

CRIMINAL REVISION

Present: The Hon'ble Justice Ashim kumar Roy JUDGEMENT ON:

26.04.2010

C.R.R. 588 OF 2010

P P Koya & Ors

Versus

The State of West Bengal & Ors

Points-

Second Complaint: The earlier complaint is dismissed without assigning any reason, a second complaint on same set of facts is always legally maintainable.- Code of Criminal Procedure, 1973- S. 482:

Facts:

The Petitioner herein filed this criminal revisional application for quashing the second complaint on the ground that earlier complaint containing the same set of allegations was dismissed by the court below. Hence this application.

Held :

when a complaint is dismissed not on merit but on default of the complainant, i.e. due to his failure to appear in Court or being represented by his lawyer OR when a complaint is dismissed without assigning any reason, a second complaint on same set of facts is always legally maintainable. Para-4

In the case at hand, the earlier complaint was never dismissed on a finding the complaint was groundless but as a consequence of default of the complainant and his lawyer to be present in Court. Neither any reason has been assigned nor such dismissal was on merit. This criminal revision has

no merit and accordingly stand dismissed. Interim order, if any, stands vacated. Para-6

Case followed----

2001(2) SCC 570 (Jatinder Singh & Ors. –Vs- Ranjit Kaur).

2003(1) SCC 734 (Mahesh Chand -Vs- Janardhan Reddy & Anr.).

for petitioner ---- Mr Pratip Chatterjee/

The Court:

The present petitioner an accused in a case instituted on a complaint relating to an offence punishable under Section 380 of the Indian Penal Code, has now moved this Court for quashing of the same, on the sole ground that earlier a complaint containing the same set of allegations was dismissed by the Court below.

2. Heard the learned advocate appearing on behalf of the parties.
Considered the materials on record.

3. Having regards to the averment made in the impugned complaint it is an admitted position earlier a complaint case based on same set of allegations, as that of the impugned complaint instituted at the behest of the opposite party against the petitioners was dismissed as no step was taken by the complainant. The said order of dismissal being Annexure “P-2” to this criminal revision is read

as follows; “Order No. Date : 13.02.09/

Today is fixed for evidence. The complt. taken no step. All the four accused persons are preset by filing attendance. On repeated calls none moves the case for the complainant. Hd. The defence. The Complt. is also found absent on call. The complt. Is least interested to proceed with this case against the accused persons. It is now 11.40 a.m. Hence, it is Ordered that all the (4) accused persons are discharged u/s. 245 (2)

Cr.P.C. They are also discharged from their respective bail

bonds. Sd/- S.K. Meyur Judicial Magistrate, 1st Court, Jangipur, Msd.”

4. It is well settled when a complaint is dismissed not on merit but on default of the complainant, i.e. due to his failure to appear in Court or being represented by his lawyer OR when a complaint is dismissed without assigning any reason, a second complaint on same set of facts is always legally maintainable.

5. In the case of *Jatinder Singh & Ors. Vs. Ranjit Kaur*, reported in 2001 (2) SCC 570, the Apex Court in paragraph 14 held as follows; “As the Magistrate did not consider the materials on record when he dismissed the first complaint, instead the said course was adopted by him only as a consequence of the default of the complainant presenting herself when the case was called, there is no reason to shut the door before her once and for all. The High Court has correctly interfered with the order of the Sessions Court by restoring the complaint and the proceedings initiated thereon. We therefore dismiss the appeal. (Para 14) Similarly, in the case of *Mahesh Chand Vs. B. Janardhan Reddy & Anr.*, reported in 2003 (1) SCC 734, a three Judges Bench of the Apex Court, further held;

“Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Talukdar* case second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, 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 facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of

the alleged offence had been made out or not.” (Para 19)

6. Moreover, the first complaint was dismissed in purported exercise of power under Section 245 (2) of the Code of Criminal Procedure. According to the provisions of Section 245 (2) of the Code, a Court can always dismiss a complaint even before the recording of evidence before charge, if Court finds, the charges are to be groundless. However, in the case at hand, the earlier complaint was never dismissed on a finding the complaint was groundless but as a consequence of default of the complainant and his lawyer to be present in Court. Neither any reason has been assigned nor such dismissal was on merit. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)