
(2008) 02 JH CK 0043
In the Jharkhand High Court

Birendra Prasad Sahu @ Birendra Prasad and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 202, 203, 204, 257
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 323

Citation : (2008) 3 JCR 75

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding of Complaint Case No. 1092 of 1998 (T.R. No. 73 of 2005) including the order dated 7.12.1998 whereby and whereunder learned Sub-Divisional Judicial Magistrate, Giridih took cognizance of the offences under Sections 147 148 149 120-B 452 323 341 342 354 380 and 384 of the Indian Penal Code against the petitioners.

2. Learned counsel appearing for the petitioners submitted that the complainant-opposite party No. 2 filed a complaint which was registered as Complaint Case No. 1092 of 1998 alleging therein that on 8.8.1995 the petitioners and other accused persons came variously armed to her house and held out threat of life to her husband and some of them, assaulted her and also dragged her by catching hold her hair and then accused persons took away household articles as well as articles of her shop and they also took the signatures of her husband as well as her son forcibly on a plain piece of paper and for that an information was given to the police station but Officer-in-Charge instead of instituting a case initiated a proceeding u/s 107 of the Code of Criminal Procedure.

3. Upon filing the said complaint, the statement of complainant was recorded on solemn affirmation and subsequently in course of enquiry statements of the witnesses were also recorded and thereupon cognizance of the offences under

Sections 147 148 149 120-B 452 323 341 342 354 380 384 of the Indian Penal Code was taken by learned Sub-Divisional Judicial Magistrate, Giridih, vide order dated 7.12.1998 and thereupon processes were issued against the petitioners. The petitioners were quite surprised to know that they have been summoned to face the trial as for the same occurrence, husband of the complainant had brought a complaint case which had been registered as Complaint Case No. 495 of 1995 on 22.8.1995 on the same set of allegations with the difference that earlier only 13 persons had been made accused whereas in the instant case 29 persons have been made accused and that in the instant case the complainant is the wife of Mahendra Prasad Sahu whereas earlier complaint was lodged by Mahendra Prasad Sahu, husband of the complainant who after lodging the said complaint had filed an application on 28.9.1995 in the said complaint bearing No. 495 of 1995 praying therein to drop the proceeding on the ground that the parties who are agnates to each other have settled their dispute and, accordingly, the Chief Judicial Magistrate, Giridih after recording the contents of the application filed by the complainant dropped the proceeding, vide order dated 29.9.1995 and almost after three years, this complaint was lodged only to wreak vengeance and, therefore, cognizance taken in the instant case against the petitioners is fit to be set aside.

4. Learned counsel further submitted that the proceeding relating to three petitioners has already been quashed by this Court, vide order dated 20.7.2004 passed in Cr. Misc. No. 2044 of 1999(R) after the Court did find that the complaint has been filed to wreak vengeance.

5. As against this, learned Counsel appearing for the opposite party No. 2 submitted that it is well settled that second complaint on the same set of allegation on which the first complaint had been lodged can very well be maintained if the earlier complaint has not been decided on its merit and that admittedly earlier complaint case was never decided on its merit rather the proceeding had been dropped when application had been filed by the complainant that dispute in between the parties has been settled and in this situation, the second complaint is very much maintainable and, therefore, the impugned order taking cognizance needs not to be interfered with by this Court. In support of his submission, learned Counsel has referred to a decision reported in the case of Mahesh Chand v. Janerdhan Reddy and Anr. 2002 (1) SCC 734.

6. Thus, question which has fallen for determination as to whether, in the facts and circumstances of the case, the Court below is justified in taking cognizance of the offences on the allegation made in the second complaint.

7. It is a settled law that there is no statutory bar in filing a second complaint on the same facts in a case where the previous complaint has been dismissed not on its merit but on other grounds and in that situation the Magistrate u/s 204 of the Code of Criminal Procedure may issue process if there is sufficient ground for proceeding but the second complaint on the same facts could be entertained only in exceptional circumstances and those exceptional circumstances, have been

spelt out in a case of Ram Narain Chaubey Vs. Panachand Jain, . which are as follows:

(i) Manifest error, (ii) manifest miscarriage of justice, and (iii) new fact which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceeding.

8. More or less same issue fell for consideration before the Hon''ble Supreme Court in the case of Mahesh Chand Vs. B. Janardhan Reddy and Another, . The Hon''ble Supreme Court while following the decision rendered in Panchanan Jain's case and also different decisions did hold that it is settled law that there is no statutory bar in filing second complaint in the same fact in a case where the previous complaint is dismissed without assigning any reason and in that event the Magistrate u/s 204 of the Code of Criminal Procedure may take cognizance of an offence and issue process if there is sufficient ground for proceeding. However, it has been held that 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 fact which could not with reasonable diligence, have been brought on record in the previous proceeding.

9. In view of the principle laid down by the Hon''ble Supreme Court, it needs to be considered in the facts and circumstances of the case whether any exceptional circumstances was existing for bringing second complaint. In this regard it be noticed that first complaint, according to the case of the petitioner, was filed on 22.8.1995 putting allegation, as per the petitioner, almost the same which was there in the second complaint and then on 18.9.1995 perhaps before any process was issued against the accused persons, an application was filed by the complainant (husband of the complainant) praying therein to drop the proceeding on the ground that the parties have settled their dispute and the Court, vide order dated 29.9.1995 dropped the proceeding and dismissed the complaint. That order though was never challenged does not appear to have been passed in accordance with law as there has been no provision in the Code of Criminal Procedure for withdrawal of a criminal prosecution in a warrant trial cases though one provision for withdrawal of the case is there that is Section 257 of the Code of Criminal Procedure but it relates to withdrawal of the complaint confined to Chapter XX which deals with the summon cases only. Therefore, were the offence alleged is a warrant triable, the Magistrate had no option but to proceed with the enquiry, even if there had been prayer on behalf of the complainant to allow him to withdraw the case. That apart, the order of termination or dropping of the proceeding on a withdrawal application before issue of process can be said to be non est as dismissal of the complaint can be made only u/s 203 and therefore, it was quite inappropriate on the part of the Court to dismiss the complaint when the enquiry u/s 202 was still pending. In the instant case, first complaint has not been brought on the record but as per

the case of the petitioner, the allegation levelled in both the complaints are identical except the fact that in the second complaint, the complainant is the wife of Mahendra Prasad Sahu whereas in the first complaint, it was Mahendra Prasad Sahu, who was the complainant and in that in the first complaint there were only 13 accused persons whereas in the second complaint there are as many as 29 accused persons. In this situation, it can easily be said that in the first complaint there would have been allegations attracting warrant trial as the Magistrate in the second complaint has found prima facie case true under Sections 147 148 149 120-B 452 323 341 342 354 380 384 and 506 of the Indian Penal Code and therefore, there was manifest error on the part of the learned Magistrate who had earlier dropped the proceeding of the first complaint on the basis that the matter had been compromised in between the parties and, therefore, there exists exceptional circumstance for bringing second complaint which though have been brought after more than three years of the occurrence but as the learned Magistrate has found prima facie case u/s 380 which is punishable for seven years, the question of cognizance being bared by limitation u/s 468 of the Code of Criminal Procedure also does not arise.

Thus, I do not find any merit in the submission advanced on behalf of the petitioners and hence, this application stands dismissed.