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Court : Karnataka

Decided On : Jul-30-1998

Reported in : 1999(1)ALT(Cri)343; 1998(5)KarLJ596

Judge : M.P. Chinnappa, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173 (8), 200 and 203;
[Indian Penal Code \(IPC\), 1860](#) - Sections 420 and 467

Appeal No. : Criminal Petition No. 2986 of 1996

Appellant : Naveen Kumar and Others

Respondent : State by Circle Inspector of Police, Udupi Circle, Udupi and Another

Advocate for Def. : Sri S.S. Koti, Additional State Public Prosecutor and ;Sri S.B. Pavin, Adv.

Advocate for Pet/Ap. : Sri Sharathchandra Bajai, Adv.

Judgement :

ORDER

1. The important question that arises for consideration in this petition is whether the second complaint filed under Section 200, Cr. P.C. is maintainable when the

'B' Report was accepted by the Court without there being a protest petition.

2. Heard.

3. The learned Counsel for the petitioners submitted that the second complaint is not maintainable as the 'B' Summary Report submitted by the police was accepted by the Court as the respondent failed to file any protest petition before the 'B' Summary Report was accepted by the Court. He further contended that the order passed by the learned Magistrate accepting the 'B' Summary Report was confirmed by the High Court in the revision petition. The respondent filed the second private complaint on the same allegations as made in the earlier complaint before the same Court suppressing the fact that the revision petition was filed before the Court which subsequently came to be rejected and the learned Magistrate has directed the police to investigate into the offence. Therefore, the said order is illegal and unsustainable. He also further submitted that the complainant has not brought out any changed circumstances. Therefore, the petition may be allowed setting aside the impugned order and the complaint be dismissed.

4. Repelling this argument, the learned Counsel for the respondents submitted that in view of the fact that the complainant was not allowed to participate in the proceedings pending before the Court as the petitioners herein had obtained an order of injunction in W.P. No. 10117 of 1990 and therefore, he could not file the protest petition. He further submitted that the respondent has filed the revision petition as abundant caution but he has filed the 2nd complaint as by then he was advised to do so. He also submitted that since Krishna Murthy, the Administrator appointed by the Deputy Registrar was replaced by one Siddartha, necessary steps were taken to file the complaint. Therefore, there was a changed circumstance to lodge the complaint. On that ground he submitted that the petition is not maintainable.

5. The facts which are not in dispute are as follows:

The 1st petitioner is an employee, the 2nd petitioner was the Director during the relevant time, the 4th petitioner is the Managing Director of the Udupi Primary

Weavers' Service Co-operative Society Limited, Udupi and the 3rd petitioner is his close relative. On 4-5-1990, the Administrator was appointed by the Deputy Registrar of Co-operative Societies as he found certain irregularities in the said society and the Administrator had taken charge on the same day of the society. In the meantime on 8-5-1990, the petitioners herein filed W.P. No. 10117 of 1990 before this Court and obtained an injunction order restraining the Administrator from interfering with the management of the society. On 12-5-1990, it appears that the 4th petitioner had sought for police protection against the Administrator. On 10-5-1990, Administrator had filed a complaint and the police registered FIR in Cri. No. 59 of 1990 of Udupi Town Police Station. In that complaint, the Administrator has alleged that these petitioners committed theft of records on 4-5-1990 at 9.30 P.M. After Investigation, police submitted a 'B' Report on 15-9-1990 before the Court. On 16-11-1990, the Court has accepted the 'B' Report after due notice to the respondents. On 21-2-1991 W.P. No. 10117 of 1990 was dismissed and in the meantime, contempt proceedings also were instituted against the said Krishna Murthy, the Administrator. On 26-6-1991, one Siddartha was appointed as the new Administrator in place of Krishna Murthy. On 7-1-1992 the said Administrator filed Criminal Revision Petition No. 12 of 1992 on the file of this Court. During the pendency of this criminal revision petition, the private complaint in question came to be filed before the JMFC. On 11-3-1992 the criminal revision petition came to be dismissed by this Court and the contempt petition also came to be rejected later. The learned Magistrate passed a detailed order directing the Police Inspector, Udupi Circle to investigate and report and has also issued search warrant as sought in the application to the Circle Inspector, Udupi. On the basis of it, the records were seized by the police during investigation. Subsequently, after the investigation, the police have also filed charge-sheet. It is also necessary to mention that on perusal of the order sheet maintained by the Magistrate, it is seen that the learned Advocate appearing for the accused submitted to the Court that charges may be framed against the accused persons. Accordingly, charges were framed and the case stood posted for trial. Thereafter, several adjournments were granted for recording evidence. At that stage, the petitioners filed this petition for quashing the entire proceedings. From this it is clear that the petitioners have not raised their little finger when the matter stood posted for arguments regarding

charges. At that stage, it was open to them to raise all these contentions placing all materials before the Magistrate but they failed to do so for the reasons best known to them. On the other hand, they consented to frame charges against them. When the matter was posted for trial, they came up with this petition. Thus the intention of the petitioners is clear that they want to prolong the matter. This petition was filed before this Court on 16-12-1996 and the same has been pending in this Court, thereby frustrating the trial of the case pending before the Court below. Be that as it may, coming to the merits of this case, the learned Counsel for the petitioners has placed reliance on a decision in State of Rajasthan v Aruna Devi and Others, wherein the question before their Lordships was whether the complaint of a complainant dismissed under Section 203, Cr. P.C. is a bar to entertain the second complaint on the same facts. Their Lordships have held that it is not a bar but that can only be in exceptional circumstances when fresh evidence was let in. In view of this judgment, the learned Counsel for the petitioners has vehemently argued that there is no fresh evidence in this case to file another complaint when earlier complaint was dismissed by the same Court accepting the 'B' Report and the same was confirmed by this Court in the revision petition referred to above.

6. However, the learned Counsel for the respondent submitted that for a just and reasonable cause, the complainant could not be present to file a protest petition when 'B' Report was accepted due to the fact that the petitioners herein filed writ petition and obtained temporary injunction restraining the then Administrator of the society from taking any part in the matter. Under those circumstances, he submitted that the 'B' Report was accepted. While emphasising this argument, he also submitted that the earlier complaint was referred to the police by the Magistrate on 13-5-1990 and the 'B' Report was submitted on 15-9-1990, that means to say the police have not properly investigated the matter. It is no doubt true after service of notice, the complainant should have appeared before the Court and filed a protest petition but he had a reasonable apprehension that any part he takes in that case, would be treated as contempt and for that matter, a contempt petition also was filed against him and the same came to be dismissed by this Court. Subsequently, the police have investigated the same and submitted a charge-sheet against the petitioners after seizing the books which were said to

have been taken away by the accused persons. These circumstances would indicate that the complainant could not be present to file the protest petition. Thereafter, the Administrator was changed and he filed the revision petition before the Court. That revision petition also came to be rejected by this Court on the ground that Krishna Murthy did not appear before the Court on 16-11-1990 in view of the stay order in W.P. No. 10117 of 1990. This cannot be accepted to be a valid ground for not attending the Court on 16-11-1990 because there was no stay order against him in attending the Court. As indicated above, the complainant had the apprehension in his mind that any action taken by him would be treated as contempt by the petitioners. Even otherwise, the Court has not considered the case on merits but has only accepted the 'B' Report by the police. Subsequently, the same police had investigated the matter and filed charge-sheet. With this background it is now necessary to refer to the facts of the case before their Lordships in the judgment cited above. In that case, the complaint was referred to the police in a case of forgery. The report came to be accepted by the Magistrate. Subsequently, the Superintendent of Police had independently ordered further investigation and a challan under Sections 420 and 467 of the IPC was filed. The Magistrate took cognizance. Of course in that case on further investigation, fresh material had come to light which led to the filing of charge-sheet. In the circumstances, their Lordships have held that the order passed by the High Court in quashing the proceedings is illegal. Almost similar point is involved in this case. The Magistrate had directed the police to investigate the offence and they filed a charge-sheet. By then the complainant also changed. Under those circumstances, I am of the considered view that the contention of the learned Counsel for the petitioners that the second complaint is not maintainable is liable to be rejected.

7. He also further argued that taking cognizance on the basis of the second complaint is nothing but reviewing the earlier order which is impermissible as there is no provision under the Cr. P.C. empowering the Magistrate to review or recall his order. It is no doubt true that the Magistrate cannot review or recall the order passed by him and he also does not have any inherent jurisdiction as it is available to the High Court under Section 482, Cr. P.C. That question of law was decided by their Lordships of the Supreme Court in a decision in Bindeshwari Prasad Singh v Kali Singh . As far as this principle is concerned, there is absolutely no quarrel.

The order passed on the second complaint can never be construed as an order reviewing or recalling the earlier order passed by the Magistrate. Their Lordships of the Supreme Court in Major General A.S. Gauraya and Another v S.N. Thakur and Another , have held following the decision rendered in Pramatha Nath Taluqdar v Saroj Ranjan Sarkar, that 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. A second complaint is permissible in law when it could be brought within the limitations imposed by the Supreme Court in the decision referred to above. In the earlier case, the 'B' Summary Report was filed but subsequently on the basis of the similar complaint, the investigation was conducted, charge-sheet was filed and all the records were seized from the custody of these petitioners. Therefore, there are changed circumstances warranting the Magistrate to take cognizance of the matter. Filing a second complaint is not a bar. Their Lordships have also held that a second complaint can lie only on fresh facts or even on the previous facts but only after a special case is made out. From the narration of facts, it is clear that special case is made out by the complainant for the Court to take cognizance of the offence.

8. Their Lordships of the Supreme Court in a decision Union Public Service Commission v S. Papaiah and Others , have held:

'Communication by informant to CBI indicating certain defects in investigation and some shortcomings requiring reinvestigation. Communication withheld by CBI from Magistrate. Application by informant before Magistrate bringing such communication to his notice and praying for reinvestigation rejection of, by Magistrate on ground that it cannot review its earlier order illegal, Magistrate could in such cases direct further investigation as provided under Section 173(8) '.

In that case also the Magistrate accepted the 'B' Report and passed an order of dropping the proceedings without notice to the informant. Such order according to their Lordships is illegal. In this case also though the notice was served to the respondent, he could not take further steps because of the stay order granted by this Court. Under the circumstances and also taking into consideration the fact that

the further investigation disclosed the commission of serious offence against the petitioners and the matter is pending for trial after framing of charges, I hold the impugned order does not call for interference by this Court.

9. The learned Counsel for the petitioners has argued on the probable defence which the accused would take in this case. There is a clear bar for this Court to consider the pros and cons of the case or the probable defence which the accused might take in a case. It is always open to the accused persons to take such defence as available to them in the circumstances of the case before the Trial Court.

10. For the foregoing reasons, I hold that there is no merit in this petition. Accordingly, the same is dismissed.

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