

Laxminarayan Vs. Ramaswamy

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Court : Karnataka

Decided On : Oct-07-1988

Reported in : ILR1989KAR1158; 1989(1)KarLJ28

Judge : Navadgi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Crl. Petn. No. 1085 of 1988

Appellant : Laxminarayan

Respondent : Ramaswamy

Advocate for Def. : S.S. Koti, HCGP

Advocate for Pet/Ap. : A.B. Patil, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Navadgi, J.

1. This is a Criminal Petition under Section 482 of the Code of Criminal Procedure (the Code for short) and is directed against the order dated 4-3-1988 made by the learned Principal Sessions Judge, Gulbarga, in Criminal Revision Petition No.

62/85 on his file. By the order impugned herein, the learned Principal Sessions Judge dismissed the Criminal Revision Petition and confirmed the order dated 31-1-1985 made by the learned J.M.F.C. Sedam, in C.C. No. 153/3/81 on his file.

2. The matter is in the orders' list. Heard the learned Counsel for the petitioner and the learned High Court Government Pleader for the State, who was requested to take notice of the petition and assist the Court. The record is perused.

3. Few facts that need to be mentioned to dispose of the petition are these:

The petitioner and respondents Nos. 1 to 6 herein were the complainant and A-1, A-2, A-3, A-4, A-5 and A-6 respectively In the Trial Court. They will be hereinafter referred to as such.

The complainant lodged a complaint against A-1 to A-6 before the J.M.F.C. Sedan, alleging the offences punishable under Sections 427 and 380 of the Indian Penal Code.

The learned Magistrate took cognizance of the offences alleged and issued process to all the six accused persons. The six accused persons, in response to the process, entered appearance.

4. Under the First Schedule to the Code, the offence punishable under Section 427 of the Indian Penal Code is non-cognizable and bailable. It is compoundable. The offence punishable under Section 380 of the Indian Penal Code is cognizable and non-bailable. The learned Magistrate took the complaint on his file in C.C. No. 153/ 3/81 and proceeded to try the offences in accordance with the provisions contained in Section 244 and onwards appearing in Chapter 19 of the Code.

5. The complainant examined himself and adduced the evidence of his witness. On 31-1-1985, to which date the case had stood adjourned for orders on charge, the complainant was absent. It appears, there was request for time on behalf of the complainant, but the learned Magistrate, observing that there was no application to claim exemption from appearance of the complainant, proceeded to dismiss the complaint under Section 249 of the Code. By the same order, he discharged all the accused persons of the offences alleged against them and

directed the cancellation of their bail bonds.

6. The complainant made an application to the learned Magistrate under Section 249 read with Section 200 of the Code with a prayer to restore his complaint, dismissed for his absence on 31-1-1985, to file. The learned Magistrate by the order dated 2-7-1985 declined the request.

7. Thereafter, the complainant carried the matter in revision to the learned Sessions Judge, Gulbarga in Criminal Revision Petition No. 62/85.

8. The learned Sessions Judge held that the order of the learned Magistrate dated 31 -1 -1985, though expressly stated to be one passed under Section 249 of the Code, was the one under Section 245(1) of the Code. In the view he took, he held that the complainant ought to have assailed the validity of the order dated 31-1-1985 made by the learned Magistrate in a Revision Petition and that having not done so, it was not open to the complainant to file an application for restoration of the complaint under Section 249 of the Code. In that view of the matter, he dismissed the Criminal Revision Petition. The complainant has brought this order of the learned Sessions Judge to this Court challenging it in this petition.

9. The question whether a Magistrate has jurisdiction or not to restore and revive the complaint dismissed for the absence of the complainant, on a subsequent application of the complainant is no more *res Integra*. It is concluded by the pronouncement made by the Supreme Court in *MAJ. GENERAL A.S. GAURAYA AND ANR., v. S.N. THAKUR AND ANR.*, (Criminal Appeal No. 184 of 1979, decided on April 25, 1986). The law laid down by the Supreme Court is to be found in Paragraphs Nos. 9, 10 and 11 of the Judgment. They read as under:

'9. Section 249 of the Criminal Procedure Code enables a Magistrate to discharge the accused when the complainant is absent and when the conditions laid down in the said Section are satisfied. Section 256(1) of the Criminal Procedure Code enables a Magistrate to acquit the accused if the complainant does not appear. Thus, the order of dismissal of a complaint by a Criminal Court due to the absence of a complainant is a proper order. But the question remains whether a Magistrate can restore a complaint to his file by revoking his earlier order dismissing it for the

non-appearance of the complainant and proceed with it when an application is made by the complainant to revive it. A second complaint is permissible in law if it could be brought within the limitations imposed by this Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* : AIR 1962 SC876 . Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal Procedure Code does not contain any provision enabling the criminal Court to exercise such an inherent power.

10. In *B.D. Sethi v. V.P. Dewan* (1971 DLT 162) a Division Bench of the Delhi High Court held that a Magistrate could revive a dismissed complaint since the order dismissing the complaint was not a Judgment or a final order. In Paragraph 9, the Court observes as follows:

9. As long as the order of the Magistrate does not amount to a Judgment or a final order there is nothing in the Code of Criminal Procedure prohibiting the Magistrate from entertaining a fresh application asking for the same relief on the same facts or from reconsidering that order. During the course of the proceedings, a Magistrate has to pass various interlocutory orders and it will not be correct to say that he has no jurisdiction to reconsider them....We would like to point out that this approach is wrong. What the Court has to see is not whether the Code of Criminal Procedure contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have. It was relying upon this decision that the Delhi High Court in this case directed the Magistrate to recall the order of dismissal of the complaint. The Delhi High Court referred to various decisions dealing with Section 367 (old Code) of the Criminal Procedure Code as to what should be the contents of a Judgment. In our view, the entire discussion is misplaced. 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 provision in the Code, a Magistrate cannot exercise any inherent jurisdiction.¹¹ For our purpose, this matter is now concluded by a Judgment of this Court in the case of *Bindeshwari Prasad Singh v. Kali Singh* : 1978 CriLJ187 . We may usefully quote the following passage at page

126 of the Reports: (SCC pp.59-60, para 5): Even if the Magistrate had any jurisdiction to recall this order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the Code of Criminal Procedure of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal Courts have no inherent powers. In these circumstances, therefore, the learned Magistrate has absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact, after having passed the order dated November 23, 1968, the Sub-Divisional Magistrate became functus officio and had no power to review or recall that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, recalling order dismissing the complaint, was entirely without jurisdiction. This being the position, all subsequent proceedings following upon recalling the said order, would fall to the ground including order dated May 3, 1972, summoning the accused which must also be treated to be a nullity and destitute of any legal effect. The High Court has not at all considered this important aspect of the matter which alone was sufficient to put an end to these proceedings. It was suggested by Mr, D. Goburdhan that the application given by him for recalling the order of dismissal of the complaint would amount to a fresh complaint. We are, however, unable to agree with this contention because there was no fresh complaint and it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. This has been held by this Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* : AIR 1962 SC876 . For these reasons, therefore, the appeal is allowed. The order of the High Court maintaining the order of the Magistrate dated May 3, 1972 is set aside and the order of the Magistrate dated May 3, 1972 summoning the appellant is hereby quashed.'

10. In view of the decision of the Supreme Court, the complainant cannot assail the order of the learned Sessions Judge, confirming the order of the learned

Magistrate dated 2-7-1985, though it is obviously not supportable in law. The reasons given by him to uphold the order challenged before him do not commend themselves for acceptance. The petition has to fail. It is, accordingly, dismissed.

11. If a second complaint on the same facts alleged in the first complaint is permissible in law, the complainant would be within his right to make such a second complaint.

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