(1996) 08 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 2317-M of 1996

Saran Dass Chela Basant Muni	APPELLANT
Vs	
Ram Singh and Others	RESPONDENT

Date of Decision: Aug. 20, 1996

Acts Referred:

- Constitution of India, 1950 - Article 20(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173, 173(2), 190(1), 200
- Penal Code, 1860 (IPC) - Section 120B, 201, 302, 34, 364

Citation: (1997) CriLJ 2021 : (1996) 3 RCR(Criminal) 382

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: N.S. Virk, for the Appellant; B.S. Bhasaur, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jain, J.
This petition has been filed u/s 482 of the Code of Criminal Procedure (for short the Code'') for quashing the order dated 11-12-1995, passed by the Additional Sessions Judge, Barnala, whereby the order dated 8-9-1995, passed by the Judicial Magistrate, Barnala, dismissing the complaint of the petitioner has been affirmed.

2. The facts necessary for the disposal of this petition are that on 5-12-1994, First Information Report No. 106 was registered at Police Station, Tappa, under Sections 302/364/471/468/467/120-B/34, Indian Penal Code, on the basis of a statement made by one Kaur Singh son of Kaka Singh, resident of Dhurkot, against five persons i.e. Ram Singh, his three brothers and Gurdev Singh, Lambardar of village Sanghera. According to the allegations in the first information report, one Basant Muni being the Mahant of a Dera was proprietor of a piece of land measuring 18

kanals, situated in village Dhurkot, which was being cultivated by Hardam Singh on bataj. Hardam Singh changed his name as Baldev Muni. About 3/4 years prior to the occurrence, difference developed between Basant Muni and Baldev Muni, Hardev Singh and his three brothers entered into a conspiracy with Gurdev Singh in the year 1991. In pursuance of the said conspiracy, Dhanna Singh impersonated Basant Muni, fabricated his thumb impressions and suffered a decree in respect of the said piece of land. In July 1991, Kaur Singh was present at the Bus Stand of village Rureke Kalan, where Hardam Singh, Ram Singh, Bhola Singh alongwith Mahant Basant Muni were present. On arrival of the bus, he along with Hardam Singh and others boarded the same and reached Bus Stand, Tappa, Hardam Singh and others alongwith Basant Muni went to Railway Station, Tappa. On the same day, Bhola Singh came back to Dhurkot and told that he had sent Ram Singh, Hardam Singh and Mahant Basant Muni to U. P. and Ram Singh and Hardam Singh would come back only after doing away with Basant Muni. After about 2/ 3 months, Hardam Singh and Ram Singh came back to the village but Basant Muni was missing. A search was made for Basant Muni but in vain. He expressed a doubt that Hardam Singh and Ram Singh, residents of Dhurkot had taken Basant Muni with intention to murder with a motive to grab his 18 kanals of land. On the basis of this statement, the present case was registered under Sections 364/467/468/471\\120-B/34 and 201, Indian Penal Code, against five persons stated above. After Investigating the same a charge-sheet for the offences including an offence u/s 302, Indian Penal Code, was filed in the Court. The case has been committed to the Court of Session and all the five persons mentioned above are facing trial.

3. On 28-8-1995, Saran Dass Chela Basant Muni filed a complaint against all the aforesaid five accused for the same offences including an offence u/s 302, Indian Penal Code, in the Court of Judicial Magistrate, Barnala. It has been alleged by him that the land of the accused persons adjoins to the land of Dera and they wanted to grab the land of the Dera, that for this purpose the accused took Basant Muni with them to Mansa on 7-8-1996 and got executed a registered will in favour of Hardam Singh which was scribed by Janak Raj Goyal and attested by Gurdev Singh and Banta Singh, that when Basant Muni came to know of the will, he got the will cancelled on 27-10-1986 in the presence of the witnesses, that when Hardam Singh accused came to know about this cancellation of the will, he again took Basant Muni to Mansa on 29-10-1986 and got executed another registered will from Basant Muni, which was scribed by Gurcharan Singh and attested by Davinder Singh and Bhura Singh and that this will was also cancelled by Basant Muni on 13-7-1987. Basant Muni took the possession of the disputed land from the accused persons and refused to let out the same on Theka Watti. It has been further alleged in the complaint that on 3-12-1990, Hardam Singh filed a civil suit wherein Dhanna Singh accused impersonated himself as Basant Muni and made a statement in the Court on 23-4-1991 in the civil Court admitting the claim of Hardam Singh in respect of the said land. He was identified by Gurdev Singh accused and the decree was passed on 28-7-1991. When Basant

Muni came to know about the same, he called the accused at the dera and made enquiry from them. The accused persons assured him that they would get the same cancelled. However, all the accused made a plan to eliminate Basant Muni. In July 1991 the accused persons took Basant Muni to Tappa. When Bhola Singh accused returned to the village, he told on an enquiry about Basant Muni by Kaur Singh that Ram Singh and Hardam Singh had taken Basant Muni to LI. P. and they would come back after finishing. Basant Muni, after about 3 months Hardam Singh and Ram Singh came back {o the village but Basant Muni was found missing. It has also been alleged that on 5-12-1994. Kaur Singh got registered a case at Police Station, Tappa and that on 6-12-1994 the accused persons made extra-judicial confession before different persons. The accused persons were arrested and a challan has been presented to the Court. It has been alleged that the Police of Police Station, Tappa, was favouring the accused persons, that they did not investigate the case properly, did not record the statements of the witness, nor tried to compare the thumb impressions of the accused with the suffered decree. In these circumstances. Saran Das Chela Basant Muni filed this complaint.

4. After hearing the counsel for the complainant, the Judicial Magistrate, by order dated 8-9-1995, dismissed the complaint on the grounds that the case was not covered by Section 210 of the Code, that he had already taken cognizance of the offence on the police report and a complaint for the same offence was not maintainable. Feeling aggrieved, the petitioner went to the Sessions Court in revision but the Additional Sessions Judge, by the impugned judgment, dismissed the same affirming the view expressed by the Judicial Magistrate. As such, the petitioner has invoked the inherent jurisdiction of this Court u/s 482 of the Code.

5. I have heard the learned counsel for the parties and have gone through the record.

6. Shri. N. S. Virk, Advocate, learned counsel for the petitioner, has argued that the Judicial Magistrate was bound to take cognizance of the complaint made by the petitioner and could not dismiss the same on the ground that he had already taken cognizance of the same offence on the basis of a police report. It has been further argued by the learned counsel that the police had not investigated the case properly, nor has collected proper evidence and was siding with the accused persons which forced the petitioner to file a complaint for the same offence against the same persons. It has been further argued by the learned counsel that when the complaint case and a case based on the police report are instituted in respect of the same incident against the same accused persons, both the cases can be tried simultaneously, even if they are not covered by the provisions of Section 210 of the Code. The learned counsel has placed reliance upon a judgment of the apex Court in Harjinder Singh Vs. State of Punjab and Others, and the decision of this Court in Naresh Kumar v. Gopal Krishan (1996) 2 RCR 79 and Surjan Lal v. Radhey Shyam, (1977) 4 CLT 259 and a judgment of the Calcutta High Court in S. K. Abdur Rahim v.

Amal Kumar Banerjee (1996) 2 RCR 279.

7. On the other hand Shri B. S. Bhasaur, Advocate, learned Counsel for the respondents, has argued that once the Magistrate had taken cognizance of certain offences on the basis of a police report, a subsequent complaint based on the same allegations against the same accused persons is not maintainable and is not covered by Section 210 of the Code, and if the investigation made by the police was not proper, the police had ample powers u/s 173 of the Code to make further investigations in the case. The learned counsel has defended the two impugned orders on the ground that the Court cannot take cognizance of the same offence twice since it would amount to double jeopardy.

8. I have given my careful thought to the arguments advanced at the Bar.

9. It may be clarified at the outset that Section 210 of the Code lays down the procedure to be followed when there is a complaint case and police investigation in respect of the same offence is in progress, and not vice versa. According to the said section, a complaint case is to be stayed when it is brought to the notice of the Magistrate that police investigation on the same matter is proceeding. The Magistrate shall then call for a report-from the police officer concerned to ensure that the investigation on the same matter has been proceeding. If a report is made by the Investigating Officer u/s 173 of the Code and on such a report cognizance of any offence is taken by the Magistrate against any person who is also an accused in the complaint case, the Magistrate shall enquire into try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. Where a Magistrate has already taken cognizance on a police report and thereafter a complaint is filed, Section 210 of the Code is not attracted. To that extent, the orders passed by the two Courts below cannot be assailed.

10. However, the question still remains as to whether the complaint filed by the present petitioner could have been dismissed on the ground that the Magistrate had already taken cognizance of the same offence earlier on a police report, which had already been committed to the Court of Session, and he could not take cognizance of the same offence twice on the basis of the rule of double jeopardy. In my considered view, the answer should be in the plain negative.

11. From a careful reading of the provisions contained in Chapters XI, XIV, XV and XVI of the Code, it emerges that on a receipt of a complaint a Magistrate has several courses open to him. The Magistrate may take cognizance of the offence at once and proceed to record statements of the complainant and the witnesses present u/s 200. After recording those statements, if in the opinion of the Magistrate there is no sufficient ground for proceeding, he may dismiss the complaint u/s 203. On the other hand if in his opinion there is sufficient ground for proceeding he may issue process u/s 204. If, however, the Magistrate thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be

made by the police officer or such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding. Yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down u/s 200 or Section 202, he may order an investigation to be made by the police u/s 156(3). When such an order is made, the police will have to investigate the matter and submit a report u/s 173(2). On receiving the police report the Magistrate may take cognizance of the offence u/s 190(1)(b)and issue process straightaway to the accused. The Magistrate may exercise his powers in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the police report u/s 173(2) will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom. If the Magistrate is satisfied that upon the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence and issue process the Magistrate may do so without reference to the conclusion drawn by the Investigating Officer because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not. Alternately the Magistrate on receiving the police report, may without issuing process or dropping the proceeding proceed to act u/s 200 by taking cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statement upon oath of the complainant and the witnesses present and thereafter decide whether the complaint should be dismissed or process should be issued.

12. From the above provisions, it becomes clear that when a complaint containing allegations disclosing an offence is made to a Magistrate u/s 190(1)(a) of the Code, the Magistrate is bound to take cognizance of the offence. The words "may take cognizance" in the context means must take cognizance. He may not take cognizance at the initial stage in the sense that he may refer the complaint to the police u/s 156(3) of the Code or may issue a warrant or a process for the production of any document etc. but otherwise he is bound to take cognisance of the complaint and has no discretion in the matter. This view is fully supported by a judgment of the apex Court rendered in Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., . The Code does not contain any bar in taking cognisance of an offence on the basis of a police report. The reasons may vary. For instance, the factual position, the number and names of the accused, the number and names of the witnesses or other factual position may differ from those contained in the first information report, although the complaint case and the police case relate to the commission of the same offence. It is not necessary for proceeding with the complaint case filed subsequent to the taking cognisance of an offence, on a police report that it must be covered within the ambit of Section 210 of the Code. This section is merely an enabling provision regarding the procedure to be adopted when the complaint is filed and the investigation for the same offence is

in progress. There is no other provision in the Code providing for the reverse situation. This would not mean that no complaint is maintainable when the cognizance has already been taken on the basis of the police report. Where there are two cases exclusively triable by the Court of Session, one instituted on a police report u/s 173 of the Code and the other initiated on a criminal complaint arising out of the same transaction, both the cases should be tried by one and the same Court simultaneously to avoid conflicting findings.

13. While dismissing the complaint of the petitioner, the Judicial Magistrate took the shelter of the principle of double jeopardy which view has been affirmed by the Additional Sessions Judge in his impugned judgment. In my considered view, both the Courts below have fallen in error in this respect as well. Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. On the same principle Section 300 of the Code provides that when 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. The protection afforded by the Constitution of India as well as Section 300 of the Code can still be reserved if both the cases instituted upon a complaint as well as a police report are tried together. Admittedly the prosecution launched on the basis of the police report is still pending and the accused persons have neither been convicted nor acquitted therein.

14. From a purusal of the first information report registered on the statement of Kaur Singh, and the complaint filed by the present petitioner, it is evident that the origin and genesis of the prosecution case as laid down in the complaint is more elaborate in details regarding the alleged previous conduct of the accused persons. The allegations contained in the complaint do differ from the texture of the averments made in the first information report, although leading to the commission of the same offence. The grievance of the petitioner is that the police has not investigated the case properly and has also not collected the relevant evidence in support thereof since it was helping the accused persons. In these circumstances it cannot be said that the complaint filed by the petitioner is not maintainable.

15. For the reasons mentioned above, it is a fit case where to secure the ends of justice, this Court should exercise its inherent powers u/s 482 of the Code. Consequently, this petition is allowed and the two impugned orders passed by the Courts below arc hereby set aside and the Judicial Magistrate is directed to proceed with the complaint in accordance with law in the light of the observations made above.