
(2015) 09 CAL CK 0062
In the Calcutta High Court
Case No : C.R.R. No. 1163 of 2013

Pannalal Ojha and Others

APPELLANT

Vs

Shambhu Bhattacharjee and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Mental Health Act, 1987 — Section 20
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 420, 498 A

Citation : (2015) 09 CAL CK 0062

Hon'ble Judges : Siddhartha Chattopadhyay, J

Bench : Single Bench

Advocate : Tapash Kr. Ghosh and Somsubhra Ganguly, for the Appellant;
Diptendu Majumder, Indranil Banerjee and Tapabrata Bhattacharjee, Advocates
for the Respondent

Final Decision : Allowed

Judgement

Siddhartha Chattopadhyay, J—This criminal revisional application emanates from the order dated 12.02.2013 passed by the Learned Judicial Magistrate, 5th Court, at Sealdah, by which he had issued summons under Section 420, 120B and 34 of the Indian Penal Code in connection with "C" case No. 206 of 2012.

2. In the revisional application the petitioner has ventilated his grievances by saying that a similar case with same allegation was lodged against him on 11.01.2008 by the opposite party before the Learned Additional Chief Judicial Magistrate, Sealdah which was numbered as "C" case No. 69 of 2008. After issuance of that summon, the present petitioners made their appearance before the said Court on 20.02.2008 and thereafter the said Court dismissed the complaint under Section 203 of Criminal Procedure Code after imposing a cost of Rs. 500/- upon the complainant (herein opposite party). That Learned Court held that the complainant (present opposite party) attempted to abuse the process of law. Thereafter, the present opposite party challenged the said order of Learned

Additional Chief Judicial Magistrate by filing a revisional application and the Learned Additional District and Sessions Judge has dismissed the said revisional application and upheld the finding of the Learned Additional Chief Judicial Magistrate, Sealdah.

3. Subsequently the present opposite party instituted a Criminal Miscellaneous Case Bearing No. 2 of 2011 under Section 20 Sub-Section (2) and (4) of the Mental Health Act 1987 and that too was dismissed by the Learned Court below pursuant to an order passed by the Hon''ble High Court in C.R.R. No. 778 of 2011. The present petitioners further submitted that another complaint case vide No. 481 of 2006 under Section 498 A/323/506 of IPC read with Sections 3 and 4 of the Dowry Prohibition Act has been initiated and also a matrimonial suit has been filed by the complainant and those cases are still pending.

4. According to him, suppressing all these material facts the present opposite party has instituted complaint case No. 206 of 2012 on self-same cause. According to him with an ulterior motive and to take revenge the present opposite parties had instituted the said complaint case and tried to throw dust in the eyes of the Learned Court below. In such circumstances, he has come before this forum for invoking its jurisdiction under Section 482 of Cr.P.C. to quash the proceeding.

5. Learned Counsel appearing on behalf of the opposite party contended that at the time of marriage of his son, the present petitioners suppressed the fact that Ladly Bhattacharjee, daughter-in-law of the present opposite party No. 1 was mentally challenged lady. Without disclosing that fact the marriage was held and ultimately it was detected that she is insane. So he had to institute second complaint case against the present petitioners.

6. On perusal of the record I find that after filing of the first complaint case these opposite parties had filed another case under Mental Health Act which was dismissed by the Learned Court below at the instance of this Hon''ble Courts verdict in connection with C.R.R. No. 778 of 2011. Therefore, it is crystal clear that at the time of second complaint that part of mental illness of the bride was considered and rejected by the Hon''ble Court. However after filing of the second complaint case the Learned Judicial Magistrate, Sealdah has issued process against the present petitioners under Section 420/120B/34 of IPC.

7. I have heard the rival contention of the parties at length and have gone through the decisions cited by them. According to the petitioner there is no ingredient of Section 420 of IPC and if the said section does not lie against them naturally question of implicating them under Section 120B and 34 of IPC do not arise. In the interest of academic discussion I should now go through Section 420 of IPC which runs thus "S. 420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable

security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." On a plain reading on Section 420 it is crystal clear that if anybody dishonestly induces the person deceived to deliver any property to any person, or to make alter or destroy the whole or any part of a valuable security or anything which is signed or sealed, and which is capable of being converted into a valuable security only in that case Section 420 of IPC will be attracted. (Emphasis supplied by me.)

8. If we analyze this section we would find that to constitute the offence under Section 420 of IPC the following ingredients must be there.

(1) There must be deception i.e. the accused must have deceived some one;

(2) That by the said deception the accused must induce a person;

(a) To deliver any property; or

(b) To make, alter or destroy to whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security;

(3) That the accused did so dishonestly.

9. Therefore, it is crystal clear that there must be a property or valuable security which has been transferred by a person to another under a deception caused by the accused. Therefore, suppression of mental illness, even if there be any, does not come within the mischief of Section 420 of IPC. If parents of bride induce a complainant to marry their daughter concealing the fact that the bride has some disease, no element of wrongful gain or loss to the property is involved. A bride cannot be equated with the term "property". The basic thing is such that the offence under it consists of a dishonest disposition of property or valuable security. From the complaint case it does not transpire that such an offence is made out.

10. It is perhaps needless to say that if the main offence that is Section 420 of IPC does not lie as a natural corollary 120B and 34 of IPC will be of no use.

11. Learned Counsel appearing on behalf of the opposite party has contended that second complaint is always maintainable in view of the judgments reported in (Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, AIR 1962 SC 876 : (1962) 2 SCR 297 Supp , (Poonam Chand Jain and Another Vs. Fazru, AIR 2005 SC 938 : (2005) CriLJ 100 : (2004) 9 JT 208 : (2005) 139 PLR 40 : (2004) 8 SCALE 833 : (2004) 13 SCC 269 : (2004) AIRSCW 6222 : (2004) 7 Supreme 470 According to him ratio of these judgments go to suggest that there is no illegality in filing second complaint over the self-same cause. Learned Counsel appearing on behalf of the petitioners had referred the judgments reported in Tajmul Hossain Shah @ Taju Shah and Another Vs. State of West Bengal and Another, (2006) 4 CHN 267 . (2007) 2 C Cr LR (Cal) 385 Samar Mondal & Anr. Vs. The State of West Bengal & Anr. Ranvir Singh Vs. State of Haryana and Another,

(2009) 12 JT 474 : (2009) 12 SCALE 89 : (2009) 9 SCC 642 : (2009) 14 SCR 1063 Hira Lal and Others Vs. State of U.P. and Others, AIR 2009 SC 2380 : (2009) CriLJ 2849 : (2009) 5 JT 327 : (2009) 5 SCALE 418 : (2009) 11 SCC 89 : (2009) 5 SCR 567 Poonam Chand Jain and Another Vs. Fazru, AIR 2010 SC 659 : (2010) CLT 676 : (2010) CriLJ 1423 : (2010) 1 Crimes 151 : (2010) 1 JT 468 : (2010) 1 SCALE 664 : (2010) 2 SCC 631 : (2010) 2 SCR 109 : (2010) AIRSCW 881 : (2010) 1 Supreme 600 .

12. On perusal of the decision reported in (Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, AIR 1962 SC 876 : (1962) 2 SCR 297 Supp , I find that the Hon"ble Apex Court held that an order of dismissal under Section 203 Cr.P.C., is no bar to entertain a second complaint on the same facts but it will be entertained only in exceptional circumstances i.e. where the previous order was passed on an incomplete record or of 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 record in the previous proceeding. In the instant case, the plea of the opposite party is such that their daughter-in-law is suffering from mental illness was not within their knowledge at the time of first complaint case before the Learned Additional Chief Judicial Magistrate, Sealdah. Even if we assume that it was not within their knowledge but after dismissal of the first complaint case by the Learned Court below as well as by the Learned Revisional Court below and also the miscellaneous case under Mental Health Act was also dismissed but these facts were not mentioned in their second complaint case which has been filed long after 4 years from the date of first complaint case. Here the complainant (present opposite parties) suppressed that fact certainly on an ulterior motive and to take revenge of their long standing enmities. It is on record that criminal case under Section 498A is pending and at the same time divorce suit is also pending between the parties. Therefore non-mentioning of these facts at the time of filing second complaint, indicates that the complainant made a foul play only to implicate the accused petitioners by hook or by crook. Learned Counsel appearing on behalf of the present petitioners has referred to judgments reported in (2010 (1) Supreme Page 599) wherein after considering the decision of Pramatha Nath Talukdar & Anr. Vs. Saroj Ranjan Sarkar reported in (Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, AIR 1962 SC 876 : (1962) 2 SCR 297 Supp had come to the conclusion that an order of dismissal under Section 203 of Cr.P.C. is no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. Exceptional circumstances are where the previous order was passed on incomplete record, or on a misunderstanding of the nature of complaint or the order which was passed, was manifestly absurd, unjust or foolish or where new facts which could not with reasonable diligence had been brought on record in the previous proceedings. Hon"ble Apex Court further held that nothing had been disclosed in the second complaint which was substantially new and not disclosed in first complaint. No case was made out that even after the exercise of due diligence. In this case far to speak of mentioning

the dismissal of former cases the opposite parties never mentioned the facts that said dismissal order was upheld by higher Court and the miscellaneous case under Mental Health Act also has been decided against them. Learned Counsel appearing on behalf of the present petitioners has also relied on the decisions reported of this Hon''ble Court reported in Tajmul Hossain Shah @ Taju Shah and Another Vs. State of West Bengal and Another, (2006) 4 CHN 267 wherein this Hon''ble Court held that the two criminal cases had already been filed over the same incident and in spite of that filing of third complaint over the same incident is nothing but is abuse of process of law. Factual aspect of that case is squarely applicable in this case. In that case de facto complainant did not mention at all that previously he filed two complaints relating to same incident before the Learned Judicial Magistrate at Dantan. It was manifestly clear that by suppressing material fact the de facto complainant approached the Court of Learned Chief Judicial Magistrate at Midnapore and misled the Court to pass an order against them. Hon''ble Court held that in such circumstances, it was a fit case for exercising inherent jurisdiction under the Code to quash the criminal proceeding.

13. Now, I will consider as to under what circumstances this power can be applied. Section 482 of the Code envisages three circumstances under which the inherent jurisdiction may be exercised, namely (1) to give effect to an order under the Code, (2) to prevent abuse of the process of the Court, (3) to otherwise secure the ends of justice.

14. It is neither possible nor desirable to lay down any concrete formula or any inflexible rule which is governed by the exercise of inherent jurisdiction. It is needless to say that no legislative enactment dealing with procedure can provide for all cases that may possibly arise or to foretell what would happen after a certain period. This is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of High Court.

15. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking the vengeance on the accused with a view to satisfy of his personal grudge, in that case this power should be exercised. Where a complaint, even if taken at their face value, in its entirety do not constitute the offence alleged, that has to be quashed. I have already held that Section 420 does not lie because there is no delivery of property or valuable security. This Court is not unmindful to the legal mandate that while setting aside an order of a Magistrate the High Court is to confine itself materials from which the Magistrate obtained the satisfaction to issue process against the accused. Here the fact of filing first complaint was not before the Magistrate concerned and if it were made known to the Learned Magistrate concerned and if after considering the same Magistrate would have passed such order in that case some sort of laxity could have been given. But in the instant case I find that it appears to me not only false and without foundation but also meant for the unnecessary harassment of the

accused and therefore the proceeding should not be allowed to continue any further inasmuch as it is repugnant to the conscience of justice and the ends of justice should not be allowed to be offended by the continuance thereof.

16. After considering all these material aspects and legal position I am of the view that it is a fit case where the inherent powers of High Court has to be invoked for quashing the proceedings pending before the Learned Judicial Magistrate, Sealdah. Accordingly the revisional application is allowed.

17. There shall be no order as to costs.

18. The order passed by the Learned Court below dated 12.02.2013 is hereby set aside and accordingly proceedings of "C" case No. 206 of 2012, hereby quashed in respect of petitioner Nos. 1 to 5.

19. Let a copy of this order be sent to the Learned Court below for information and taking necessary action in accordance with law.

20. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.