

Bharat Vs. Ramkumar

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Court : Madhya Pradesh

Decided On : Sep-26-2013

Appellant : Bharat

Respondent : Ramkumar

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH
PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA MISC. CRIMINAL CASE
NO.4920/2008 Bharat and 19 others -VERSUS- Ramkumar

..... Shri K.B.
Bhatnagar, Advocate for the applicants. None for the respondent.
.....

ORDER

(Passed on the 26th day of September, 2013) Applicants have challenged the order dated 5/1/08 passed by the learned C.J.M., Dindori in Complaint Case No.912/07, whereby he restored the complaint which was dismissed in absence of the complainant.

2. Prosecution's case, in short, is that the respondent had lodged a complaint against the applicants for various offences. Vide order dated 3/11/2007, the learned C.J.M. registered the complaint for the offences punishable under Sections 147, 447, 427 and 506 of the I.P.C. and notices were issued to the applicants. On 15/12/2007, neither the complainant nor the applicants appeared

before the trial Court and therefore, after making so many calls in the entire day, at 5:00 P.M. learned C.J.M., Dindori dismissed the complaint in want of prosecution. Again vide order dated 5/1/08, learned C.J.M., Dindori restored the complaint.

3. I have heard the learned counsel for the applicants, whereas none appeared for the respondent, though notice of the petition was served upon him. 2 M.Cr.C. No.4920/2008 4. Learned counsel for the applicants has submitted that there is no provision for restoration of any complaint. If complainant thinks it proper, then he could file a second complaint. In support of his contention, he has placed his reliance upon the judgment passed by Hon'ble the Apex Court in the case of Jatinder Singh and others v. Ranjit Kaur. [2001 AIR SCW435.

5. After considering the submissions made by learned counsel for the applicants and looking to the facts and circumstances of the case, it appears that the learned C.J.M., Dindori restored the complaint on the basis of judgment passed by the Single Bench of Gujarat High Court in the case of Kumbhar Dhulabhai Kalubhai v. Patel Ganeshbhai Fulabhai and another. [AIR1969 Gujarat 176].. However, in that judgment, it is no where mentioned that the power of restoration is given to the trial Court itself. In that judgment, the Single Bench of Gujarat High Court set aside the order of dismissal of complaint on the basis, that if a date was fixed for appearance of the accused persons, then presence of the complainant was not required. However, it is no where directed that such type of restoration can be done by the trial Court itself.

6. It is no where proved that the complainant had filed any revision or misc. petition against the order of dismissal of the complaint passed by learned C.J.M., Dindori. Learned C.J.M., Dindori did not have power under Section 482 of Cr.P.C. and therefore, it could not review its own order that the dismissal was not according to law.

7. In the light of the judgment passed by Hon'ble the Apex Court in the case of Jatinder Singh. (supra), the complainant could file a second complaint or he could move a revision application before the revisionary authority for restoration of the complaint in the light of the judgment 3 M.Cr.C. No.4920/2008 passed by the Single Bench of Gujarat High Court in the case of Kumbhar Dhulabhai Kalubhai.

(supra). However, the trial Court could not review its own order and therefore, the order dated 5/1/2008 passed by learned C.J.M. , Dindori is of no jurisdiction. That order is bad in law, which cannot be maintained.

8. On the basis of the aforesaid discussion, the present petition filed by applicants is hereby allowed. The order dated 5/1/2008 passed by learned C.J.M., Dindori is hereby set aside and therefore, the order dated 15/12/2007 continues.

9. A copy of the order be sent to the trial Court for information and to drop the proceedings against the applicants. (N.K. Gupta) Judge 26.9.2013 rv

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