

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

**CRM No.M-5862 of 2011 (O&M)
Date of Decision: January 24, 2017**

Arun Kapoor

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Hemant Bassi, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.N.S.Shekhawat, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and M/s Nalwa Steel Udyog for quashing of complaint No. Nil dated 28.10.2010 titled as 'M/s Nalwa Steel Udyog vs. M/s EN Esteem Company & Others' pending in the Court of learned JMIC, Hisar, impugned order dated 22.01.2011 passed by learned JMIC, Hisar, FIR No.66 dated 28.01.2011 registered at Police Station Civil Lines, Hisar, under Sections 420, 467, 468, 471 and 120-B IPC as well as all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as

learned counsel for respondent No.2 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioner contended that earlier the complaint was filed which was withdrawn by making statement by the complainant, therefore, he argued that once the complaint was withdrawn by the complainant, then he cannot file the second complaint. He further argued that in the second complaint, the complainant has wrongly mentioned that earlier petition was withdrawn with reserving the right to approach the SP. There is nothing in the order while withdrawing the first complaint that any right was reserved. Learned counsel for the petitioner next argued that as the first complaint was dismissed as withdrawn, so second complaint on the same facts is not maintainable. He further contended that in earlier complaint, the report was called under Section 202 Cr.P.C., whereas in this case, the Magistrate passed the order for registration of the FIR under Section 156(3) Cr.P.C. and the FIR was registered. He also contended that petitioner has not cheated the complainant company. Rather, the complainant company dealt with M/s EN Esteem Company Limited and the material was supplied by that company of South Korea. He argued that no case is made out against the present petitioner, who was simply an agent of the company.

On the other hand, learned State counsel as well as learned counsel for private respondents argued that second complaint is maintainable as the first complaint was not decided on merit. Even in the first complaint report under Section 202 Cr.P.C. was given by the police holding that a fraud has been played upon the complainant party. Learned counsel for the private respondent argued that the complaint was withdrawn as the complainant was thinking that police will take action but as police did not take any action, the complaint was again filed by the complainant. He

next argued that after investigation in the FIR, the challan has already been presented in the Court and finding of facts is to be given by the trial Court on the basis of evidence and the FIR and subsequent proceedings cannot be quashed. He further argued that the amount was paid to the present petitioner and the present petitioner gave invoice of his company and it is nowhere stated that this invoice is on behalf of M/s EN Esteem Company of South Korea. Learned counsel for the private respondents next argued that it is admitted fact that sub-standard material was delivered which was also found by the police in the report under Section 202 Cr.P.C. in the earlier complaint and he further argued that the petitioner, who has all the dealings with the complainant, has cheated the complainant. The other accused of M/s EN Esteem Company could not be arrested as there was no extradition treaty with South Korea.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the Hon'ble Supreme Court in ***Poonam Chand Jain and another vs. Fazru, 2010(1) RCR (Criminal) 801***, has held as under:-

*“23. Almost similar questions came up for consideration before this Court in the case of **Pramatha Nath Talukdar and another v. Saroj Ranjan Sarkar – (AIR 1962 SC 876)**. The majority judgment in Pramatha Nath (supra) was delivered by Justice Kapur. His Lordship held that an order of dismissal under Section 203 of the Criminal Procedure Code (for short ‘the Code’) is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. This Court explained the exceptional circumstances as (a) where the previous order was passed on incomplete record (b) or on a misunderstanding of the nature of the complaint (c) or the order which was passed was manifestly absurd, unjust or foolish or (d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings. This Court made it*

very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full consideration of the case, the complainant should be given another opportunity to have the complaint enquired into again. In paragraph 50 of the judgment the majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record. This Court very clearly held that it cannot be settled law which permits the complainant to place some evidence before the Magistrate which are in his possession and then if the complaint is dismissed adduce some more evidence. According to this Court such a course is not permitted on a correct view of the law. (para 50, page 899).

*24. This question again came up for consideration before this Court in **Jatinder Singh and others v. Ranjit Kaur – (AIR 2001 SC 784)**. There also this Court by relying on the principle in **Pramatha Nath** (supra) held that there is no provision in the Code or in any other statute which debars complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are ‘exceptional circumstances’. This Court held in para 12 if the dismissal of the first complaint is not on merit but the dismissal is for the default of the complainant then there is no bar in the filing a second complaint on the same facts. However if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different. Saying so, the learned Judges held that the controversy has been settled by this Court in **Pramatha Nath** (supra) and quoted the observation of Justice Kapur in paragraph 48 of **Pramatha Nath** (supra):-*

“.....An order of dismissal under S. 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interest of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into.....”.

it is clear that second complaint on the same facts can be maintained in exceptional circumstances i.e. when the complaint was dismissed by Magistrate and the order was passed on incomplete record; or on a misunderstanding of the nature of the complaint or the order passed manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings. In the case in hand, the first complaint was not dismissed on merit, rather, it was withdrawn. The Hon'ble Supreme Court in the above-said judgment also held that where the first complaint is not dismissed on merit but the dismissal is for the default of the complainant then there is no bar in the filing a second complaint on the same facts. Therefore, in view of the law laid down by the Hon'ble Supreme Court, second complaint is not barred. It is further held that once the first complaint is decided on merit, second complaint can be filed in exceptional circumstances.

In the case in hand, the first complaint was withdrawn by the complainant after report under Section 202 Cr.P.C. was received. The report placed on the record shows that the petitioner was not exonerated by the police, rather it is stated that the aforesaid company supplied low standard material as against promised scrapped stainless of standard 8%, as a result of which, the complainant Anil Jindal has suffered loss of about Rs.1.5 crore and fraud has been committed with the owner of this business. There is clear finding that officials of M/s EN Esteem Company have cheated the owner of M/s Nalwa Steel and have grabbed the money.

The copy of statement dated 15.09.2010, is also placed on the record as Annexure P-7, which is as under:-

complaint, I don't want to proceed with the present complaint, therefore, I withdraw the present complaint.”

This above-stated statement shows that complaint was not decided on merit, rather, it has been withdrawn even before summoning of the accused. Now, coming to the point, in this complaint it is written that earlier the complaint was withdrawn with liberty to approach the SP etc., is not material mis-representation to the Court. After investigation of the case, now challan has been presented.

The invoice has been placed on the record, which was issued by the present petitioner and admittedly, the material has not been supplied by the company as per the invoice. The complainant paid advance amount, through accused Arun Kapoor and admittedly, the material was found sub-standard and complete material has not been delivered. The agreement, invoice and other things, all are done by the present petitioner with the complainant company.

After investigation, challan has already been presented. In no way, it can be held from the challan that no offence under Section 420 IPC or any other offence is not made out against the petitioner. In no way, the registration of the FIR can be held as abuse of process of law or amounts to miscarriage of justice and therefore, the same is not liable to be quashed.

Therefore, finding no merit in the present petition, the same is dismissed.

January 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No