

Arvind Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-05-2008

Judge : Abhijit Sinha, J.

Appellant : Arvind Singh

Respondent : State of Bihar and ors.

Disposition : Application allowed

Prior history : Abhijit Sinha, J. 1. The petitioners herein who happens to be the complainant of Complaint Case No. 250 of 2003 prays for the quashing of the order dated 6.5.2003 passed by the learned Chief Judicial Magistrate, Kaimur at Bhabhua whereby he has dismissed the said complaint under Section 203 Cr.P.C. on the ground that the earlier complaint case preferred by the self same complainant had been dismissed for non prosecution and the instant complaint case, filed after a delay of over one year for w

Judgement :

Abhijit Sinha, J.

1. The petitioners herein who happens to be the complainant of Complaint Case No. 250 of 2003 prays for the quashing of the order dated 6.5.2003 passed by the learned Chief Judicial Magistrate, Kaimur at Bhabhua whereby he has dismissed the said complaint under Section 203 Cr.P.C. on the ground that the earlier

complaint case preferred by the self same complainant had been dismissed for non prosecution and the instant complaint case, filed after a delay of over one year for which there was no satisfactory explanation, was in an effort to revive the case in connection with Ramgarh P.S. Case No. 112 of 2000. A further prayer has been made for quashing order dated 23.9.2006 passed by the learned Presiding Judge, Fast Track Court No. V, Kaimur at Bhabhua whereby Criminal Revision No. 108 of 2003 preferred against order dated 6.5.2003 has also been dismissed.

2. It appears that on the basis of a written information submitted by the petitioner herein inter alia alleging that opposite party Nos. 2 to 4 herein had killed his sister, Mansa Devi, within 5-6 years of her marriage on account of non fulfillment of dowry demands, Ramgarh P.S. Case No. 112 of 2000 was registered wherein the police after due investigation submitted a final form. Upon filing of a protest petition the same proceeded as Complaint Case No. 513 of 2001 and was dismissed on 4.1.2002 for non prosecution. The petitioner filed a fresh complaint case bearing No. 250 of 2003 which as stated above and the resultant Criminal Revision No. 108 of 2003 were also dismissed.

3. It has been submitted by the learned Counsel for the petitioner that there is no bar to the filing of a second complaint and does not amount to a review or recall of an earlier order dismissing the first complaint. It was sought to be impressed that the second complaint was very much maintainable specially when the first complaint was not dismissed on merits but for non prosecution and both the learned Magistrate and the Revisional Court had erred in respect of the legal position.

4. The matter stands concluded by two decisions of the Apex Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkair* reported in : AIR 1962 SC876 and *Maj. Genl. A.S. Gauraya v. S.N. Thakur* reported in : 1986 CriLJ1074 .

5. It was held in *A.S. Gauraya's case*(supra) that so far as the accused is concerned, dismissal of a complaint for non appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provisions in the Code of Criminal Procedure, a Magistrate cannot exercise any inherent jurisdiction and he cannot restore a complaint to his file by

revoking his earlier order dismissing it for non appearance of the complainant and proceed with it when an application is made by the complainant to revive it. It was further held that a second complaint is permissible in law if it could be brought within the limitations imposed by the Supreme Court in Pramatha Nath Taluqdar's case(supra).

The limitations imposed in Taluqdar's case(supra) is as follows:

Under the Code of Criminal Procedure the subject of 'Complaints to Magistrates is dealt with in Chapter XVI of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainant's and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in 1961 (1) SCR 1 at pp. 9,10: (AIR 1969 SC 1113 at pp. 1116, 1117). The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202, Criminal Procedure Code, and has judicially applied his mind to the materials before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under Section 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....

Therefore, the categorical finding of the Apex Court in the above two mentioned cases is that filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal.

7. In the instant case, it would be apparent from a perusal of the petition of Complaint Case No. 250 of 2003 that there was no prayer for reviving or review of the order dated 4.1.2002 passed in Complaint Case No. 513 of 2001 and after stating the facts a prayer was made for taking appropriate steps in the matter. Had it been a case where Complaint Case No. 513 of 2001 was dismissed on merits after having followed the procedure for inquiry under Section 202 Cr.P.C. the matter would have been different but that is not the situation here.

8. In view of the discussions made above, I am of the opinion that both the learned Magistrate as also the Revisional Court had erred in dismissing the complaint and the criminal revision, respectively. Accordingly, the impugned orders are hereby set aside and the application is allowed. The learned Chief Judicial Magistrate, Kaimur at Bhabhua is directed to proceed with the Complaint Case No. 250 of 2003 in accordance with law and in the light of the observations made above.

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