
(2011) 09 AP CK 0095

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3898 of 2008

Narni Sudhakar and Others

APPELLANT

Vs

State of A.P. and G.U.V.B. Raju

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 202, 203, 482
Penal Code, 1860 (IPC) — Section 120, 34, 354, 379, 380

Citation : (2011) 09 AP CK 0095

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Advocate : Ch. Dhanamjaya, for the Petitioners, for the Appellant; S.R. Sanku, Advocate for the 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sri Justice G. Krishna Mohan Reddy

1. This Criminal Petition is filed u/s 482 Cr. P.C. seeking to quash proceedings in C.C. No. 152 of 2008 on the file of the III Additional Judicial Magistrate of First Class, Rajahmundry.

2. The petitioners are A1 to A5 in that C.C. No. 152 of 2008 filed by the respondent-complainant u/s 190 Cr. P.C. for the offences punishable under Sections 448 and 386 read with Section 34 IPC. The parties hereinafter be referred to as they are arrayed in the calendar case.

3. Before going into the merits of the case, it is necessary to note the brief facts of the case.

4. It is alleged or claimed in the complaint as follows:

A4 and A5 are wife and husband and A2 and A3 are their daughters and A1 is the husband of A2.

5. The complainant who was the counsel of A3 and who settled her maintenance

case etc., after sometime developed an affair with her and thereafter A1 suspected that on the advice of complainant, he may get lesser share from the properties of A5 and accordingly he hatched a plan to eliminate the interference of the complainant in the family of A4 and A5 by any means. On the encouragement of A4 and A5, the complainant and A3 went to Annavaram on 1.9.2006 and got married and after the marriage, A1 to A5 demanded the complainant to transfer house property in the name of A3 and further in pursuance of their common intention, on 11.4.2007 at about 8.15 a.m. while the complainant and others were present in his office, A1 to A5 trespassed into the office and abused him in filthy language and demanded to transfer his house in the name of A3 or to pay Rs. 15.00 lakhs putting a deadline of one month for the compliance of their demand and as there was no other alternative, the complainant had to issue three blank cheques for Rs. 15.00 lakhs.

6. It is contended on behalf of the Accused that all the allegations made in the complaint are false and incorrect and there is no truth in the complaint and it was filed as a counter blast to a report given by A3 dated 20.4.2007 registered by the Station House Officer, Rajahmundry against the complainant for offences punishable under Sections 417, 420, 494, 506(2), 384, 448, 380, 354 and 379 IPC. The said complaint was duly investigated by the police who later filed charge sheet numbered as P.R.C. No. 3 of 2008. Further, the complainant filed another criminal complaint with the same set of allegations on the file of the Court of III Additional Judicial Magistrate of First Class, Rajahmundry, but had withdrawn it by filing a memo not pressing the complaint dated 1.5.2007. The said complaint was accordingly dismissed as withdrawn without any condition and without permitting the complainant to file another complaint accordingly. The present complaint filed with the same set of allegations is nothing but gross abuse of the process of law. The complainant suppressed in the present complaint which is filed with the same set of allegations that the earlier complaint was filed by him and the same was withdrawn on his own volition.

7. It is contended on behalf of the complainant that earlier the complaint was only withdrawn without disposing of it on merits, which therefore cannot be taken as a bar to file the subsequent complaint and if the proceedings are quashed prematurely, lot of injustice would be caused to him. In support of his contention, the learned counsel has relied upon the decision in Poonam Chand Jain and Another Vs. Fazru, In that case, a complaint was filed against the accused concerned for the offences punishable under Sections 420, 120 and 426 IPC and on contest, the complaint was dismissed following which revision was preferred before the High Court of Punjab & Haryana, which was also dismissed and which became final and subsequently another complaint was filed on the very same set of facts and circumstances as incorporated in the earlier complaint before the Magistrate concerned and the matter went upto the Supreme Court with regards to the question as to whether the second complaint was maintainable on the basis of very same set of facts and circumstances in view of the dismissal of earlier complaint, which became final. Under those

circumstances, the Supreme Court observed as under:

This question again came up for consideration before this Court in *Jatinder Singh Vs. Ranjit Kaur*, There also this Court by relying on the principle in *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, held that there is no provision in the Code or in any other statute which debars complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry u/s 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are "exceptional circumstances". This Court held in para 12 if the dismissal of the first complaint is not on merit but the dismissal is for the default of the complainant then there is no bar in the filing a second complaint on the same facts. However if the dismissal of the complaint u/s 203 of the Code was on merit the position will be different. Saying so, the learned Judges held that the controversy has been settled by this Court in *Pramatha Nath* (supra) and quoted the observation of Justice Kapur in paragraph 48 of *Pramatha Nath* (supra):

...An order of dismissal u/s 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....

Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint which is substantially new and not disclosed in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the knowledge of the first complainant. In fact such a case could not be made out since the facts in both the complaints are almost identical. Therefore, the second complaint is not covered within exceptional circumstances explained in *Pramatha Nath* (supra). In that view of the matter the second complaint in the facts of this case, cannot be entertained.

8. The facts of that case and the facts of this case are some what different, because in that case, the first complaint was disposed of on merits and the second complaint was filed on the basis of same facts and circumstances, whereas here the first complaint was filed and withdrawn as not pressed and the second complaint was filed basing upon the same set of facts and circumstances

as mentioned in the first complaint. Here it is to be examined the consequences of not pressing the first complaint and under what circumstances it was done. When the complainant did not press the first complaint, it amounts to that he ceased of the matter once for all, unless he sought and obtained necessary permission giving reasons for filing the second complaint. The withdrawal of the first complaint may be for various reasons and he has to show prima facie under what circumstances he had to do so and also the need to survive the cause of action also. Such action of not pressing the complaint may be on the ground that the allegations made therein are not true or cannot be established or following some kind of compromise entered into between him and the accused either by cordial understanding or by force exerted by the accused or his men etc. The matter cannot be reopened when it was withdrawn on the basis of the first ground or on the basis of the second ground and it can be reopened under the third ground if such compromise was obtained by force or fraud. Prosecution of innocent persons without any basis is unnecessary harassment of them which cannot be permitted. It is the cardinal principles of criminal jurisprudence that no body should be prosecuted and subjected to harassment unless sufficient grounds are shown to do so in respect of any criminal charge. The complainant has to give reasons as to under what circumstances he had withdrawn the first complaint, failing which the second complaint filed on the basis of same set of facts and circumstances is not maintainable for the reasons narrated or discussed above. In fact, no reasons are given for filing the second complaint. The principles laid down in the decision cited are well applicable to the facts and circumstances of this case as it is not shown that exceptional circumstances are there in order to take the second complaint on file.

9. In the result, the criminal petition is allowed and the proceedings in the calendar case are quashed.