

PATNA HIGH COURT

Ram Narain Chaubey

Vs

Panachand Jain

(Das and Narayan, JJ.)

13.09.1948

JUDGMENT

Das, J.

1. This is a reference by the Second Additional Sessions Judge of Patna in respect of an order passed by the learned Sub-divisional Magistrate of Dinapure, dated 4th March 1948, in two criminal cases, one bearing No. 1580 and the other 1590 of 1947. The facts leading up to the order under reference are shortly stated below. The petitioner before the learned Sessions Judge was Ramnarayan Chaubey, an employee of one Haroon Taj Mohammad. For the sake of convenience I shall refer to him as the petitioner. The opposite party, Mr. P. O. Jain, is a Factory Manager of the Jagdishpur Zamindary Company, Ltd. The South Bihar Sugar Mills, Ltd., Bihta, leased out the sugar section of their Mills to the Jagdishpora Zamindary Company Ltd., but the old stock of molasses was leased to Haroon Taj Mohammad. On 7th May 1947, the opposite party gave a first information to the officer in charge of Bihta Police Station alleging that the petitioner and another person called Bam Chandar were seen running away when some men deputed by the Jagdishpur Zamindary Company were watching the tanks from which some 9000 ms of molasses had been previously stolen. Before the local police could submit a report as a result of the investigation into the allegations made in the first information, the opposite party filed two petitions of complaint on 16th May 1947. In one of the petitions of complaint the allegations were the same as the first information. In the other petition of complaint, it was alleged that the petitioner and two other persons had committed theft of molasses worth Rs. 4500. In the first petition of complaint in which the allegations were the same as in the first information, a prayer was made for taking action against the accused for offences under 38, 426 and 457, Penal Code. In second petition of complaint a prayer was made for taking action against the accused persons for offences under Sections 426 and 457, Penal Code. The first petition of complaint gave rise to case no. 159C, and the second petition gave rise to case no. 1690 of 1947. The learned Sub-divisional Magistrate after examining the complainant in both the cases, directed the Sub-Inspector of Police, Bihta, to investigate into the allegations made and submit a report thereon. On 18th May 1947, the local police submitted a final report stating that the

allegations were maliciously false and making a prayer that the complainant should be prosecuted for making a false complaint. This final report came up for consideration by the learned Sub-divisional Magistrate in case no. 1580, on 16th June 1947. Before that date the complainant had filed a protest petition on 16th June 1947. On 21st June 1947, the learned Sub-divisional Magistrate accepted the final report submitted by the police and dismissed the complaint in Case No, 168C under the provisions of Section 203, Criminal P. C. Apparently, no order, was passed on the protest petition filed by the complainant on 16th June 1947. In case No. 1590 the final report of the police was put up on a much later date, and on 27th August 1947, the learned Sub-divisional Magistrate passed the following order: Final report maliciously false received under Section 379/ 411, Penal Code; Complainant will show cause for his prosecution under Section 211, Penal Code. On 13th September 1947, as a report for prosecution under Section 211, Penal Code., has also been received. In Case no. 1E9C also the complainant had filed certain petitions from time (to time?) for taking necessary action in respect of the sample of molasses. The order dated 27th August 1947, passed in Case No. 1B9O, to which I have already made a reference, was passed by Mr. A. J. Khan, Mr. Khan was transferred and was succeeded by Mr. Huda, who was also transferred. The matter was then put up before Mr. Ghosh, the present Sub-divisional Magistrate of Dinapore. On 1st November 1947, the petitioner, filed a petition praying for an enquiry under Section 476, Cr. P. O. and making a complaint against the opposite party for an offence under Section 211, Penal Code. The present Sub-divisional Magistrate dealt with both the cases together and on 4th March 1948, he passed the following order: It will appear from the records that the complaint filed on 16th May 1947 was dismissed, after considering the final report (the case having been sent to the Police) on 21st June 1947. But the complainant had filed a protest petition on 16th June 1947 which has not yet been disposed of. Therefore, the question of revival and the necessary law points do not arise. I have gone through the police reports and also heard lawyers. I consider that a regular trial in Court is the only means of finding out in this case whether the complainant made a maliciously false complaint and if that be the finding in Court, he could of course, be prosecuted under 8. 211, Penal Code. Cognizance is therefore taken. Summon the accused to 21st March 1948, This disposes of the points arising from Case No, 158C of 1947. As regards Case No. 159C of 1947, no action was taken either under Section 203, or under Section 204, Criminal P.C. On perusal of the order sheet of Case No. 1590 it appears that before the complaint was dismissed a show cause notice was issued to the complainant. Complainant had already filed protest petition in Case No. 1580. As I have noted above after considering the police reports and hearing the lawyers of the parties, I deem it necessary to get the points thrashed out in Court and It is only then it will appear whether the complaint in Case No. 159C of 1947 was maliciously false, and if that be the finding, the complainant, of course, will be prosecuted under 9. 211, Penal Code. Cognizance is therefore taken. Summon the accused.

2. It is against the aforesaid order of the learned Sub-divisional Magistrate that the present reference has been made. We have heard learned Counsel for the petitioner as well as for the opposite party. Two main questions arise for consideration. The first question is if the learned

Sub-divisional Magistrate had jurisdiction to revive the two complaints and take cognizance thereon, when his predecessor in office had already dismissed one of the complainants by an express order and the other complaint by implication. The second question is not one of jurisdiction but of propriety. Assuming that the learned Sub-divisional Magistrate had jurisdiction to revive the old complaints and take cognizance thereon, was it proper for him to do so in the circumstances of the present case? learned Counsel for the parties have addressed us on both these questions.

3. Mr. S. N. Sahay appearing for the petitioner has put his argument on the first question in a restricted form. His contention is that the Magistrate can take cognizance on a fresh complaint, even though an earlier complaint on the same facts has been dismissed; but in the absence of a fresh complaint, the Magistrate has no jurisdiction to revive an old complaint and take cognizance thereon. He has argued with some vehemence that a Magistrate cannot go on changing his mind, dismissing the complaint once and reviving it again at his own sweet will. According to his view, the first complaint is finished and disposed of by the order of dismissal, and any further action, if desired to be taken, must be on a fresh complaint. The question has been the subject of several decisions including a decision of this Court. The question was considered at great length by a Full Bench of the Madras High Court in *Emperor v. Chinna Kalipa Goundan and another*¹. It was pointed out there that an order under Section 208, Criminal P. C., was not a judgment to which the provisions of Section 369 would apply; nor will the principle of *autrefois acquit* apply as there is no trial when the complaint is dismissed under Section 203, Criminal P. C. The leading judgment was given by Sir Arnold White C. J. who specifically dealt with the question of a fresh complaint and said as follows: I do not think that in substance with reference to the question of jurisdiction any distinction can be drawn between entertaining a fresh complaint and rehearing the original complaint. The argument that the Magistrate having made the order of dismissal, is *functus officio* applies equally to both cases, and the formality of putting in a fresh complaint cannot be said to create a jurisdiction, which without such formality, the Magistrate would not have possessed. If I may say so with respect, the view expressed above is correct. In *Jyotindra Nath Daw v. Hem Chandra Daw*² it was observed as follows: There is no doubt that the Deputy Magistrate who had dismissed the complaint under Section 203, Criminal P. C., could legally revive it after dismissal under Section 208, Criminal P. C. In that case the complainant had filed a petition before the Magistrate who had dismissed the complaint praying for revival of the case. But the decision of their Lordships was not based on the facts that a petition had been filed praying for revival of the case. The observation of their Lordships, which I have quoted above, shows that they took the view that the Magistrate who had dismissed the complaint under Section 203, Criminal P. C., could legally revive it after dismissal under Section 208, Criminal P. C. This decision was approved in *Janakdhari Singh v. King-Emperor*³, a decision of this Court. Though the facts of that case were different, their Lordships approved of the principle laid down in *Jyotindra Nath Daw v. Hem Chandra Daw*⁴. They stated that the Subordinate Court had jurisdiction, even apart from the revisional order of the Sessions Judge, to revive a complaint, which had been dismissed under Section 203, Penal Code. The same view has been expressed in other

decisions, as well, which I need not examine in detail. I do not think that the jurisdiction of the Magistrate necessarily depends on the filing of a fresh complaint ; and the Magistrate has jurisdiction to revive the old complaint dismissed under Section 203, Criminal P. C. In the case before us the question of jurisdiction depending on a fresh complaint is of academic interest only. As a matter of fact, there was a protest petition which could be treated as a fresh complaint and the Magistrate could take cognizance on it. I do not, therefore, think that there was any absence of jurisdiction in the present case, and the order of the learned Sub-divisional Magistrate cannot be attacked on that ground.

4. On the second question, I think, the petitioner is on surer ground. It is now well settled that although a previous order dismissing the complaint is no bar to the institution of a fresh case against the same accused, still a new complaint in respect of the same offence should not be entertained, unless there are exceptional circumstances, e. g. where new facts which could not, with reasonable diligence, have been brought forward in the previous proceedings are adduced or there was some manifest error in the previous proceedings, or the previous order was passed on an incomplete record or a misunderstanding of the nature of the complaint to I have no desire to give an exhaustive list of the circumstances in which a new complaint may be entertained or the old complaint revived despite an order of dismissal under B. 303 ; but there are many decisions which have laid down that a fresh complaint should be entertained only in exceptional circumstances. learned Counsel for the petitioner has drawn our attention to some of these decisions; *Allah Ditta, v. Karam Bahsh*⁵ and *Mohammad Din v. Mehtab Din*⁶ Lab.. In a decision of this Court in *Biso Bam v. Emperor*⁷ the following observation was made: True it is that an order of discharge under Section 494 (a) or under Section 253, in a warrant case does not necessarily prevent the Magistrate from taking cognizance Of a complaint on the same facts, but an order of discharge cannot be set aside and prosecution started afresh unless there are new materials before the Magistrate which were not before him formerly and upon those materials there is a possibility of a conviction of the accused person.

These observations show a reference to only one of the circumstances on the existence of which a fresh complaint may be entertained ; but the principle that a fresh complaint or a revival of the old complaint should be allowed in exceptional circumstances only is implicit in those observations. In the case before us, the learned Sub-divisional Magistrate has not referred to any exceptional circumstances. His order gives one the impression that the only reason why he revived the old complaints was that he did not wish to hold an enquiry under 8. 476, Criminal F. C., but wanted the petitioner to be put on trial so as to determine if the allegations of the opposite party were maliciously false or not. In my opinion, this was an entirely wrong view of the matter, Whether a particular person should be put on trial on the basis of a complainant made against him depends on if a prim a facie case of the commission of an offence has been made out or not; a person is not put on trial for the purpose of finding out if the complaint should be prosecuted for an offence under 6, 211, or not. The Magistrate who had earlier dealt with these two complaints, had all the materials before him. He had the two petitions of complaint; he had the final reports submitted by the local police and he had also the protest petition filed by the opposite party. On a consideration of all these materials he dismissed one of the complaints by

an express order under B. 203, and with regard to the other complaint, he passed an order asking the opposite party to show cause why he should not be prosecuted for an offence under B. 211, Penal Code. No new materials were placed before the Sub-divisional Magistrate who had to deal with the petition filed by the petitioner for an enquiry under 8, 476. I do not think that the learned Sub-divisional Magistrate properly exercised his discretion in directing the revival of the old complaint, his purpose being merely to avoid an enquiry under 8.176, Criminal F. C. The learned Sub-divisional Magistrate does not say that any new materials have been placed before him or that any manifest error had been made by his predecessor; nor does he say that the previous order was passed on an incomplete record or that there was any misapprehension or misunderstanding on the part of his predecessor in office. In these circumstances the order passed by the learned Sub-divisional Magistrate on 4th March 1948, was in my opinion, an improper order and a wrong exercise of the Magistrate's jurisdiction.

5. learned Counsel for the parties have intimated to us in course of the hearing that the differences between the parties have now been amicably settled and the parties do not desire any further action to be taken, either in the matter of the two complaints filed by the opposite party or in the matter of the application filed by the petitioner for an enquiry under Section 476, Criminal P. C. The learned Magistrate may well have regard for this circumstance and drop all further proceedings between the parties.

6. For the reasons given above, I would accept the reference and set aside the order of the learned Sub-divisional Magistrate dated 4th March 1948.

Narayan, J.

7. I agree.

Cases Referred.

129 Mad, 126 : 8 Cr. L. J. 274

236 Cal. 416 : 21. O. 298

38 Pat. 537: A.I.R. (16) 1929 Pat. 469: 81 Cr. L. 3

486 Cal. 416 : 9 I. O. 595

512 Lab. 9 : A.I.R. (IT) 1980 Lah. 879 : 31 Cr. L. J. 1180

633 Cr. L. J. 493 : 137 I. C. 520

766 I. O. 76 : A.I.R. (9) 1922 Pat. 372 : 23 Cr. L. J. 236