

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM-M-14947-2012 (O&M)
Date of Decision: 04.08.2017

Lakhbir Kaur

..Petitioner

versus

ASI Gian Singh (since deceased) and 03 others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Navkiran Singh, Advocate, for the petitioner.

Mr. Vipin Mahajan, Advocate, for respondent nos. 2 to 4.

RAMENDRA JAIN, J. ORAL

1. Prayer in the instant petition under section 482 of the Code of Criminal procedure, has been made for quashing order dated 8.11.2007 (Annexure P-3), passed by Judicial Magistrate 1st Class, Batala, dismissing the complaint of the petitioner under sections 364/341/302/148/149 IPC in default. Further prayer has also been made to quash order dated 10.4.2012 (Annexure P-6) passed by Additional Sessions Judge, Gurdaspur, dismissing the revision petition filed by the petitioner.

2. Briefly stated, the petitioner filed a complaint in the year 1999 under sections 364/341/302/148 and 149 IPC against the respondents on the allegations that they had dragged and taken her lonely son Balwinder Singh and one Baljinder Singh in the afternoon of 21.3.1993 from a running bus and then shot them dead showing a false encounter, the next day, i.e., 22.3.1993.

3. After recording the preliminary evidence, the respondents were ordered to be summoned vide order dated 25.9.1999. The presence of only one accused, namely, Inspector/SHO Baldev Singh (since deceased) could be procured. The presence of the remaining respondents, being police officials, could not be procured even despite issuance of warrants till the year 2007, i.e., almost for spanning over 08 years. However, on 8.11.2007, when the complainant-petitioner did not appear before the Judicial Magistrate 1st Class, Batala, his complaint was dismissed in default for non-prosecution and the said ASI Baldev Singh was discharged.

4. Being aggrieved, the petitioner filed review petition, which too was dismissed vide order dated 31.3.2009 (Annexure P-5) by the Judicial Magistrate 1st Class, Batala, on the ground that he had no power to review his own order. Accordingly the petitioner filed a revision before the revisional court, which was also dismissed vide order dated 10.4.2012 (Annexure P-6) by the learned Additional Sessions Judge, Gurdaspur.

5. Learned counsel for the petitioner contends that in view of the provisions of Section 249 of the Code of Criminal Procedure, the learned Magistrate has erred in dismissing the impugned complaint of the petitioner, being filed “under cognizable” and “non-compoundable offences”.

6. On the other hand, learned counsel for Respondent nos.2 to 4 vehemently opposed the arguments of learned counsel for the petitioner by submitting that since the initial order dated 8.11.2007 (Annexure P-3) dismissing the complaint of the petitioner in default by the trial court, was not challenged by the petitioner before the revisional court and therefore, the impugned order dated 10.4.2012 passed by the revisional court (Annexure P-6) is perfectly legal and valid. He has further contended that

the petitioner, instead of seeking restoration of the impugned complaint, could very well file a fresh complaint on the same cause of action. In support of his contention, learned counsel for the respondents has placed reliance upon the decisions rendered in Ranvir Singh versus State of Haryana and another 2010 (91) AIC 155 and Joga Singh versus State of Punjab and others, 2007(1) RCR(Criminal) 770.

7. I have given anxious consideration to the submissions made by both the sides.

8. During the course of hearing, it has been pointed out by learned counsel for the respondents that ASI Gian Singh, respondent no.1-accused, has expired.

9. Undisputedly, the impugned complaint was filed on 22.1.1999 under sections 364/341/302/148 and 149 IPC, out of which, offences under sections 302 and 364 IPC are “non-compoundable”. The respondents were ordered to be summoned after recording preliminary evidence. It is worth mentioning that except the presence of Inspector Baldev Singh (since deceased), the presence of none of the respondents could be procured even by issuance of their warrants in a long span of 8 years, i.e., from the date of filing of the complaint in year 1999 till 2007, when the complaint was dismissed in default, as the respondents, being police officials, must have been accommodated by the serving staff, who are also from the police department.

10 Since respondents were summoned under sections 302 and 364 IPC by the learned Magistrate, therefore, in the considered opinion of this court, the Magistrate was not competent to discharge the accused and dismiss the complaint, in view of the provisions of Section 249 of the Code

of Criminal Procedure, as the complaint under “cognizable and non-compoundable offences” automatically after summoning the accused has to be treated as a State case and the petitioner could not file second complaint on the same facts. Reference can be made to a decision rendered in Gurmeet Singh Dhaliwal versus Om Parkash, 1995(1) RCR (Criminal) 86.

11 The facts and circumstances of Ranvir Singh's cases (supra), relied upon by learned counsel for the respondents, are not identical inasmuch as, in the case referred to above, the complaint was dismissed on account of failure of the complainant to deposit process fee for effecting service upon the accused-respondent. In these circumstances, it was held that complainant can maintain second complaint on the same allegations.

12 The facts of Joga Singh's case (supra) are not applicable to the facts of the case in hand, inasmuch as, after the preliminary evidence was recorded by the trial magistrate, the complainant did not appear on a subsequent date and consequently, the complaint was dismissed in default, whereas, in the case in hand, after recording preliminary evidence, the trial Magistrate had summoned the accused persons by issuing process, but except for one accused, the presence of the remaining accused persons could not be procured and after elapsing of more than eight years, the complaint of the complainant was dismissed in default because of non appearance by the complainant only on one date. More so, the complaint, in that case, was under compoundable offences. This authority, instead of helping the respondents, speaks in favour of the petitioner.

13 Having gone through the facts of the judgment in Daya Kishan and another versus Banarsi Dass, 2010(2) R.C.R.(Criminal) 451, relied upon by learned counsel for the respondents, this court has no dispute with the

proposition of law laid down therein that a Magistrate cannot recall or review his order of dismissal of a complaint in default for non-prosecution. As far as filing of another complaint on the same cause of action is concerned, the same was not permissible as has been discussed earlier in para no.6 of the judgment while giving reference of Gurmeet Singh Dhaliwal's case (supra), wherein it is held that “the petitioner could not file a second complaint on the same facts as that was permissible only if a special case was made out. The only remedy available to him was by way of the present revision petition for getting the impugned order set aside.”

14 In the facts and circumstances of the case in hand, the irresistible conclusion, which can be drawn, is that the petition filed under Section 482 of the Code of Criminal Procedure for quashing the impugned orders passed by the courts below is maintainable.

15 Non-challenge to order dated 8.11.2007 (Annexure P-3) by the petitioner, whereby the complaint of the petitioner was dismissed in default, had lost its significance, in view of the fact that the same had merged into the order dated 10.4.2012 (Annexure P-6) passed by the revisional court, wherein order dated 31.3.2009 (Annexure P-5) passed by the trial court dismissing the application of the petitioner for restoration of the original complaint was under challenge, inasmuch as in the event of acceptance of the application of the petitioner for restoration of the complaint, the order dated 8.11.2007 (Annexure P-3), though was not challenged before the revisional court, the complaint would have automatically restored. In such circumstances, there is no force in the contention of learned counsel for respondent nos. 2 to 4 that since the initial order dated 8.11.2007 (Annexure P-3) of the trial court, dismissing the complaint in default, was not

challenged, therefore, order dated 10.4.2012 of the revisional court is illegal.

16 In view of the above discussion, this petition is allowed. The impugned orders dated 8.11.2007 (Annexure P-3) passed by the trial court, dismissing the complaint of the petitioner in default and dated 10.4.2012 (Annexure P-6) passed by the Additional Sessions Judge, Gurdaspur, dismissing the revision petition of the petitioner, are set aside. The trial court shall proceed further in the matter, in accordance with law.

17 The petitioner as well as respondent nos. 2 to 4 are directed to appear before the trial court on 30.8.2017.

04.08.2017
VK

(RAMENDRA JAIN)
JUDGE

- | | | |
|----|---------------------------|--------|
| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable | Yes/No |