(2024) 11 SC CK 0021

Supreme Court Of India

Case No: Criminal Appeal No. 4451 Of 2024 (Arising out of Special Leave Petition (Criminal) No.1242 Of 2021)

Subrata Choudhury @ Santosh Choudhury	APPELLANT
Vs	
State Of Assam	RESPONDENT

Date of Decision: Nov. 5, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 2(d), 156(3), 173, 190(1)(a), 200, 202, 203, 204, 300(1)
- Indian Penal Code, 1860 - Section 34, 406, 420

Hon'ble Judges: C.T. Ravikumar, J; Rajesh Bindal, J

Bench: Division Bench

Advocate: Pijush K. Roy, Kakali Roy, Rajan K. Chourasia, Ankit Roy, Manish Goswami, Priyank Adhyaru, Fayaz, Rameshwar Prasad Goyal

Final Decision: Allowed

Judgement

C.T. Ravikumar, J

Leave granted.

1. An affirmative answer to the question of law raised before the High Court as to whether after the acceptance of a negative Final Report filed

under Section 173 of the Code of Criminal Procedure, 1973 (for short, the â€˜Cr.P.C.â€™), upon considering the written objection/ protest petition

and hearing complainant, a fresh complaint on the same set of facts is maintainable, by the High Court of Gauhati and the consequential confirmation

of the order of the learned Additional Sessions Judge, Cachar, Silchar in Criminal Revision Petition No.101/2012, as per judgment and order dated

08.01.2021 in Criminal Revision Petition No.95/2013 is under challenge in this appeal by special leave. As per the said judgment dated 08.01.2021, the

High Court dismissed the revision petition and confirmed the order of the learned Additional Sessions Judge dated 28.02.2013 in Criminal Revision

Petition No.101/2012 whereunder the order dated 12.07.2012 of the learned Chief Judicial Magistrate, Cachar, Silchar dismissing the complaint filed

by the second respondent herein was set aside and case was remanded for consideration of the matter afresh for the purpose arriving at a finding as

to whether any case for taking cognizance of the alleged offence(s) and for issuance of process has been made or not.

2. Facts and circumstances giving rise to the captioned appeal, in succinct, are as under: -

The second respondent herein filed a complaint on 11.11.2010 before the Chief Judicial Magistrate, Cachar, Silchar and it was forwarded for

investigation under Section 156 (3) Cr.P.C. Consequently, on 05.12.2010, FIR No.244/2010 under Sections 406, 420 read with Section 34 of the Indian

Penal Code, 1860 (for short the â€˜IPCâ€™) was registered at Dholai Police Station against the appellants. On completion of the investigation, Final

Report under Section 173, Cr.P.C., was filed before the learned Magistrate on 28.02.2011. Virtually, it was a negative report as can be seen from

Annexure-P3 â€" Final Report No.11 of 2011 dated 28.02.2011. Aggrieved by the said Final Report, the complainant filed a written objection/narazi

petition on 05.05.2011, alleging that the investigation was not conducted properly and praying for taking cognizance on it. As per order dated

06.06.2011, the learned Chief Judicial Magistrate (CJM) accepted the Final Report, after hearing the second respondent-complainant and considering

the narazi petition, upon holding that the investigation did not suffer from any infirmity. On 20.07.2011, the second respondent filed the second

complaint with the same set of allegations against the appellants and the others who were shown as accused in the first complaint, before the learned

CJM alleging commission of offence under the very Sections viz., 406, 420 and 34 IPC, and the same was numbered as C.R. No.159 of 2011. On

19.09.2011, as per Annexure P-7 order, the learned CJM exercising the power under Section 202 Cr.P.C., directed an investigation after recording the

initial deposition of the complainant and the statements of the witnesses. Feeling aggrieved by the said order of the learned CJM dated 19.09.2011, the

appellant(s)/accused preferred a Criminal Revision Petition before the High Court. As per Annexure P-8 order dated 24.05.2012, the High Court set

aside the order of the learned CJM and directed the appellants herein to file an appropriate application raising the question of maintainability of the

second complaint viz., C.R. No.159 of 2011.

3. Pursuant to the order dated 24.05.2012, the learned CJM considered the application filed by the appellants raising the question of maintainability of

the second complaint and dismissed the second complaint holding it not maintainable in law. Against the said order of the CJM dated 12.07.2012, the

second respondent-complainant filed Criminal Revision Petition No.101 of 2012. The learned Sessions Judge allowed the said Criminal Revision

Petition as per Annexure P-10 order dated 28.02.2013 and set aside the order of the CJM and remanded the case for reconsideration of the matter

afresh for the purpose of finding whether any case for taking cognizance of the alleged offences and issuance of process have been made out or not.

Aggrieved by the said order dated 28.02.2013 the appellants preferred Criminal Revision No.95 of 2013 which was dismissed by the High Court as

per the impugned order dated 08.01.2021.

4. Heard the learned counsel for the appellants and the learned counsel appearing for the respondents.

5. In the wake of aforesaid factual background, the appellants, relying various decisions of this Court, contended that the second complaint filed by the

second respondent-complainant is not maintainable. It is contended that the High Court had failed to consider the provisions under Section 300 (1),

Cr.P.C., which resulted in dismissal of the revision petition. Dilating the said contentions, further grounds founded on Section 300 (1) of the Cr.P.C.,

are raised.

6. Before dealing with the other contentions raised to assail the judgment dated 08.01.2021, we think it is only appropriate to consider the contentions

raised by the appellants founded on Section 300 (1), Cr.P.C., reads thus: -

â€œ300. Person once convicted or acquitted not to be tried for same offence.â€"(1) A person who has once been tried by a Court of competent jurisdiction for an

offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence,

nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221,

or for which he might have been convicted under sub-section (2) thereof.â€

7. In view of the indisputable and undisputed facts, referred hereinbefore, revealing the outcome of the first complaint dated 11.11.2010 and taking into

account the stage of the second complaint the question is whether Section 300 (1), Cr.P.C., is applicable or not to the case at hand.

8. Section 300 (1), Cr.P.C., is found on the maxim â€œNemo debet bis vexari pro una et eadem causaâ€, which means that no one shall be vexed

twice for one and the same cause. The Section provides that no man once convicted or acquitted shall be tried for the same offence again for one and

the same cause. Thus, it can be seen that in order to bar the trial in terms of Section 300 (1), Cr.P.C., it must be shown: -

a. that the person concerned has been tried by a competent Court for the same offence or one for which he might have been charged or convicted at that trial, on the

same facts.

b. that he has been convicted or acquitted at the trial and that such conviction or acquittal is in force.

9. This fundamental rule of our criminal law revealed from this Section enables raising of the special pleas of autrefois acquit and autrefois convict,

subject to the satisfaction of the conditions enjoined thereunder. This position has been made clear by this Court in Vijayalakshmi v.

Vasudevan(1994) 4 SCC 656 . In the case at hand, the undisputed facts stated hereinbefore would reveal that the appellants were never ever tried

before a Court of competent jurisdiction for the aforesaid offence(s) on the basis of the aforesaid set of facts. Therefore, indisputably there was no

verdict of conviction or acquittal in regard to the aforesaid Sections in respect of the appellants on the aforesaid set of facts, by a Court of competent

jurisdiction. When that be the position, we have no hesitation to hold that the grounds founded on Section 300 (1), Cr.P.C. raised by the appellants

merit no consideration.

10. As noted at the outset, the question of law raised before and decided by the High Court was whether after the acceptance of the Final Report

filed under Section 173, Cr.P.C., upon considering the written objection/ protest petition and hearing the complainant, a fresh complaint on the same

set of facts is maintainable or not. There can be no two views as relates the position that there can be no blanket bar for filing a second complaint on

the same set of facts. We will deal with the moot question and the aforesaid position a little later.

11. Firstly, the question as to what are the courses available to a Magistrate on receipt of a negative report is to be looked into and in fact, that

question was considered by this Court in Bhagwat Singh v. Commissioner of Police and Anr. (1985) 2 SCC 537 This Court held that on receipt of a

negative report, the following four courses are open to the Magistrate concerned: -

1. to accept the report and to drop the proceedings;

2. to direct further investigation to be made by the police.

3. to investigate himself or refer the investigation to be made by another Magistrate under Section 159, Cr.P.C., and

4. to take cognizance of the offence under Section 200, Cr.P.C., as private complaint when materials are sufficient in his opinion as if the complainant is prepared for

that course.

The indisputable position is that in the case at hand the learned CJM on receipt of the negative report accepted it after rejecting the written

objections/protest petition, which is one of the courses open to a Magistrate on receipt of a negative report, in terms of Bhagwat Singhâ€™s case

(supra).

12. In view of the confirmance of the judgment of the learned Sessions Judge carrying the following observations/findings it is not inappropriate to

delve into them for the limited purpose. They, in so far as relevant, read thus:-

â€œ(i) Thus, the present complaint in question is truly qualify to the definition of the term complaint and the same has been filed on being aggrieved against the

final report, submitted against his previous complaint. Hence, in my considered opinion the learned court below misconstrued the definition of the term

complaint, by treating the simple objection petition as Narazi complaint, whereas terming the present complaint in question as second complaint.

(ii) Situated thus, the Honâ€™ble Apex Court of India, in the said decision, (referring to the decision in Abhinandan Jha v. Dinesh Misra, reported in AIR 1968

Supreme Court 117) specifically observed that even after accepting the final report, it is open to the Magistrate to treat the respective protest petitions as

complaints and to take further proceedings in accordance with law.â€

13. According to us, the observations/findings referred above as (i) is actually an outcome of a misconstruction on the part of the learned Sessions

Judge. In troth, the learned CJM termed the subject complaint dated 20.07.2011 as second complaint not with reference to the written

objection/protest petition dated 5. 05.2011 and it was so treated with reference to the original complaint dated 11.11.2010. This fact is evident from the

recitals in Annexure-P9 order dated 12.07.2012 passed by the learned CJM in complaint numbered as Case No.159/2011, which was challenged

before the learned Sessions Judge. In the said order the learned CJM observed and held thus:-

â€œAfter the original complaint has been duly investigated by the police and Final Report submitted therein has been accepted by the Court in a Judicial

Proceeding; therefore, in my considered view it cannot be re-opened by means of filing of a second complaint in respect of the same facts and circumstances.â€

In view of the afore-extracted recital from the order dated 12.07.2012 of the learned CJM, it is evident that it was with reference to the original

complaint that he termed the complaint filed by the second respondent on 20.07.2011 as the second complaint.

14. The second observation/finding referred above as (ii) also requires a clarification. It is true that correctly this Court held in the decision in

Abhinandan Jha v. Dinesh Misra AIR 1968 SC 117 that even after accepting the final report it would be open to the Magistrate concerned to treat

respective protest petition as complaint and to take further proceedings in accordance with law. Section 2(d) of the Cr.P.C. defines the term

â€˜complaintâ€™. No doubt in Cr.P.C., no form for filing complaint is prescribed. However, the essentials to constitute a complaint can be briefly

mentioned thus: -

(i) An oral or written allegation;

(ii) That some person(s) known or unknown has committed an offence;

(iii) It must be made to a Magistrate with a view to his taking action.

15. In Bhimappa Bassappa Bhu Sannavar v. Laxman Shivarayappa Samagouda & Ors. 1970 (1) SCC 665, this Court, as regards the meaning of

a complaint, held thus: -

â€œ11. The word â€œcomplaintâ€ has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which

the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for

the magistrate to take action. Section 190(1)(a) makes it necessary that the alleged facts must disclose the commission of an offence.â€

16. In the decision in Sunil Majhi v. The State AIR 1968 (Cal) 238, the Calcutta High Court in paragraph 6 held thus: -

â€œ6. The term â€˜narajiâ€™ means â€˜disapprovalâ€™ and in the context of things it signifies disapproval of the report in relation to which it is filed. It may

simply challenge the report on grounds stated and pray for its rejection: it may while praying for rejection of the report also reiterate the allegations made in the

petition of complaint and pray for further action by the court and in that view of the matter it would be a fresh complaint. In the case Jamini Kanta v. Bhabanath.

AIR 1939 Cal 273, it was observed:

â€œThe word â€˜narajiâ€™ is often loosely used and it is necessary to examine the petition which is filed in a particular case â€œto determine its true import in

that case on an examination of the petition it was found that it was not a complaint. The reports of the cases cited by Mr. Banerji do not contain any discussion

about the nature of the statements made in the naraji petitions in those cases, but from the fact that the naraji petitions were treated as complaints it would appear

that they did satisfy the requirements of a complaint as defined in section 4(h) of the Code in order to be a complaint the petition must contain allegations of an

offence and also a prayer for judicial action thereon. If therefore, the protest petition filed against an enquiry report filed or to be filed, while lodging a protest

recites also the allegations already made and prays for action of the court thereon, there is no difficulty in treating it as a complaint and taking action thereon

under Sections 202, 203 or 204 of the Cr PC. In the cases of Lachmi Shaw. AIR 1932 Cal 383 (1) (Supra) and Satkari Ghose. AIR 1941 Cal 439 (Supra) there

were complaints to the police which were found on investigation to be false and the police submitted final reports and at the same time prayed for prosecuting the

complainant under section 211 I.P.C. Naraji petitions were filed against the police reports but prosecutions were launched without considering them and it was

held that the procedure followed was irregular and that the naraji petitions should be treated as complaints and treated and disposed of as such before the prayer

for prosecuting the complainant could be entertained.â€

17. In the light of the aforesaid decisions, we are of the view that a â€˜naraziâ€™ viz., disapproval against a final report submitted in a case

investigated by the police on a first information report registered pursuant to the forwarding of a complaint under Section 156(3), Cr.P.C., for

investigation should be treated as a complaint only if the same satisfies the requirement in law to constitute a complaint as defined under Section 2(d),

Cr.P.C. As held in Sunil Majhiâ€™s case (supra), if while praying for rejection of a final report after reiterating the allegations made in the original

complaint and prayer for further action by the court, the same could be treated as a fresh complaint, but then, we may hasten to add that its

maintainability depends upon the question as to how the original/protest petition was disposed of.

18. It is relevant to note that in paragraph 9 of the judgment dated 28.02.2013 (Annexure-P10), the learned Sessions Judge after referring to the term

â€˜complaint,â€™ defined under Section 2(d) of the Cr.P.C. and taking note of the aforesaid essentials to constitute a complaint made a scrutiny of

the written objection dated 05.05.2011 submitted by the second respondent-complainant against the negative report dated 28.02.2011 held that the said

objection dated 05.05.2011 could not be termed as a â€˜narazi complaintâ€™ and found that it did not qualify to the definition of the term

â€˜complaintâ€™. In that context, with reference to the definition in Section 2(d) of the Cr.P.C. and the essentials to constitute a complaint as

referred above, it can only be said that the said finding of the learned Sessions Judge is perfectly in tune with the position of law. Once that is so found

and when it is a fact that the negative report on the original complaint dated 11.11.2010 was accepted after rejecting the written objection/protest

petition dated 05.05.2011 it cannot be said that the learned CJM has gone wrong in describing the complaint dated 20.07.2011 as the second

complaint. The clarification required to the observation/finding referred to as (ii), with reference to the Abhinandan Jhaâ€™s case (supra) is that

though it would be open to the Magistrate to treat a protest petition as complaint and to take further proceedings in accordance with law even after

accepting final report that is permissible only if the protest petition concerned satisfies the ingredients to constitute a complaint as defined under

Section 2(d), Cr.P.C. Since the narazi petition dated 05.05.2011 did not satisfy the ingredients to attract Section 2(d), Cr.P.C., it could not be treated

as a complaint as held by the learned Sessions Judge. At the same time, in view of what is stated above and taking note of the fact that the allegations

made in the original complaint are reiterated in the complaint dated 20.07.2011 and pray for further action by the court, it is rightly taken by the courts

below as a complaint. Since the final report on the original complaint was already accepted after rejecting the narazi petition the complaint dated

20.07.2011 which satisfies all requirements of a complaint, if at all having the characteristics of a protest petition, could be treated as a complaint and

hence, the learned CJM and the learned Sessions Judge have rightly treated it as a complaint.

19. Now, we will consider the question whether the construction of the law laid down by this Court in regard to the maintainability of a second

complaint, in the circumstances mentioned hereinbefore that led to the moot question, by the High Court as reflected under paragraph 20 of the

impugned judgment and the consequential direction can be sustained. Paragraphs 20 and 21 in the impugned judgment read thus: -

20. Evidently, the learned Magistrate did not act upon the said protest petition, inasmuch as, the learned Magistrate did not proceed under Section 200/202 of

the CrPC treating the same as narazi complaint. When the learned Magistrate did not proceed under Section 200 to 204 CrPC for taking cognizance upon

received of the first protest petition nor the protest petition was dismissed under Section 203 CrPC, the complaint in question though considered to be a second

narazi complaint with reference to the first protest petition as indicated above, the same is not barred under law, reason being that the alleged first protest

petition did not contain detailed particulars of the case required for decision nor the learned Magistrate proceed on the basis of the first petition under Section

200/202 CrPC and therefore the alleged first protest petition in my cosndiered (sic: considered) view cannot be held to have been dismissed after full

consideration under Section 203 CrPC. Even if it is assumed for the sake of argument that the first protest petition was dismissed after full consideration, the

narazi complaint in question is maintainable for special circumstances, namely the first protest petition did not contain the full facts and particulars necessary to

decide the case and the same was considered on incomplete facts and particulars and the learned Magistrate also did not examined the complainant or any

witnesses under Section 200 CrPC nor proceeded under Section 202 CrPC to decide whether there was sufficient ground for proceeding. Therefore, in any view of

the matter, the present complaint in question cannot be considered as second complaint and the same also cannot be held to be barred for acceptance of the final

report. Secondly, even if it is considered to be second narazi complaint with reference to the first protest petition, then also the complainant is not barred in the

facts situation of the case because of the special on exceptional circumstances as indicated above.

21. For the reasons stated above, this court do not find any fault with the impugned order passed by the learned Sessions Judge and accordingly, the revision

petition is dismissed. The matter be remanded back to the learned Magistrate to proceed with the complaint in accordance with law.

20. Paragraph 21 of the impugned judgment of the High Court, as extracted above, would reveal that the High Court also treated the petition dated

20.07.2011 filed by the second respondent as a complaint. Since it is filed by the second respondent after the acceptance of the original complaint

dated 11.11.2010 that too, after the rejection of his protest petition dated 05.05.2011, there can be no dispute regarding the status of the complaint

dated 20.07.2011 as the second complaint of the second respondent.

21. The appellants herein contended that the second complaint carries the same set of allegations and in view of the dismissal of the first complaint

after considering the protest petition and hearing the complainant, the second complaint filed by the second respondent dated 20. 07.2011 is not

maintainable. To buttress the said contention, the learned counsel relied on the decisions of this Court in Shivshankar Singh v. State of Bihar & Anr.

(2012) 1 SCC 130, H. S. Bains v. State (Union Territory of Chandigarh) AIR 1980 SC 1883, Bindeshwari Prasad Singh v. Kali Singh AIR 1977

SC 2432 and Poonam Chand Jain & Anr. v. Farzu (2010) 2 SCC 631.

22. Per contra, the learned counsel appearing for the second respondent/ the complainant contended that the acceptance of the Final Report, based on

the first complaint could not be a bar for maintaining a fresh complaint on the same set of facts. It is submitted that virtually upon filing of the Final

Report based on the first complaint only an objection was filed by the second respondent and therefore, it ought not to have been taken as the first

narazi complaint. At the same time, it is further contended that even if it is taken as the first narazi complaint, a second narazi complaint is not barred

by law. To fortify the said contention, the learned counsel relied on the decision of this Court in Mahesh Chand v. B. Janaradhan Reddy & Anr.

(2003) 1 SCC 734 and Shivshankar Singhâ€™s case (supra).

23. In view of the plethora of decisions, there can be no doubt that even when Final Report filed after investigation based on the FIR registered

pursuant to the receipt of complaint forwarded by a Court for investigation under Section 156 (3) of the Cr.P.C., is accepted and protest petition

thereto is rejected, the Magistrate can still take cognizance upon a second complaint or second protest petition, on the same or similar allegations or

facts. But this position is subject to conditions.

24. In Samta Naidu & Anr. v. State of Madhya Pradesh & Anr. (2020) 5 SCC 37, this Court considered all the relevant decisions including

Pramatha Nath Talukdar v. Saroj Ranjan Sarkar AIR 1962 SC 876, Jatinder Singh v. Ranjit Kaur (2001) 2 SCC 570, Poonam Chand Jain v.

Farzu (2010) 2 SCC 631, and Shivshankar Singhâ€™s case (supra) in regard to the moot question involved, in paragraphs 12 to 12.3, 12.5, 13 and

16 thereunder. The said paragraphs, insofar as they are relevant to this case, are as under:

12. The law declared in Talukdar has consistently been followed, for instance, in Bindeshwari Prasad Singh v. Kali Singh it was observed: (Bindeshwari Prasad

Singh case, SCC p. 59, para 4)

â€œ4. â€¦ it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out.â€

(emphasis supplied)

The view taken in Bindeshwari was followed in A.S. Gauraya v. S.N. Thakur.

12.1. In Jatinder Singh v. Ranjit Kaur the issue was whether the first complaint having been dismissed for default, could the second complaint be maintained. The

matter was considered as under: (SCC pp. 572-74, paras 9 & 12)

â€œ9. There is no provision in the Code or in any other statute 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 of the Code, which debars a second trial, has taken care to explain that

â€œthe dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this sectionâ€. However, when a Magistrate conducts 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.

* * *

12. 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, (1962) 1 Cri LJ 770. A majority of Judges of the three-Judge Bench held thus: (AIR

p. 899, para 48)

â€˜48. â€¦ An order of dismissal under Section 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 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 inquired into.â€™

(emphasis supplied)

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.

(emphasis supplied)

12.2. In Ranvir Singh v. State of Haryana Haryana, the issue was set out in para 23 of the decision and the discussion that followed thereafter was as under: (SCC

p. 647, paras 23-26)

â€œ23. 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 the process fees for effecting service.

24. The answer has been provided firstly in Pramatha Nath Talukdar case, wherein this Court had held that even if a complaint was dismissed under Section 203

CrPC, a second complaint would still lie under exceptional circumstances, indicated hereinbefore. 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 CrPC, but such is not the case in these special leave petitions.

25. In the present cases, neither have the complaints been dismissed on merit nor have they been dismissed at the stage of Section 203 CrPC. On the other hand,

only on being satisfied of a prima facie case, the learned Magistrate had issued process on the complaint.

26. The said situation is mainly covered by the decision of this Court in Jatinder Singh case, wherein the decision in Pramatha Nath Talukdar case 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.â€

(Underline supplied)

12.3. In Poonam Chand Jain v. Fazru the issue whether after the dismissal of the earlier complaint had attained finality, could a second complaint be maintained

on identical facts was considered as under: (SCC pp. 634-36, paras 14-20)

â€œ14. In the background of these facts, the question which crops up for determination by this Court is whether after an order of dismissal of complaint attained

finality, the complainant can file another complaint on almost identical facts without disclosing in the second complaint the fact of either filing of the first

complaint or its dismissal.

15. Almost similar questions came up for consideration before this Court in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar. The majority judgment in Pramatha

Nath was delivered by Kapur, J. His Lordship held that an order of dismissal under Section 203 of the Criminal

Procedure Code (for short â€œthe Codeâ€) is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in

exceptional circumstances. This Court explained the exceptional circumstances as:

(a) where the previous order was passed on incomplete record, or

(b) on a misunderstanding of the nature of the complaint, or

(c) the order which was passed was manifestly absurd, unjust or foolish, or

(d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

16. This Court in Pramatha Nath made it very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full

consideration of the case, the complainant should be given another opportunity to have the complaint enquired into again. In para 50 of the judgment the

majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record.

This Court very clearly held that it cannot be settled law which permits the complainant to place some evidence before the Magistrate which are in his possession

and then if the complaint is dismissed adduce some more evidence. According to this Court, such a course is not permitted on a correct view of the law. (para 50,

p. 899)

17. This question again came up for consideration before this Court in Jatinder Singh v. Ranjit Kaur. There also this Court by relying on the principle in

Pramatha Nath held that here is no provision in the Code or in any other statute which debars a complainant from filing a second complaint on the same

allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on

merits a second complaint on the same facts could not be made unless there are â€œexceptional circumstancesâ€. This Court held in para 12, if the dismissal of

the first complaint is not on merit but the dismissal is for the default of the complainant then there is no bar in filing a second complaint on the same facts.

However, if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different.

19. Again in Mahesh Chand v. B. Janardhan Reddy, a three-Judge Bench of this Court considered this question in para 19 at p. 740 of the Report. The learned

Judges of this Court held that a second complaint is not completely barred nor is there any statutory bar in filing a second complaint on the same facts in a case

where a previous complaint was dismissed without assigning any reason. The Magistrate under Section 204 of the Code can take cognizance of an offence and

issue process if there is sufficient ground for proceeding. In Mahesh Chand this Court relied on the ratio in Pramatha and held if the first complaint had been

dismissed the second complaint can be entertained only in exceptional circumstances and thereafter the exceptional circumstances pointed out in Pramatha were

reiterated. Therefore, this Court holds that the ratio in Pramatha Nath is still holding the field. The same principle has been reiterated once again by this Court in

Hira Lal v. State of U.P. In para 14 of the judgment this Court expressly quoted the ratio in Mahesh Chand discussed hereinabove.

20. Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we

are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So

the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint

which is substantially new and not disclosed in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second

complaint were not within the knowledge of the first complainant. In fact, such a case could not be made out since the facts in both the complaints are almost

identical. Therefore, the second complaint is not covered within exceptional circumstances explained in Pramatha Nath. In that view of the matter the second

complaint in the facts of this case, cannot be entertained.â€

(emphasis supplied)

12.4â€¦..

12.5. In Ravinder Singh v. Sukhbir the matter was considered from the standpoint whether a frustrated litigant be permitted to give vent to his frustration and

whether a person be permitted to unleash vendetta to harass any person needlessly. The discussion was as under: (SCC pp. 258-60, paras 26-27 & 33)

â€œ26. While considering the issue at hand in Shivshankar Singh v. State of Bihar this Court, after considering its earlier judgments in Pramatha Nath Talukdar

v. Saroj Ranjan Sarkar, Jatinder Singh v. Ranjit Kaur, Mahesh Chand v. B. Janardhan Reddy and Poonam Chand Jain v. Fazru held : (Shivshankar Singh case,

SCC p. 136, para 18)

â€˜18. â€¦ it is evident 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, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the

complainant on merit.â€™

27. In Chandrapal Singh v. Maharaj Singh this Court has held that it is equally true that chagrined and frustrated litigants should not be permitted to give vent

to their frustration by enabling them to invoke the jurisdiction of criminal courts in a cheap manner. In such a fact situation, the court must not hesitate to quash

criminal proceedings.

* * *

33. The High Court has dealt with the issue involved herein and the matter stood closed at the instance of Respondent 1 himself. Therefore, there can be no

justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the

larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course

of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an

instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in

the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty

of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint.â€

25. After referring to the aforesaid decisions in Samta Naiduâ€™s case (supra) this Court further, held in Paragraph 13 thus: -

â€œ13. The application of the principles laid down in Talukdar in Jatinder Singh shows that â€œa second complaint is permissible depending upon how the

complaint happened to be dismissed at the first instanceâ€. It was further laid down that: (Jatinder Singh case, SCC p. 573, para 12)

â€œ12. 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.â€

â€œTo similar effect are the conclusions in Ranvir Singh and Poonam Chand Jain. Para 16 of Poonam Chand Jain also considered the effect of para 50 of the

majority judgment in Talukdar. These cases, therefore, show that if the earlier disposal of the complaint was on merits and in a manner known to law, the second

complaint on â€œalmost identical factsâ€ which were raised in the first complaint would not be maintainable. What has been laid down is that â€œif the core of

both the complaints is sameâ€, the second complaint ought not to be entertained.â€

(underline supplied)

26. It was further held in paragraph 16 of the decision in Samta Naiduâ€™s case (supra) thus: -

â€œ16. As against the facts in Shivshankar, the present case stands on a different footing. There was no legal infirmity in the first complaint filed in the present

matter. The complaint was filed more than a year after the sale of the vehicle which meant the complainant had reasonable time at his disposal. The earlier

complaint was dismissed after the Judicial Magistrate found that no prima facie case was made out; the earlier complaint was not disposed of on any technical

ground; the material adverted to in the second complaint was only in the nature of supporting material; and the material relied upon in the second complaint was

not such which could not have been procured earlier. Pertinently, the core allegations in both the complaints were identical. In the circumstances, the instant

matter is completely covered by the decision of this Court in Talukdar as explained in Jatinder Singh and Poonam Chand Jain. The High Court was thus not

justified in holding the second complaint to be maintainable.â€

27. Now, we will have to proceed with the appeal bearing in mind the exposition of law in Samta Naiduâ€™s case (supra) that if earlier disposal of

the complaint was on merits and in a manner known to law, the second complaint on â€˜almost identical factsâ€™ which were raised in the first

complaint would not be maintainable. â€œIf the core of both the complaints is same, the second complaint ought not to be entertained,â€ it was further

held therein.Â In the light of the factual narration with respect to the disposal of the original complaint dated 11.11.2010, made hereinbefore and in

view of the courses open to a Magistrate on receipt of a negative report and applying the exposition of law in Samta Naiduâ€™s case (supra) with

respect to the maintainability of a second complaint we have no hesitation to hold that the maintainability of the second complaint dated 20.07.2011

filed by the second respondent would depend upon the question whether the core of the original complaint dated 11.11.2010 and the second complaint

dated 20.07.2011 is the same as the disposal of the complaint dated 11.11.2010 was on merits and in a manner known to law. In this context, it is also

to be noted after considering the final report, the protest complaint and admittedly, upon hearing the counsel for the complainant the protest petition

was rejected not only by finding that the investigation suffers from no infirmity but also by finding that since it was conducted properly, no order for

further investigation is invited and further that the materials are not sufficient to take cognizance. As noted earlier, despite the said nature of the order

dated 06.06.2011 the second respondent-complainant has not chosen to challenge the same but, chosen only to file a fresh complaint, viz., the second

complaint dated 20.07.2011.

28. In the contextual situation, it is relevant to note that earlier the learned Magistrate invoking the power under Section 202 Cr.P.C., postponed the

issuance of summons. After recording the initial deposition of the complainant and the witnesses vide order dated 19.09.2011, he directed for police

investigation and report. The High Court as per order dated 24.05.2012 in Criminal Petition No. 12/2012 set aside the order dated 19.09.2011 and

directed the appellants herein to file appropriate application raising the issue of maintainability and in turn, directing the learned CJM to decide on the

maintainability expeditiously. The order dated 12.07.2012 was passed by the learned CJM in compliance with the direction in the order dated

24.05.2012.

29. The order dated 12.07.2012 of the learned CJM whereunder he discussed the second complaint dated 20. 07.2011 would undoubtedly reveal that

after taking into consideration the entire factual background of the case and the nature of disposal of the original complaint dated 11.11.2010 under the

order dated 06.06.2011 the application filed by the appellant herein raising maintainability of the second complaint was considered by the learned CJM.

30. We have already referred to the manner the original complaint was disposed of earlier. The submissions made on behalf of the parties, the

documents annexed thereto and above all, the order dated 12.07.2012 of the learned CJM, would reveal that the second complaint was filed on the

same set of facts contained in the first complaint and the second one was filed after the dismissal of the protest petition and the consequential

acceptance of the Final Report in the first complaint. It is not in dispute that subsequent to the rejection of the protest petition and acceptance of the

Final Report (Annexure P-5) as per order dated 06. 06.2011, the matter was not taken forward further by the respondent/complainant. The second

complaint was filed thereafter on 20.07.2011 reiterating, rather, reproducing the complaint dated 11.11.2010 and further adding allegations, virtually

made by way of the protest petition dated 05.05.2011 that the investigation pursuant to the original complaint was done perfunctorily. It is to be noted

that the said allegation against the investigation was also rejected earlier as per order dated 06.06.2011 holding that the investigation did not suffer

from any infirmity and further that it did not deserve further investigation. Now, a comparison of the first complaint dated 11.11.2010 and the second

complaint dated 20.07.2011 shows that they contain the same set of allegations against the same accused as has been observed by the learned CJM in

the order dated 12.07.2012. The learned CJM, in the order dated 12.07.2012 after referring to various decisions observed and held thus:-

â€œAfter the original complaint has been duly investigated by the police and Final Report submitted therein has been accepted by the Court in a Judicial

Proceeding; therefore, in my considered view it cannot be re-opened by the means of filing of a second complaint in respect of the same facts and circumstances. In

this connection, reliance can be placed n (Sic: in) a Judgment of the Honâ€™ble Patna High Court reported in 1981 CRL. LAW JOURNAL 795 Bhuveneswar

Prasad Singh and others Vs. State of Bihar and another.

The Honâ€™ble Patna High Court relying upon a decision of the Honâ€™ble Apex Court reported in AIR 1968 Supreme Court 117 Abhinandan Jha Vs. Dinesh

Mishra had held ---

Where the Final Report by police holding the case against the accused persons to be untrue; was accepted by the Magistrate earlier, than the complaint petition

was filed against the accused, the Magistrate would not be justified in taking cognizance on the basis of the complaint petition in respect of the same facts

constituting the offence which were mentioned in the final form where a Judicial order was passed by accepting final form.â€

31. The circumstances expatiated above and a scanning of the decision in Samta Naiduâ€™s case and the decisions referred to in the aforesaid

paragraphs thereunder would constrain us to say, with respect, that the understanding of the settled position in regard to the maintainability of a second

complaint or second protest petition of the High Court, as reflected mainly in paragraph 20 of the impugned judgment is not true to the position settled

by this Court. Merely because this Court in some of such decisions held that when a Magistrate conducted an inquiry under Section 202 Cr.P.C., and

dismissed a complaint on merits, a second complaint on the same facts would not be maintainable unless there are very exceptional circumstances, it

could not be understood that in all cases where a complaint to a Magistrate was not proceeded under Section 202 of the Cr.P.C., and dismissed not at

the stage of Section 203, Cr.P.C., a second complaint or a second protest petition would be maintainable. The various decisions referred above in

Samta Naiduâ€™s case and recitals therefrom, extracted above would indubitably reveal the said position. The different situations where a second

complaint or a second protest petition would be maintainable and would not be maintainable were specifically discussed and decided, in those

decisions. In short, the maintainability or otherwise of the second complaint would depend upon how the earlier complaint happened to be

rejected/dismissed at the first instance.

32. In the context of the contentions, it is to be noted that the case at hand stands on a firmer footing than the case involved in Samta Naiduâ€™s

case (supra). Paragraph 16 of Samta Naiduâ€™s case (supra), as extracted above, would reveal that the earlier complaint involved in that case was

disposed of not on technical ground but on finding that no prima facie case was made out and in the second complaint the nature of the supporting

materials were furnished and this Court observed that it could not be said that those materials furnished and relied upon in the second complaint could

not have been procured earlier. Thereafter, finding that both the complaints were identical the finding of the High Court that the second complaint was

maintainable was rejected and the subject complaint was dismissed as not being maintainable. In the case at hand, a perusal of protest petition dated

05.05.2011 and the second complaint dated 20.07.2011 would reveal that the second complaint filed after acceptance of final report filed pursuant to

the investigation in the FIR registered based on the complaint dated 11.11.2010, that too after considering the narazi petition and hearing the

complainant (the second respondent herein) the second complaint dated 20.07.2011 has been filed reproducing the first complaint dated 11.11.2010

and stating that the said complaint was not properly investigated and action should be taken on the second complaint dated 20.07.2011. In fact, the

indubitable position is that the core of the original complaint dated 11.11.2010 and the second complaint dated 20.07.2011 is the same.

33. In the light of the decision in Ravinder Singh v. Sukhbir Singh (2013) 9 SCC 245, referred to in Samta Naiduâ€™s case (supra) repeated

complaints by frustrated litigants cannot be maintained. A scanning of the second complaint dated 20.07.2011 would reveal that none of the situations

permissible in terms of the decisions referred supra exist in the case at hand to maintain the said complaint. When that be the position, the learned

Sessions Judge as also the High Court were not justified in interfering with the order passed by the learned CJM dated 12.07.2012 holding the second

complaint as not maintainable in law and issuing further direction.

34. In the aforesaid circumstances we allow the appeal and set aside the decision of the High Court dated 08. 01.2021 and the decision of the learned

Sessions Judge that got confirmance by the judgment of the High Court and consequently restore the order of the learned CJM dated 12.07.2012. In

short, the complaint dated

20. 07.2011 stands rejected for not being maintainable.