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(2012) 76 ACrC 285 : (2012) 109 AIC 129 : (2012) 1 AICLR 286 : (2012) 1 AllCrlRulings 1173 : (2012) ALLMR(SC) 354 : (2012) 1 ALT(Crl) 383 : (2012) 1 ApexCourtJudgments(SC) 140 : (2012) 2 BBCJ 1 : (2012) 2 BLJud 37 : (2012) BomCR(Cri) 818 : (2011) 3 CalCriLR 756 : (2012) 1 CriCC 75 : (2011) CriLR 670 : (2012) 1 Crimes 16 : (2012) Sup CutLT(Criminal) 321 : (2012) 4 GLR 3590 : (2012) 1 JCR 218 : (2011) 4 JLJR 426 : (2011) 13 JT 319 : (2012) 1 LawHerald(SC) 148 : (2012) 1 MhLJ(Crl) 561 : (2012) 2 MLJ 383 : (2012) 2 MLJ(Criminal) 383 : (2012) 1 OriLawRev 165 : (2012) 51 OrissaCriR 101 : (2012) 1 PLJR 139 : (2012) 1 RCR (Criminal) 14 : (2011) 6 RecentApexJudgments(RAJ) 215 : (2011) 13 SCALE 75 : (2012) 1 SCC 130 : (2012) 1 SCC(Cri) 513 : (2011) 13 SCR 247 : (2011) 8 SLT 503 : (2012) 1 UC 195 : (2012) 1 WLC 485

SUPREME COURT OF INDIA

DIVISION BENCH

(Before : T.S. Thakur, J; B.S. Chauhan, J)

SHIV SHANKAR SINGH — Appellant

Vs.

STATE OF BIHAR AND ANOTHER — Respondent

Criminal Appeal No. 2160 of 2011 (Arising out of SLP (Criminal) No. 2768 of 2010)

Decided on : 22-11-2011

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), Section 173, Section 203, Section 204
- Penal Code, 1860 (IPC) - Section 302, Section 34, Section 395, Section 396, Section 398, Section 506

Criminal Procedure Code, 1973 — Section 154 — FIR — Law does not prohibit registration and investigation of two FIRs in respect of same incident in case versions are different — Test of sameness has to be applied otherwise there would not be cross cases and counter cases — Filing another FIR in respect of same incident having a different version of events is permissible.

Penal Code, 1860 — Section 395 — Criminal Procedure Code, 1973 — Section 482 — Dacoity — Order taking cognizance quashed by High Court — High Court without taking note of evidence set side the order of Magistrate on a technical ground that second Protest Petition was not maintainable without considering fact that first Protest Petition having been filed prior to filing of Final Report was not competent — There was no occasion for High Court to make sweeping remarks against Magistrate — Impugned order set aside —

Appeal allowed.

Cases Referred

- Bindeshwari Prasad Singh Vs. Kali Singh, AIR 1977 SC 2432 : (1978) CriLJ 187 : (1977) 1 SCC 57 : (1977) 1 SCR 125
- T.T. Antony Vs. State of Kerala and Others, AIR 2001 SC 2637 : (2001) CriLJ 3329 : (2001) 3 Crimes 276 : (2001) 5 JT 440 : (2001) 4 SCALE 348 : (2001) 6 SCC 181 : (2001) 3 SCR 942 : (2001) AIRSCW 2571 : (2001) 5 Supreme 131
- Ram Lal Narang Vs. State (Delhi Administration), AIR 1979 SC 1791 : (1979) CriLJ 1346 : (1979) 2 SCC 322 : (1979) SCC(Cri) 479 : (1979) 2 SCR 923
- Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, AIR 1962 SC 876 : (1962) 2 SCR 297 Supp
- Bhagwant Singh Vs. Commissioner of Police and Another, AIR 1985 SC 1285 : (1985) CriLJ 1521 : (1985) 1 Crimes 994 : (1985) 1 SCALE 1194 : (1985) 2 SCC 537 : (1985) 3 SCR 942 : (1985) 17 UJ 820
- Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896
- Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528
- Jatinder Singh Vs. Ranjit Kaur, AIR 2001 SC 784 : (2001) CriLJ 1015 : (2001) 1 DMC 320 : (2001) 2 JT 198 : (2001) 1 SCALE 431 : (2001) 1 SCR 706 : (2001) 1 UJ 713 : (2001) AIRSCW 435 : (2001) 1 Supreme 417
- Mahesh Chand Vs. B. Janardhan Reddy and Another, AIR 2003 SC 702 : (2003) CriLJ 866 : (2002) 10 JT 123 : (2003) 1 SCC 734 : (2003) 1 UJ 185
- Ranvir Singh Vs. State of Haryana and Another, (2009) 12 JT 474 : (2009) 12 SCALE 89 : (2009) 9 SCC 642 : (2009) 14 SCR 1063
- Joy Krishna Chakraborty and Others Vs. The State and Another, (1980) CriLJ 482

Counsel for Appearing Parties

Gaurav Agrawal, for the Appellant; Awanish Sinha, Gopal Singh and Ravi Bhushan, for the Respondent

JUDGMENT

B.S. Chauhan, J.—This appeal has been preferred against the judgment and order dated 6.5.2009 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 36335 of 2008, by which the cognizance taken by the Magistrate vide order dated 2.8.2008 against the Respondent No. 2 u/s 395 of the Indian Penal Code, 1860 (hereinafter called `Indian Penal Code?) has been quashed.

2. Facts and circumstances giving rise to this case are that:

A. A dacoity was committed in the house of present Appellant Shivshankar Singh and his brother Kameshwar Singh on 6.12.2004 Where in Gopal Singh son of Kameshwar Singh was killed by the

dacoits and lots of valuable properties were looted. The police reached the place of occurrence at about 3.00 AM i.e. about 2 hours after the occurrence. An FIR No. 147/2004 dated 6.12.2004 was lodged by the Appellant naming Ramakant Singh and An and Kumar Singh alongwith 15 other persons under Sections 396/398 Indian Penal Code.

B. However, Kameshwar Singh, the real brother of the Appellant and father of Gopal Singh, the deceased, approached the court by filing a case u/s 156(3) of the Code of Criminal Procedure, 1973, (hereinafter called `Code of Criminal Procedure.?). Appropriate orders were passed therein and in pursuance of which FIR No. 151/2004 was lodged on 29.12.2004 in respect of the same incident with the allegations that the present Appellant, Bhola Singh, son of the second complainant and Shankar Thakur, the maternal uncle of Bhola Singh had killed Gopal Singh as the accused wanted to grab the immovable property.

C. Investigation in pursuance of both the reports ensued. When the investigation in pursuance of both the FIRs was pending, the Appellant filed Protest Petition on 4.4.2005, but did not pursue the matter further. The court did not pass any order on the said petition. After completing investigation in the Report dated 6.12.2004, the police filed Final Report u/s 173 Code of Criminal Procedure. on 9.4.2005 to the effect that the case was totally false and Gopal Singh had been killed for property disputes.

D. After investigating the other FIR filed by Kameshwar Singh, father of the deceased, charge-sheet was filed under Sections 302, 302/34, 506 Indian Penal Code etc. on 29.8.2005 against the Appellant, Bhola Singh, son of complainant and others. The matter stood concluded after trial in favour of the accused persons therein.

E. It was on 22.9.2005, the Appellant filed a second Protest Petition in respect of the Final Report dated 9.4.2005. After considering the same and examining a very large number of witnesses, the Magistrate took cognizance and issued summons to Respondent An and Kumar Singh and Ors. vide order dated 2.8.2008.

F. Being aggrieved, the Respondent An and Kumar Singh filed Criminal Miscellaneous No. 36335 of 2008 for quashing the order dated 2.8.2008 which has been allowed by the High Court on the ground that second Protest Petition was not maintainable and the Appellant ought to have pursued the first Protest Petition dated 4.4.2005.

Hence, this appeal.

3. Shri Gaurav Agrawal, learned Counsel appearing for the Appellant has submitted that the High Court failed to appreciate that the so-called first Protest Petition having been filed prior to filing the Final Report was not maintainable and just has to be ignored. The learned Magistrate rightly did not proceed on the basis of the said Protest Petition and it remained merely a document in the file. The second petition was the only Protest Petition which could be

entertained as it had been filed subsequent to filing the Final Report. The High Court further committed an error observing that the Magistrate?s order of summoning the Respondent No. 1 was vague and it was not clear as in which Protest Petition the order had been passed. More so, the facts of the case in Joy Krishna Chakraborty and Others Vs. The State and Another, decided by the Division Bench of the Calcutta High Court and solely relied by the High Court were distinguishable as in the said case the first Protest Petition had been entertained by the Magistrate and an order had been passed. Protest Petition is to be treated as a complaint and the law does not prohibit filing and entertaining of second complaint even on the same facts in certain circumstances. Thus, the judgment and order impugned is liable to be set aside.

4. On the contrary, Shri Awanish Sinha and Shri Gopal Singh, Learned Counsel appearing for the Respondent have vehemently opposed the appeal contending that the second petition was not maintainable and the Appellant ought to have pursued the first Protest Petition. The High Court has rightly observed that the order of the Magistrate summoning the Respondent No. 1 and Ors. was totally vague. Even otherwise, as the Appellant himself had faced the criminal trial in respect of the same incident, he cannot be held to be a competent/eligible person to file the Protest Petition. He had purposely lodged the false FIR promptly after committing the offence himself. Therefore, the facts of the case do not warrant any interference by this Court and the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

6. We do not find any force in the submission made on behalf of the Respondent that as in respect of same incident i.e. dacoity and murder of Gopal Singh, the Appellant himself along with others is facing criminal trial, proceedings cannot be initiated against the Respondent No. 1 at his behest as registration of two FIRs in respect of the same incident is not permissible in law, for the simple reason that law does not prohibit registration and investigation of two FIRs in respect of the same incident in case the versions are different. The test of sameness has to be applied otherwise there would not be cross cases and counter cases. Thus, filing another FIR in respect of the same incident having a different version of events is permissible. (Vide: Ram Lal Narang Vs. State (Delhi Administration), T.T. Antony Vs. State of Kerala and Others, Upkar Singh Vs. Ved Prakash and Others, and Babubhai Vs. State of Gujarat and Others,

7. Undoubtedly, the High Court has placed a very heavy reliance on the judgment of the Calcutta High Court in Joy Krishna Chakraborty and Ors. (supra), wherein the Protest Petition dated 19.3.1976 was entertained by the Magistrate issuing direction to the Officer-in-Charge of the Khanakul Police Station u/s 156(3) Code of Criminal Procedure. to make the investigation and submit the report to the court concerned by 10.4.1976. The Officer-in-Charge of the said police station did not carry out any investigation on the ground that the incident had occurred outside the territorial jurisdiction of the said police station. The second Protest Petition filed by the same

complainant on 23.3.1976 was entertained by the learned Magistrate. In fact, it was in this factual backdrop that the Calcutta High Court held that the matter could have been proceeded with on the basis of the first Protest Petition itself by the Magistrate and second Protest Petition could not have been entertained.

8. The facts of the present case are completely distinguishable. Therefore, the ratio of the said judgment has no application in the facts of this case.

9. In Bhagwant Singh Vs. Commissioner of Police and Another, this Court dealt with an issue elaborately entertaining the writ petition and accepting the submission in regard to acceptance of the Final Report to the extent that if no case was made out by the Magistrate, it would be violative of principles of natural justice of the complainant and therefore before the Magistrate drops the proceedings the informant is required to be given hearing as the informant must know what is the result of the investigation initiated on the basis of first FIR. He is the person interested in the result of the investigation. Thus, in case the Magistrate takes a view that there is no sufficient ground for proceeding further and drops the proceedings, the informant would certainly be prejudiced and therefore, he has a right to be heard.

10. In Bindeshwari Prasad Singh Vs. Kali Singh, this Court held that the second complaint lies if there are some new facts or even on the previous facts if the special case is made out.

Similarly, in Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, this Court has held as under:

An order of dismissal u/s 203 of the Code of Criminal Procedure, 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.

11. After considering the aforesaid judgment along with various other judgments of this Court, in Mahesh Chand Vs. B. Janardhan Reddy and Another, this Court held as under:

..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 u/s 204 Code of Criminal Procedure may take cognizance of an offence and issue process if there is sufficient ground for proceeding.

In Poonam Chand Jain and Anr. v. Fazru AIR 2005 SC 38, a similar view has been re-iterated by this Court.

12. In Jatinder Singh Vs. Ranjit Kaur, this Court held that dismissal of a complaint on the ground of default was no bar for a fresh Complaint being filed on the same facts.

Similarly in Ranvir Singh Vs. State of Haryana and Another, this Court examined the issue in the backdrop of facts that the complaint had been dismissed for the failure of the complainant to put in the process fees for effecting service and held that in such a factsituation second complaint was maintainable.

13. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

14. The Protest Petition can always be treated as a complaint and proceeded with in terms of Chapter XV of Code of Criminal Procedure. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second Protest Petition can also similarly be entertained only under exceptional circumstances. In case the first Protest Petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh Protest Petition is filed giving full details, we fail to understand as to why it should not be maintainable.

15. The instant case is required to be decided in the light of the aforesaid settled legal propositions.

Order dated 2.8.2008 passed by the Magistrate concerned is based on the depositions made by the Appellant-Shivshankar Singh, and a very large number of witnesses, namely, Sonu Kumar Singh, Suman Devi, Nirmala Devi, Ganesh Kumar, Udai Kumar Ravi, Ram Achal Singh, Jateshwar Acharya, Neeraj Kumar Singh, Krishna Devi and Dr. Narendra Kumar. More so, the record of the Sessions Trial No. 866 of 2005, wherein the Appellant himself has been put to trial was also summoned and examined by the learned Magistrate. Thus, the Magistrate further took note of the fact that for the same incident, trial was pending in another court. After appreciating the evidence of the complainant and other witnesses deposed in the enquiry, the learned Magistrate passed the following order:

On the basis of aforesaid discussion, I find that there are materials available on the record to proceed against the accused person. A prima-facie case u/s 395 Indian Penal Code has been made out against all the accused person of this case. O/c is directed to issue summons on filing of the requisite. Put up the record on 13.8.2008 for filing of the requisites.

16. The High Court without taking note of the aforesaid evidence

set side the order of the Magistrate on a technical ground that the second Protest Petition was not maintainable without considering the fact that the first Protest Petition having been filed prior to filing of the Final Report was not competent. More so, the High Court without any justification made the following remarks:

The Court can only record that the learned Judicial Magistrate has not conducted himself in a fair manner because he has intentionally left the impugned order vague as to which protest petition he was acting upon, so that advantage may accrue to Opposite Party No. 2.

17. In our opinion, there was no occasion for the High Court to make such sweeping remarks against the Magistrate and the same remain unjustified and unwarranted in the facts and circumstances of the case.

18. In view of the above, the appeal succeeds and is allowed. The order impugned of the High Court is set aside and the order of the Magistrate is restored. Respondent No. 1 is directed to appear before the Magistrate on 1.12.2011 and the learned Magistrate is requested to proceed in accordance with law. However, we clarify that any observation made in this judgment shall not adversely prejudice the cause of the Respondent to seek any further relief permissible in law as the said observations have been made only to decide the controversy involved herein.

Final Result : Allowed