

GAHC010241002019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1176/2019

BISWAJIT SAHA
S/O SRI MONORANJAN SAHA, R/O NOONMATI, GUWAHATI, DIST-KAMRUP,
ASSAM

VERSUS

SARAJIT SAHA AND ANR.
S/O SRI MONORANJAN SAHA, C/O MA ARATI ELECTRONICS NEAR
NOONMATI L.P. SCHOOL, P.S.-NOONMATI, GUWAHATI, KAMRUP (M),
ASSAM, PIN-781020

2:THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSA

Advocate for the Petitioner : MR. D K BAGCHI

Advocate for the Respondent : PP, ASSAM (R2)

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

22.06.2023

Heard Mr D K Bagchi, learned counsel for the petitioner and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam/respondent No. 2. None appears for the respondent No. 1.

2. This is an application filed by the petitioner, Sri Biswajit Saha, under Sections 482 of the CrPC, praying for setting aside the impugned Judgment dated 03.09.2019, passed by the learned Additional Sessions Judge No. 1, Kamrup (Metro), at Guwahati, dismissing the Criminal Revision No. 96/2018 and Order dated 28.09.2018, passed by the learned Additional CJM, Kamrup (Metro), at Guwahati, passed in CR Case No. 5243/2018, under Sections 339/352/420/403/407 IPC dismissing the complaint under Section 203 CrPC.

3. The learned counsel for the petitioner has submitted that without examining the witnesses under Section 202 CrPC, the complaint was dismissed by the learned trial Court under Section 203 CrPC. Accordingly, he submits that the matter may be remanded back to the learned trial Court for deciding the matter afresh and to take cognizance of the case under Sections 339/352/420/403/407 IPC against the respondent No. 1.

4. In support of his submissions, learned counsel has relied on the following case-laws:-

1) (2009) 8 SCC 751; (*Mohammed Ibrahim & Others vs. State of Bihar & Another*)

2) (2009) 8 SCC 751; (*Mohammed Ibrahim & Others vs. State of Bihar & Another*)

3) (2013) 2 SCC 801; (*Arun Bhandari vs. State of Assam*)

4) 2013 (1) GLT 28; (*Deva Kanta Chetia vs. State of Assam & Ors.*)

5) 2019 (4) GLT (ML) 189; (*Bankhrawdor Lyngdoh vs. State of Meghalaya & Ors.*)

7. I have considered the submissions made by the learned counsel for both the parties. I have also gone through the Judgment and order(s) of the learned trial Court as well as the appellate Court.

8. A Magistrate may take cognizance of an offence on a complaint. The procedure to be followed by the Magistrate in that case is provided in Chapter XV. [Section 200](#), occurring in that Chapter, contemplates an examination of the complainant on oath (except in cases contemplated by the proviso) and of the witnesses present, if any. The Magistrate is empowered to postpone issuance of process to the accused person and get an inquiry made in accordance with [Section 202](#).

9. Section 203 provides as under :-

"If, after considering the statement on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) Under [Section 202](#), the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

10. [Section 204](#), occurring in Chapter XVI, provides for issue of process to the accused person, where the Magistrate, taking cognizance of an offence, is of opinion that there is sufficient ground for 'proceeding'.

11. It is noticeable that where the Court is of opinion that there is no sufficient ground for proceeding or that the charge against the accused is groundless, it has to record reasons for dismissal of a complaint or discharge of the accused. This is expressly provided by the statute. No such requirement has been expressly laid down in the statute where the court feels that there is sufficient ground for proceeding and directs issue of process or is of opinion that there is ground for presuming that the accused has committed an offence and proceeds to frame a charge against him.

12. Now, the question is whether such a requirement can be inferred on any acceptable principle of law?

13. In the case of *Niranjanlal Bawri v. State*; reported in **1975 Chand LR (Cri) 448**, it was held that :

".....In the instant case, the impugned order dated 19-9-1974 reproduced above was passed by the Magistrate in accordance with the report of the police officer. He did not discuss the statement made on oath by the complainant before it. The Magistrate failed to apply his judicial mind to the material, on which he has to form his judgment that there is a sufficient ground for proceeding against the accused and, therefore, this order is illegal and is quashed."

14. In another case, ***Jangir Singh v. Smt. Bharpur Kaur***, 1976 Chand LR (Cri) 63 (Punjab & Haryana), the observation made by the Punjab and Haryana High Court reads as under:-

".....According to Section 204(1),... if in the opinion of a magistrate..... there are sufficient grounds for proceeding against the accused then he has to issue process for his attendance in Court, it is manifest from the provisions of this Section that the Magistrate must apply his mind to the material on the record and then form judgment whether he is to proceed or not against the accused. The opening words of this Section make it obligatory that the opinion of the magistrate must be based on sufficient grounds and this fact should be apparent from the order itself....."

15. While dealing with Section 203 of the Code in ***Vadilal Panchal v. Dattatraya***, AIR 1960 SC 1113, it was observed as under:

"It is manifestly clear from the provisions of Section 203 that the judgment which the magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry."

16. Similar observations were made by the Supreme Court in ***L.Pramatha Nath Talukdar and Surendra Mohan Basu v. Saroj Ranjan Sarkar***, AIR 1962 SC 876 as under:

"He must apply his mind to the materials and form his judgment whether or

not there is sufficient ground for proceeding."

17. The observations made by the Supreme Court make it clear that at the stage at which the Magistrate is to decide whether he is to act under [Section 203](#) or [Section 204](#) of the Code he is to apply his judicial mind to the material before him and has to come to judgment whether or not he is to issue process and if so against which of the accused and for which of the offences...

18. At this stage, the basic question is whether dismissal of complaint under Section 203 CrPC will bar entertaining a second complaint on the same facts or not.

19. Hon'ble Supreme Court has gone into the question about the duty of the Court at the stage of framing of a charge in the case of ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja***, AIR 1990 SC 1962. The scope and ambit of "consideration" by the trial court at that stage was examined in the case. After referring to some of the earlier decisions in ***State of Bihar v. Ramesh Singh***, AIR 1977 SC 2018; ***Union of India v. Prafulla Kumar Samal***, AIR 1979 SC 366 and ***Supdt. and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja***, AIR 1980 SC 52, and held as under:

".....It seems well settled that at the [Sections 227-228](#) stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

20. The Hon'ble Supreme Court referred to the observations made in ***State of Bihar vs. Ramesh Singh***, AIR 1977 SC 2018 to the effect that:

".....at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for

presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused....."

21. The result of the evaluation of the material by the Court should appear from the order that it passes. If the trial court is of opinion that there is no sufficient ground for proceeding against the accused or that the charge against the accused is groundless, an order of discharge shall be passed by the Court and it shall record its reasons for doing so. The order, in other words, should mention the basis on which the court comes to a conclusion that the accused person should be discharged. Reasons, as known to law, should appear in the conclusion recorded by the trial court.

22. In this case I find that the impugned Judgment dated 28.09.2018, suffers from arbitrariness. It does not disclose that the judicial mind was applied to the evidence available before the magistrate. The order should have been a speaking order disclosing that the Magistrate had not found sufficient grounds for proceeding against the accused.

23. Perusal of the language of [Section 203](#) of the Cr.P.C makes it clear that on filing a complaint and on examination of the complainant and his witnesses, if the Magistrate forms an opinion that sufficient ground to proceed in the "inquiry" or "investigation" under [Section 202](#) of the Cr.P.C is made out, he shall issue the summons under [Section 204](#) of the Cr.P.C otherwise dismiss the complaint. The words "inquiry" and "investigation" have been defined in [Section 2\(g\)](#) and [2\(h\)](#) of the Cr.P.C, which are reproduced as under:-

"2(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

24. The "inquiry" would mean every inquiry other than a trial conducted under the [Cr.P.C](#) by a Magistrate or Court whereas "investigation" denotes all the proceedings under the [Cr.P.C](#) for collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) authorised by a Magistrate in this behalf. Therefore, it can safely be crystallized that dismissal of a complaint under [Section 203](#) of the Cr.P.C does not contemplate the word "trial" and it merely contemplates the words "inquiry" and "investigation" under [Section 202](#) of the Cr.P.C. The word "trial" is not defined in the [Cr.P.C](#) but [Section 4](#) of the Cr.P.C deals with the trial of offences under [the Indian Penal Code](#) and other laws, which clarifies that all the offences of the [I.P.C](#) shall be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions of the [Cr.P.C](#) and similar is the provision for trial to the offences other than the [I.P.C](#).

25. In the case of *Hardeep Singh Versus State of Punjab & Others*, reported in (2014) 3 SCC 92, the Apex Court while explaining the meaning of expression "inquiry" has observed that "inquiry" means pretrial inquiry by a Court and the Court can exercise such power under [Section 319](#) of Cr.P.C prior to commencement of trial.

26. In the case of *Shivjee Singh Versus Nagendra Tiwary & Others*; reported in AIR 2010 SC 2261, the Hon'ble Apex Court has explained the meaning of expression "sufficient ground" and observed that it would mean to record a satisfaction by a Magistrate that a prima facie case is made out against the accused but it does not mean that "sufficient ground" for the purpose of conviction is made out.

27. In the case of *Iris Computers Limited Versus Askari Infotech Private Limited & Others*; reported in (2015) 14 SCC 399, the Hon'ble Apex Court has observed that on receipt of a private complaint, the Magistrate has to satisfy by conducting the "inquiry" and "investigation" under [Sections 200 & 202](#) of the Cr.P.C that there existed material to proceed against the accused. If the Magistrate is not satisfied, he can dismiss the complaint taking recourse of [Section 203](#) of Cr.P.C otherwise he can issue process

under [Section 204](#) of the Cr.P.C. The Apex Court has also observed that if a complaint is dismissed under [Section 203](#) of Cr.P.C, the remedy to approach the High Court lies under [Section 482](#) of Cr.P.C and not to the Magistrate under [Section 203](#) of the Cr.P.C.

28. In the case of *Jatinder Singh & Others Versus Ranjit Kaur*; reported in (2001) 2 SCC 570, the Apex Court has dealt with the situation of dismissal of a complaint under [Sections 202 & 203](#) of the Cr.P.C not on merit but on default of complainant to be present in Court and observed that the dismissal of a complaint under [Section 203](#) of the Cr.P.C may be made if there is no sufficient ground for proceeding. The Apex Court further held that there is no provision in [the Code](#) or any in 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. If the dismissal of the complaint was not on merit but was on default of the complainant to be present in Court then 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 Cr.P.C was on merit, the position would be different because when a Magistrate conducts an inquiry under [Section 202](#) of the Cr.P.C and dismisses the complaint on merit, the second complaint would not lie unless there are very exceptional circumstances.

29. In view of the aforesaid legal propositions, it can safely be crystallized that "inquiry" can be conducted by a Court in a proceeding but it would not come within the purview of "trial". It is also apparent that when "investigation" is to be conducted, it ought to be done by a Police Officer or by any person authorized by a Court but it would not be done by a Magistrate. If a complaint is dismissed under [Section 203](#) of the Cr.P.C for want of sufficient ground for proceeding against the accused, it would not come within the purview of "acquittal" and such an order would not be treated to be an order "after trial".

30. In the case of *Manharibhai Muljibhai Kakadia & Another Versus Shaileshbhai*

Mohanbhai Patel & Others; reported in (2012) 10 SCC 517, the Hon'ble Apex Court has observed that if a complaint is dismissed under [Section 203](#) of the Cr.P.C, the revision can be maintained and opportunity of hearing to the accused at a subsequent proceeding is necessary. Similar view of maintaining the revision has been taken by the Apex Court in the case of V.K.Bhat Versus G.Ravi Kishore & Another reported in (2016) 13 SCC 243.

31. In view of the foregoing discussions, the question as posed is answered that the order of dismissing the complaint under Section 203 CrPC would not come within the connotation of "acquittal." Therefore, the petitioner to take recourse of law as permissible to him.

32. Reverting to the present case, it appears that the learned trial Court examined the petitioner under Section 200 CrPC by recording his initial deposition, on 18.09.2018, fixing the next date on 28.09.2018 for passing necessary order, but the allegation made by the petitioner is that on 28.09.2018, the learned trial Court without making any enquiry and investigation and without examining any witness under Section 202 CrPC, dismissed the complaint under Section 203 CrPC.

33. It appears that the learned Magistrate has not followed the procedure as per provision of law while dismissing the complaint under Section 203 CrPC. Under such backdrop, there is no bar for the petitioner/complainant to approach before the learned Magistrate again with a second complaint on the same facts.

34. With the aforesaid directions, this criminal petition stands disposed of.

JUDGE

Comparing Assistant