

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C.3557/2001

% Date of reserve : 12.05.2009
Date of decision: 25.05.2009

Dr. V. P. GOEL ...PETITIONER
Through: Mr.Ajay Burman, Mr.R.K.Singh,
Mr.R.Samanotra, Advocates

Versus

STATE & ORS. ...RESPONDENTS
Through: Ms.Santosh Kohli, APP for the State.
 Mr.L.K.Upadhyay, Mr.Devesh Shukla,
 Mr.Manish Kumar, Mr.Afzal, Advocates for R-2.

WITH

+ Crl.M.C.96/2002

Dr. V. K. JAIN & ANR. ...PETITIONERS
Through: Mr.Ajay Burman, Mr.R.K.Singh,
Mr.R.Samanotra, Advocates

Versus

STATE & ORS. ...RESPONDENTS
Through: Ms.Santosh Kohli, APP for the State.
 Mr.L.K.Upadhyay, Mr.Devesh Shukla,
 Mr.Manish Kumar, Mr.Afzal, Advocates for R-2.

**CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG**

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

: **MOOL CHAND GARG, J.**

1. The aforesaid two petitions arise out of a common order dated 12.9.2001 passed by the Additional Sessions Judge, New Delhi, refusing to quash the summoning order dated 24.9.1998 passed by the Metropolitan Magistrate by which petitioner Shri V.P.Goel (petitioner in Crl.M.C.3557/2001) and Dr.V.K.Jain and Anju Jain (petitioners in Crl.M.C.96/2002) were summoned to face prosecution under Section 406/420/506/120-B/34 IPC on the basis of a fresh complaint filed by Dr.Rajiv Kumar Jain, the complainant, who has been arrayed as respondent in both the cases in addition to Government of NCT of Delhi.

2. Briefly stating the facts giving rise to filing of this petition are as under:-

- A) Mrs. Anju Jain is the owner of Premises bearing No.B-18, Surya Nagar, Ghaziabad, Dr.V.K.Jain, her husband, is a doctor and is the owner of various medical equipments lying in the said premises. Dr.V.P.Goel is the father-in-law of Mrs.Anju Jain.
- B) An advertisement was made by Dr.V.K.Jain and Mrs. Anju Jain in the Hindustan Times and other papers on 19.07.1992 for the sale of the said property and medical equipments lying therein at Ghaziabad.
- C) Dr.Rajeev Kumar Jain, the complainant responded pursuant to the said advertisement by his letter dated 27.09.1992.
- D) Pursuant to the talks between the parties, a Memorandum of Understanding cum receipt dated 9.1.1993 alleged to be an agreement to sell was signed by the parties, i.e., by Dr. V.K. Jain and Dr.P.S. Jain, as Chairman of the Indo Soviet Medical Education Care and Research Foundation for the sale of the premises belonging to Mrs. Anju Jain and the sale of the medical equipment belonging to the Dr.V.K.Jain and his company.
- E) It is also the case of the petitioners that thereafter Dr.Rajeev Kumar Jain, the complainant, started adopting dilatory tactics in order to resile from the transaction and also filed a complaint in Police Station Link Road, Ghaziabad on the same day and in view of the aforesaid, Dr.V.K.Jain and Ms.Anju Jain also filed a complaint against the complainant in Police Station Link Road, Ghaziabad on

12.4.1993. At that juncture, the complainant also filed a complaint against the petitioners on 19.4.1993 though no FIR was registered on any of the complaint. In his complaint made to police, Dr.Rajeev Kumar Jain attributed no role to Dr.V.P.Goel. Parties also started civil litigation. However, Dr.Rajeev Kumar Jain then filed a criminal complaint against the petitioners at Ghaziabad under Section 406/420 IPC. The copy of the complaint so filed has been annexed as annexure C to the petition Crl.M.C.3557/2001.

- F) In the aforesaid complaint, it was alleged that Dr.V.P.Goel along with Dr.V.K.Jain and Anju Jain conspired to commit a fraud and cheated the complainant and it was on the assurance of Dr.V.P.Goel, the complainant dealt with the other petitioners, which it is stated is absolutely false.
- G. After receiving the summons from the Court of Metropolitan Magistrate, Ghaziabad for 26.7.1993, a revision petition was filed by all the petitioners which was partly allowed by the Sessions Judge, Ghaziabad vide order dated 11.10.1993. By the said order Dr.V.P.Goel was discharged while Mrs.Aju Jain and Dr.V.K.Jain were asked to face the trial.

3. As against the aforesaid order, Anju Jain and Dr.V.K.Jain filed a Writ Petition bearing No.38270/1993 before the Allahabad High Court. On the other hand, a revision petition (Crl.Rev.P.2149/1993) was filed on behalf of the complainant through Manoj Kumar against the order discharging Dr.V.P.Goel, which was pending at the time when the fresh complaint was filed by Dr.Rajeev Kumar Jain against all the petitioners. The writ petition was disposed of by the Allahabad High Court vide order dated 4.4.1995 holding that the courts at Ghaziabad had no jurisdiction in the matter but permitted the court to return the complaint for presentation before the competent court of jurisdiction in Delhi as contemplated under Section 201 Cr.P.C.

4. The complainant instead of filing the same complaint which was directed to be returned under Section 201 Cr.P.C., filed a fresh complaint on 6.11.1998, wherein additional allegations

were also made against Dr.V.P.Goel.

5. The Magistrate on the basis of the new complaint summoned all the petitioners to face prosecution with respect to the offences alleged in the said complaint even though some of the offences were not even mentioned in the original complaint, vide his order dated 24.9.1998.

6. This order was challenged by all the petitioners before the Additional Sessions Judge, New Delhi by way of filing a revision petition (Crl.Rev.P.56/57/2001) under Section 397 Cr.P.C., wherein the petitioners also relied upon Section 201 Cr.P.C. as well as Section 462 Cr.P.C. However, the learned Additional Sessions Judge while dismissing the said revision petition made the following observations:-

- a) The mandate given in Section 201 Cr.P.C. is for the Metropolitan Magistrate to return the complaint. There is no mandate given by the legislature to the complainant that the complainant shall file only that complaint which has been returned to him. It is the discretion of the complainant to file that complaint which has been returned or to file a fresh complaint mentioning the facts of the earlier complaint also. I therefore consider that Revision must fail on this point.
- b) The learned judge held that the pendency of the Civil litigation is not a bar to file a criminal complaint.
- c) The learned judge also held that he had considered the evidence made before the trial Court and that the trial Court had rightly summoned the accused person.

Hence, this petition.

7. Now the following issues arise for determination in this case:-

(i) Whether the petition filed by the petitioners under Section 482 Cr.P.C. is maintainable as the petitioners have already availed the remedy of revision under Section 397 Cr.P.C. against the order of summoning passed by the Metropolitan Magistrate concerned, which stands dismissed.

(ii) Whether the summoning order dated 24.9.1998 and the order dated 12.9.2001 refusing to quash the same passed by the Additional Sessions Judge, New Delhi are sustainable in view of the provisions contained under Sections 201 and 462 Cr.P.C.

(iii) Whether Dr.V.P.Goel who stood discharged in respect of the original complaint filed at Ghaziabad by the Sessions Judge, Ghaziabad vide order dated 11.10.1993 could have been summoned again on the basis of second complaint despite the bar contained under Section 462 Cr.P.C., which reads as under:-

462. Proceedings in wrong place:No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

(iv) Whether the complainant was at all justified in filing a fresh complaint in Delhi Courts after the order of the High Court of Allahabad dated 4.4.1995, whereby it was held that the complaint filed in

Ghaziabad was not maintainable as it was beyond jurisdiction of Ghaziabad Court but liberty was granted to the complainant to withdraw his complaint from the Courts at Ghaziabad and to file the same before the competent court in accordance with Section 201 Cr.P.C., which is reproduced hereunder:-

201. Procedure by Magistrate not competent to take cognizance of the case: If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall, -

(a) If the complaint is in writing, return it for presentation to the proper court with to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper court.

8. The learned counsel appearing for the petitioners have submitted that the impugned order dated 12.09.2001 passed by the Additional Sessions Judge, New Delhi is liable to be set aside inter alia on the following grounds:-

(i) Once the Allahabad High Court held that the complaint filed in Ghaziabad was beyond the jurisdiction of Ghaziabad courts and permitted to re-file the same before the competent court of jurisdiction at Delhi under Section 201 Cr.P.C., the very same complaint which was filed in Ghaziabad only could have been filed in Delhi Courts and not a fresh complaint as has been done by the complainant/respondent.

(ii) Discharge of Dr.V.P.Goel in the original complaint filed at Ghaziabad by the Sessions Court at Ghaziabad, which order has not been set aside so far by any higher court, fresh summons issued to Dr.V.P.Goel by the Magistrate on the basis of second complaint where some other allegations were also added unauthorisedly were illegal. This aspect has also not been considered by the Additional Sessions Judge and as such his order is liable to be set aside by this Court, by exercising its inherent powers as the said order is causing a grave prejudice to Dr.V.P.Goel and amounts to miscarriage of justice.

(iii) Even otherwise on facts of this case, no criminal offence was made out. This fact has also been completely ignored by the trial court as well as by the Sessions Court.

(iv) By filing the fresh complaint, the complainant has tried to make out a new case on the allegations which were not there in the earlier complaint by adding;

“That Dr.V.P. Goel met Dr. P.S. Jain some time in December 1992 and assured Dr.P.S. Jain that he can get a hospital at B-18, Surya Nagar, Ghaziabad under the name of Udyan Medical Centre from his son-in-law Dr.V.K. Jain and his daughter Mrs. Anju Jain both being the Directors/proprietors of Udyan Medical Center at a most reasonable price to the Indo Soviet Medical Care and Research Foundation.

It was also stated that it has come to the

knowledge of the complainant that after giving the sum of Rs.15 lakhs the accused persons had no intention to deliver the possession of the aforesaid hospital along with land and building, all valuable machinery and equipment and other facilities etc. to the foundation and that the accused had intentionally grabbed a sum of Rs.15 lakhs fraudulently from the complainant.”

9. It has been submitted that the course of action adopted by the complainant by filing a new complaint, by adding new facts in the aforesaid complaint is against the direction of order dated 4.4.1995 of Allahabad High Court in Writ Petition (Crl.) No. 38270/1993 and is also against the mandate of Section 201 of the Cr.P.C. It is a matter of record that SLP filed by the petitioners against the said order of Allahabad High Court is also dismissed.

10. On behalf of Dr. V.P.Goel, it is submitted that even if the allegations made in the complaint are taken on the face value no case is made out against him inasmuch as neither the property belong to him, nor the Memorandum of Understanding was signed by him. The money was also not accepted by him and as such no transaction took place with him. Moreover, he was also not in a position to induce Dr.Rajeev Kumar Jain to enter into the deal. In the previous complaint no allegation were made against him by Dr. Rajeev Kumar Jain. This was also the position in the complaint dated 19.04.1993 filed with the police and the written statement filed by him in the Civil Court. Consequently the allegations are clearly an afterthought only to harass him. Thus, it is stated that he has been falsely implicated for some ulterior reasons.

11. It has also been argued that once he stood discharged in the original complaint filed in Ghaziabad and the revision petition was

pending before the Allahabad High Court, the complainant was precluded from filing a fresh complaint against him and thus, taking cognizance of the complaint by the trial court against him is bad in law and therefore, the complaint is liable to be dismissed being an abuse of process of Court. It may be observed that during the course of arguments before this Court, it has been admitted that the revision petition filed against Dr.V.P.Goel has also been withdrawn by the complainant as having become infructuous in view of the fact that the complaint itself was quashed by the Allahabad High Court.

12. To support their cases the petitioners have relied upon the following judgments:-

- a) On the point of maintainability of petition under Section 482 Cr.P.C:-
 - i) Krishanan & Anr. Vs. Krishanan & Anr. J.T. 1997 (1) SC 657, para-9
 - ii) Smt. Kavita Vs. State & Ors. 1999 (2) JCC (Delhi) 508, paras 5,6,9
 - iii) Jitender Kumar Jain Vs. State of Delhi 1999 SCC 77, para-2
 - iv) Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr. 2005 SCC (Crl.) 538, para-5 & 7,
 - v) B.C. Sharma Vs. M/s Shree Bhagwati Enterprises 2000 (2) JCC 42., para-4.
 - vi) State of Haryana Vs. Bhajan Lal (1990) Supp. 3 SCR,para108
 - vii) Pepsi Food Ltd. & Anr. Vs. S.J. Magistrate 1998 SCC (Crl.) 1400., paras-22,26,28
- b) On the point of Sections 201 & 462 Cr.P.C:-
 - i) Y Abraham Ajith & Ors. Vs. Inspector of Police 2004 (3) JCC 1305, para-19

ii) Malkiat Singh & Ors. Vs. Inspector of Police 2005 (2) JCC 1237, para-13, 14.

iii) Directorate of Revenue Intelligence Vs. Kumar Pal 2007 (4) JCC 3101, para-26,28,29,30.

c) To prove that criminal proceedings in such circumstances are vexacious, malafide and clearly an abuse of process of court:-

i) S. Subir Vs. Mahender Kumar Rajput and Ors. 1999 (2) JCC Delhi 525, para-2,6.

ii) Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & Anr. JT 2006 (II) SC 133.,para-6,10,12

iii) Murari Lal Gupta Vs. Gopi Singh 2006 (2) SCC (Crl.) 430, para-6

13. On the other hand, the respondents opposed the petition by making following submissions;

a) That the present petition was barred in view of Section 397(3) Cr.P.C. as the Additional Sessions Judge has already dismissed the revision petition filed by the petitioners. As such the petition under Section 482 Cr.P.C. is not maintainable, because inherent powers cannot be utilized against the express bar of filing a second revision. Such powers are to be exercised sparingly and not in a routine manner.

b) It is also submitted that, prima facie, a case is made out against the petitioners and this fact has also been gone into detail by the Allahabad High

Court by the order dated 4.4.1993 while holding that there was no jurisdiction in the Ghaziabad. Allahabad High Court has held that prima facie case is made out against the petitioner and thus, this issue cannot be reviewed by the Court of Additional Sessions Judge or by this Court.

- c) It is also submitted that there is no provision in the Cr.P.C. or any other statute which debars the complainant from filing a fresh complaint on the same grounds, if the first complaint was returned without adjudication only on the point of jurisdiction.
- d) The complainant also submitted that insofar as the revision petition filed against the discharge of Dr.V.P.Goel is concerned, the same has been dismissed as withdrawn because it has become infructuous in view of the orders passed by the Allahabad High Court in the writ petition with a direction to the complainant to withdraw his complaint from the Court of Ghaziabad as the said court had no jurisdiction and to file it before the competent Court in Delhi. It is thus submitted that because of that order passed in the revision petition, the order of discharge of Dr.V.P.Goel becomes a nullity and therefore, the complainant was well within his rights to proceed with his

complaint even against Dr.V.P.Goel.

- e) It is further submitted that merely because the complainant was entitled to withdraw his complaint and to file a fresh complaint it would not mean that the complainant has to file the same complaint with the same averments as contended on behalf of the petitioners inasmuch as there is nothing in law against the entertainment of second complaint on the same facts on which a person has already been discharged as a discharge is not equivalent to an acquittal.

14. To support their case, the respondents have relied upon the following judgments:

- a) On the point of invocation of the inherent powers vested in High Court under Section 482 Cr.P.C.;

- i) Deepti @ Arti Rai Vs. Akhil Rai & Ors. 1995 SCC (Crl.) 1020, para-4.
- ii) Rajathi Vs. C. Ganeshan 1999 SCC (Crl.) 1118, para-10, 11.
- iii) State, Through special cell New Delhi Vs. Navjot Sandhu @ Afshan Guru & Ors. 2003 SCC (Crl.)1545, para 27-29.
- iv) Kailash Verma Vs. Punjab (Supra)
- v) State of M.P. Vs. Avadh Kishore Gupta & Ors. 2004 Crl.J. 598, para-13
- vi) Som Mittal Vs. Govt. of Karnataka 2008 (2) SCC Crl. 1,para-9.
- vii) Shamshad Ahmed & ors. Vs. Tilak Raj Bajaj & Ors., Civil Appeal No.8067/2004 decided on 11.09.2008,

para-32-36

viii) Renu Kumari Vs. Sanjay Kumar & Ors. 2009 (1) SCC CrI. 426, paras 8-10

b) On the issue of 201 Cr.P.C.:-

i) Jitender Singh & Ors. Vs. Ranjit Kaur (2001) 2 SCC 570, paras 9,12,14

ii) Mahesh Chand Vs. B. Janardhan Reddy & Anr. JT 2002 (10) SC 123, paras-14, 19

iii) Pramatha Nath Talukdar Vs. Saroj Ranjan Sarkar, (1962) 1 CrI.J 770

c) About the pendency of both the civil and criminal proceedings, it is submitted by the respondents that pendency of civil suits is not a bar to continuation of criminal proceedings and does not justify the quashing of criminal proceedings. They have relied upon:-

i) M.S. Sheriff Vs. State of Madras, 1954 CrI.J. 1019, para-15

ii) Vitoori Pradeep Kumar Vs. Kai Sula Dharmaiah, 2004 SCC CrI. 440, para-2.

iii) Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. 2005 SCC (CrI.) 1101, para 32.

15. I have heard the arguments and have also gone through the judgments cited on behalf by both the sides. Taking into consideration all the facts of this case, it is observed:-

(i) As held by this Court in the case of *Gajraj Singh Tomar Vs. State and Ors.*, 2009(3)AD(Del)741, despite the bar contained under Section 397(3) Cr.P.C., the petition under Section 482 Cr.P.C. can be entertained in respect of the order assailed

before the Court of Sessions, if it is necessary to do so for preventing miscarriage of justice and to do substantial justice between the parties, or if it is in the interests of justice. The relevant paragraphs of the aforesaid judgment are reproduced hereunder:-

9. In this regard, I may extract some observations made by the Apex Court in the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr. (2005) 2 SCC 571 :

5. It may also be noticed that this Court in Rajathi v. C. Ganesan said that the power under Section [482](#) of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section [397\(3\)](#) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section [397\(1\)](#) of the Criminal Procedure Code as it is prohibited under Section [397\(3\)](#) thereof. However, the High Court can entertain a petition under Section [482](#) of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

(ii) In the case in hand, the complainant not only violated the order of Allahabad High Court in W.P.(Crl.)No. 38270/1993 also the order of Court of Sessions, Ghaziabad dated 11.10.1993, discharging Dr.V.P.Goel. This is violative of the provisions contained under Section 300 Cr.P.C. and Article 20(3) of Constitution of India besides the provisions contained under Section 462 Cr.P.C., because in the present case, there was a restriction on the right of the complainant to file a

fresh complaint even against petitioners Anju Jain and Dr.V.K.Jain, what to talk of filing a fresh complaint against Dr.V.P.Goel, who stood discharged. However, the complainant not only filed a fresh complaint but also leveled additional allegations against Dr.V.P.Goel which were not there in his original complaint.

- (iii) This procedure is violative of the law laid down in Y Abraham Ajith & Ors. Vs. Inspector of Police (supra). The relevant paragraph of the aforesaid judgment is quoted below:-

19. When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned Magistrate had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to respondent No. 2 who, **if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. The appeal is accordingly allowed.**

It is apparent from the order of Allahabad High Court that the complainant was not authorized to file a 'fresh complaint' but was obliged to file the 'same complaint' which was allowed to be withdrawn by the Allahabad High Court.

- (iv) Insofar as the prosecution of Dr.V.P.Goel is concerned, after his discharge by the Sessions Judge, Ghaziabad, even though said Court was not a court of competent jurisdiction, Dr.V.P.Goel was

protected under Section 462 Cr.P.C. and therefore, unless and until the order of discharge would have been interfered with by higher court, prosecuting Dr.V.P.Goel by filing a fresh complaint in respect of same allegations tantamount to double jeopardy and as such it is violative of Section 300 Cr.P.C. and Article 20(2) of the Constitution of India.

16. Thus, it is concluded that:-

- (i) In the present case, the petitioner could not have implicated Dr.V.P.Goel again after his discharge by the Ghaziabad Court on merits in the first complaint. If aggrieved by the order of Ghaziabad Court he should have continued with the petition before the Allahabad High Court or should have sought liberty to file a fresh petition against him at Delhi High Court.
- (ii) In view of order of Allahabad High Court in W.P.(Crl.)No.38270/1993, dated 4.04.1995, the complainant was entitled only to file the same complaint in the court of competent jurisdiction in Delhi without any alteration which could have been proceeded from the stage at which it was returned from Ghaziabad Court.

17. In view of the aforesaid, both the petitions filed by the petitioners are disposed of with the following directions:-

- (a) The summoning order against Dr.V.P.Goel by MM,

Delhi Court, are hereby quashed.

- (b) The complaint filed against Anju Jain and Dr. V.K.Jain by Dr. Rajeev Kumar Jain in Delhi is dismissed with liberty to respondent to file an amended complaint, if he so wishes, i.e., a copy of the same complaint returned to him by the Ghaziabad Court. The Magistrate will then proceed with the complaint from the stage, at which it was returned by the Ghaziabad Court.
- (c) Parties, except Dr. V.P. Goel shall now appear before the concerned court on 3.7.2009 for further proceedings. However, the bail bond of Dr. V.P. Goel stands discharged.

MAY 25, 2009

MOOL CHAND GARG, J.