

Before Satish Kumar Mittal, J.

JAGIR SINGH AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

CRIMINAL MISC. NO. 1480/M OF 2006

14th September, 2006

Code of Criminal Procedure, 1973—Ss. 202 and 203—Complainant failing to prove allegations of fraud and cheating against petitioners before the Magistrate—Magistrate dismissing complaint by a detailed order after considering police report sought under section 202 as well as preliminary evidence led by complainant—Allegations in FIR and previous complaint verbatim the same—No disclosure by complainant the factum of dismissal of his earlier complaint by the Magistrate—Order of Magistrate became final as no challenge by complainant in revision—Once a Magistrate took cognizance of the offence, followed the procedure envisaged in Chapter XV of the Code, he has no jurisdiction to refer the complaint under section 156(3) for investigation and registration of case—Registration of FIR exactly on same allegations and on the basis of same material is an abuse of process of Court—Petition allowed, FIR as well as consequent proceedings quashed.

Held, that on the same material and evidence, the investigating agency has reached to a different conclusion than to the JMIC, who had dismissed the complaint after holding that the complainant has failed to prove that the accused has committed the alleged offence. The said order had become final as it was not challenged by the complainant in revision. In my opinion, when the JMIC while dismissing the complaint under Section 203 of the Code came to the conclusion that the allegations levelled in the complaint and the material produced on the record did not prove the allegations of fraud and cheating, the lodging of the second complaint by the complainant exactly on the same allegations without there being any change in the facts or in the material or evidence and registration of the FIR on such complaint and filing of the challan and even framing of the charge on the basis of the said material, is an abuse of the process of the Court.

(Para 11)

Further held, that keeping in view the legal position with regard to filing and entertaining a second complaint on the same allegations, even the second complaint by respondent No. 2 could not have been entertained by the Judicial Magistrate. If the Judicial Magistrate has been debarred from entertaining the second complaint on these facts, in my opinion, on the basis of such complaint with exactly same allegations, the FIR could not have been lodged by the police and the Court should not have taken cognizance on the challan filed by the police in the said FIR. Therefore, in the facts and circumstances of the case, the lodging of the FIR and the consequent proceedings thereon are totally an abuse of the process of the Court.

(Para 17)

Further held, that on the earlier complaint filed by respondent No. 2 not only the Magistrate took cognizance of the offence but he also followed the procedure envisaged in Chapter XV of the Code. He sought the police report under Section 202(1) of the Code and also recorded the preliminary evidence of the complainant. Thereafter he came to the conclusion that there were not sufficient grounds to proceed against the accused as the complainant had failed to prove that the accused has committed the alleged offence. In such situation, even the Magistrate has no jurisdiction to refer the complaint under Section 156 (3) of the Code for investigation and registration of the case. If that is the position, then how on the similar allegations the police can register the case under Section 156 of the Code and investigate the matter, and then come to the conclusion that from the same allegations and the same material, *prima facie* a cognizable offence has been made out.

(Para 19)

R.S. Mamli, Advocate, for the petitioners.

Partap Singh, Sr. D.A.G., Haryana.

JUDGEMENT

SATISH KUMAR MITTAL, J.

(1) The question for consideration in this case is whether on a Complaint filed by a person, an FIR can be registered for the alleged offence if the said person had earlier filed a complaint before the Magistrate exactly on the same allegations, and the Magistrate after

obtaining the report from the police under Section 202 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and after recording the preliminary evidence, had dismissed the same under Section 203 of the Code after observing that the complainant has failed to prove the alleged offence; and whether lodging of the FIR and continuation of the proceedings thereon on such complaint will be an abuse of the process of law and are liable to be quashed.

(2) Before considering the aforesaid question, it is necessary to give certain facts of this case.

(3) On 20th May, 2002, Balbir Singh (respondent No. 2 herein) filed a complaint before the Judicial Magistrate Ist Class, Jagadhri against petitioners Jagir Singh and his son Raju under Sections 323/406/419/420/467/504/506 IPC. In the said complaint, it was alleged that the complainant had business dealing with petitioner No. 1, who was doing the business of electric repairs. In the year 1999, both the petitioners visited the house of the complainant at his village and allured him that his son Mohinder Singh could be sent abroad if he could arrange an amount of Rs. 3,00,000/-. Mohinder Singh was holding a passport. It was further alleged that the petitioners had taken the said passport besides obtaining the signatures of the complainant and Mohinder Singh on many blank forms and papers. Thereafter, the complainant paid an amount of Rs. 5,24,600 to the petitioners on different occasions. This amount was arranged by the complainant after mortgaging his agricultural land besides borrowing some amount from his relatives and selling his jewellery. It was further alleged that the petitioners forged some papers and passport of one Sushil Duggal on which they affixed the photograph of Mohinder Singh. The accused arranged the visa and supplied a copy of the same to the complainant. When it came to the knowledge of the complainant that the said visa was a forged document and when he made a complaint to the accused, they assured him that his son would be sent abroad as soon as possible, but the accused could not send the son of the complainant abroad and when he protested, the petitioners started threatening him and also visited the house of the complainant and abused him. On these allegations, the complaint was filed.

(4) The aforesaid complaint was sent for investigation and report to the police under Section 202 of the Code by the Magistrate. SHO, Police Station, Khizrabad reported that there was some financial

transation between the parties, but the alleged offence in the complaint was not established. Thereafter, the complainant himself appeared as a witness in his preliminary evidence and also produced on record copy of the passport of Sushil Duggal as Mark-A, copy of visa as Mark-B and copy of the mortgage deed as Mark-C. The Judicial Magistrate after taking into consideration of the police report as well as the preliminary evidence led by the complainant dismissed the complaint while coming to the conclusion that the complainant has failed to prove that the petitioners had cheated him and they had committed any forgery as there was no cogent evidence in support of those allegations. While dismissing the complaint, the following observations have been made by the Judicial Magistrate :—

“From the persual of the records of the case, it is evident that the complainant and the two accused had spoken to each other as one of the sons of Jagir Singh was abroad. The complainant has alleged that the two accused had allured him into parting with Rs. 5,24,000 on the pretext of sending his son Mohinder Singh abroad. They had taken the passport and had obtained their signatures on blank papers and documents. There is no evidence in support of this contention that the accused had obtained the signatures and passport of the son of complainant and/or his son. The allegations are that the accused had thereafter forged passport of one Sushil Duggal had given it to the complainant for sending his son abroad. The complainant has stated that he had taken the passport and visa but his son was not sent abroad. This submission is clearly made in para No. 8 of the complaint. This clearly admitted by the complainant and despite being fully aware that the passport and visa were forged documents, the complainant still chose to accept them. In para no. 4 of the complaint, the complainant has mentioned that the passport number of his son is B-114465/98, whereas from the perusal of the Mark-A, it is seen that the said is a copy of passport of one Sushil Duggal and its number is B-0561010. This is not the same passport as that Mohinder Singh. There is no evidence on record to show that the passport Mark -A or visa Mark-B were forged or fabricated by the two accused in order to send Mohinder Singh, the son of the

complainant, to a foreign country. If at all, the version of the complainant is to be believed then the complainant has himself admitted that he was fully aware about the forgery committed by the two accused and has willingly accepted the forged documents. Therefore, also the complainant can not lay any claim against the accused. In any case, the complainant has failed to show that any forgery has been committed by the two accused.

Even, the witness of the complainant examined by the police during the course of investigation only shows that a sum of Rs. 2,50,000 had been collected by the wife of the complainant by mortgaging the agricultural property,— *vide* Mark-C. There is no evidence on record to show that the said amount was paid to the accused. PW-Mewa Singh has stated that any amount of Rs. 2,50,000 was paid to the two accused on 4th January, 1999 and a sum of Rs.1,50,000 was paid on 10th January, 1999. Thereafter, a sum of Rs. 1,24,000 was paid in the year 2001. Mortgage deed Mark-C is dated 7th January, 1999 and as per this an amount of Rs. 2,50,000 was obtained by Smt. Karamjit Kaur. Even if this amount is presumed to have been paid to the two accused only a sum of Rs.1,50,000 was paid on 10th November, 1999. The remaining sum of Rs.1,24,600 was paid to the two accused allegedly in the year 2001. There is no evidence on record to actually prove the payment. The accused have also been examined and they have also stated that they had introduced the (AS PER SCHEDULE) to one Dinesh Kumar in New Delhi, who was an agent for sending people abroad. It was through the said Dinesh Kumar that the son of Jagir Singh has gone to Germany. The version of accused seems more plausible that having heard about the son of accused Jagir Singh, complainant was tempted to send his own son abroad. The accused have denied taking any money from the complainant or his family such like huge transactions are seldom made in cash, if the dealing is straight forward. In the present cases also, by the own admission of the complainant, the transactions were not done in any straight forward manner. Though, there are allegations of forgery.

the same have not been proved. Even if it were to be believed that the complainant had made some payment to the accused and now wants to recover the same it can not be allowed. This is basically a dispute of civil nature and, therefore, no criminal liability is made out at this stage. In any case, the complainant has failed to prove that the accused have cheated him or they have committed any forgery.”

(5) It is pertinent to mention here that this order became final as against this order no revision was filed by the complainant.

(6) After dismissal of the aforesaid complaint, on 28th January, 2004, respondent No. 2 made a similar complaint exactly on the same allegations to the police. On the basis of the said complaint, the instant FIR was registered against the petitioners by the police of Police Station Khizrabad, District Yamuna Nagar under Section 420/406 IPC. It is pertinent to mention here that the allegations in this FIR and the previous complaint are verbatim the same. It is also made clear that in the complaint, on the basis of which the aforesaid FIR was registered, respondent No. 2 did not disclose the factum of filing the earlier complaint as well as dismissal of the said complaint by the JMIC, Jagadhri,—*vide* order dated 15th February, 2003.

(7) During the investigation, the police recorded the statements of Dhani Ram, Mewa Singh and Mahinder Singh, whose statements were also recorded earlier by the police while submitting a report under Section 202 of the Code to the Judicial Magistrate. On the basis of the statements of these three persons as well as the complainant, the police submitted the challan against the petitioners, and the Judicial Magistrate on the basis of the said report and the material annexed thereto, framed the charge against the petitioners under Sections 420/406 IPC on 29th September, 2005. In this situation, the petitioners have filed this petition for quashing of FIR No. 48, dated 21st May, 2004 registered under Sections 420/406 IPC at Police Station Khizrabad, District Yamuna Nagar as well as the consequent proceedings alleging that these proceedings are an abuse of the process of the court.

(8) Counsel for the petitioners contends that in this case undisputedly the allegations in the previous complaint and in the

instant FIR are exactly the same. The Judicial Magistrate Ist Class had dismissed the complaint filed by respondent No. 2 after considering the police report as well as the preliminary evidence led by him while coming to the conclusion that the complainant *prima-facie* has failed to prove the allegations of fraud and cheating. Learned counsel submits that after dismissal of the said complaint, may be under Section 203 of the Code, the instant FIR on the same allegations could not have been registered particularly when respondent No. 2 did not disclose all the facts in his second complaint made to the police on the basis of which the instant FIR was registered. Learned counsel submits that not only the allegations in both the complaints are same, but the material/evidence produced by the complainant is also same. Therefore, on the basis of the said material and allegations neither the FIR should have been lodged nor the Court should have taken cognizance and framed the charge against the petitioners. Learned counsel submits that when the order passed by the Judicial Magistrate Ist Class dismissing the complaint of respondent No. 2 had become final and no revision was filed against the said order, then on the similar allegations and cause of action, the instant FIR should not have been registered and continuation of such proceedings is an abuse of the process of the Court. Learned counsel submits that if a complaint is dismissed under Section 203 of the Code, the second complaint can only be entertained in exceptional circumstances, i.e., 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 brought on the record in the previous proceedings, have been adduced. Counsel contends that in the instant case it is not the case that the previous order passed by the JMFC dismissing the previous complaint was an incomplete order or the same was passed on a misunderstanding of the nature of the complaint or the complainant with reasonable diligence has not been able to bring on record the complete facts. Learned counsel submits that in the second complaint, on the basis of which the FIR was registered, no new fact was stated. He further contends that in support of the allegations, even no new material or evidence was brought in. According to the learned counsel, the allegations, material and evidence at both the times were exactly the same. Counsel further contends that this Court has the inherent powers under Section 482

of the Code to quash the FIR and the subsequent proceedings in case lodging of the FIR and continuation of the proceedings thereon are an abuse of the process of the Court and are liable to be quashed. In support of his contention, learned counsel for the petitioners has relied on **State of Haryana and others versus Ch. Bhajan Lal and others (1)**. In support of his contention, learned counsel has also placed reliance on judgements of the Supreme Court in **Pramatha Nath Talukdar versus Saroj Ranjan Sarkar (2)** and **Major General A.S. Gauraya and another versus S.N. Thakur and another (3)** and a judgement of this Court in **Jitender Bajaj versus State (U.T. Chandigarh) and others (4)**.

(9) On the other hand, counsel for the respondent-State though opposed the prayer of the petitioners but could not controvert the factual position in the instant case as stated above. The learned counsel submits that even if the complaint is dismissed under Section 203 of the Code, the police is competent to register the FIR on the complaint made by the complainant on the similar allegations. He further contends that on the material collected by the police during the investigation, the Court has already framed the charge against the petitioners. therefore, in these circumstances, the FIR as well as the subsequent proceedings, including the order of charge, are not liable to be set aside at this stage.

(10) I have heard the arguments of the learned counsel for the parties and perused the previous complaint, order dated 15th February, 2003, passed by the JMIC, Jagadhri, dismissing the said complaint as well as the allegations in the FIR and the reply filed by respondent No. 1.

(11) It is not disputed that the allegations in the previous complaint, which was dismissed by the JMIC, Jagadhri, and the subsequent complaint, on the basis of which the FIR has been registered, are verbatim the same. It is also not disputed that at the time of filing of the subsequent complaints, respondent No. 2 did not disclose the factum of the dismissal of his earlier complaint by JMIC, Jagadhri. It is also not disputed that during the investigation and submitting the challan in the FIR, the investigating agency has also

(1) AIR 1992 S.C. 604

(2) AIR 1962 S.C. 876

(3) AIR 1986 S.C. 1440

(4) 2005 (3) R.C.R. (Cr.) 69

not taken into consideration the order passed by the JMIC, Jagadhri dismissing the earlier complaint. The JMIC, Jagadhri while dismissing the earlier complaint of respondent No. 2 passed a detailed order, copy of which has been annexed with this petition as Annexure P-1. I have perused the said order. The said order was passed by the JMIC after considering the police report sought under Section 202 of the Code as well as the preliminary evidence led by the complainant. From the order, it also reveals that on earlier occasion the police had recorded the statements of Dhani Ram, Mewa Singh and Mahinder Singh as also the complainant and the Court after taking into consideration all the material, including the statement of the complainant in preliminary evidence and the documents produced, came to the conclusion that the complainant has failed to prove that the accused has committed the alleged offence. Now during the investigation of the impugned FIR, the investigating agency has recorded the statements of those very persons and then came to the conclusion that the allegations made by the complainant have been established and thereafter decided to file the challan against the petitioners. In my opinion, on the same material and evidence, the investigating agency has reached to a different conclusion than to the JMIC, who had dismissed the complaint after holding that the complainant has failed to prove that the accused has committed the alleged offence. The said order had become final as it was not challenged by the complainant in revision. In my opinion, when the JMIC while dismissing the complaint under Section 203 of the Code came to the conclusion that the allegations levelled in the complaint and the material produced on the record did not prove the allegations of fraud and cheating, the holding of the second complaint by the complainant exactly on the same allegations without there being any change in the facts or in the material or evidence, and registration of the FIR on such complaint and filing of the challan and even framing of the charge on the basis of the said material, is an abuse of the process of the court.

(12) In **Pramatha Nath Talukdar's case** (*supra*), a question came up for consideration before the Supreme Court that if a complaint was dismissed under Section 203 of the Code, whether the second complaint is maintainable. While answering the said question, it was observed by the Hon'ble Supreme Court as under :—

“...An order of dismissal under Section 203 of the 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.”

(13) Similarly, the Hon’ble Supreme Court in **Jatinder Singh and others versus Ranjit Kaur**, (5) has observed as under :—

- “9. There is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a second trial, has taken care to explain that “the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of this Section.”

However, when a Magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance.

10. x x x

11. x x x

12. If the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different. There appeared a difference of opinion earlier as to whether a second complaint could have been filed when the dismissal was under Section 203. The controversy was settled by this Court in **Prematha Nath Talukdar versus Saroj Ranjan Sarkar**, AIR 1962

SC 876; [(1962 (1) CrL. LJ 770)]. A majority of Judges of the three Judge Bench held thus (Para 48) :

“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.”

S.K. Das, J. (as he then was) while dissenting from the said majority view had taken the stand that right of a complainant to file a second complaint would not be inhibited even by such considerations. But at any rate the majority view is that the second complaint would be maintainable if the dismissal of the first complaint was not on merits.”

(14) Similar view was taken by the Hon'ble Supreme Court in **Mahesh Chand versus B. Janardhan Reddy and another**, (6) while observing as under :—

“19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 Cr. P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in **Pramatha Nath Talukdar** case second complaint could be dismissed after a decision has been given against the complainant

in previous matter upon a full consideration of this case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.”

(15) Similarly in **Poonam Chand Jain and another versus Fazru**, (7) a similar view was taken that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reason, the Magistrate under Section 204 of the Code may take cognizance of an offence and issue process if there is sufficient ground for proceeding. But the second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced.

(16) So, in view of the aforesaid position, it is well settled that a second complaint is not barred where the matter has not been decided on merits and the same can be filed in exceptional circumstances. The exceptional circumstances for entertaining the second complaint have been brought in the following three categories :—

- (i) Manifest error;
- (ii) Manifest miscarriage of justice; and
- (iii) New facts, of which the complainant had knowledge, but could not be brought on record by the complainant, with reasonable diligence, in the previous proceedings, have been adduced.

In such situation, the Magistrate can entertain second complaint on the same allegations even though the earlier complaint was dismissed under Section 203 of the Code.

(17) Thus, keeping in view the aforesaid legal position with regard to filing and entertaining a second complaint on the same allegations, even the second complaint by respondent No. 2 could not have been entertained by the Judicial Magistrate. If the Judicial Magistrate has been debarred from entertaining the second complaint on these facts, in my opinion, on the basis of such complaint with exactly same allegation, the FIR could not have been lodged by the police and the Court should not have taken cognizance on the challan filed by the police in the said FIR. Therefore, in the facts and circumstances of the case, the lodging of the FIR and the consequent proceedings thereon, in my opinion, are totally an abuse of the process of the Court.

(18) The instant controversy can be looked into from another angle. Section 156 of the Code falling within Chapter XII deals with the power of police officer to investigate cognizable offences. The investigation envisaged in Section 202 of the Code contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code. The investigations contemplated in Chapter XII can be commenced by the police even without the order of a Magistrate. The Magistrate has also been empowered under Section 156 (3) of the Code to order for registration and investigation of the cognizable offence. However, there will be no difference between the investigation done by the police under Section 156 of the Code or an investigation done by it on the order made by the Magistrate under Section 156 (3) of the Code. If a complaint is made to the Magistrate, it is for the Magistrate to order for registration and investigation of the case under Section 156 (3) of the Code or to take cognizance of the offence and follow the procedure envisaged in Chapter XV of the Code. Once a Magistrate takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code i.e. procedure prescribed under Section 202 of the Code, He may himself held an inquiry in the case or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. The investigation by the police referred in this Section is of a limited nature. Such investigation is only for helping the Magistrate to decide whether or not there are sufficient grounds to proceed further against the accused. The ordering of the investigation under Section 202 of the Code is different than ordering an investigation.

under Section 156 (3) of the Code. The investigation under Section 156 (3) of the Code can only be ordered if the Magistrate decides not to take cognizance on a complaint and proceeds further in accordance with the procedure envisaged in Chapter XV of the Code, he cannot order for investigation and registration of the case under Section 156 (3) of the Code.

(19) In the instant case, on the earlier complaint filed by respondent No. 2, not only the Magistrate took cognizance of the offence but he also followed the procedure envisaged in Chapter XV of the Code. He sought the police report under Section 202 (1) of the Code and also recorded the preliminary evidence of the complainant. Thereafter, he came to the conclusion that there were not sufficient grounds to proceed against the accused as the complainant had failed to prove that the accused has committed the alleged offence. In such situation, even the Magistrate has no jurisdiction to refer the complaint under Section 156 (3) of the Code for investigation and registration of the case. If that is the position, then how on the similar allegations the police can register the case under Section 156 of the Code and investigate the matter, and then come to the conclusion that from the same allegations and the same material, *prima-facie* a cognizable offence has been made out.

(20) In **R.P. Kapur versus State of Punjab, (8)** the Supreme Court while laying down the scope of the inherent powers of the High Court to quash the criminal proceedings, has held as under :—

“If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground.”

Thus, in my opinion, the lodging of the FIR and the consequent proceedings in the instant case are an abuse of the process of the Court.

(21) For the foregoing reasons, this petition is allowed and FIR No. 48, dated 21st May, 2004 registered under Sections 420/406 IPC at Police Station Khizrabad, District Yamuna Nagar as well as the consequent proceedings arising therefrom are hereby quashed.

R.N.R.