

RANVIR SINGH

v.

STATE OF HARYANA & ANR.
(SLP (Criminal) Nos. 670-671 of 2008)

SEPTEMBER 1, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 – s.203 – Complaint under provisions of Prevention of Corruption Act – Dismissal of, for failure on the part of the complainant to put in process for effecting service – Second complaint – Maintainability of – Held: Cr.P.C. does not bar filing of second complaint, if the first complaint did not result in conviction, acquittal or discharge of the accused – Second complaint would be maintainable if first one was dismissed on account of default on the part of complainant.

The question for consideration, in the present case was whether second complaint on the same issue between same parties would be maintainable when the earlier one had not been dismissed on merits, but for the failure of the complainant to put in process fees for effecting service.

Dismissing the Special Leave Petitions, the Court

HELD: 1.1. Even if a complaint was dismissed u/s. 203 Cr.P.C., a second complaint would still lie under exceptional circumstances. The question of making a prayer for recalling the order of dismissal would not be maintainable before the Magistrate in view of s. 362 Cr.P.C.. But in the instant case, neither have the complaints being dismissed on merit nor have they been dismissed at the stage of s. 203 Cr.P.C. On the other hand, only on being satisfied of a prima facie case, the

A Magistrate had issued process on the complaint. [Para 14] [1070-H; 1071-A-B]

B 1.2. In the absence of any provision in Cr.P.C. barring a second complaint being filed on the same allegation, there would be no bar to a second complaint being filed on the same facts if the first complaint did not result in the conviction or acquittal or even discharge of the accused, and if the dismissal was not on merit but on account of a default on the part of the complainant. [Para 14] [1071-C-E]

C *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* AIR 1962 SC 876; *Jatinder Singh v. Ranjit Kaur* 2001 (2) SCC 570, relied on.

D *Poonam Chand Jain v. Fazru* 2005 SCC (Cri) 190; *Dilawar Singh v. Parvinder Singh* 2005 (12) SCC 709, referred to.

Case Law Reference:

E	2005 SCC (Cri) 190	Referred to.	Para 6
	2005 (12) SCC 709	Referred to.	Para 7
	AIR 1962 SC 876	Relied on.	Para 14
F	2001 (2) SCC 570	Relied on.	Para 14

CIVIL APPELLATE JURISDICTION : SLP (Criminal) 670-671 of 2008.

G From the Judgment & Order dated 31.5.2007. of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. 6703-M of 2000 and 598-M of 2005.

Ranvir Singh (Petitioner-in-person.)

M.A. Chinnasamy, T.V. George, Gautam Awasthi,

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Prashant Kr. Sharma and S.S. Sangwan for the Respondent. A

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. These Special Leave Petitions arise out of the judgment and order passed by the Punjab & Haryana High Court on 31st May, 2007, dismissing two criminal revision cases, viz., CrI. Misc. No.6703-M of 2000 and CrI. Misc. No.598-M of 2005 filed by the petitioner herein, who is appearing in-person. CrI. Misc. No.6703-M of 2000 was filed by the petitioner herein to quash a complaint filed by Smt. Ved Wati, Respondent No.2 herein, on 1st July, 1999, under Section 420/34 I.P.C. on allegations of payment having been received by the petitioner to perform certain favours for the complainant's son-in-law by making use of his official position. Process was issued by the Chief Judicial Magistrate, Rohtak, Haryana, on the said complaint on 19th August, 1999. The said matter is still pending before the learned Magistrate. B C D

2. The CrI. Misc. No.598-M of 2005 was filed by the petitioner for quashing another complaint filed by the said Smt. Ved Wati on 29th September, 2003, under Sections 7, 8, 9, 11 and 13 of the Prevention of Corruption Act, 1988, wherein the learned Additional Sessions Judge, Rohtak, issued process on 8th January, 2004. Both the Criminal Revision Petitions were taken up for hearing and disposal together by the High Court on 31st May, 2007, and were dismissed by a common judgment and order, which has been assailed in these Special Leave Petitions. E F

3. The petitioner, who appeared in-person, submitted that the High Court had erred in rejecting the revisional applications filed by him since in the first complaint filed on 1st July, 1999, the complainant had stated that sanction was being sought for prosecuting the petitioner, but such sanction had never been obtained. G

4. The petitioner also submitted that thereafter the H

A complainant applied for sanction to prosecute the petitioner under the provisions of the Prevention of Corruption Act, 1988, on four different occasions, but such sanction was not granted while the petitioner remained in service. The petitioner ultimately retired from service on 31st January, 2002.

B Immediately thereafter, on 8th April, 2002, the complainant filed the complaint mentioned hereinabove under the provisions of the Prevention of Corruption Act, 1988, on 8th April, 2002, which was entertained by the learned Additional Sessions Judge, Rohtak, and process was issued on 16th April, 2003.

C The petitioner further submitted that the complaint filed on 8th April, 2002, on which process had been issued on 16th April, 2003, came to be dismissed on 24th July, 2003, for non-filing of process fee. The petitioner submitted that an application filed by the complainant on 18th September, 2003, for recall of the order dated 24th July, 2003, was dismissed by the learned Additional Sessions Judge, Rohtak. Thereafter, yet another complaint was filed by Smt. Ved Wati on 29th September, 2003, on the same grounds under the provisions of the Prevention of Corruption Act, 1988, on which process was issued on 8th January, 2004.

E The petitioner submitted that having taken cognizance on the complaint filed by Smt. Ved Wati and the same having been dismissed for non-filing of process fee, the learned Additional Sessions Judge, Rohtak, was no longer competent to take cognizance and issue process on a separate complaint on the same cause of action.

F According to the petitioner, the complaint filed on 29th September, 2003, was nothing but an abuse of the process of the Court having regard to the fact that the earlier complaint on which cognizance had been taken was dismissed on account of non-filing of process fee.

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5. In support of his aforesaid submission, the petitioner firstly referred to the decision of this Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* [AIR 1962 SC 876], wherein the majority view of the Three-Judge Bench was that an order

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of dismissal on a complaint under Section 203 Cr.P.C. does not constitute bar to the entertainment of a second complaint on the same facts, but it would be entertained only in exceptional circumstances such as (i) where the previous order was passed on an incomplete record; or (ii) on a misunderstanding of the nature of the complaint; or (iii) it was manifestly absurd, unjust or fallacious or false where new facts which could not with a reasonable diligence have been brought on record in a previous proceeding, have been adduced. It was observed further that it could not be said in the interest of justice that after a decision had 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 inquired into.

6. The petitioner also referred to the decision of this Court in *Poonam Chand Jain v. Fazru* [2005 SCC (Cri) 190], wherein a similar view was expressed relying on, among other cases, the decision in *Pramatha Nath Talukdar's case* (supra).

7. The petitioner then contended that the complaint under the provisions of the Prevention of Corruption Act, 1988, is a special Statute and would have an overriding effect over the general provisions contained in the Code of Criminal Procedure. According to the petitioner, the maxim *generalia specialibus non derogent* would have application and that since a special provision had been made with regard to matters relating to prevention of corruption and for other matters connected therewith, the same would stand excluded from the general provisions and accordingly the provisions of Section 19 of the Act would have an overriding effect over the general provisions contained in Section 190 or 319 Cr.P.C. In support of his said submission, the petitioner relied on the decision of this Court in *Dilawar Singh v. Parvinder Singh* [2005 (12) SCC 709].

8. The petitioner lastly submitted that in any event, the

A complainant after serving notice under Section 80 of the Civil
B Procedure Code had issued a notice on 12th June, 1999,
indicating that if sanction was not given, the complainant would
be compelled to file a suit for damages against the
C Government. The petitioner submitted that it was obviously an
attempt to pressurize the Government into granting sanction for
prosecution of the petitioner under the provisions of the
Prevention of Corruption Act, 1988. The petitioner submitted
that both the complaints filed on 1st July, 1999 and 29th
September, 2003, without the sanction under Section 19 of the
Prevention of Corruption Act, 1988, were not maintainable,
particularly when the earlier complaint on the same cause of
action had been dismissed.

9. The petitioner also urged that since under Section 362
of the Code of Criminal Procedure the learned Additional
D Sessions Judge was not competent to recall and/or review his
earlier order, he was not competent to entertain the second
complaint on the same set of facts and between the same
parties. In support of his submissions, the petitioner relied on
the decision of this Court in *Sankatha Singh v. State of U.P.*
E [1962 Supp. (2) SCR 817], which dealt with the provisions of
Sections 369 and 424 of the 1898 Code which is *pari materia*
with the provisions of Section 362 of the present Code. The
petitioner submitted that this Court had specifically observed
that inherent powers of the Court could not be exercised to do
F something which the Code specifically prohibited the Court from
doing.

10. Appearing for the complainant, Smt. Ved Wati, Mr. S.S.
Sangwan, learned Advocate, submitted that while a Magistrate
could not exercise any inherent jurisdiction to restore a case
G after the discharge or acquittal of an accused, a second
complaint could be entertained if the same could be tried within
the limitations imposed by this Court in *Pramatha Nath*
Talukdar's case (supra). Relying on the decision of this Court
in *Maj. Gen. A.S. Gauraya & Anr. v. S.N. Thakur & Anr.* [AIR
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1986 SC 1440], Mr. Sangwan submitted that it had been held in the said decision that filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. Mr. Sangwan, therefore, urged that there was no legal bar to a second complaint being entertained by the Magistrate if it could be brought within the parameters of the exceptions culled out in *Pramatha Nath Talukdar's* case (supra).

11. On behalf of the State, it was submitted by Mr. Gautam Awasthi, learned Advocate, that apart from the various decisions mentioned hereinabove regarding the competence of the learned Magistrate to entertain the second complaint, right from the decision in *Pramatha Nath Talukdar's* case (supra), any doubt as to whether a second complaint could be entertained by the Magistrate if an earlier complaint was dismissed not on merits but on account of default on the part of the complainant, had been dispelled by the decision of this Court in *Jatinder Singh v. Ranjit Kaur* [2001 (2) SCC 570], wherein while considering the earlier decisions, including the decision in *Pramatha Nath Talukdar's* case (supra), this Court spelt out the distinction between Sections 202 and 203 Cr.P.C. in arriving at a finding that dismissal of a complaint on grounds of default was no bar for a fresh complaint being filed on the same set of facts. This Court held that under Section 202 of the Code a Magistrate conducts an inquiry before issuing process, for the purposes of determining whether there was sufficient ground for proceeding, whereas Section 203 of the Code empowered him to dismiss a complaint after holding such inquiry, if he was of the view that there was no sufficient ground of proceeding. In such an event, the Magistrate was required to record reasons as to why there was no sufficient ground for proceeding though an elaborate order was not required to be given. But, there is no provision in the Code which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not

A result in the conviction or acquittal or even discharge. This Court observed further that if the dismissal of the complaint was not on merit but on default of the complainant to be present, there could be no bar in the complainant moving the Magistrate again with the second complaint on the same facts. However, this
B Court made a distinction in respect of a dismissal under Section 203 of the Code on merits on the basis of an inquiry conducted under Section 202 thereof. Relying on the observations made in *Pramatha Nath Talukdar's* case (supra), it was held that in such a case the second complaint on the
C same facts cannot be made unless very exceptional circumstances existed.

12. Mr. Awasthi submitted that since a prima facie case had been made out for issuance of process in the first complaint in which process was issued on 19th August, 1999, the High
D Court had rightly rejected the petitioner's prayer for quashing the same. Even with regard to the subsequent complaint in which process was issued by the learned Additional Sessions Judge, Rohtak, on 8th January, 2004, there was no bar to the filing of a second complaint when the earlier complaint had not
E resulted in either conviction, acquittal or discharge.

13. The main question which emerges for decision in these special leave petitions is whether a second complaint on the same cause of action and between the same parties would
F lie, when an earlier application had been dismissed. In the instant case, the question is narrowed down further as to whether such a second complaint would be maintainable when the earlier one had not been dismissed on merits, but for the failure of the complainant to put in process fees for effecting
G service.

14. The answer has been provided firstly in *Pramatha Nath Talukdar's* case (supra), wherein this Court had held that even if a complaint was dismissed under Section 203 Cr.P.C., a second complaint would still lie under exceptional
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circumstances, indicated herein-before. The said view has been consistently upheld in subsequent decisions of this Court. Of course, the question of making a prayer for recalling the order of dismissal would not be maintainable before the learned Magistrate in view of Section 362 Cr.P.C., but such is not the case in these special leave petitions. In these cases, neither have the complaints been dismissed on merit nor have they been dismissed at the stage of Section 203 Cr.P.C. On the other hand, only on being satisfied of a *prima facie* case, the learned Magistrate had issued process on the complaint. The said situation is mainly covered by the decision of this Court in *Jatinder Singh's* case (*supra*), wherein the decision in *Pramatha Nath Talukdar's* case (*supra*) was also taken into consideration and it was categorically observed that in the absence of any provision in the Code barring a second complaint being filed on the same allegation, there would be no bar to a second complaint being filed on the same facts if the first complaint did not result in the conviction or acquittal or even discharge of the accused, and if the dismissal was not on merit but on account of a default on the part of the complainant.

15. As far as the first complaint under Section 420/34 I.P.C. is concerned, the petitioner has not seriously questioned the order of the High Court rejecting the petitioner's prayer for quashing the same. The petitioner confined his case mainly to the complaint wherein the learned Sessions Judge took cognizance and issued process under the provisions of the Prevention of Corruption Act, 1988, despite an earlier complaint on the same ground and on the same set of facts having been dismissed earlier for non-filing of process fees.

16. We are unable to appreciate the submissions made on behalf of the petitioner, since the law with regard to the filing of a second complaint is now crystalised. It is well-settled that such a complaint is maintainable in different circumstances as enumerated in *Pramatha Nath Talukdar's* case and *Jatinder*

A *Singh's* case (supra). We, therefore, have no hesitation in dismissing both the Special Leave Petitions, since we are of the view that both the complaints are maintainable and the impugned judgment of the High Court does not warrant any interference.

B 17. The Special Leave Petitions are, accordingly, dismissed.

K.K.T.

Special Leave Petitions dismissed.