

(2014) 03 KAR CK 0297
In the Karnataka High Court
Case No : Criminal Petition No. 11633 of 2011

Annasaheb Appanna Kamble

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 203, 256
Penal Code, 1860 (IPC) — Section 34, 420, 464, 465, 468

Citation : (2014) 2 AKR 717

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : Vitthal S. Teli, Advocate for the Appellant; V.M. Banakar, Addl. SPP, Amirkhan Pathan and Ravikumar Gokakakar, Advocate for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—This petition is filed seeking quashing of the proceedings in C.C. No. 873/2011 on the file of the Principal Civil Judge at Chikodi for the offences punishable under Sections 420, 464, 465, 468, 469, 470 and 471 r/w Sec. 34 of I.P.C. Before advertng to the technicality involved in this particular case, the facts are little bit interesting. It is seen from the records that the respondent No. 2 herein (hereinafter called as "complainant") lodged a private complaint in P.C.R. No. 66/2002 against the petitioner herein (hereinafter called as "accused") for several offences as noted above. The said private complaint was referred to the Police i.e. the jurisdictional C.P.I., for investigation and report.

2. The brief allegations against the petitioner is that the complainant (Respondent No. 2) is the employer and accused is an employee, and accused was working as Lecturer in the complainant's Institution, during that period the accused (petitioner) has forged the signatures of the Hon'ble Home Minister of Government of Karnataka and there was a case against him in Crime No. 12/2001. It is also alleged that the petitioner was suspended from his duty and

during the suspension period the accused was called upon to furnish his Domicile Certificate. It is alleged that though the Domicile Certificate was not at all issued by the Village Accountant, Chikodi, the petitioner himself forged the Domicile Certificate and produced before the complainant. The Village Accountant was enquired later and he replied in his letter stating that the Domicile Certificate dated 31.05.2002 furnished by the accused to the complainant-Society was not at all issued by him and he denied its contents and signatures on the same stating that they are different from his signature, etc. It is alleged that the accused has committed an offence u/s 468 of I.P.C. by producing the said document to be used by the complainant and thereby used the document for the purpose of cheating the complainant, etc.

3. On the above said complaint, a thorough investigation was made by the Circle Inspector of Police and in fact, he submitted a "B" Final Report before the Principal Civil Judge and J.M.F.C., Chikodi. The order sheet in the said complaint shows that the Court has issued notice on the "B" Final Report submitted by the Police. In fact, the order sheet dated 27.08.2008 shows that "complainant was absent, exemption application was filed" and the same was allowed. On 15.12.2008 the complainant was present and it was posted for sworn statement of the complainant. On 25.03.2009 the complainant was absent and exemption application was filed u/s 256 of Criminal Procedure Code and the same was allowed. Ultimately, on 23.05.2009 the complainant remained absent, again application was filed u/s 256 of Criminal Procedure Code. The learned Magistrate recorded that since the year 2002 the complainant regularly remained absent before the Court in spite of providing sufficient opportunity to him, he has not deposed his sworn statement before the Court. Recording the same, the Trial Court has rejected the application u/s 256 of Cr.P.C. and dismissed the complaint for non-prosecution.

4. Having suffered that order the complainant did not choose to challenge the said order in accordance with law before any Court. But the complainant did not kept quite. Again, in the year 2009 on 24.06.2009 he filed second private complaint in P.C.R. No. 89/2009 before the same Magistrate on the same similar set of facts. As could be seen from the second complaint, there is absolutely no change in the allegations made against the accused. Verbatim of the first complaint has been reiterated in the second complaint except at paragraph 11 stating that:

The complainant Society has filed the case against the accused earlier in Private Complaint No. 66/2002. There was a religious function and hence the then Secretary could not appear before this Hon"ble Court and hence the case is dismissed for default.

Except stating that nothing has been added or deleted to the earlier complaint.

5. On the basis of the second complaint, again the learned Magistrate referred the matter u/s 156(3) of Cr.P.C. to the PSI of Chikodi for investigation and

report. It appears the Police after due investigation submitted a charge sheet against the accused. The learned Magistrate after going through the contents of the charge sheet, took cognizance and issued summons against the petitioner. At that juncture the present petition is filed seeking quashing of the entire proceedings before the learned Magistrate.

6. The technical point raised in this Court by the learned Counsel for the petitioner is that when the first complaint attained the finality by the orders of the learned J.M.F.C., u/s 256 of Cr.P.C. it virtually amounts to acquittal of the accused. Therefore, if at all the complainant was aggrieved by the orders of the learned Magistrate, he ought to have challenged the said orders of the learned Magistrate. Instead of that he has filed the second complaint. Therefore, the second complaint is not maintainable either in law or on facts. Therefore, the same is liable to be quashed.

7. Though the learned Counsel for the respondent tried to persuade submitting that the second complaint is maintainable under exceptional circumstances. He has cited a Ruling of the Hon"ble Supreme Court in this regard. But the Court has to see whether any such exceptional circumstances are there in this case to file the second complaint.

8. Before advertng to the said Ruling cited by the learned Counsel, it is just and necessary to look into the Ruling cited by the learned Counsel for the petitioner which is reported in Subbe Gowda and others Vs. P.S. Saldana, wherein it is stated:

Validity of second complaint-Whether the complainant can file a second complaint on the same allegations and the accused can be prosecuted?. It was clear from the facts that second complaint filed by the respondent was against such principle-Magistrate therefore cannot had taken cognizance of second complaint and directed issue of process against petitioners-accused-Impugned order cannot be sustained and was liable to be set aside.

In fact, similar facts are involved in this particular case and the judgment of this Court cited are little bit relevant, which is narrated as follows:

As pointed by the learned Counsel for the petitioners, the sworn statement of the complainant recorded by the learned Magistrate on 25.4.92 itself goes to show that there is such a "B" report on the first complaint with regard to the very same incident. The learned Counsel for the petitioners has also produced certified copy of the order passed by the learned Magistrate accepting the "B" report on 22.5.1990. Therefore, the learned Magistrate was aware about the order accepting the "B" report when he passed the impugned order. As rightly submitted by the learned Counsel for the petitioners, there cannot be a double jeopardy for the accused. Article 20 Clause 2 of the Constitution of India reads in this regard as follows:- "No person shall be prosecuted and punished for the same offence more than once". It is clear from the facts that the second complaint filed by the respondent is against this principle. The learned Magistrate

therefore could not have taken cognizance of the second complaint and directed the issue of process against the petitioners-accused. Hence, the impugned order cannot be sustained and is liable to be set aside.

In another Ruling which is reported in Anju Chaudhary Vs. State of U.P. and Another, , the Hon"ble Supreme Court laid down a principle that:

Second FIR-More than one FIR-Registration of, when permissible-Is a mixed question of law and fact-Test of "sameness" is to be applied. Second FIR in respect of same offence or incident forming part of same transaction as contained in first FIR, is not permissible. Second FIR, for an unrelated incident and for offence of such magnitude which does not fall within ambit of first FIR, is only permissible.

9. Let me come to the decision cited by the learned Counsel for the respondent, which is reported in Poonam Chand Jain and Another Vs. Fazru, . The Apex Court has in fact, categorically laid down that:

An order of dismissal of first complaint u/s 203 is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances i.e. (a) Where previous order was passed on incomplete record, (b) or on a misunderstanding of the nature of the complaint, (c) or the order which was passed manifestly absurd, unjust or foolish, (d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

10. Now, coming back to the factual matrix of this case are whether there are any new facts alleged in the second complaint or whether any exceptional circumstance has been pleaded by the complainant in order to file a second complaint. As I have already noted that the second complaint is nothing but a replica of the first complaint, sentence by sentence has been reiterated in the second complaint except paragraph 11. This in my opinion, paragraph 11 provided in the second complaint in fact totally damages the case of the complainant because of the simple reason, he categorically brought to the knowledge of the Magistrate the filing of the previous complaint. But very peculiarly at paragraph 11 he never stated the entire transaction taken place under the previous complaint i.e. with regard to the filing of the "B" Report and as well as the opportunity given to the complainant and the dismissal of the complaint u/s 256 of the Cr.P.C. and acquittal of the accused.

11. In my opinion, when the second complaint was filed, it was the bounden duty of the Magistrate at least looking to the contents of the second complaint, paragraph 11 would have been read by the Magistrate before referring the matter to the Police, definitely he would have applied his mind so far as previous proceedings are concerned. If he had knowledge of previous transaction he would not have passed such an order referring the matter to the Police for investigation, which is a serious lapse on the part of the Magistrate in not pursuing the complaint averments meticulously before passing; such orders.

Therefore, it is incumbent upon this Court to mention herein that whenever a private complaint is filed the Magistrate who are in the helm of affairs they have to meticulously look into the contents of the complaint this would serve some purpose. Firstly, if on plain reading of the complaint, if the allegations made in the complaint do not constitute any offence alleged against the accused, then the question of taking cognizance or referring the matter to the Police for investigation does not arise. Secondly, if the Magistrate on plain reading of the complaint is of the opinion that he has no jurisdiction to try the subject matter or he gets no jurisdiction to entertain the complaint at all, then also he can either return the complaint or dismiss the complaint at the threshold. Thirdly, if the Magistrate is of the opinion that on plain reading of the complaint averments no action can be taken like the matter is on hand he could have dismissed the complaint at the threshold itself as second complaint is not maintainable. Therefore, all the above said laborious process has happened because the Magistrate has not meticulously perused the complaint averments and taken a right decision.

12. Now, again coming to the facts of this case, the complainant has not at all stated what are the exceptional circumstances in this case in order to file the second complaint as laid down by the Hon"ble Apex Court noted above. In the absence of that, in my opinion, the second complaint filed by the complainant is not at all maintainable.

13. So far as the first complaint is concerned, when the "B" Report is filed before the Court, on the reference by the jurisdictional Magistrate the accused gets a relief at the hands of the Police because after due investigation "B" Report was submitted in favour of the accused. The learned Magistrate has provided sufficient opportunity to contest "B" report. Accordingly, protest petition was filed. But in support of the protest petition the complainant failed to adduce sworn statement before the jurisdictional Magistrate, which resulted in acquittal of the accused u/s 256 of Criminal Procedure Code. When the law mandates that any order passed u/s 256 of Cr.P.C. amounts to an acquittal, technically it is nothing but a clear chit in favour of the accused. The complainant if at all has suffered any illegality by the orders passed by the learned Magistrate he ought to have challenged the said order before the competent Court, by way of an appeal or revision as the case may be, instead he made effort to file a second complaint.

14. In view of the above said facts and circumstances of the case and the law laid down by the Apex Court, the order passed by the learned Magistrate on 27.05.2009 in acquitting the accused u/s 256 of Cr.P.C. has attained finality. Therefore, on the basis of the same facts and the same circumstances, no second complaint is maintainable. Hence, I am of the opinion the petitioner has made out a ground for quashing of the proceedings as prayed for.

Hence, the following Order:

The Criminal Petition is allowed. Consequently, the entire proceedings in C.C. No.

873/2011 for the offences punishable under Sections 420, 464, 465, 468, 469, 470 and 471 r/w Sec. 34 of I.P.C. pending on the file of the Principal Junior Civil Judge and J.M.F.C., Chikodi are hereby quashed.