

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No. 3129 of 2011 (O&M)
DECIDED ON: May 10, 2016**

Purshotam Dass

.....Petitioner...

VERSUS

State of Haryana and others

....Respondents...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Present: Mr. S.K. Tripathi, Advocate,
for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

Mr. N.S. Shekhawat, Advocate,
for respondents No. 2 to 6.

Mr. S.K. Yadav, Advocate,
for respondent No.7.

JASPAL SINGH, J.

CRM-68464-2011

Heard.

Delay of 589 days in filing the present revision petition is
condoned.

Application stands disposed of.

Main case

Aggrieved against the order dated 19.01.2010 passed by Ld.

Additional Sessions Judge, Rewari whereby the summoning order issued by the Additional Chief Judicial Magistrate, Rewari dated 13.08.2008 under Sections 419, 420, 467, 468, 471 and 120-B IPC, in a complaint bearing No. 134/2006, captioned as ***“Purshotam Dass vs. Smt. Krishna Devi and others”*** has been set aside/quashed, Purshotam Dass has preferred the instant criminal revision for the restoration of order dated 13.08.2008 passed by the Additional Chief Judicial Magistrate, Rewari.

2. While assailing the impugned order dated 19.01.2010 passed by Id. Additional Sessions Judge, Rewari, learned counsel for the petitioner has contended that after recording preliminary evidence, Id. Additional Chief Judicial Magistrate, Rewari summoned the private respondents-accused to face trial under Sections 419, 420, 467, 468, 471 and 120-B IPC vide its order dated 13.08.2008 (Annexure P-2).

3. Aggrieved against the aforesaid summoning order dated 13.08.2008, respondents-accused preferred a revision petitions No.59 of 2008, 63 of 2008 and 35 of 2009 before Additional Sessions Judge, Rewari, which were clubbed together and decided by a common order dated 19.01.2010 by the Id. Additional Sessions Judge. The order passed by Additional Sessions Judge is absolutely against the settled canons of law. The well reasoned order dated 13.08.2008 has been set aside by learned Additional Sessions Judge merely on the ground that no second complaint for the same cause of action lies and in the second complaint no new facts have been brought forward by the the complainant/petitioner.

But, it is well settled proposition of law that in case the previous complaint

has been dismissed or withdrawn by the complainant on technical ground and a fresh complaint after adding some new facts has been filed, which came to the notice of the petitioner subsequently, the second complaint is legally maintainable. Since, previous complaint was withdrawn and not decided on merits and fresh complaint was lodged after addition of some new facts, which came to light subsequently, the second complaint being legally maintainable was not liable to be dismissed in the revision petition. Thus, the impugned order passed by the Id. Additional Sessions Judge being against the settled canons of law is liable to be set aside. Consequently, the order passed by Id. Additional Judicial Magistrate, Rewari deserves to be restored.

4. On the other hand, learned counsel for the respondents have supported the order dated 19.01.2010 passed by Id. Additional Sessions Judge, Rewari. Undisputably, the case of petitioner-complainant Purshotam Dass is that earlier he filed complaint which was withdrawn by him on 30.09.2006 due to some technical defects and on surfacing some new facts.

5. By now, it is well settled that there is no statutory bar in filing a second complaint on same facts. In a case where a previous complaint is dismissed without assigning any reason, the Magistrate under Section 204 Cr.P.C. is competent to take cognizance of an offence and issue process if there is sufficient ground for proceeding. But the second complaint on the same facts could be entertained only in exceptional circumstances. In short, where the previous order was passed on an incomplete record or on

misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not with reasonable diligence brought on record in the previous proceedings, the second complaint is maintainable.

6. Adverting to the facts of the case in hand, the previous complaint filed by complainant was dismissed by Id. Magistrate on 30.09.2006 on the basis of statement of complainant that he does not intend to proceed with his complaint on account of some technical defects and on surfacing new facts. But second complaint filed by complainant does not disclose any such exceptional circumstances which could permit him to file a fresh complaint on fresh cause of action. A perusal of previous complaint as well as second complaint transpires that the second complaint is nothing but reiteration of the same allegation, which were unfolded in the previous complaint. No new facts have been brought into light before the Court. There is also nothing in the second complaint to suggest that all are new facts, which were not in his knowledge at the time of lodging of previous complaint and what were the technical defects, which have been removed while filing the second complaint. In the previous complaint also, the allegation was that Krishna Devi in collusion with other accused persons had forged his signatures on the registered sale deed dated 01.02.2002 bearing Vasika Nos.5307 to 5309 executed in favour of accused-respondents No. 2 to 4 and in fact, she never visited to the said premises on 01.02.2002 and signed/attested the sale deed. Since, neither any new facts have been disclosed in the second complaint nor the

complainant-petitioner could point out any technical defect in the previous complaint on the basis of which it was withdrawn, the second complaint is not maintainable and the Court was not competent to take cognizance.

7. In view of the facts narrated above, this Court is of the view that there is no infirmity or impropriety in the impugned order passed by the Id. Additional Sessions Judge, Rewari. Thus, the impugned order does not call for any interference by this Court.

8. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed.

May 10, 2016
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(JASPAL SINGH)
JUDGE