

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

Judgment On: 07-04-2010.

C.R.R. No. 742 of 2010

***Mahua Patra @ Mithu
versus
The State of West Bengal & Anr***

POINTS:

QUASHING-First complaint dismissed for default without assigning any reason-Second complaint on the same set of facts and against the same set of accused persons at the instance of the same complainant, whether be quashed- Indian Penal Code, Ss.302/451/452/380/120B/34-Code of Criminal Procedure, 1973 S.482

FACTS:

Pursuant to an order passed on a complaint made to the Court by the opposite party no. 2 herein, a First Information Report was registered against the present petitioner and 16 others. After completion of investigation, when police filed final report praying for discharge of the accused from the case, the opposite party no. 2 herein filed a 'Naraji' petition. The Learned Sub-Divisional Judicial Magistrate refused to accept the final report and directed re-investigation of the case. After re-investigation, police again submitted final report, but the Learned Magistrate instead of accepting such final report took cognizance on 'Naraji' petition filed by the defacto-complainant. Subsequently, on January 30, 2010, the opposite party no. 2 filed a fresh complaint on the self-same

allegations and against the self-same accused persons. The Learned Magistrate, after taking cognizance directed issuance of process against the present petitioner and 16 others

HELD:

It is contended that no second complaint can be entertained unless there is exceptional circumstances showing that the previous order of dismissal was passed on the incomplete facts or on a misunderstanding of the nature of the 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 first complaint was dismissed for default without assigning any reason. In such view of the matter, the second complaint on the same set of facts and against the same set of accused persons at the instance of the same complainant is not prohibited.

Paras-4, 7& 8

CASES REFERRED:

- 1) Poonam Chand Jain & Anr. Vs. Fazru, JT 2010 (1) SC 468
- 2) Asit Kumar Kar Vs. State of West Bengal & Ors., 2009 (1) Supreme 647
- 3) Hira Lal & Ors. Vs. State of U.P. & Ors., AIR 2009 SC 2380
- 4) Jatinder Singh & Ors. Vs. Ranjit Kaur, AIR 2001 SC 784
- 5) Mahesh Chand Vs. B. Janardhan Reddy & Anr., AIR 2003 SC 702

For Petitioner : Mr. Deep Chaim Kabir
Mr. Lakshmi Nath Bhattacharjee

THE COURT:

1. Pursuant to an order passed under Section 156 (3) of the Code by the Learned Sub-Divisional Judicial Magistrate, Uluberia, on a complaint made to the Court by the opposite party no. 2 herein,

a First Information Report relating to offences punishable under Sections 302/451/452/380/120B/34 of the Indian Penal Code was registered at Uluberia Police Station against the present petitioner and 16 others.

2. After completion of investigation, when police filed final report praying for discharge of the accused from the case, the opposite party no. 2 herein filed a 'Naraji' petition, whereupon the Learned Sub-Divisional Judicial Magistrate refused to accept the final report and directed re-investigation of the case. After re-investigation, police again submitted final report, but the Learned Magistrate instead of accepting such final report took cognizance on 'Naraji' petition filed by the defacto-complainant. Thereafter, the case was transferred for trial to the Court of the Learned Judicial Magistrate, 1st Court, Uluberia. By an order dated was April 3, 2007, the Learned Magistrate dismissed the complaint on default. Subsequently, on January 30, 2010, the opposite party no. 2 filed a fresh complaint on the self-same allegations and against the self-same accused persons and on such complaint a criminal proceeding being the Complaint Case No. 165 (C) of 2007 registered and the Learned Court below after taking cognizance directed issuance of process against the present petitioner and 16 others under Sections 302/451/452/380/120B/34 of the Indian Penal Code.

Now, the petitioner has approached this Court for quashing of the aforesaid complaint case, now pending before the Learned Judicial Magistrate, 1st Court, Amta, on the sole ground that no second complaint on the same facts is legally maintainable unless there is a very exceptional circumstance.

3. Heard the Learned Counsel appearing for the petitioner and considered the following case laws cited by him.

(i) Poonam Chand Jain & Anr. Vs. Fazru, reported in JT 2010 (1) SC 468, (ii) Asit Kumar Kar Vs. State of West Bengal & Ors., reported in 2009 (1) Supreme 647 and (iii) Hira Lal & Ors. Vs. State of U.P. & Ors., reported in AIR 2009 SC 2380.

4. It is contended that no second complaint can be entertained unless there is exceptional circumstances showing that the previous order of dismissal was passed on the incomplete facts or on a misunderstanding of the nature of the 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.

5. In the case of Jatinder Singh & Ors. Vs. Ranjit Kaur, reported in AIR 2001 SC 784, a Division Bench of the Hon'ble Supreme Court held that there is no bar to entertain the second complaint on the same set of facts when the previous one was dismissed for default. In the case of Mahesh Chand Vs. B. Janardhan Reddy & Anr., reported in AIR 2003 SC 702, a three Judges Bench held as follows;

“...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.....”

6. In the case at hand, the Learned Magistrate dismissed the first complaint with the following orders;

“Complt. Take no steps absent on call. It is now 10.48. Hence finding no alternative the case is dismissed u/s 203 Cr.P.C. Note in the register.”

7. Therefore, the first complaint was dismissed for default without assigning any reason.

8. In such view of the matter, the second complaint on the same set of facts and against the same set of accused persons at the instance of the same complainant is not prohibited.

9. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

10. Office is directed to communicate this order to the Learned Court below immediately.

11. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)