

B.R.K. AATHITHAN

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v.

SUN GROUP & ANR.

(Criminal Appeal Nos. 2080-2083/2022)

NOVEMBER 29, 2022

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[SURYA KANT AND J. K. MAHESHWARI, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Quashing of criminal proceedings – Second complaint on identical set of facts – Factum of FIR against appellant and his arrest was telecasted and publicised by the respondents – Complaint u/ss.499 and 500, IPC filed by appellant against respondents, dismissed by Judicial Magistrate – Revision petition filed by the appellant before High Court was dismissed as withdrawn – Appellant filed second complaint under the same provisions on same facts only adding the factum of Revision Petition and claiming that the second complaint is being filed as per the order of the High Court – Magistrate summoned the respondents, they filed petition u/s.482, Cr.PC which was allowed – On appeal, held: Second complaint can be maintainable in exceptional circumstances, depending upon the manner in which the first complaint came to be dismissed – In the present case, when the first complaint was filed u/ss.499, 500, IPC, the Judicial Magistrate was well within his jurisdictional competence to find out whether a prima facie case for summoning the accused was made out or not, however, on having found that the allegations made by appellant were in the teeth of fourth exception to s.499, IPC, he declined to issue process to the respondents – Such dismissal cannot be said to be without application of judicial mind, even if erroneous in law – Appellant took a chance and challenged the said order of dismissal before High Court in Revision – No sooner the High Court expressed reluctance to entertain the Revision Petition on merits, the appellant withdrew the same to work out his remedy as available in law – Such order cannot be construed to have permitted the appellant to file a second complaint on identical set of facts – No error in the impugned judgment – Penal Code, 1860 – ss.499, 500.

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A **Dismissing the appeals, the Court**

- HELD:** There can be no quarrel that in view of the decisions of this Court in “Pramantha Nath Talukdar v. Saroj Ranjan Sarkar” AIR 1962 SC 876 and “Shivshankar Singh Vs. State of Bihar and Another” (2012) 1 SCC 130, the second complaint can be maintainable in exceptional circumstances, depending upon the manner in which the first complaint came to be dismissed. To say it differently, if the first complaint was dismissed without venturing into the merits of the case or on a technical ground and/or by returning a reasoning which can be termed as perverse or absurd in law, and/or when the essential foundation of second complaint is based upon such set of facts which were either not in existence at the time when the first complaint was filed or the complainant could not have possibly lay his hands to such facts at that time, an exception can be made to entertain the second complaint. These principles, however, are not attracted to the facts circumstances of the case in hand. When the first complaint was filed primarily under Sections 499 and 500 IPC, the Judicial Magistrate was well within his jurisdictional competence to find out whether a *prima facie* case for summoning the accused was made out or not. This essentially involved application of judicial mind to reach a definite conclusion as to whether or not the accused be summoned. In the instant case, the Judicial Magistrate having found that the allegations made by the appellant were in the teeth of fourth exception to Section 499 IPC, he declined to issue process to the respondents. Such dismissal cannot be said to be without application of judicial mind. The application of judicial mind and arriving at an erroneous conclusion are two distinct things. The Court even after due application of mind may reach to an erroneous conclusion and such an order is always justiciable before a superior Court. Even if the said Order is set aside, it does not mean that the trial court did not apply its mind. The appellant took a chance and challenged the order of dismissal of his 1st complaint before the High Court in a Criminal Revision Petition. It is apparent from the contents of the Order that no sooner the High Court expressed its reluctance to entertain the Revision Petition on merits, the appellant withdrew the same to work out his remedy as may be available in law. This
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Order cannot be construed to have permitted the appellant to file a second complaint on identical set of facts. The view taken by the High Court in Para No. 19 and Para No. 22 of its impugned Order, thus, appears to be the correct statement of law. Even if the order of Judicial Magistrate while dismissing the first complaint was erroneous in law, it does not amount to non-application of mind by the trial court. No error found in the impugned Judgment passed by the High Court. [Paras 14-17, 19 and 20][92-G-H; 93-A-G; 94-C-D]

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Pramantha Nath Talukdar v. Saroj Ranjan Sarkar AIR 1962 SC 876 : [1962] Suppl. SCR 297; Shivshankar Singh v. State of Bihar and Another (2012) 1 SCC 130 : [2011] 13 SCR 247 – relied on.

Subramanian Swamy v. Union of India (2016) 7 SCC 221 : [2016] 3 SCR 865 – referred to.

Case Law Reference

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[1962] Suppl. SCR 297	relied on	Para 14
[2011] 13 SCR 247	relied on	Para 14
[2016] 3 SCR 865	referred to	Para 17

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2080-2083 of 2022.

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From the Judgment and Order dated 30.08.2019 of the High Court of Madras at Madurai Bench in Criminal Original Petition (MD) Nos. 1246 and 1298-1300 of 2017.

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P. V. Yogeswaran, Ashish Kumar Upadhyay, Y. Lokesh, V. Sibi Kargil, V. Kandha Prabhu, L. R. Venkatesan, Ms. Maitri Goal, Ms. Priyanka Chowdhary, Hemant Kumar Niranjan, K. K. Chauhan, Advs. for the Appellant.

Satyanarayan, Sr. Adv., Abhishek Malhotra, Ms. Liz Mathew, Harsh Buch, Ms. Vasudha Jain, K. V. Jagdishwaran, Ms. G. Indira, Harnaman Singh, P. Gandeepan, Mrs. Koj Yaayung, Kashyap, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
SURYA KANT, J.
Delay condoned.
2. Leave granted.
- B 3. The appellant assails the Judgment and Order dated 30-08-2019 passed by the High Court of Judicature at Madras, Madurai Bench, whereby the High Court allowed the petition under Section 482 of the Code of Criminal Procedure, 1973 (in short, ‘the Cr.P.C.’) filed by the respondents and quashed the Criminal Complaint viz. STC No.45 of C 2017, filed under Sections 499 and 500 of the Indian Penal Code, which the appellant had filed against the respondents.
4. Briefly stated, the facts are that First Information Report No.345 of 2013 was registered against the appellant under Section 468 IPC before Tirucher Taluk Police, Tutukodi District at the instant of an D Advocate who alleged that the appellant had taken huge amounts of money by assuring admission to candidates in various law colleges.
5. The factum of registration of the FIR and arrest of the appellant in that case was tele-casted and published in the TV and print media by the respondents.
- E 6. The appellant having felt that the action of the respondents amounted to criminal defamation, filed a Criminal Complaint under Sections 499 and 500 IPC etc. which was, however, dismissed by the learned Judicial Magistrate on 28-04-2015 by passing the following Order:-
- F “Heard perused, it is alleged by the Petitioner that the Respondents broad-casted and published defamation against the Petitioner. On perusal of the available material which is revealed that the content of the Petitioner falls in the Fourth exception of U/s 499 of IPC. Hence, there is no *prima facie* case made out against the Respondents for the alleged offences. Hence, this Petition stands G is dismissed.
7. The aggrieved appellant filed a Criminal Revision before the High Court but the same was withdrawn on 10-06-2015 in the following terms:-
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“As per the endorsement made by the learned counsel appearing for the revision petitioner, this revision petition is dismissed as withdrawn with liberty to the petitioner to work out his remedy in the manner known to law.”

8. Thereafter, the appellant filed second Criminal complaint, i.e, STC 45/2017 in the Court of Judicial Magistrate at Tiruchendur which too was under the same provisions as was his first complaint.

9. It is hardly in dispute that the second complaint was replica of the first complaint with each and every averments being identical except that in the second complaint, the appellant added one more paragraph No.11, incorporating the factum of filing Criminal Revision before the High Court; rejection thereof and further claiming that he had filed a second complaint “as per the order of the Hon’ble Madurai Bench of the Madras High Court”.

10. In the second complaint, learned Judicial Magistrate summoned the respondents which prompted them to file a Petition under Section 482 of the Cr.P.C. before the High Court, seeking quashing of the said complaint primarily on the ground that the second complaint on the same set of facts and circumstances was not maintainable. Vide impugned Judgment and Order dated 30-08-2019, the High Court allowed the petition filed by the respondents and consequently, the second complaint filed by the appellant has been quashed.

11. The High Court while reaching the said conclusion has held as follows:-

“Keeping the above principles in mind, let me now consider the issue. The averments made in the first complaint filed by the respondent, coupled with the sworn in statements of the witnesses were fully considered by the learned Magistrate. On considering the entire materials, the learned Magistrate has come to a conclusion that, the complaint squarely fall under fourth exception to Section 499 of IPC, he declined to issue the process to respondents and there was no prima facie case made out against the accused therein and dismissed the same. On a perusal of the earlier order, it could be seen that the learned Magistrate had duly applied his mind and on being satisfied that no prima facia case was made out against the accused, as the allegations made in the complaint would only fall under Section 499 of IPC, and dismissed the complaint, and

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- A the order has been passed upon full consideration of the entire materials available on record, whether the order is correct or not is totally a different issue. Once a learned Magistrate applied his mind on the materials available on record and came to a conclusion that no *prima facie* case was made out against the accused and dismissed the complaint, another Judicial Magistrate cannot hold that the earlier order passed by his predecessor is not valid, it virtually amounts to reviewing the earlier order, which is barred under Section 362 Cr.P.C. The only remedy available to the complainant is to challenge the same before the appropriate forum and get that order set aside. In the present case, the respondent/complainant has already challenged the order by way of a revision before this Court, but, subsequently, he has withdrawn the revision and the revision was also dismissed. In the above circumstances, after getting the revision dismissed, the respondent/complainant cannot maintain another complainant on the very same fact.”
- B 12. The High Court has further observed in Para 22, to the following effect:-
- “As already discussed above, the second complaint in the instant case is replica of the facts set out in the first complaint and no fresh facts have been set out in the second complaint. The core issue in both the complaints are one and the same. The second complaint also does not disclose any of the exceptional circumstances warranting the entertainment of the complaint. The earlier complaint was dismissed after full consideration of the entire materials available on record, unless the order dismissing the complaint under Section 203 of Cr.P.C. is set aside by a competent forum, a second complaint is not maintainable”.
- C 13. We have heard learned counsel appearing for the appellant as well as learned counsel appearing for the respondents and gone through the record.
- D 14. There can be no quarrel that in view of the decisions of this Court in “*Pramantha Nath Talukdar v. Saroj Ranjan Sarkar*” AIR 1962 Supreme Court 876” and “*Shivshankar Singh Vs. State of Bihar and Another*” (2012) 1 SCC 130, the second complaint can be maintainable in exceptional circumstances, depending upon the manner in which the first complaint came to be dismissed. To say it differently, if

the first complaint was dismissed without venturing into the merits of the case or on a technical ground and/or by returning a reasoning which can be termed as perverse or absurd in law, and/or when the essential foundation of second complaint is based upon such set of facts which were either not in existence at the time when the first complaint was filed or the complainant could not have possibly lay his hands to such facts at that time, an exception can be made to entertain the second complaint.

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15. These principles, however, in our considered view, are not attracted to the facts circumstances of the case in hand. When the first complaint was filed primarily under Sections 499 and 500 IPC, the Judicial Magistrate was well within his jurisdictional competence to find out whether a *prima facie* case for summoning the accused was made out or not.

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16. This essentially involved application of judicial mind to reach a definite conclusion as to whether or not the accused be summoned. In the instant case, the learned Judicial Magistrate having found that the allegations made by the appellant were in the teeth of fourth exception to Section 499 IPC, he declined to issue process to the respondents. Such dismissal cannot be said to be without application of judicial mind. The application of judicial mind and arriving at an erroneous conclusion are two distinct things. The Court even after due application of mind may reach to an erroneous conclusion and such an order is always justiciable before a superior Court. Even if the said Order is set aside, it does not mean that the trial court did not apply its mind.

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17. The appellant took a chance and challenged the order of dismissal of his 1st complaint before the High Court in a Criminal Revision Petition. It is apparent from the contents of the Order that no sooner the High Court expressed its reluctance to entertain the Revision Petition on merits, the appellant withdrew the same to work out his remedy as may be available in law. This Order cannot be construed to have permitted the appellant to file a second complaint on identical set of facts. The view taken by the High Court in Para No.19 and Para No. 22 of its impugned Order, as reproduced above, thus, appears to be the correct statement of law.

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18. Learned counsel appearing for the appellant then relies upon the Judgment of this Court in "Subramanian Swamy Vs. Union of

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- A *India*" (2016) 7 SCC 221, to urge that the onus was on the respondents to establish that the appellant's first complaint was barred by fourth exception to Section 499 of IPC.

- B 19. It appears to us that such a contention was available to the appellant before the High Court in Criminal Revision filed by him challenging the order of dismissal of his first complaint. The appellant instead of withdrawing the Criminal Revision, ought to have invited an order on merits including on the contention sought to be raised now. As stated earlier, even if the order of learned Judicial Magistrate while dismissing the first complaint was erroneous in law, it does not amount to non-application of mind by the trial court.

- C 20. For the aforesaid reasons, we do not find any error in the impugned Judgment dated 39-08-2019 passed by the High Court.

21. The appeals are, accordingly, dismissed.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeals dismissed.