JATINDER SINGH

v.

RANJIT KAUR

JANUARY 30, 2001

[K.T. THOMAS AND R.P. SETHI, JJ.]

Criminal Law:

Code of Criminal Procedure, 1973—Sections 202, 203 and 300—Marriage with appellant who was already married—Complaint with Judicial Magistrate—Dismissal of Complaint for default—Second complaint filed with same Magistrate—Summons issued—Validity of second complaint—Held, the second complaint is valid since the first complaint was dismissed for default and not on merits—Penal Code, 1860—Sections 109 and 494.

Respondent felt cheated after her marriage with appellant, when she came to know that the appellant was already married and has a child from his earlier marriage. Her younger sister connived with the appellant for performing the marriage between them clandestiny when the respondent was enceinte. Aggrieved, the respondent filed a complaint before Judicial Magistrate against the appellant under Section 494 I.P.C. for offence of bigamy, and against four others including her sister under Section 109 I.P.C. for offence of abetment. The Magistrate dismissed the complaint for default as the respondent was not present in the Court when the case was called up for hearing. Immediately, the respondent filed another complaint before the same Magistrate. The Magistrate took cognisance of the offence and issued summons to the appellant and others mentioned in the complaint. The appellant objected to the complaint before the Magistrate contending that the earlier complaint filed by the respondent with the same allegations was dismissed. The Magistrate overruled the objections of the appellant. The appellant filed a revision petition before Sessions Judge, which was allowed. The respondent challenged the order of the Sessions Judge by a filing a revision petition before High Court. The High Court set aside the order of the Sessions Judge and revived the order of Magistrate.

In appeal to this Court, the appellant contended that the dismissal of first complaint, whether for default or on merits, has the same effect of

A exonerating the appellant of the allegations; that the second complaint is not maintainable as the respondent suppressed the fact of first complaint.

Dismissing the appeal, the Court

HELD : 1.1. There is no provision in Cr. P.C. or in any other statute B which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 Cr.P.C., which debars a second trial has taken care to explain that "the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of this Section." However, when a magistrate conducts an inquiry under Section 202 Cr.P.C. and dismisses the C complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance. If the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant D moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 Cr.P.C. was on merits the position could be different. [710-F-G; 711-E]

1.2. There is no force in the contention of the appellant that complainant lacked *bona fides* since she suppressed the fact of dismissal of the first E complaint. The second complaint was filed before the same Magistrate who dismissed the first complaint and within a short interval. Even otherwise, nothing would turn out from the mere fact that the complaint did not contain an averment that the first complaint was dismissed for default. [712-C-D]

F *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar,* AIR [1962] SC 876, relied on.

Chandra Deo Singh v. *Prokash Chandra Bose,* AIR (1963) SC 1430, referred to.

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 121 of 2001.

From the Judgment and Order dated 19.7.99 of the Punjab and Haryana High Court in Crl. R. No.1141 of 1999.

H Ashok Saini, Rajesh K. Sharma, and Goodwill Indeevar for the Appellants.

K.G. Bhagat and R.K. Agnihotri for the Respondent. A

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

The sole question is whether a complaint, once dismissed by a magistrate for default, can be refiled? Appellant, who is alleged to have married twice, and that too with the sibling of the first spouse, is now aggrieved as the High Court held that there is nothing illegal in filing a second complaint on the fact situation. B

Ranjit Kaur, the undeterred complainant, felt beguiled by the appellant, whom she described as her lawful husband, and her younger sister Rajwant Kaur connived with him for performing a marriage between them clandestinely during the time when Ranjit Kaur was enceinte. After the child was born to her she filed the first complaint against Jatinder Singh - the appellant. In the complaint she arrayed the appellant as the first accused indicting him of the offence of bigamy (Section 494 IPC) and four others including her sister Rajwant Kaur were arraigned for abetting the said offence (Section 109 IPC). C D

The magistrate before whom she filed a complaint kept on waiting for holding an inquiry under Section 202 of the Code of Criminal Procedure (for short 'the Code'). It is a pity that a complaint filed by the respondent Ranjit Kaur before the Judicial Magistrate of First Class, Batala (Punjab) remained in the incubation stage for nearly one year during which she had to appear in the court on many occasions without the accused being called to appear. Her statement was recorded on 12.3.1992 and the statements of two of her witnesses were recorded many months thereafter. But on 15.12.1993, the magistrate dismissed the complaint merely because she was not present inside the court when the case was called. Instead of taking up the matter to higher courts Ranjit Kaur has chosen to file another complaint dated 15.2.1993 before the same magistrate containing the same allegations as stated in the first complaint. However, the magistrate this time took cognisance of the offence and issued process to the accused persons mentioned in the complaint. E F G

The appellant first filed a revision petition before the Sessions Court after getting summons from the magistrate, but when he felt its maintainability doubtful he withdrew the revision petition and moved the magistrate for dismissal of the complaint on the sole ground that another complaint, containing the same allegations, was dismissed earlier. The magistrate overruled H

A his objections and proposed to proceed with the case, but the appellant succeeded in stalling the proceedings as the Sessions Judge entertained a revision petition once again filed by the appellant.

That revision was allowed by the Sessions Judge and there was a temporary reprieve for the appellant from court proceedings. But the B complainant, with alacrity, moved the High Court by a revision petition in challenge of the order passed by the Sessions Judge. A learned Single Judge of the High Court of Punjab and Haryana, by a very short order, revived the magistrate's order and upset the order passed by the Sessions Judge. It is the said brief order passed by the Single Judge which the appellant has C assailed now by special leave.

This is what the High Court has stated in the impugned order:

> "The earlier complaint was dismissed on 2.12.1992 but not on merits. It was dismissed in default. In those circumstances, the second D complaint was maintainable and rightly held by the Magistrate that special reasons have been advanced in the second complaint."

Learned counsel for the appellants raised two contentions before us. The first is, dismissal of the first complaint, whether for default or on merits, has the same effect of exonerating the accused of the allegations and so long E as that order remains, a second complaint is not maintainable in law. The other contention is that the complainant in her second complaint suppressed the fact that her first complaint was dismissed and hence the second complaint should have been dismissed for want of *bona fides*.

There is no provision in the Code or in any other statute which debars F a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a second trial, has taken care to explain that "the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of this Section." However, when a magistrate conducts G an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance.

H Under Section 202 of the Code a magistrate is conducting an inquiry

before issuing the process to the accused, for the purpose of determining whether "there is sufficient ground for proceeding". Section 203 of the Code empowers him to dismiss a complaint after holding such inquiry if he is of opinion that "there is no sufficient ground for proceeding". In that event he has to record the reasons as to why he held that there is no sufficient ground for proceeding, though he need not write an elaborate order. Section 203 of the Code reads thus:

> "203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

A four Judge Bench of this Court said in *Chandra Deo Singh* v. *Prokash Chandra Bose,* AIR (1963) SC 1430, as to the effect of not recording reasons while dismissing a complaint under Section 203 of the Code. This is what the learned Judges said on that score: "The complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional court. Being kept in ignorance of the reasons clearly prejudices his right to move the revisional court and where he takes a matter to the revisional court renders his task before that court difficult".

If the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different. There appeared a difference of opinion earlier as to whether a second complaint could have been filed when the dismissal was under Section 203. The controversy was settled by this Court in *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar,* AIR (1962) SC 876. A majority of Judges of the three Judge Bench held thus:

> "An order of dismissal under S.203, Criminal Procedure Code, 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

A 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."

B S.K. Das, J. (as he then was) while dissenting from the said majority view had taken the stand that right of a complainant to file a second complaint would not be inhibited even by such considerations. But at any rate the majority view is that the second complaint would be maintainable if the dismissal of the first complaint was not on merits.

C We do not find much force in the next contention that the complainant lacked *bona fides* as he suppressed the fact of dismissal of the first complaint. We cannot overlook the fact that the second complaint was filed before the same magistrate who dismissed the first complaint, and that too was done within a short interval. Even otherwise, nothing would turn out from the mere D fact that the complaint did not contain an averment that the first complaint was dismissed for default.

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 complainant presenting herself when E 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 this appeal.

B.S. Appeal dismissed.