whether a Magistrate even after accepting final report filed by the police, can take cognizance of offence upon a complaint or the protest petition on same or similar allegations of fact; to which the answer was rendered in the affirmative.

17. The question which has arisen for consideration herein neither arose therein nor was canvassed.

18. In Jayashankar Mund's case, the Orissa High Court again did not have any occasion to consider the question raised herein. The Court held:

> ". . . . . .Even though a protest petition is in the nature of a complaint, it is referable to the investigation already held by the vigilance police culminating in the final report and because the informant was not examined on solemn affirmation under S. 202 of the Code, thereby no illegality or prejudice was caused to the accused. If such a view is accepted and there is no reason why such a view should not be accepted, the necessary consequence in this particular case shall be that the protest petition which is of the nature of a complaint petition filed by the petitioner shall be in continuation and in respect of the case instituted and investigated by the vigilance police."

19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Sec. 204, Cr. P. C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Taluqdar's case (supra) second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.

20. For the reasons aforementioned, the impugned order of the High Court is set aside. The matter shall now go back to the learned Magistrate who shall consider the matter afresh in the light of the observations made hereinbefore.

21. This appeal thus stand disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

Order accordingly.

[1]*(1985 Cri LJ 437)* [2]*(1989 Cri LJ 1578)* [3]*(1962) Supp 2 SCR 297* [4]*(1977) 1 SCR 125*
[5]*AIR 1930 Lahore 879* [6]*AIR 1949 Pat 256* [7]*AIR 1949 Bom 384* [8]*AIR 1981 Mad 484*
[9]*ILR (1901) 28 Cal 211* [10]*ILR (1901) 28 Cal 652* [11]*ILR (1896) 23 Cal 983* [12]*AIR 1946 Mad 167*
[13]*(1900) ILR 28 Cal 211)* [14]*(AIR 1918 Mad 494)* [15]*(AIR 1946 Mad 167)*