
(1981) 07 AHC CK 0052

In the Allahabad High Court

Case No : Criminal Misc. Case No. 6462 of 1980

B.M. Surekha and Another

APPELLANT

Vs

R.K. Rai and Another

RESPONDENT

Date of Decision : 08-07-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 210, 239, 482
Penal Code, 1860 (IPC) — Section 109, 326, 406, 408, 409

Citation : (1981) AWC 579

Hon'ble Judges : R.B. Lal, J

Bench : Single Bench

Advocate : Shashi Kant Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Lal, J.—The accused applicants have moved this application u/s 482, Code of Criminal Procedure for quashing the complaint dated 17-12-1979 filed by the present opposite party No. 1. Bal Mukund Surekha applicant No. 1, carries on business at Calcutta and applicant No. 2 is his secretary. Opposite party no, 1 is Assistant Purchase Officer, Oalla Cement Factory, district Mirzapur. It is said that applicant no, 1 agreed to supply G I. corrugated sheets weighing twelve tonnes to the Cement Factory. Two officials of the factory namely R.K, Maihotra, Purchase Inspector, and R. B. Pandey, Assistant Engineer (Civil), went to Calcutta along with two bank drafts to obtain the sheets from the applicants as they (sheets) were required very urgently. These officials met the applicants on 7-2-1979 and the latter represented that the sheets were in their godown which was pledged with a bank, and they (the officials) should hand over the bank drafts to them so that the goods may be available in the godowns for inspection and delivery Acting on this representation the officials handed over a bank draft of Rs. 57,975.84 to the applicants. Next day, the two officials met the applicants and were told that the sheets of three meter length were not available. The applicants neither returned the money nor gave delivery of the requisite material.

2. R. K. Maihotra, the Purchase Inspector, filed a complaint against the present applicants on 3-3-1979 setting out the facts which were substantially the same as mentioned earlier, alleging that the accused (the present applicants) had committed offences under Sections 406, 409, 417, 418, 420, 421 and 109, IPC. The Magistrate took cognizance and summoned the accused. The accused (the present applicants) challenged those criminal proceedings before the Sessions Judge, Mirzapur and this Court, but without success.

3. The General Manager of the Cement Factory, authorised Sri R. K. Rai, the present opposite party No. 1, to file a complaint and the latter filed a complaint against the present applicants on 17-12-1979 alleging that they had committed offences under Sections 420/406, IPC. The facts set out in the complaint were more or less the same as mentioned earlier.

4. The contention of the accused applicants is that the filing of the second complaint by Sri R. K. Rai, the Assistant Purchase Officer, on the same facts amounted to an abuse of the process of the Court and it indicated mala fide intention and, therefore, it (the second complaint) should be quashed. It has also been pointed out that the second complaint contains several deviations in allegations and many improvements as compared to the first complaint and this indicated that the purpose was to improve the prosecution case.

5. I have heard the learned Counsel for the parties and have also gone through the copies of the two complaints which form Annexures I and II to the present application. A reading of the two complaints shows that there are some differences in the allegations, but on account of them it cannot be said that the basic allegations have been altered substantially. Much need not be said with regard to these variations in the two versions, here, because they can be properly considered by the Trial Magistrate at the relevant time. On account of these variations or deviations, as the learned Counsel for the applicants would like to call them, it cannot be said that the second complaint amounts to an abuse of the process of the Court or indicates any mala fide intention on the part of the authorities of the cement factory. The learned Counsel for opposite party No. 1 has in this connection made one submission. He has contended that the present applicants had won over R. K. Malhotra, the Purchase Officer of the Cement Factory, and got the complaint filed by him with incomplete facts, in order to forestall the prosecution which might be launched by the Factory. Hence, the authorities of the factory had to file the second complaint. This submission does not receive support from the affidavit of Sri, R. K. Rai, opposite party No. 1 which is silent on this point.

6. On a careful consideration I do not find any merit in the above submissions of the learned Counsel for the accused applicants, and therefore, in my opinion, no good ground exists for quashing the second complaint in exercise of the powers u/s 482, Code of Criminal Procedure.

7. During the hearing of the application, I had suggested to the learned Counsel

for the applicants that the two complaints could be directed to be amalgamated and tried together. The learned Counsel submitted that there was no provision in the Code of Criminal Procedure, 1973 (briefly the Code) providing for an amalgamation of this kind. He pointed out that Section 210 of the Code provides for a joint enquiry or trial of a complaint and a case in which cognizance of any offence is taken on the basis of a police report. This section does not provide for a joint trial of two cases arising out of separate complaints with regard to the same subject matter.

8. In the Code of Criminal Procedure, 1898 (briefly the Old Code), there was no provision corresponding to the provision contained in Section 210. However, the question, whether a complaint and a case arising on police report or two complaints, in which the subject matter was the same and at least some of the accused were common, could be amalgamated and enquired into or tried jointly, sometimes arose for consideration of courts. The preponderance of authority was that a joint trial could be held if the circumstances of the particular cases did not make such a course improper. If the number of the accused was different in two cases, Section 239, of the Old Code was also called into aid.

9. In *Mukanta v. Achalia*, AIR 1952 Rajasthan 160 the police submitted a charge sheet against three persons u/s 326, IPC. Mukania did not feel satisfied and filed a complaint against nine persons including those three who were named in the charge sheet by the police. The Magistrate summoned five accused including those three named by the police. The Sessions Judge relying on a Single Judge decision of the Rajasthan High Court, was of the view that the joint trial was illegal and made a reference. The Division Bench did not approve of the Single Judge decision and held that if a Magistrate has both a complaint and a police report before him about the same offence, he can take cognizance of that offence on the basis of both. The further question whether after taking cognizance on the basis of both he can amalgamate them and hold a joint trial of the accused named in the police report as well as in the complaint depends upon Section 239 of the Criminal Procedure Code and the discretion of the Magistrate, which has to be exercised according to the circumstances of each case." The Division Bench further held that there was no impropriety in trying the accused together in the particular cases before it.

10. In *Giriraj Singh v. The State*, 1964 AWR 213 the facts were very much similar to the facts of the instant case. One Basheshwar Dayal filed a complaint on 11-1-1962 alleging that Giriraj Singh and Sohan Lal Sharma had committed offences under Sections 408, 467 and 471 IPC. The Bench Magistrates summoned the accused. On 4-6-1962 one Deharam Singh filed another complaint on the same facts against the same accused alleging that they had committed offences punishable under Sections 406, 467 and 471, IPC. In this case also the accused were summoned. The Magistrate amalgamated the two cases and directed that both complainants shall be treated as co-complainants with the right to cross-examine or contradict the witnesses examined by the

other complainant, of course with the permission of the Court. The accused challenged this order before this Court. A learned Single Judge considered the various provisions of the Old Code and observed that the Magistrate takes cognizance of an offence on a complaint or police report or upon information received. The further proceedings taken are not with particular reference to the complainant or the informant. He further observed that there could be no fresh trial after the acquittal or conviction of the accused; the trial is of the offence committed not necessarily with particular reference to the complainant. The learned Single Judge concluded thus :

My reading of the various provisions of the Code of Criminal Procedure, therefore, is that even if a Magistrate could take cognizance of an offence once, he can entertain and take cognizance of other complaints, applications or police reports with regard to that offence, if made, during the pendency of the trial. Considering that there can be only one trial for the offence, the complaints, police reports or applications pertaining to that offence must be amalgamated, Amalgamation and joint trial of all the cases, if registered separately, is thus necessary.

The learned Single Judge, however, set aside the Magistrate's order permitting one complainant to cross-examine the witnesses produced by the other.

11. The Legislature while enacting the Code of Criminal Procedure, 1973 added Section 210 in " the Code to prevent forestalling of police investigation in serious cases and consequent miscarriage of justice by the institution of hurried or collusive complaints. The fact that the Code is silent in regard to amalgamation of cases arising on two separate complaints of which the subject matter is the same, cannot lead to the conclusion that such amalgamation cannot be directed in appropriate cases on general principles. Though Giriraj Singh's case was under the Old Code, the principles enunciated in that decision with regard to amalgamation of cases on separate complaints, still hold good, because there is nothing contrary in the Code. I respectfully agree with the principles laid down in Giriraj Singh's case.

12. In the instant case, the accused's main allegations and the main offences alleged to have been committed by the accused, are the same in the two complaints. Both the cases are to be tried, according to the procedure laid down for trial of warrant cases. Hence amalgamation of the two cases is just and proper. The accused applicants will also not be prejudiced in any manner. As observed earlier, the variations in the prosecution story in the two complaints may be brought to the notice of the Magistrate at the time of trial, in the manner provided by law.

13. The application for quashing the complaint dated 17-12-1979 is rejected. It is, however, directed that the cases arising out of the two complaints shall be amalgamated and tried jointly according to law. The order staying the case arising out of the second complaint, is vacated, The record shall be sent back to

the Magistrate for further proceedings at an early date.