
(2013) 02 JH CK 0091
In the Jharkhand High Court
Case No : Cr. M.P No. 1626 of 2007

Rapaz Chanda Kiskoo

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 02 JH CK 0091

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned senior counsel appearing for the petitioner, learned counsel for O.P. No. 2 and the learned counsel for the State. This application has been filed for quashing of the order dated 17/09/2007, passed by the then Judicial Magistrate, 1st Class, Jamtara, in P.C.R. Case No. 128 of 2007, whereby and whereunder cognizance of the offence punishable u/s 420 of the Indian Penal Code has been taken against the petitioner.

2. It is the case of the complainant that when this petitioner represented to the complainant that if Rs. 2 lakhs are paid to him a petrol pump dealership of Indian Oil Corporation at Nala would be allotted to her. On such assurance, Rs. 2 lakhs was paid to the petitioner but she was never allotted any petrol pump by the Indian Oil Corporation. When the dealership was not allotted to her, she asked the petitioner to refund the money but he refused to return the same. On such allegation, one P.C.R. Case No. 269 of 2006, was lodged, which was dismissed on 10/01/2007, when the complainant failed to adduce any witness in course of enquiry. After dismissal, second complaint bearing P.C.R. Case No. 128 of 2007, was lodged in which cognizance was taken against the petitioner vide order dated 17/09/2007, which is under challenge.

3. Learned senior counsel appearing for the petitioner submits that there has been no doubt that second complaint can also be filed with respect to same

allegation but it could have been filed only in a situation where there is manifest error, manifest miscarriage of justice and new fact, which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceeding or it is manifestly absurd and unjust. But, here the second complaint was lodged without there being any manifest error in the order under which the first complaint was dismissed.

4. Learned senior counsel in this respect referred to a decision rendered in a case of Mahesh Chand Vs. B. Janardhan Reddy and Another, .

5. Learned senior counsel submits that since the second complaint never falls within any of the categories as laid down by the Hon"ble Supreme Court, the order taking cognizance certainly suffers from illegality.

6. As against this, learned counsel appearing for O.P. No. 2 submits that earlier the complaint, which had been filed on the same allegation, can be said to have been dismissed for default as the complainant failed to adduce any witness during enquiry.

7. The question does arise as to whether the second complaint has been filed in exceptional circumstances? It be recorded that the Hon"ble Supreme Court in the case of Mahesh Chand Vs. B. Janardhan Reddy and Another, , while taking notice of the decision rendered in a case of Ram Narain Chaubey Vs. Panachand Jain, and also different decisions, did hold that it is settled law that there is no statutory bar in filing second complaint on 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, has been brought on record in the previous proceeding. No such exceptional circumstances, as have been mentioned above, does exist in bringing the second complaint. Accordingly, the second complaint can be said to be not maintainable in absence of any exceptional circumstances, stated above.

8. In such situation order dated 17/09/2007, taking cognizance certainly suffers from illegality and, hence, it is set aside. In the result, this application stands allowed.