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STATE OF RAJASTHAN

v.

ARUNA DEVI AND ORS.

NOVEMBER 8, 1994

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[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Criminal Procedure Code, 1973—Sections 173 (8) and 203—Dismissal of complaint u/s 203—Second complaint on same facts on basis of further investigation—Order of Cognizance—Whether legally sustainable—Held, yes.

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A complaint was filed against the respondents under various sections of the Indian Penal Code. The Magistrate, after perusal of the complaint, directed an investigation to be made u/s 156 (3) of the Code of Criminal Procedure. A report was submitted that complaint was false. The report came to be accepted by the Magistrate. Thereafter the police had independently ordered further investigation. A challan came to be filed by the police against the respondents u/ss 420 and 467 IPC. The Magistrate took cognizance. Revision filed against this order of taking cognizance was dismissed. The order of cognizance was set aside on further revision to the High Court, which held that the magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. The State had come in appeal. [under Article 136 of the Constitution].

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The appellant contended that the view taken by High Court was erroneous in law in as much as section 173 (8) of the Code permitted further investigation in respect of an offence after a report under sub section (2) had been submitted. Sub-section (8) also visualized forwarding of another report to the Magistrate. It was submitted that further investigation had thus legal sanction and if after such further investigation a report was submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

H

Allowing the appeal, this Court

HELD: 1.1 Dismissal of a complaint under section 203 of the Code of Criminal Procedure is no bar to the entertainment of a second complaint on the same facts when fresh evidence comes forward on further investigation being made which leads to the filing of further report stating that a case has been made out. (276-E-F)

Pramathanath v. Saroj Ranjan, [1962] Supp 2 SCR 297, relied on and *Bhindeshwari Prasad v. Kali Singh*, [1977] 1 SCC 57, distinguished.

1.2 In the instant case, the High Court erred in quashing the cognizance taken by the learned Magistrate. The appeal is, therefore, allowed by setting aside the impugned judgment. (277-A)

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.761 of 1994.

From the Judgment and Order dated 17.12.90 of the Rajasthan High Court in S.B.Crl.Misc. P.No. 233 of 1988.

Aruneshwar Gupta, for the Appellant.

V.J. Francis, Doongar Singh and V. Subramaniam for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. Special leave granted.

A complaint was filed in the Court of Munsif and Judicial Magistrate, First Class, Bilara, against the respondents under various sections of the Penal Code. The gravamen of the allegation was that the respondents had, in pursuance of a conspiracy, transferred some land on the strength of a special power of attorney bearing forged signature. The Magistrate, after perusal of the complaint, directed an investigation to be made as contemplated by section 156 (3) to the Code of Criminal Procedure, 1973 (the Code). A case was registered thereafter by police and a final report was submitted on 18.7.81 stating that complaint was false. The report came to be accepted by the Magistrate on 23.9.81. It however, so happened that the Superintendent of Police had independently ordered further investigation on 24.9.81 and a challan came to be filed by police against the respondents, inter alia, under section 420 and 467 IPC. The Magistrate took cognizance on 25.6.84. A challenge was made to this act of the Magistrate before Sessions Judge, Jodhpur, who dismissed the revision. On further approach

A to the High Court, the revision was allowed and the order of cognizance was set aside. The State has come in appeal under Article 136 of the Constitution.

B 2. A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as section 173 (8) of the Code permit further investigation in respect of an offence after a report under sub-section (2) has been submitted. Sub-section (8) also visualizes forwarding of another report to C the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

D 3. Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to *Pramathanath v. Saroj Ranjan*, [1962] Supp 2 SCR 297, in which a three-judge Bench of this Court dealt with this aspect. A perusal of the judgment E of the majority shows that it took the view that dismissal of a complaint under section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be F entertained, inter alia, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out.

G 4. The case of *Bindeshwari Prasad v. Kali Singh*, [1977] 1 SCC 57, to which also has been referred by Shri Francis, has not really dealt with the point under consideration, as the legal question examined therein was whether a Magistrate possesses inherent powers to review or recall any order passed by him. Of course, the order recalled in that case was also one of dismissing of complaint under section 203 on the ground of complainant H being absent which showed that he had no interest in the matter.

5. The aforesaid being the position in law, we are of the view that the High Court erred in quashing the cognizance taken by the learned Magistrate. The appeal is therefore, allowed by setting aside the impugned judgment. It would, however, be open to the respondents, on the matter being further taken up by the Magistrate, to urge that no case against them has been made out, whereupon such order shall be passed by the Magistrate as deemed legal and just.

A.G.

Appeal allowed.