SUPREME COURT OF INDIA

Poonam Chand Jain

Vs

Fazru

Criminal Appeal No. 371 of 2004

(Arijit Pasayat and C.K.Thakker)

15/10/2004

JUDGMENT

ARIJIT PASAYAT, J.

1. An interesting point is raised in this appeal as to the effect of dismissal of a complaint filed under Section 200 of the Code of Criminal Procedure, 1973 (in short the 'Code') and whether second complaint can be filed.

2. Brief reference to the factual aspects as contended by the appellant would suffice.

3. Respondent-Fazru (hereinafter referred to as the 'complainant') filed a complaint no. 152 on 10.7.1992 which was dismissed by order dated 13.1.1994 by the Judicial Magistrate, 1st Class, Nuh, Haryana. On 12.2.1996 the complainant filed a revision before the Punjab and Haryana High Court which was numbered as Criminal Revision No. 43 of 1995. The said revision petition was dismissed by order dated 12.2.1996. Prior to the institution of a complaint 4 suits had been filed by the appellant's companies and other appellants in 1989 which were decreed by order dated 24.10.1997. In all these cases complainant-Fazru was defendant no.1. In 1992 the complainant filed a Civil Suit No. 90 of 1992 in the Court of Civil Judge, Junior Division, Nuh. The same was dismissed for default on 7.10.1997. Complainant filed the complaint which forms subject matter of present appeal

no. 25.11.1997. According to the appellants process was directed to be issued by the learned Magistrate on 9.1.1999. Such action was assailed by filing a revision. By judgment dated 9.7.1999, learned Additional Sessions judge, Gurgaon, allowed the revision and dismissed the complaint. It was, inter alia, held that protection under Section 300 of the Code was not available to the complainant. Aggrieved by said order, the complainant filed a revision petition no.552 of 2000 before the High Court. By the impugned order the High Court allowed the revision. Learned Judge held that if the present appellants had any grievance they could seek review of the summoning order with a view to get discharged in view of the provision of Section 245 of the Code.

4. In support of the appeal, Mr. Altaf Ahmad, learned senior counsel, submitted that the second complaint was nothing but a repetition of the averments of the first complaint and was in essence a fresh attempt to re-open the matters which have attained finality. The order of learned Additional Sessions Judge was justified and the High Court should not have interfered with it. It was pointed out with reference to various averments in the first complaint filed on 10.7.1992 and the second one filed on 25.11.1997 that both are founded on the same allegations. The averments were merely repeated and, therefore, no case for entertaining the second complaint was made out. That being so, the issuance of process was illegal and the learned Additional Sessions Judge had rightly interfered with it. The High Court was not justified in saying that present appellant should seek discharge in terms of Section 245 of the Code. It was submitted that though the second complaint can be entertained, the same has to be on establishing exceptional circumstances and not as a matter of routine.

5. In response, learned counsel for the respondent submitted that it is not correct to contend as done by the appellants that the averments were mere repetitions. Different persons were arrayed as accused in the complaint and the alleged offences were different.

6. A bird's eye view of some of the decisions throwing light on the controversy needs to be taken.

7. In Pramatha Nath Talukdar vs. Saroj Ranjan Sarkar), Kapur, J. speaking for himself and Hidayatullah, J. as he then was, observed: (at p.899, para 48).

"Therefore, if he has not misdirected himself as to the scope of the enquiry made under S.20, 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 vs. Karam Baksh 1930 AIR(Lah) 879 ; Ram Narain Chaubey vs. Panachand Jain 1949 AIR(PAT) 256 ; Hansabai Sayaji Payagude vs. Ananda Ganuji Payagude 1949 AIR(Bom) 384 ; Doraisami Aiyar vs. Subramania

Aiya 1918 AIR(Mad) 484 . 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 opinion of Maclean, C.J. in Queen Empress vs. Dolegobind Dass 1901 (28) ILR(Cal) 211), affirmed by a Full Bench in Dwarka Nath Mondul vs. Beni Madhab Banerjee 1901 (28) ILR(Cal) 652). 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: (AIR p.887, para 21)

* "The question was then considered by a Full Bench of the Calcutta High Court in Dwarka Nath Mondul vs. Beni Madhab Banerjee 1901 (28) ILR(Cal) 652) 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 1896 (23) ILR (Cal) 983) and Kamal Chandra Pal's case 1897 (24) ILR (Cal) 286) 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:

"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."

The same view was expressed by the Madras High Court Malayil Kottayil Koyassan Kutty, In Re 1918 AIR (Mad) 494 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 Kumaraiah Naicker vs. Chinna Naicker 1946 AIR (Mad) 167, where it was held that the fact that a previous complaint had been dismissed under Section 203 of the Code of Criminal Procedure was no bar to the entertainment of a second complaint. In Hansabai Sayaji Payagde vs. Ananda Ganuji Payagude 1949 AIR (Bom) 384 the question was examined with reference to a large number of earlier decisions of several High Courts 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 Chaubey vs. Panachand Jain 1949 AIR (PAT) 256; Rama Nand vs. Sheri 1934 AIR (All) 87 and Allah Ditta vs. Karam Bakhsh 1930 AIR(Lah) 879 , 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 Section 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 Section 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 Section 203 of the Code of Criminal Procedure." *

8. The learned Judge posed the question as to what would be those exceptional circumstances. Noticing the decisions in Queen Empress vs. Dolegobind Dass, 1901 (28) ILR(Cal) 211), In Re: Koyassan Kutty, 1918 AIR(Mad) 494), Kumariah vs. Chinna Naicker, 1946 AIR(Mad) 167), 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 vs. Panachand Jain 1949 AIR(PAT) 256 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 vs. Dolegobinda 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 Singh vs. Kali Singh) this Court followed Pramatha Nath Talukdar'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.." *

9. As was observed in Mahesh Chand vs. B. Janardhan Reddy and another 9), **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 reason, the Magistrate under Section 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. But the 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. The 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 would be**

entertained only in exceptional circumstances, namely, where previous order was passed on an incomplete record or on misunderstanding of the complaint or it was manifestly absurd or unjust. #

10. At this juncture, it will be also necessary to take note of what this Court has said in Subramanium Sethuraman vs. State of Maharashtra and Anr. (2004 (6) Supreme 662). It was laid down in the said decision that it is impermissible for the Magistrate to re-consider his decision to issue process in the absence of any specific provision to recall such order.

11. In Adalat Prasad vs. Rooplal Jindal and others, (2004(7) SCALE 137), this Court considered the view of the Court in K.M. Mathew, vs. State of Kerala and Anr.) and held that the issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the Code for review of an order by the same Court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. In that line of reasoning this Court in Adalat Prasad's case (supra) held:

"Therefore, we are of opinion that the view of this Court in Mathew's case (supra) that no specific provision is required for recalling and issuance order amounting to one without jurisdiction, does not laid down the correct law." *

12. From the above, it is clear that the larger Bench of this Court in Adalat Prasad's case (supra) did not accept the correctness of the law laid down by this Court in K.M. Mathew's case (supra).

13. Learned counsel for the respondent submitted that the order to issue process is an interlocutory order, and therefore revision before the Additional Sessions Judge was not maintainable. Learned counsel for the appellants with reference to certain observations in Rajendra Kumar Sitaram Pande and others vs. Uttam and Anr. 1993 (3) SCC 134) and K.K. Patel and Anr. vs. State of Gujarat and Anr.) submitted that this Court has held that issuance of process or charges is not an interlocutory order. In both these cases reference was made to V.C. Shukla vs. State through C.B.I.) to hold that framing of charge is not an interlocutory order. The decision in V.C. Shukla's case (supra) was rendered in the background of the special statute applicable and it is clearly stated in para 47 to be so. In any event, that question is academic as the High Court did not interfere with the order passed by the Additional Sessions Judge on the ground that the revision was not maintainable in view of the prescription in Section 397(2) of the Code. Undisputedly, in a given case Section 482 of the Code can be pressed into service. It was held by this Court in Pramatha Nath's case (supra). Further, in Subramanium's case (supra) as noted above, it was observed that issuance of process is a preliminary step in the stage of trial. In V.C. Shukla's case itself the distinction between cases covered by the Code and the special Statute governing that case, as noted above, has been clearly indicated. It was interring alia, observed as follows:

'To sum up, the essential attribute of an interlocutory order is that it merely decides some point or

matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia, J in the case of Madhu Limaye vs. State of Maharashtra clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in Corpus Juris Secundum, Vol. 60. We find ourselves in complete agreement with the observations made in Corpus Juris Corundum. It is obvious that an order framing of the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term 'interlocutory order' as used in Section 11(1) of theAct.Wharton's Law Lexicon (14th Edn. P.529) defines interlocutory order thus:

"An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."

Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code, or any other statute. That is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in Section 11(1) of the Act.

* This case was following in the case of Mohd. Amin Bros. vs. Dominion of India 1950 AIR(SC) 139 where it was held that so far as this Court is concerned the principles laid down in S. Kuppuswami Rao vs. King settled the law. In this connection, in the aforesaid case, Mukherjea, J., speaking for the Court observed as follows:

"The expression 'final order' has been used in contradiction to what is known as 'interlocutory order' and the essential test to distinguish the one from the other has been discussed and formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this Court in their recent pronouncement in S. Kuppuswami's case (supra) and the law on point, so far as this Court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial Committee in Ramchand Manjimal vs. Goverdhandas Vishandas 1920 (47) IA 124 and Abdul Rahman vs. D.K. Cassim and Sons 1933 AIR(PC) 58 and the authorities of the English Courts upon which these pronouncements were based, it has been held by this Court that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties.

Thus, the Federal Court in its decision seems to have accepted two principles, namely:

(1) That a final order has to be interpreted in contradiction to an inter locutory order; and

(2) That the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression 'interlocutory order' its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswami's case (supra) and applying the non obstante clause, we are satisfied that so far as the expression 'interlocutory order' appearing in Section 11(1) of the Act is concerned, it has been used in the natural sense and not in a special or a wider sense as used by the Code in Section 397(2). The view taken by us appears to be in complete consonance with the avowed object of the Act to provide for a most expeditious trial and quick dispatch of the case tried by the Special Court, which appears to be the paramount intention in passing the Act." *

14. As the High Court has not considered the legality of the order directing issuance of process keeping in view the law laid down by this Court, we feel it would be proper to remit the matter to the High Court to record positive findings on the relevant issues.

15. The appeal is disposed of accordingly.