

Pranab Kumar Roy Vs. State and anr.

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Court : Kolkata

Decided On : Jul-12-2004

Reported in : 2004(3)CHN661

Judge : Bhaskar Bhattacharya, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200, 203 and 482;
;Wild Life (Protection) Act, 1972 - Section 50(4)

Appeal No. : CRAN No. 004 of 2003

Appellant : Pranab Kumar Roy

Respondent : State and anr.

Advocate for Def. : R.S. Saroop, Adv.

Advocate for Pet/Ap. : N.A. Khan, Adv.

Judgement :

Bhaskar Bhattacharya, J.

1. By this application under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for setting aside the order dated 6th June, 2003 passed by the learned Chief Judicial Magistrate, Andaman, at Port Blair, in CR Case No. 065 of 2003 and has further prayed for quashing of the complaint itself on the basis of

which the aforesaid CR case has been registered.

2. The following facts are not in dispute.

3. The Assistant Wild Life Warden, Wild Life Division No. 1, Port Blair filed a petition under Section 50(4) of the Wild Life (Protection) Act, 1972 before the Court of Chief Judicial Magistrate, Port Blair, thereby indicating the petitioner for violation of the provisions of Wild Life (Protection) Act, 1972 on the allegation that he was unlawfully carrying/transporting some of the Schedule I wild life articles.

4. By the said application, the complainant prayed for keeping on record the seized articles and for taking the petitioner in the judicial custody for violation of such provision. In the said application, the complainant in paragraph 7 stated that the investigation of the case was in progress and that a complaint would be filed in due course.

5. On the basis of such petition, a miscellaneous case being Misc. Case No. 029 of 2003 was started and the petitioner was taken into custody. On the prayer of the petitioner for grant of bail, the learned Chief Judicial Magistrate refused such prayer and fixed next day viz. 25th February, 2003 for 'production' and called for CD, if any.

6. It appears from record that on the self-same date, the petitioner got bail from this Court and on 25th February, 2003, the complainant prayed for adjournment whereupon the learned Chief Judicial Magistrate fixed June 6, 2003 for filing of report in final form.

7. On June 6, 2003, the complainant filed a fresh complaint on the basis of the allegations contained in the previous application filed on 24th February, 2003 and the learned Chief Judicial Magistrate on the basis of the second complaint dated June 6, 2003 started a fresh case being CR No. 065 of 2003 and further directed that the earlier Misc. Case bearing No. 029 of 2003 arising out of self-same matter be tagged with the subsequent case file.

8. Being dissatisfied, the accused person has come up before this Court under Section 482 of the Code of Criminal Procedure thereby praying for quashing of the

second complaint dated June 6, 2003.

9. Mr. Nadeem Khan, learned Counsel appearing on behalf of the petitioner, has strenuously contended before this Court that on the basis of the complaint dated 24th February, 2003, the learned Chief Judicial Magistrate having taken cognizance and consequently, the petitioner having been taken into custody, on the self-same material, the second complaint filed on June 6, 2003 was not maintainable. He, thus, prays for quashing of the second complaint.

10. Mr. Saroop, the learned Public Prosecutor, appearing on behalf of the respondent, opposes the aforesaid prayer of the petitioner and contends that on 24th February, 2003, the complainant merely filed an application for taking note of the seized articles and for taking of custody of the petitioner with liberty to file a full-fledged complaint after the investigation was over. According to Mr. Saroop, the second complaint filed on 6th June, 2003 was really the outcome of the investigation and as such cannot be said to be a fresh complaint in the eye of law.

11. After hearing the learned Counsel for the parties and after going through the aforesaid materials placed before me, I find that on the basis of the application dated 24th February, 2003 filed by the complainant the learned Chief Judicial Magistrate having taken cognizance and consequently, the accused person having been confined in the judicial custody, so long such complaint was not dismissed, there was no scope of filing a second complaint on the selfsame materials.

12. It is now settled position of law as pointed out by a Division Bench of this Court in the case of Joy Krishna Chakraborty v. State and Anr., reported in 1980(1) Calcutta High Court Notes page 68 that once on the basis of a complaint, cognizance has been taken by the Magistrate, the said Magistrate has no competence to entertain a second complaint. It was further held that unless the first complainant died or the complaint was time barred or it was dismissed under Section 203 of the Code or disposed of, there was no scope of entertaining a second complaint.

13. In the case before me the application dated 24th February, 2003 has all the ingredients of a 'complaint' within the meaning of Section 200 of the Code of

Criminal Procedure and therefore, should be treated to be such and the learned Magistrate should proceed on the basis of such complaint by ignoring the second one lodged on 6th June, 2003.

14. I, thus, find substance in the contention of Mr. Khan that on the basis of the complaint lodged on 6th June, 2003, a fresh case cannot be initiated. I, thus, quash the second complaint dated 6th June, 2003 on the basis of which CR Case No. 065 of 2003 has been initiated. However, the quashing of the said complaint will not stand in the way of the respondents in proceeding on the basis of the first complaint dated 24th February, 2003, which gave rise to the Misc. Case No. 029 of 2003. The learned Chief Judicial Magistrate will proceed as if the petition dated 24th February, 2003 was a complaint filed by the complainant within the meaning of Section 200 of the Code of Criminal Procedure and a regular CR case should be started on the basis of such complaint.

15. The application under Section 482 of the Code of Criminal Procedure is, thus, disposed of with the above observations and direction.

16. In the facts and circumstances, there will be, however, no order as to costs.