

(1997) 08 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1625-M of 1996

Supinder Singh

APPELLANT

Vs

Provident Fund Inspector

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Citation : (1997) 4 RCR(Criminal) 449

Hon'ble Judges : K.S.Kumaran, J

Advocate : C.P. Sapra, Arvind Mittal, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. I am disposing of the following criminal miscellaneous petitions along with Criminal Misc. No. 1625M of 1996 by means of this order since the same questions of law and fact arise in all these petitions :

1. Criminal Misc. No. 1626(A) of 1996
2. Criminal Misc. No. 1628 of 1996
3. Criminal Misc. No. 1630 of 1996
4. Criminal Misc. No. 1632 of 1996
5. Criminal Misc. No. 1634 of 1996
6. Criminal Misc. No. 1636 of 1996
7. Criminal Misc. No. 1638 of 1996
8. Criminal Misc. No. 1640 of 1996
9. Criminal Misc. No. 1642 of 1996

2. The Provident Fund Inspector, Office of the Regional Provident Fund Commissioner, Punjab (respondent herein) filed complaints against the two petitioners herein namely, (1) Shri Supinder Singh, and (2) M/s Indra Motors (P)

Limited, Kurali through Supinder Singh, the Managing Director, on 16.12.1994 either under para 38 of the Employees Provident Fund Scheme, 1952, read with Section 14(1A) of Section 14A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 or under para 8 of the Employees Deposit Linked Insurance Scheme, 1976 read with Sections 6C, 14(1B) and 14A of Employees Provident Fund Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act). The relevant allegations in the complaint are found extracted in the present petitions themselves and are as follows :

3. M/s Indra Motors (P) Limited, Kurali is an establishment within the meaning of the Act. The Employees Provident Fund Scheme, 1952; and the Employees Family Pension Scheme, 1971, framed under the said Act are applicable to the said establishment. It has been allotted Code No. PN/1424. It is situated at Kurali. The first accused is the person incharge of the establishment and is responsible for the conduct of its business and is required to comply with the provisions of the said Act and the Schemes. Under paras 30 and 38 of the Employees Provident Fund Scheme, 1952, the accused are required to pay employee's and employer's share of the contribution to the Employees Provident Fund and Family Pension Fund in respect of the employees together with administrative charges, for every month within 15 days. But they have not paid the statutory dues for the months specified in the respective complaints. Thus, they have committed offences under the provisions mentioned above.

4. These complaints presented on 16.12.1994 were taken on file and the Additional Chief Judicial Magistrate, Roop Nagar (Ropar) ordered the accused to be summoned.

5. The accused have, therefore, come forward with these petitions under Section 482 Cr.P.C. for quashing the respective criminal complaints, the summoning orders and the consequential proceedings on the ground that earlier on the same facts and same cause of action, a similar complaint was filed before the Additional C.J.M., against the very same accused/petitioners herein, which was dismissed as withdrawn on 13.12.1994 and, therefore, a fresh complaint once again on the very same facts and cause of action against the very same persons is not only not maintainable, but is also an abuse of process of Court.

6. The respondent has filed replies in all these petitions alleging that the trial Court has only summoned the petitioners to appear before it, that it is only an interlocutory order and, therefore, this Court should not, in exercise of its jurisdiction under Section 482 Cr.P.C., quash the same. The second ground urged by the respondent is that the offence complained of in the complaint is a continuing offence and, therefore, there is no bar for filing a subsequent complaint as fresh cause of action accrues on each and every day. Yet another plea raised by the respondent is that on the previous complaint, the Additional C.J.M. had only dismissed the complaint as withdrawn but had not acquitted the accused. Therefore, according to the respondent, there is no ground for quashing the fresh complaint and the consequential proceedings.

7. I have heard the counsel for both the sides and perused the records.

8. As pointed out already, the complaint on the basis of which the summoning order was issued, has been extracted in the petition itself. The copy of the previous complaint has been annexed with these petitions. A perusal of the allegations in the present complaint and the previous complaint shows that they are based upon the same facts and same cause of action. The previous complaint was also filed for nonpayment of the amounts for the same months mentioned in the present complaint. The amounts and the due dates are also the same. The learned counsel for the petitioners contends that the previous complaint is word for word the same, as the present complaint, which is not disputed by the learned counsel for the respondent. The previous complaint was dismissed by the Additional C.J.M., Ropar on 13.12.1994 as withdrawn after recording a separate statement. The petitioners have extracted this statement in the petition which is as follows :

"The accused firm has shifted to Calcutta so do not want to proceed with the complaint."

But the learned counsel for the petitioners contends that even now, the very same address as found in the previous complaint, has been given in the present complaint also.

9. The learned counsel for the petitioners contends that as per Section 257 of the Criminal Procedure Code, if a complainant, at any time, before the final order is passed, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw the complaint against the accused, the Magistrate may permit him to withdraw the same and shall thereupon acquit the accused concerned, and such a person once acquitted is not liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him, in view of the provisions contained in Section 300 Cr.P.C. He also relies upon the provisions of clause (2) of Article 20 of the Constitution of India which provides that no person shall be prosecuted and punished for the same offence more than once. But the learned counsel for the respondent, on the other hand, contends that the previous complaint against the petitioners has been only dismissed as withdrawn and that the petitioners have not been acquitted and, therefore, the petitioners cannot draw any support from these provisions.

10. But the learned counsel for the petitioners relied upon a decision of this Court in *M.M.S. Bedi v. Union Territory, Chandigarh*, 1987(2) RCR 60. That was a case where on a complaint, the accused were summoned by the Magistrate, but the complainant did not appear on the date fixed. The complaint was dismissed for default of prosecution, and the summoned accused were discharged. The complainant filed a second complaint against the said accused subsequently, for the same offence and on similar facts. The Magistrate again summoned them. The accused moved an application for discharging them which was dismissed by

the Magistrate. One of the said accused questioned his prosecution on the basis of the second complaint in view of the provisions of Section 300 Cr.P.C. It was contended on behalf of the respondent before the High Court that while dismissing the first complaint, the order passed was one discharging the accused and not acquitting them and, therefore, the second complaint would not be barred under Section 300 Cr.P.C. This contention was not accepted. It was held that under Section 256 of the Criminal Procedure Code, the accused had to be acquitted and not discharged, that the use of wrong expression in the order would be of no consequence and that the said order of discharge has to be read as an order of acquittal (Relying upon the decision in *Bhim Sain v. Pritam Singh*, 1978 CLR 50 and *Guest Keen William Ltd. v. Murari Lal and another*, 1984(1) RCR 153).

11. The learned counsel for the petitioners contends that similarly when a complaint is withdrawn by the complainant, the Magistrate has to permit him to withdraw the same and shall thereupon acquit the accused in view of Section 257 of the Cr.P.C. He, therefore, contends that even though the learned Additional C.J.M. has not mentioned that he was acquitting the petitioners herein, he should be taken to have done so in view of the provisions of Section 257.

12. The learned counsel for the petitioners also relied upon the decision of the Gujarat High Court in *K.H. Dhamji v. Vichai Ratnabash*, 1983 All India Criminal Law Reporter 315, wherein it was held as follows :

"When the Magistrate finds that the complainant is absent on the appointed day for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned, the Magistrate has only two alternatives with him. He is required to acquit the accused or to adjourn the matter. There is no provision for dismissing the complaint and if such an order is erroneously passed, the order would have its legal effect as contemplated under Section 256(1) of the Criminal Procedure Code.

The Criminal Procedure Code has specifically provided the cases where the complaint is required to be dismissed or when the accused is required to be discharged. Section 256(1) does not envisage either of these two orders and the only order which the Magistrate can pass under Section 256(1) of the Criminal Procedure Code is to acquit the accused or to adjourn the proceedings. Therefore, the order passed by the learned Magistrate under Section 256(1) of the Criminal Procedure Code, and there is no dispute that the order was passed by the learned Magistrate under Section 256(1) of the Criminal Procedure Code in a complaint No. 1248/77, would not be covered within the explanation incorporated in Section 300(1) of the Criminal Procedure Code...."

It is not necessary that there should be a full previous trial and acquittal or conviction on the merits. Where the accused appears and answers to a charge but he is acquitted under Section 256 for nonappearance of the complainant, he is said to be tried and acquitted (although there was no trial on the merits) and

he cannot be tried again for the same offence."

13. The learned counsel for the petitioners also relied upon another decision of this Court in *Surjit Kaur v. State of Punjab*, 1988(1) RCR 169, in support of his contention that once the complaint is dismissed as withdrawn by the Magistrate, a fresh complaint on the same facts and cause of action is not competent. What happened was, the respondent (before the High Court) in that case filed a complaint before the Judicial Magistrate Ist Class under Sections 419, 420, 465, 466, 467 and 471 IPC against the petitioner. The complaint was dismissed as withdrawn in view of the statement given by the complainant. The Court had even given liberty to the complainant to file a fresh complaint after collecting the documents. On the very next day, a fresh complaint was filed by the respondent against the petitioner, which was challenged by the petitioners before the High Court as incompetent on the ground that it was on the same facts and cause of action. It was held that the second complaint is not competent.

14. In the light of the above discussions, the position that emerges is this : Though, a complaint is dismissed merely as withdrawn, the accused in the complaint should be considered to have been acquitted in view of the provisions contained in Section 257 Cr.P.C., since this section mandates that while the Magistrate permits the complainant to withdraw the complaint, he shall acquit the accused against whom the complaint is so withdrawn. So even if in the final order of the learned Magistrate, it is not mentioned that the accused is/are acquitted, but the complaint is simply dismissed as withdrawn, we have to take the order to its legal consequence, i.e. we have to consider that the accused have been acquitted. Once the accused is acquitted, no fresh complaint is competent on the basis of the same facts and cause of action in view of the provisions contained in Section 300 Cr.P.C. as well as the provisions contained in clause (2) of the Article 20 of the Constitution of India. Therefore, the contention of the learned counsel for the respondent that the complaint has been merely dismissed as withdrawn and that the accused have not been acquitted, will be of no avail.

15. Another contention put forward by the learned counsel for the respondent is that the order summoning the petitioners herein to appear before the trial Court was only an interim order against which the petition under Section 482 Cr.P.C. is not maintainable. In this connection, the learned counsel for the respondent relied upon a decision of the Hon"ble Supreme Court in *K.M. Mathew v. State of Kerala*, 1992(1) RCR 232. That was a case where on a complaint, the accused was summoned and had entered appearance, but pleaded not guilty. Before the evidence was recorded, the accused requested the Magistrate to drop the proceedings contending that there was no allegation in the complaint that the accused was responsible for the publication of certain news items (against which the complaint under Sections 500 and 34 IPC was made). After hearing the parties, the Magistrate accepted the plea of the accused and dropped the proceedings against him. This order of the Magistrate was set aside by the High

Court in revision. But the Supreme Court, while setting aside the order of the High Court, upheld the order of the trial Court. This decision was relied upon by the learned counsel for the respondent to show that the Magistrate who summoned the accused, has the power to drop the proceedings against the accused, and therefore, the petition under Section 482 Cr.P.C. is not competent.

16. But this decision will have no application to the facts of the present case. It is no doubt true that the Magistrate could drop the proceedings against the petitioners herein as and when the petitioners appear and put forth their case before him and if it merits acceptance. But this is a case where the complaint before the Magistrate is barred by the provisions of Section 300 Cr.P.C. and Article 20(2) of the Constitution of India, being the second complaint based upon the same facts and cause of action as mentioned in the previous complaint, which was dismissed as withdrawn. In such a case where the second complaint is barred by the provisions of the statute and the Constitution of India, it is certainly open to the petitioners to approach this Court under Section 482 Cr.P.C. since the filing of the second complaint will be an abuse of process of Court. The decision of the Hon''ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 : 1991(1) RCR (CrL.) 383 holds that the High Court, in exercise of its jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India, may interfere in proceedings relating to cognizable offences to prevent the abuse of process of Court or to secure the ends of justice; however, this power should be sparingly used in rarest of rare cases where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, to the institution and the continuance of the proceedings.

17. Although the present case emanated from a complaint to the Court, still, this principle will apply with equal force to such a case also. Therefore, I am of the view that when there is a legal bar to the second complaint, it is not necessary to direct the petitioners to appear before the trial Court and put forth their case. When the second complaint is obviously barred, allowing the complainant to prosecute the same further will be an abuse of process of Court, and to prevent that, this Court can certainly interfere in proceedings under Section 482 Cr.P.C.

18. The decision of the Hon''ble Supreme Court in *K.M. Mathew's* case cited above relates to a case where the petitioner before the Hon''ble Supreme Court contended before the trial Court itself that the allegations in the complaint did not disclose any ground for proceeding against him, and it was on that ground alone, that he had requested the trial Court also to drop the proceedings. So this decision of the Hon''ble Supreme Court cited supra will not be of any help to the respondent.

19. The learned counsel for the respondent also relied upon a decision of this Court in *M/s East India Cotton Manf. Co. Ltd. v. Haryana State Board for Prevention and Control of Water Pollution*, 1994(3) RCR 585, in support of his contention that the summoning order is an interim order and the Magistrate can withdraw the same and, therefore, this Court should not interfere in exercise of

its jurisdiction under Section 482 Cr.P.C. That again is a case where this Court observed that if the petitioners (before the High Court) can show to the Magistrate that no case is made out against them, the Magistrate has the discretion to drop the proceedings on reconsideration. It was in these circumstances, the petition was dismissed by this Court.

20. I have already pointed out the distinction between such a case and the present case where there is a legal bar to the second complaint itself which makes the continuance of the second complaint, an abuse of process of Court, and which entitles this Court to interfere in exercise of its jurisdiction under Section 482 Cr.P.C. Therefore, this decision also will not help the respondent.

21. The learned counsel for the petitioners, on the other hand, relied upon a decision of this Court in *B.R. Gupta v. Kaushal Kumar*, 1995(3) RCR 621 wherein it was held that the contention of the respondent that the accused should first approach the Magistrate, who was competent to vary or recall the order, is not tenable. That was a case where the respondent before the High Court had preferred a criminal complaint in the Court of the Judicial Magistrate with regard to offences punishable under Sections 465 and 467 IPC. The learned Judicial Magistrate, after recording the preliminary evidence, concluded that there were sufficient grounds for proceeding against the petitioner (before the High Court) and accordingly, issued the summons. The petitioner (before the High Court) contended that the reading of the complaint by itself did not disclose any evidence against him and, therefore, the summoning order should be quashed. This Court, after referring to the decisions of the Hon''ble Supreme Court in *State of Haryana v. Ch. Bhajan Lal and others* (supra), *Smt. Chand Dhawan v. Jawahar Lal and others*, AIR 1992 SC 1379 etc., held that the High court, in exercise of its inherent jurisdiction can quash the criminal proceeding when the complaint does not constitute an offence, and also to prevent the abuse of process of Court or to secure the ends of justice. This Court also referred to the decision of the Hon''ble Supreme Court in *K.M. Mathew's case* (supra) and distinguished it on the ground that the Hon''ble Supreme Court was concerned in that case with the question as to whether the Magistrate, after recording the preliminary evidence and summoning the accused, can recall or vary the order or not, and was not concerned with the inherent powers of the High Court. This Court held that the inherent powers of the High Court as referred to above, would remain, which have been explained in the case of *Janta Dal v. H.S. Chaudhary and State of Haryana and others v. Ch. Bhajan Lal and others* (supra). This Court further held that the principle remains the same and it has to be considered if the complaint discloses any offence against the petitioner or not.

22. In the circumstances of the present case on hand, I am also of the view that the contention that the accused should first approach the Magistrate who is competent to vary or recall the order, cannot be accepted and that this Court, in exercise of its jurisdiction under Section 482 Cr.P.C. can quash the summoning order.

23. Another contention put forward by the learned counsel for the respondent is that the nonpayment of the amounts due under the Employees Provident Fund Miscellaneous Provisions Act and the various schemes framed thereunder, is a continuing offence that does not vanish after the prosecution, but continues to exist till the date of the payment, and that for every day of default, a fresh cause of action arises and, therefore, a fresh complaint could be filed. In support of his contention that such an offence of nonpayment of the contribution is a continuing offence, the learned counsel for the respondent relied upon a decision of the Hon''ble Supreme Court in Bhagirath Kanoria v. State of M.P., AIR 1984 SC 1688. Of course, the Hon''ble Supreme Court held that the nonpayment of the employer's contribution to the Provident Fund before the due date is a continuing offence, but the Hon''ble Supreme Court did so in a different context. A question was raised before the Supreme Court that the offence was barred by limitation. The Hon''ble Supreme Court in that context observed that the nonpayment was a continuing offence, and that Section 468 Cr.P.C. will have no application, whereas the offence will be governed by Section 472, according to which a fresh period of limitation begins to run at every moment of time, during which the offence continues. This principle laid down by the Hon''ble Supreme Court cannot be stretched too far to contend that inspite of the dismissal of the first complaint filed on the same cause of action and on the same fact, a second complaint on the same fact and cause of action is maintainable on the ground that the offence is a continuing one. Because accepting such a contention will lead to unintended and absurd consequences. The present case atleast is one where the accused/petitioners were acquitted, rather the complaint against them was dismissed as withdrawn, which legally amounts to their acquittal. Suppose, if the present petitioners/accused had been convicted on the basis of the previous complaint, can it be said that a second complaint will be maintainable on the ground that the same amount due for the same period remained unpaid even after the previous conviction also, on the basis of the contention that the offence continues ? If the answer is in the affirmative, then that will mean that the complainant can go on filing one complaint after another for the same amount. In my view this cannot be done. Because the omission of the accused to pay the amount in these circumstances can be only a single omission for which there could be only one complaint/prosecution. Otherwise, if every day's default is treated as giving rise to a fresh cause of action, and fresh complaint is entertained, then it will amount to harassing the accused, and an abuse of process of Court, which cannot be permitted at all. Therefore, I am of the view that the decision of the Hon''ble Supreme Court has no application to the facts of the case since in that case of Hon''ble Supreme Court was concerned with the question of limitation only.

24. Therefore, I am of the view that in the circumstances of the case, the second complaint is not maintainable. Consequently, all these petitions deserve to be allowed.

25. Accordingly, all these petitions are allowed quashing the complaint and the

consequential proceedings impugned in these petitions. But this, however, shall not stand in the way of the respondent to take such steps as are legally open to them to recover the amounts.