

Dinkar Vs. the State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Jun-13-2013

Judge : A.P. Bhangale

Appeal No. : Criminal Writ Petition No.103 of 2001

Appellant : Dinkar

Respondent : The State of Maharashtra and Another

Judgement :

Oral Judgment:

1. The petitioner, who has filed this petition under Section 482 of Cr.P.C. and under Article 227 of the Constitution of India questioning the order of issuance of process dated 19.8.1992 passed by learned Judicial Magistrate, First Class, Udgir in Regular Criminal Case No.226/1998, being a private complaint filed by respondent No.2 - Kashiram Sangram Hallale. According to learned Advocate for the petitioner, the process under Section 302, 201, 504, 506 Part I, 109 and 498-A read with Section 34 of Indian Penal Code ought not to have been issued as against the petitioner. It is not in dispute that accused Nos.1 to 5 did not challenge the impugned order of issuance of process. It is also contended with reference to ruling in **HariSingh Mann vs. Harbhajan Singh Bajwa and others**, reported in **2001 (1) Mh.L.J.465** that once the complaint was dismissed for default, it could not have been reviewed in view of the bar under Section 362 of Cr.P.C. Reference

is also made in this regard to ruling in **Bindeshwari Prasad Singh vs. Kali Singh**, reported in **AIR 1977 SUPREME COURT 2432** contending that second complaint can lie only on new facts or even on previous facts only if special case is made out.

2. It may be noted that the private complainant, who was unaware of the adjourned dates i.e. 25.6.1992 and 1.7.1992 because he was informed the adjourned date as 17.8.1992, while before that adjourned date the complaint was wrongly dismissed. Thus, there was no order of either discharge or acquittal after hearing the complainant. This appears to have been considered by the learned Judicial Magistrate, First Class, Udgir who allowed application of the private complainant and decided to restore the complaint. The contention that in view of the bar under Section 362 of Cr.P.C. the Magistrate could not have restored the complaint, is not acceptable in the facts and circumstances of the present case, particularly when the complainant was informed the adjourned date as 17.8.1992. While before that adjourned date informed to the complainant, no order to the prejudice of the complainant in his absence could have been passed. It is always open for the Court to rectify clerical or arithmetical error in its order, even in view of Section 362 of Cr.P.C. The very existence of the court is to ensure that justice must not only be done but must be seen to have been done. Therefore, in my opinion, no fault can be found with the learned Magistrate who chose to rectify his own order on the ground that the date adjourned was informed as 17.8.1992 to the complainant and before that adjourned date and in the absence of the complainant no order to the prejudice of complainant could have been passed.

3. The next contention is that it was the case of suicide and not of murder and the accusation made against the present petitioner relates to performance of his duties as Police Inspector and, therefore, without valid sanction under Section 197 of Cr.P.C., the petitioner cannot be prosecuted. Learned A.P.P. is not in a position to dispute his proposition that prior sanction of the competent authority is necessary to prosecute the petitioner, as accusations are made in respect of performance of his duties as Police Inspector or alleged failure to perform his duties according to law. Learned Advocate for the petitioner made reference to ruling in **Rizwan Ahmed Javed Shaikh and others vs. Jammal Patel and**

others, reported in **AIR 2001 SUPREME COURT 2198**. In para 15 of the said ruling the test applied was as to whether act done by a public Officer, as alleged to have constituted an offence was done by him while acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. Under these circumstances, benefit or protection under Section 197 (2) of Cr.P.C. would be available to the present petitioner, who was Police Circle Inspector at the relevant time. Reference is also made to the ruling in **MarutiRamchandra Dawane vs. State of Maharashtra**, reported in **1998 (2) Bom.Cr.C.460** on the point of requisite previous sanction by the competent authority to prosecute a public servant.

4. Hearing these submissions, I think that the prosecution as against the present petitioner cannot proceed further without insisting upon valid and legal sanction order, as contemplated under Section 197 of Cr.P.C. Considering the seriousness of the accusation in the impugned order by which process was issued, it is desirable that such prosecution, though lodged at the instance of private person ought to be taken to its logical end according to law. In normal course, no roadblocks can be allowed to be created in respect of prosecution for serious offences like murder etc. Therefore, I am not inclined to disturb the impugned order, except with a qualification that as against the present petitioner, committing Magistrate of trial would insist upon previous sanction from the competent authority to prosecute the present petitioner on the ground that he was acting as Police Inspector at the relevant time for alleged acts or omissions attributed to him or which were alleged to have been committed by the petitioner.

5. With these observations, petition stands disposed of. Rule discharged.

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