

Om Prakash Singh vs The State Of Bihar on 11 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3242, AIR 2018 SC(CRI) 944, (2019) 1 MADLW(CRI) 1, (2019) 2 MH LJ (CRI) 776, (2018) 4 CRILR(RAJ) 1040, (2018) 72 OCR 261, (2018) 3 PAT LJR 346, (2018) 8 SCALE 720, (2018) 3 JLJR 311, (2018) 3 CURCRIR 156, (2018) 3 CRIMES 214, (2019) 106 ALLCRIC 690, (2018) 4 ALLCRILR 150, 2018 CRILR(SC MAH GUJ) 1040, 2018 CRILR(SC&MP) 1040, (2018) 190 ALLINDCAS 165 (SC), (2018) 3 ALLCRIR 2210, 2018 (9) SCC 440, 2018 (4) KCCR SN 451 (SC)

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Bench: Mohan M. Shantanagoudar, N.V. Ramana

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Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.857 OF 2018
(Arising from SLP(Crl.) No.387/2018)

OM PRAKASH SINGH

...APPELLANT

VERSUS

THE STATE OF BIHAR & ORS.

..RESPONDENTS

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. Leave granted.

2. passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 52088 / 2013 allowing the petition filed by respondent nos. 2 and 3 herein under Section 482 of the Code of Criminal Procedure. By the impugned judgment, the High Court has set aside the order dated 10.09.2013 passed by the Chief Judicial Magistrate, Siwan, Bihar in Siwan (M) P.S. Case No.288/2012, taking cognizance of the offence under Section 420/406/379/448/307/427 and 506 read with Section 34 of the Indian Penal Code against the accused respondent nos. 2 and 3 herein.

3. Brief facts leading to this appeal are that on 30.05.2006, Dr. Ira Sinha purchased fully automatic Biochemistry Analyser model “Echo Plus” along with standard accessories from M/s Logotech (India) Private Limited (hereinafter called ‘the Logotech’), of which respondent nos. 2 and 3 are Director and Technical Director respectively. The sale consideration of the said machine was Rs.7 lakhs. The machine was supposed to be fully automatic Biochemistry Analyser with free warranty maintenance for a period of three years. However, a maintenance of Rs.20,000/□ per annum was to be paid by the purchaser after expiry of three years. The appellant is the husband of Dr. Ira Sinha. It was found out by the appellant and his wife that the Biochemistry Analyser purchased by them was not functioning properly and was showing inaccurate results due to manufacturing defect. Though, several visits were made by the maintenance agents of the Logotech for repairing the machine, the same was not successful. Thereafter, as suggested by the officials of the Logotech, Dr. Ira Sinha relying upon the assurance and recommendation of the officials of the Logotech, purchased a random access fully automatic analyser model “Miura□200” along with standard accessories from the Logotech in exchange of the earlier model “Echo Plus” on 25.07.2007. The sale price of “Miura□200” was Rs.11 lakhs. Thus, Dr. Ira Sinha had to pay balance amount of Rs.4 lakhs extra (i.e. over and above Rs. Seven lakhs). On payment, as mentioned supra, “Miura□200” model was installed in Prachi Pathological Clinic of Dr. Ira Sinha. However, annual maintenance costs of Rs.40,000/□ was to be paid by the purchaser after expiry of free warranty period.

4. Unfortunately, “Miura□200” model was also not functioning properly and regular problems were being faced in the use of the said machine at the pathological clinic of Dr. Ira Sinha. The officials of the Logotech were not paying proper attention and care, though several repeated complaints were made by the purchaser. Being aggrieved, Dr. Ira Sinha lodged an FIR in Siwan Police Station on 24.03.2008, which came to be registered as case no.61/2008 under Sections 420/406/384/386 read with Section 34 of the Indian Penal Code, at Police Station, Siwan. The charge sheet was submitted by the said police station before the Magistrate, who took

cognizance of the offences. However, the High Court of Judicature at Patna in Criminal Miscellaneous No. 36923/2008 quashed the cognizance order passed by the Chief Judicial Magistrate, Siwan.

5. Despite receipt of annual comprehensive maintenance cost of Rs.40,000/- the officials of the Logotech were not resolving the issues faced in the functioning of “Miura 200” model. Therefore, Dr. Ira Sinha contacted the manufacturer of “Miura 200” model, Logotech, Rome, Italy with her grievances. The manufacturer directed the third party service provider, i.e., “Key Pharma Limited, Delhi”, to look after and solve the problems of “Miura 200” machine purchased by Dr. Ira Sinha. Service engineer / technical representative of Key Pharma Limited visited the pathological clinic of Dr. Ira Sinha to check the machine in question. After an in depth verification of the machine, it was found that the original parts of the machine have been replaced by duplicate parts, causing inaccurate results. Hence, the technical expert changed some of the duplicate parts with original parts as they were readily available with him at that time.

He promised that he would inform the top officials of the manufacturer about the fiddle play of the Logotech. The said engineer/ technical service expert, issued a report (i.e. Service Report) dated 17.04.2012 under his signature evidencing fitting of duplicate parts of the machine in place of the original ones. The copy of the report is also furnished along with the appeal. Having come to know about such service report against respondent nos. 2 and 3, they started threatening the purchaser to return back the copy of the service report to them, for which the appellant and his wife refused.

They even threatened with dire consequences of taking away their life. According to the appellant, respondent nos. 2 and 3 even tried to shoot them and allegedly tried to take back the service report dated 17.04.2012 from their possession. Having no other go, the appellant lodged an FIR before Siwan Police Station, which came to be registered as Siwan (M) P.S. Case No. 288/2012 for the offences under Sections 420/406/374/448/307/ 427 and 506 read with 34 of the Indian Penal Code. In the said matter, the charge sheet came to be filed by the police station after due investigation before the Chief Judicial Magistrate, Siwan, Bihar. The

Chief Judicial Magistrate, Siwan, took cognizance of the offences. The said order of cognizance was questioned by respondent nos. 2 and 3 before the High Court of Judicature at Patna by filing petition under Section 482 of the Code of Criminal Procedure. The said petition was allowed by the impugned judgment. Hence, this appeal.

6. Having heard the learned Advocates from both the sides, we find that the High Court is at fault in allowing the petition filed under Section 482 of the Code of Criminal Procedure without duly appreciating the facts and circumstances of the case and without effectively considering the allegations made in the complaint and materials found in the charge sheet. The High Court is mainly influenced by the factum that the earlier order of taking cognizance

was quashed while deciding the present matter. In our considered opinion, it is an error to conceive that the present proceedings based on the subsequent complaint are liable to be quashed merely because the earlier criminal proceedings were quashed. The High Court rather advanced erroneously on the basis of presumptions and conjectures, without considering the merits of the matter.

7. It is pertinent to note that the subsequent FIR dated 05.08.2012 from which the present proceedings emerge is thrust upon discovery of a new fact of replacing the original parts with the duplicate ones. The subject matter of the complaint is in relation to the superior model "Miura 200", upgraded on the advice of the respondent company. Though, the appellant and his wife agreed and got their machine upgraded to "Miura 200" by paying Rs.4 lakhs extra, it is found by the technical expert appointed by the manufacturer that the "Miura 200" supplied by respondent nos. 2 and 3 was containing duplicate parts. In other words, the original parts were replaced by the duplicate parts at the time of supply of machine to the appellant, and subsequently the machine was not working properly resulting in inaccurate results. Thus, it is clear that the subsequent complaint dated 05.08.2012 is based on new set of facts and new set of allegations and not based on old set of allegations as have been made in the FIR dated 24.03.2008. It is needless to repeat that the FIR dated 24.03.2008 was based on the allegations of non functioning of the machine in addition to delay and carelessness of respondent nos. 2 and 3 in getting the machine repaired. At that time, the appellant and his wife were not aware about replacement of the original parts with the duplicate ones. The Service report of "Key Pharma Limited" was not in existence at that time. Therefore, the Chief Judicial Magistrate, Siwan was justified in taking the cognizance, since prima facie case is found against respondent nos. 2 and 3.

8. This Court in the case of *Udai Shankar Awasthy v. the State of U.P.* [(2013) 2 SCC 435, para 30] has observed 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, the second complaint would not be maintainable wherein the earlier complaint has been disposed on full consideration of the case of the complainant on merit". In the matter on hand, the complainant/appellant came to know certain facts relating to the replacement of parts of the machine after the disposal of the first

complaint, that too after getting a service report from “Key Pharma Limited, Delhi”, and, therefore, there is no bar for the appellant to lodge second complaint.

9. Looking to the complaint and the charge sheet, it is clear that the complainant has made host of allegations. The police after due investigation filed the charge sheet. On going through the available material, we find a prima facie case against respondent nos. 2 and

3. Since the case has to be tried, we desist ourselves to comment any further on the merits of the matter. We make it clear that the observations made by us are only for disposal of this appeal. That these observations of ours will not influence the trial court while deciding the case. Since, we find prima facie material against respondent nos. 2 and 3, the High Court is not justified in quashing the proceedings. Accordingly, the impugned judgment of the High Court is set aside. The order of taking cognizance passed by the Chief Judicial Magistrate, Siwan, in Siwan (M) P.S. Case No. 288/2012 stands restored.

.....J. [N.V. RAMANA]J.
[MOHAN M. SHANTANAGOUDAR] NEW DELHI;

JULY 11, 2018.