

POONAM CHAND JAIN AND ANR.

v.

FAZRU

(Criminal Appeal No. 203 of 2010)

JANUARY 28, 2010

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Code of Criminal Procedure, 1973: s.203 – First complaint dismissed on merits – Second complaint filed on same facts without disclosing fact of dismissal of first complaint – Maintainability of – Held: An order of dismissal under s.203 is no bar for entertaining a second complaint on the same facts but only in exceptional circumstances – On facts, core of both complaints was same – Second complaint not covered within exceptional circumstances – In that view of the matter, the second complaint was not maintainable.

The question which arose for consideration in the present appeal is whether after an order of dismissal of complaint has attained finality, the complainant can file another complaint on almost identical facts without disclosing in the second complaint the fact of either filing of the first complaint or its dismissal.

Allowing the appeal, the Court

HELD: An order of dismissal under Section 203 Cr.P.C. is no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. The exceptional circumstances may be (a) where the previous order was passed on incomplete record (b) or on a misunderstanding of the nature of the complaint (c) or the order which was passed was manifestly absurd, unjust or foolish or (d) where new facts which could not, with

A reasonable diligence, have been brought on the record in the previous proceedings. In the instant case, the second complaint was on almost identical facts which were raised in the first complaint and which was dismissed on merits. The core of both the complaints was same. Nothing was disclosed in the second complaint which was substantially new and not disclosed in first complaint. No case was made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the knowledge of the first complaint. In fact such a case could not be made out since the facts in both the complaints were almost identical. Therefore, the second complaint is not covered within exceptional circumstances. In that view of the matter the second complaint in the facts of this case, cannot be entertained. Unfortunately, the High Court fell into an error in not appreciating the legal position in its correct perspective while allowing the revision petition of the respondent. The order passed by the High Court in revision jurisdiction cannot be sustained and is quashed. [Paras 23, 27 and 28] [116-A-C; 118-C-G]

E *Pramatha Nath Talukdar and another v. Saroj Ranjan Sarkar* AIR 1962 SC 876; *Jatinder Singh and others v. Ranjit Kaur* AIR 2001 SC 784; *Mahesh Chand v. B. Janardhan Reddy and another* (2003) 1 SCC 734; *Hiralal and others v. State of U.P. & others* AIR 2009 SC 2380, relied on.

Case Law Reference:

	AIR 1962 SC 876	relied on	Para 23
G	AIR 2001 SC 784	relied on	Para 24
	(2003) 1 SCC 734	relied on	Para 25
	AIR 2009 SC 2380	relied on	Para 26

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 203 of 2010.

From the Judgment & Order 5.2.2009 of the High Court of Punjab & Haryana at Chandigarh in Criminal Revision No. 552 of 2000. A

A.M. Singhvi, U.U. Lalit, Jayant Mohan, Rahul Pratap (for "Coac") for the Appellants. B

Khurshid Ahmed, Mehtab Ahmed, Aftab Ali Khan for the Respondent.

The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted. C

2. Assailing the judgment of High Court dated 05.02.2009 rendered in Criminal revision No. 552/2000 this appeal was filed. D

3. The main contention of the appellants before this Court is that without any colour of right the respondent herein repeatedly filed complaints on same facts and the High Court without proper appreciation of the facts and the legal position allowed the revision petition of the respondent and caused a grave failure of justice. E

4. The material facts are that a complaint was filed by the respondent in the court of judicial Magistrate 1st Class, Nuh on or about 10.06.1992 alleging therein that the appellants who own and possess his own house at Faridabad came into contact with the respondent and ultimately won the confidence of the respondent. In the complaint it was alleged that the respondent is an illiterate, innocent person with a poor village background and he was induced to purchase some land at village Mohammedpur for and on behalf of the appellants. Thus the respondent entered into an agreement to sell different plots of land of about 60 acres at Mohammedpur village. F G

5. The said complaint further alleges that various sale deeds were executed and registered and respondent was given H

A the impression that those deeds were registered in the names of appellants and the respondent jointly.

B 6. It is further alleged that the respondent was asked to put his thumb impression on the sale deeds and he was further assured that the land situated in village Mohammedpur, Nuh will be transferred in their joint names of appellants and the respondent.

C 7. According to the complaint, fraud was thus played on the respondent by the appellants and when the respondent realized the same he allegedly filed a complaint in Chhitranjan Park police Station on 28.06.1991 but that police station failed to take any action inter alia on the ground that the entire thing took place beyond their territorial jurisdiction.

D 8. The further case in the complaint is that the respondent wanted to file complaint before local police station but as the police failed to take any step, the complaint was filed before the Magistrate complaining of offences under Sections 420/120B/426 IPC.

E 9. On such complaint the matter was taken up by the Judicial Magistrate 1st Class, Nuh and ultimately after a detailed analysis of factual and legal position, the Judicial Magistrate 1st Class came to a conclusion on 13.01.1994 to the following effect:

F "Thus the whole story of the complainant is bundle of falsehood and is liable to be discarded forthwith without going further in the investigation of the allegations. Hence the complaint is dismissed u/s 420 IPC also qua accused no. 1. Record be consigned."

G

H 10. Challenging the order of the Magistrate, a revision petition was filed in the High Court of Punjab and Haryana by the respondent. The said revision petition was also dismissed by order dated 12.02.1996 and while dismissing the petition

the High Court recorded the following finding: A

“Having gone through the judgment of the trial court and hearing counsel for the parties, I am of the view that the case is not for interference. Dismissed.”

11. High Court's finding was not challenged and attained B
finality. It may be noted that respondent also filed a civil suit on
inter alia the same allegations. The said Civil Suit was
numbered as 599/92 and was dismissed for default by the
learned Civil Judge, Junior Division, Nuh.

12. The said order of dismissal of the suit became final C
since no attempt was made to challenge the same.

13. In the meantime, the appellants filed several suits some D
of which were filed by several companies against the
respondent for permanent injunction and other relief. These suits
were numbered as follows:

“(i) Suit No. 241/89 filed by M/s. SPML India Ltd. along with E
*Suman Malik, w/o Balkishan/Usman Absul Rahim &
Hanif v. Fazru s/o Bher Khan and Rahim Bux s/o Shri
Kaho Khan*

(ii) Suit No.242/89 dated 28.11.1989 title *M/s. SPML India
Limited and others vs. Fazru and others.*

(iii) Suit No.243/89 dated 21.11.1989 title *Poonam Chand F
Sethi and other vs. Fazru and others.*

(iv) Suit No.244/89 title *M/s. SPML India Limited vs. Fazru
and others.*”

14. All the suits which were filed against respondent were G
clubbed as common questions were involved and there was an
analogous hearing.

15. All the four suits succeeded with costs and defendants H
including the respondents were prevented from the

A dispossessing the plaintiff over the suit land except in the process established by law. Before passing the final decree the Civil Court came to the following finding:

B “23. From the oral as well as documentary evidence led by the plaintiffs, it is proved that the plaintiffs have purchased the suit land from its original owners and Usman, Hanif and Abdul Rahim are in cultivating possession of the suit land as a lessee. The defendant no.1 has himself admitted that he is not in possession of the suit land. The defendant no.2 has already admitted the claim of the plaintiffs. Therefore, it is concluded that the plaintiffs are entitled to the decree of permanent injunction as prayed for. Hence, this issue is decided in favour of the plaintiffs and against the defendants.”

D 16. The aforesaid decree passed on 27.10.1997 was not challenged by the respondent and therefore become final.

E 17. After the civil suits were decreed on 24.10.97, just a month thereafter on 25.11.97 another complaint was filed by the respondent in the Court of Judicial Magistrate on virtually the same facts. In fact, paragraphs 4, 6, 7 and 9 of the subsequent complaint has a striking similarity with the previous one. It may be mentioned that in the second complaint the fact of filing of the first complaint and its dismissal was totally suppressed.

F 18. On such complaint the Magistrate passed an order summoning the appellants 1 and 2. Challenging the said order of summoning the appellants, the appellants moved a criminal revision before the Court of Additional Sessions Judge, Gurgaon and the Additional Sessions Judge, Gurgaon allowed the revision and the summoning order was set aside by an order dated 9.7.99. Against that order the respondent moved a criminal revision being Criminal Revision No.552 of 2000 before the High Court and the Hon'ble High Court reversed the order passed by the Additional Sessions Judge and directed

H

the appellants to appear before the trial Court where appellants were given liberty to raise all the points and seek reconsideration of the order in accordance with Section 245 of Criminal Procedure Code.

A

19. Against that order the appellants filed a special leave petition before this Court wherein leave was granted and it was numbered as Criminal Appeal No.371/04.

B

20. In the said criminal appeal this Court remanded the matter to the High Court for recording positive finding on relevant issues. This Court while remanding the matter was of the opinion that High Court has not considered the legality of the order directing issuance of summon keeping in view the law laid down by this Court. The exact directions given by this Court in its concluding portion vide order dated 15.10.04 in the aforesaid criminal appeal is as follows:

C

D

“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”.

E

21. After the matter was remanded to the High Court, the High Court passed the impugned judgment holding therein that the Magistrate's order dated 9.1.99 whereby the appellants have been summoned is restored and the appellants were asked to face trial.

F

22. In the background of these facts, the question which crops-up for determination by this Court is whether after an order of dismissal of complaint attains finality, the complainant can file another complaint on almost identical facts without disclosing in the second complaint the fact of either filing of the first complaint or its dismissal.

G

23. Almost similar questions came up for consideration before this Court in the case of *Pramatha Nath Talukdar and*

H

A *another vs. Saroj Ranjan Sarkar* – (AIR 1962 SC 876). The majority judgment in *Pramatha Nath* (supra) was delivered by Justice Kapur. His Lordship held that an order of dismissal under Section 203 of the Criminal Procedure Code (for short ‘the Code’) is, however, no bar to the entertainment of a second
 B complaint on the same facts but it can be entertained only in exceptional circumstances. This Court explained the exceptional circumstances as (a) where the previous order was passed on incomplete record (b) or on a misunderstanding of the nature of the complaint (c) or the order which was passed
 C was manifestly absurd, unjust or foolish or (d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings. This Court made it very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full consideration
 D of the case, the complainant should be given another opportunity to have the complaint enquired into again. In paragraph 50 of the judgment the majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record. This Court very clearly held that it cannot be settled law
 E which permits the complainant to place some evidence before the Magistrate which are in his possession and then if the complaint is dismissed adduce some more evidence. According to this Court such a course is not permitted on a correct view of the law. (para 50, page 899)

F
 24. This question again came up for consideration before this Court in *Jatinder Singh and others vs. Ranjit Kaur* – (AIR 2001 SC 784). There also this Court by relying on the principle in *Pramatha Nath* (supra) held that there is no provision in the
 G Code or in any other statute which debars complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts
 H could not be made unless there are ‘exceptional

circumstances'. This Court held in para 12 if the dismissal of the first complaint is not on merit but the dismissal is for the default of the complainant then there is no bar in filing a second complaint on the same facts. However if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different. Saying so, the learned Judges held that the controversy has been settled by this Court in *Pramatha Nath* (supra) and quoted the observation of Justice Kapur in paragraph 48 of *Pramatha Nath* (supra):-

“.....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, e.g., 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 interest 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.....”

25. Again in *Mahesh Chand vs. B. Janardhan Reddy and another* – (2003) 1 SCC 734, a three Judge Bench of this Court considered this question in paragraph 19 at page 740 of the report. The learned Judges of this court held that a second complaint is not completely barred nor is there any statutory bar in filing a second complaint on the same facts in a case where a previous complaint was dismissed without assigning any reason. The Magistrate under Section 204 of the Code can take cognizance of an offence and issue process if there is sufficient ground for proceeding. In *Mahesh Chand* (supra) this Court relied on the ratio in *Pramatha Nath* (supra) and held if the first complaint had been dismissed the second

A complaint can be entertained only in exceptional circumstances and thereafter the exceptional circumstances pointed out in *Pramatha Nath* (supra) were reiterated.

26. Therefore, this Court holds that the ratio in *Pramatha Nath* (supra) is still holding the field. The same principle has been reiterated once again by this Court in *Hiralal and others vs. State of U.P. & others* – AIR 2009 SC 2380. In paragraph 14 of the judgment this Court expressly quoted the ratio in *Mahesh Chand* (supra) discussed hereabove.

27. Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint which is substantially new and not disclosed in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the Knowledge of the first complain. In fact such a case could not be made out since the facts in both the complaints are almost identical. Therefore, the second complaint is not covered within exceptional circumstances explained in *Pramatha Nath* (supra). In that view of the matter the second complaint in the facts of this case, cannot be entertained.

28. Unfortunately, the High Court fell into an error in not appreciating the legal position in its correct perspective while allowing the revision petition of the respondent. The order passed by the High Court in revision jurisdiction cannot be sustained and is quashed. This appeal succeeds.

29. There shall be no order as to costs.

H D.G. Appeal allowed.