
(1977) 02 AHC CK 0010

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2518 of 1976

Kunj Behari Rathi

APPELLANT

Vs

Jagdish Prasad and Another

RESPONDENT

Date of Decision : 03-02-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 417, 420

Citation : (1977) ACR 235

Hon'ble Judges : J.M.L. Sinha, J

Bench : Single Bench

Advocate : Devendra Swarup, for the Appellant; H.S. Joshi, for the Respondent

Judgement

J.M.L. Sinha, J.—This is an application u/s 482, Code of Criminal Procedure praying that the proceedings in a complaint case u/s 417/420, IPC filed by Jagdish Prasad Sharma against the applicant, pending in the Court of the Munsif Magistrate, Hathras (Aligarh), be quashed.

2. The present application was moved by Sri Devendra Swarup, Advocate. Neither he nor any other counsel has, however, appeared to press this application. Sri H.S. Joshi, appearing on behalf of the opposite party, has raised a preliminary objection, namely, that an application u/s 482, Code of Criminal Procedure containing precisely the same facts was earlier moved by the applicant through the same counsel which was registered as Misc. Application No. 2059 of 1976 and was rejected by J.P. Chaturvedi, J. on 30th of March, 1976. learned Counsel for the opposite party has urged that, since the present application is based on the same facts as the previous application and since the previous application was considered on merits and rejected, this application cannot be entertained and should be rejected. learned Counsel also pointed out that the fact that an application on the same facts had earlier been moved and rejected by this Court was intentionally suppressed, while moving the present application, in order to induce this Court to admit the application, and the applicant has thus

played a fraud on this Court.

3. On a perusal of record it transpires that an objection as aforesaid was also raised by the opposite party in paragraph 9 of the counter -affidavit. In paragraph 12 of the counter affidavit it was further averred on behalf of the opposite party that the previous application No. 2059 of 1976 was also presented through Sri Devendra Swarup, Advocate, who filed the present application. In the rejoinder-affidavit filed on behalf of the applicant it is not controverted that an application had been filed previously and rejected by this Court. It has, however, been said in paragraph 9 of the rejoinder affidavit :

...there is no bar to file a fresh application u/s 482, Code of Criminal Procedure and more so when this Hon"ble Court has already exercised jurisdiction vested with it. It is, further submitted that if a complaint is dismissed except on the ground of acquittal, which is also open to complainant to file a fresh complaint on the same facts and allegations. It is further submitted that there have been several cases when after the dismissal of an application u/s 482, Code of Criminal Procedure another application u/s 482 Code of Criminal Procedure has been filed and which have been finally disposed and even allowed by this Hon"ble Court., It is further submitted that so far this present application u/s 482 Code of Criminal Procedure is concerned, it has been filed much subsequently with new addition of facts and circumstances of the case and hence it is fully maintainable.

The fact that the previous application was presented by the same counsel, namely, Sri Devendra Swarup, has not been controverted at all in the rejoinder-affidavit. The record of Misc. Application No. 2059 of 1976 is before me and on a perusal thereof also it is crystal clear that the previous application was moved by none else than Sri Devendra Swarup.

4. The first question for consideration is whether the present application could be filed in view of the fact that an application was earlier presented and rejected by this Court. The stand taken by the applicant in the rejoinder-affidavit appears to be that dismissal of a previous application is no bar to moving a fresh application u/s 482 Code of Criminal Procedure (old 561-A of the Code of Criminal Procedure). I can accept that, if any fresh circumstance came to exist which be of a substantial nature, it may be possible for a person to make a fresh application u/s 482 Code of Criminal Procedure and it may be open to the Court to entertain that application and pass suitable orders. I have, however, no doubt in my mind that a second application cannot be moved without any change in the circumstances of the case. This principle is so well established that it cannot be expected that the learned Counsel, who moved the present application, would not have been aware of it.

5. It is, therefore, to be seen whether any change of circumstances took place in between the disposal of the previous application and the making of the present application and whether any such circumstances were mentioned in the present

application. The record of Misc. Case No. 2059 of 1976 is available to me and I have myself compared the previous application with the present application and, much to my surprise, I find that the present application is word for word the same as the previous application. In fact the present application appears to be a carbon copy of the previous application with necessary corrections in it. Even the affidavit accompanying the present application is word for word the same as the affidavit which accompanied the previous application, it is also worthy of notice that it was Safi Mohammad, who had sworn the affidavit accompanying the previous application and it is the same person who has sworn the affidavit accompanying the present application. It cannot, therefore, be accepted by any stretch of imagination that the present application was based on any change of circumstances. The order disposing of the previous application reads as follows :

The legations made in the complaint and the circumstances disclosed make out a prima facie case u/s 420, IPC. The application is rejected.

It is obvious from the above order that this Court considered the previous application on merits and it was thereafter that it passed the order rejecting the application. One: this Court had considered the facts of the case and had rejected the application, it would not have entertained the fresh application on the same facts, if the previous order had been brought to its notice. What happened was that the present application was moved before another Hon''ble Judge, namely, S. B. Malik, J. and he, not aware of the fact that a previous application based on the same facts had been rejected admitted it.

6. Since an application based on precisely the same facts as have been stated in the present application had been considered on merits earlier and rejected by this Court, it is not possible for this Court to hear the present application again on merits and interfere with the proceedings pending in the Court below. The application should, therefore, fail on this ground alone.

7. Before taking leave of this application however, I consider it my duty to take notice of the fact that a material fact was suppressed while making the present application, and there can be no doubt that the said fact was concealed because the learned Member of the Bar who drafted the present application was very well aware that, if it was brought to the notice of the Judge hearing the present application, it will be rejected. A Member of the Bar has certain responsibilities towards the Court and such a conduct on his part cannot, in my opinion, be countenanced, it is worthy of notice that the previous application was rejected on 30-3-1976 and only nineteen days thereafter the second application was moved by the same learned Member of the Bar. It is, therefore, not open to him to say that he had forgotten about having moved the previous application. That apart, no such plea has been taken in the rejoinder-affidavit and the learned Counsel has not even turned up, today to explain that.

8. At this stage Sri Devendra Swarup appeared. On being called upon as to what has he to say about the aforesaid lapse on his part, he merely said that he is

extremely sorry for that. He did not try to justify it.

9. In view of the fact that Sri De vendra Swarup has expressed unconditional regrets, I do not consider it pro per to pursue that matter any further against him.

10. In the result this application fails and is hereby dismissed. The stay order dt. 19th April, 1976 is vacated. The Court below shall be forthwith apprised of this order.