A

MAJ. GENL. A.S. GAURAYA & ANR.

v.

S.N. THAKUR AND ANR.

APRIL 25, 1986

B

[V. KHALID AND M.M. DUTT, JJ.]

Criminal Procedure Code, 1973 - Whether subordinate criminal Courts have inherent jurisdiction outside the provisions of the Code.

Respondent No.1, complainant, filed a complaint against C the appellants-accused in the Court of the Judicial Magistrate, First Class, New Delhi disclosing an offence punishable under s. 67 and 72-C(1)(a) of the Mines Act, 1952 read with Regulation 106 of the Metallifarous Mines Regulation, 1961. The Magistrate took the complaint on file and issued summons to the accused to appear on 6.1.1972. On D 6.1.1972 neither the complainant nor the accused were present and, therefore, the Magistrate dismissed the complaint in default and for want of prosecution. The respondent filed an application on 13.1.1972 for restoration of the complaint and on 20.1.72, after hearing the complainant, the Magistrate restored the complaint and issued summons to the accused. E Thereafter the accused-appellants moved an application before the Magistrate stating that the order dated 20.1.72 was without jurisdiction since the Magistrate had become functus officio by order dated 6.1.72. The Magistrate rejected this application holding that he had inherent powers under the code of Criminal Procedure to review and recall his earlier orders. F The Additional Chief Judicial Magistrate and the Delhi High Court dismissed the first and the second revision petition filed by the appellants against the order of the Magistrate.

Pursuant to a judgment delivered by the Supreme Court on 5th August, 1976 in the case of **Bindeshwari Prasad Singh v. Kali Singh,** [1977] 1 S.C.R. 125 holding that no Criminal G Court had any inherent jurisdiction, not provided for in the Criminal Procedure Code, the appellants moved an application before the Metropolitan Magistrate contending that all proceedings after the dismissal of the complaint by order dated 6th January, 1972 were without jurisdiction in the light H

of the law laid down by the Supreme Court and requested the Magistrate to drop further proceedings. The Magistrate accepted this contention and dropped the proceedings against the appellants-accused. Aggrieved by this order, the respondent filed a revision before the Additional Sessions Judge who reversed the decision of the Magistrate holding that a pronouncement as to the position of law in a judicial decision by the Supreme Court cannot be treated as a sort of legislation by Parliament giving retrospective effect as to enjoin re-appointing of all matters which have already become final and closed. Thereupon, the appellants filed a writ petition before the High Court and the same was dismissed in limine. Hence this appeal by special leave.

Allowing the appeal.

HELD: 1. In view of the law laid down by Supreme Court in **Bindeshwari Prasad Singh v. Kali Singh,** [1977] 1 S.C.R. 125, the order of the High Court is set aside and that of the Magistrate dated 6.1.77 dismissing the complaint is restored. [781 C]

2.(i) Section 249 of the Criminal Procedure Code enables a magistrate to discharge the accused when the complainant is absent and when the conditions laid down in the said section are satisfied. Section 256(1) of the Criminal Procedure Code enables a magistrate to acquit the accused if the complainant does not appear. Thus, the order of dismissal of a complaint by a criminal court due to the absence of a complainant is a proper order. Therefore, so far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction. [776 E-F; 777 G-H]

2.(ii) There is absolutely no provision in the Code of Criminal Procedure of 1908 empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to re-call the order dismissing the complaint. [778 C-E]

A

2.(iii) Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the order of dismissal. The Criminal Procedure Code does not contain any provision enabling the Criminal Court to use such an inherent power. A second complaint is permissible in law if it could be brought within the limitations imposed by the B Supreme Court in **Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar** [1962] Suppl. 2 S.C.R. 297. [777 A-B; 776 H]

Bindeshwari Prasad Singh v. Kali Singh, [1977] 1 S.C.R. 125, followed.

B.D. Sethi v. V.P. Dewan, 1971 Delhi Law Times 162, C over-ruled.

3. A mere reading of Article 141 brings into sharp focus its expanse and all pervasive nature. There is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by the Supreme Court applies D to all pending proceedings. [780 D; 779 E]

Shenoy and Co. v. Commercial Tax Officer, [1985] 2 S.C.C. 512, relied upon.

In the instant case, the Additional Sessions Judge E overlooked the binding nature of the law declared by the Supreme Court mandating under Art. 141, every court subordinate to this Court to accept it. The High Court could have, if it had examined the matter, corrected the error into which the Sessions Judge fell. The observations of the Sessions Judge disclose a confusion of thought about the F effect of decision rendered by the Supreme Court and a misreading of Article 141 of the Constitution. [779 F-G; D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 184 of 1979.

G

From the Judgment and Order dated the 9.8.78 of the Delhi High Court in Criminal Misc. No. 391 of 1978.

Rajender Nath Sachar, D.N. Mishra, Ms. L. Goswami and T.M. Ansari with him for the Petitioners.

H

A

V. Mahajan and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

KHALID, J. This Criminal appeal by special leave, B involves the question :

> Whether a Sub-ordinate Criminal Court has any inherent jurisdiction outside the provisions of the Criminal Procedure Code ?

C Incidentally, the scope of Article 141 of the Constitution also comes up for consideration.

The facts of the case can be stated first. The appellants, two in number, are the accused in a complaint filed by the first respondent in the Court of the Judicial D Magistrate, First Class, New Delhi, disclosing an offence punishable under Section 67 and 72C(1)(a) of the Mines Act, 1952, read with Regulation 106 of the Metallifarous Mines Regulation 1961. The learned Magistrate took the complaint on file and issued summons to the accused to appear on 6.1.1972. On 6.1.1972 neither the complainant nor the accused were E present and therefore, the Magistrate passed the following order :

> "Accused not present. None present for the complainant also. The complaint is hereby dismissed in default and for want of prosecution."

F

On 13.1.1972, the complainant filed an application for restoration of the complaint. On 20.1.1972, the Magistrate passed the following order :

> "I heard Shri T.S. Sodhi. The complaint be G restored. Summon accused for 21/2."

On 21.2.1972, the accused petitioners moved an application before the Magistrate stating that the order dated 20.1.1972 was without jurisdiction since the Magistrate had become functus officio, by his order dated 6.1.1972. This application H was rejected by the Magistrate by his order dated 8.5.1972. He was of the view that he had inherent powers under the Code of Criminal Procedure to review and re-call his earlier orders.

Aggrieved by this order, the petitioners filed a revision before the Court of Additional Chief Judicial Magistrate, New Delhi, which was dismissed on 6/7/1973. A

This was followed by another revision before the High Court of Delhi. The Delhi High Court dismissed the revision by its order dated 10.1.1975, relying upon an earlier decision of the same Court to the effect that a criminal court had certain inherent powers, though not specifically mentioned in the Code. B

On 5.8.1976, this Court delivered its Judgment in the case of **Bindeshwari Prasad Singh v. Kali Singh,** [1977] 1 S.C.R. 125 holding that no criminal court had any inherent jurisdiction, not provided for in the Criminal Procedure Code. The petitioners, armed with this decision, moved an application before the Metropolitan Magistrate on 22.12.1976, contending that all proceedings, after the dismissal of the complaint by order dated 6.1.1972, were without jurisdiction in the light of the law laid down by this Court and requested the Magistrate to drop fruther proceedings. The learned Metropolitan Magistrate accepted this contention and by his order dated 16.7.1977 dropped the proceedings against the petitioners. C D

Aggrieved by this order, the respondents filed a revision before the Sessions Judge, New Delhi. The Additional Sessions Judge, New Delhi, to whom this case stood transferred, reversed the decision of the Magistrate by his order dated 7.1.1978 and held that : "so for as Article 141 of the Constitution of India and the ratio of these decisions is concerned, there can be no dispute whatsoever. At the same time a pronouncement as to the position of law in a judicial decision by the Supreme Court cannot be treated as a sort of legislation by the Parliament giving retrospective effect as to enjoin reopening of all matters which have already become final and closed." E F

Aggrieved by this order the petitioners moved the Delhi High Court under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, to quash further proceedings, relying upon the decision of this Court mentioned above and contending that the order of the Sessions G H

A

Judge was wrong. This revision petition was dismissed in limine by the High Court on 9.8.1978, observing :

> "I find no sufficient reason to interfere with the impugned order. Dismissed."

B It is against this order that this appeal has been filed.

The first question to be considered is whether the Magistrate could have re-called his order. It cannot be disputed that the Magistrate has powers to dismiss a complaint and discharge the accused when the complainant is absent. In C **Ram Prasad Maitra v. Emperor,** 1928 A.I.R. - Cal. 569 a division bench of the Calcutta High Court had to consider the question whether the Sessions judge was justified in directing the complaint to be sent back to the Magistrate for further enquiry when the complaint was dismissed under section 203 of Criminal Procedure Code. Answering the question in the D negative, it was observed :

> ".....In a case like this, where the complainant does not choose to be present, he cannot be heard afterwards to say that the matter should be sent back to the Magistrate for further enquiry..."

E

This Judgment indirectly recognises the power in a Magistrate to dismiss a complaint for default. We agree with this conclusion.

Section 249 of the Criminal Procedure Code enables a F Magistrate to discharge the accused when the complainant is absent and when the conditions laid down in the said section are satisfied. Section 256(1) of the Criminal Procedure Code enables a Magistrate to acquit the accused if the complainant does not appear. Thus, the order of dismissal of a complaint by a criminal court due to the absence of a complainant is a G proper order. But the question remains whether a magistate can restore a complaint to his file by revoking his earlier order dismissing it for the non-appearance of the complainant and proceed with it when an application is made by the complainant to revive it. A second complaint is permissible in law if it could be brought within the limitations imposed by this Court H in **Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar,** [1962]

Suppl. 2 S.C.R. 297. Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal Procedure Code does not contain any provision enabling the criminal court to exercise such an inherent power.

In **B.D. Sethi v. V.P. Dewan,** 1971 Delhi Law Times 162 a division bench of the Delhi High Court held that a Magistrate could revive a dismissed complaint since the order dismissing the complaint was not a Judgment or a final order. In paragraph 9, the Court observes as follows :

> "9. As long as the order of the Magistrate does not amount to a Judgment or a final order there is nothing in the Code of Criminal Procedure prohibiting the Magistrate from entertaining a fresh application asking for the same relief on the same facts or from re-considering that order. During the course of the proceedings, a Magistrate has to pass various interlocutory orders and it will not be correct to say that he has no jurisdiction to re-consider them.."

We would like to point out that this approach is wrong. What the Court has to see is not whether the Code of Criminal procedure contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have. It was relying upon this decision that the Delhi High Court in this case directed the Magistrate to re-call the order of dismissal of the complaint. The Delhi High Court referred to various decisions dealing with section 367 (old code) of the Criminal Procedure Code as to what should be the contents of a Judgment. In our view, the entire discussion is misplaced. So far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jursidiction.

A

For our purpose, this matter is now concluded by a judgment of this Court in the case of **Bindeshwari Prasad Singh v. Kali Singh,** [1977] 1 S.C.R. 125. We may usefully quote the following passage at page 126 :

B

> ".....Even if the Magistrate had any jurisdiction to re-call this order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for re-calling the order. We, however, need not dilate on this point because there is absolutely no provision in the Code of Criminal Procedure of 1908 (which applies to this case) empowering a Magistrate to review or re-call an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to re-call the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact, after having passed the order dated 23.11.1968, the Sub-divisional magistrate became functus officio and had no power to review or re-call that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, re-calling order dismissing the complaint was entirely without jurisdiction. This being the position, all subsequent proceedings following upon re-calling the said order, would fall to the ground including order dated 3.5.1972, summoning the accused which must also be treated to be a nullity and destitute of any legal effect. The High Court has not at all considered this important aspect of the matter which alone was sufficient to put an end to these proceedings. It was suggested by Mr. D. Goburdhan that the application given by him for re-calling the order of dismissal of the complaint would amount to a fresh complaint. We are,

C

D

E

F

G

H

A

> however, unable to agree with this contention because there was no fresh complaint and it is not well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. This has been held by this Court in **Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar** (supra). For these reasons, therefore, the appeal is allowed. The order of the High Court maintaining the order of the Magistrate dated 3.5.1972 is set aside and the order of the Magistrate dated 3.5.1972 summoning the appellant is hereby quashed."

B

C

When the matter went before the High Court, the decision of this Court referred above must have been brought to its notice, since the order by the Additional Sessions Judge refers to it. We would have happy if the High Court had considered the matter in some detail especially when its attention was drawn to this decision instead of dismissing the revision in limine. The observations of the Sessions Judge, extracted above, discloses a confusion of thought about the effect of a decision rendered by this Court and a misreading of Article 141 of the constitution. There is nothing like any prospective operation alone of the law laid down by this Court. The law laid down by this court applies to all pending proceedings. If the Sessions Judge had expressed his helplessness because of the earlier order of the High Court binding on him and had allowed the revision on that ground, we could have understood the reasoning behind it. He got rid of the effect of this Court's Judgment by observing that a decision by this Court cannot be treated as "a sort of legislation by Parliament" and thus overlooked the binding nature of the law declared by this Court, mandating under Article 141, every Courts subordinate to this Court to accept it. The High Court could have if it had examined the matter, corrected the error into which the Sessions Judge fell.

D

E

F

G

The sweep of Article 141 of the Constitution, so far as the Judgments of this Court are concerned, came up for consideration before this Court recently in **Shenoy and Co. v. Commercial Tax Officer,** [1985] (2) S.C.C. 512 to which one of us was a party. It is not necessary to refer to the facts of that case, in detail. Suffice it to say that the contention

H

A

that the law laid down by this Court in an appeal filed by the State would not bind the other parties against whom the State of Karnataka did not file appeals from a common Judgment, was repelled by this Court in the following words:

> "....It is, therefore, idle to contend that the law
> B laid down by this Court in that Judgment would bind only the Hansa Corporation and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. Article 141 reads
> C as follows :
>
> "The law declared by the Supreme Court shall be binding on all courts within the territory of India." A mere reading of this article brings into sharp focus its expanse and is all pervasive
> D nature. In cases like this, where numerous petitions are disposed of by a common judgment and only one appeal is filed, the parties to the common judgment could very well have and should have intervened and could have requested the Court to hear them also. They cannot be heard to say that
> E the decision was taken by this Court behind their back or profess ignorance of the fact that an appeal had been filed by the State against the common judgment....
>
> To contend that this conclusion applies only to the
> F party before this Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. But setting aside the common judgment of the High Court, the mandamus issued by the High Court is rendered ineffective not only in one case but in all cases."

G

Normally, when several matters are disposed of by a common Judgment, and the defeated party files only one appeal against one such matter and succeeds in that matter, he would still be faced with the plea of finality of the Judgment based on res-judicata by those against whom appeals were not filed. But
H this plea did not find favour with this Court in the above

case. It was held that the Judgment rendered by this Court in one appeal, took away the finality of the common Judgment even against those against whom appeals were not filed because of the all pervasive operation of Article 141.

We do not think it necessary to probe further into the facts of this case and lengthen this Judgment, for one good reason; this case has moved along the files of various Courts for more than 15 years and it is high time that we give it a decent burial. In view of the law laid down by this Court in **Bindeshwari Prasad Singh's case** (supra) we set aside the order of the High Court, allow this appeal and restore the order of the Magistrate, dated 6.1.1972 dismissing the complaint.

M.L.A. Appeal allowed.