

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5073 OF 2015

Mr. Mahendra P. Dholakia  
Aged about 72 years, Occ.: Retired,  
Residing at 21, Western Court, Petitioner  
Co-op. Hsg.Soc. Ltd., 83,  
Marine Drive 'F' Road,  
Mumbai – 400 002

**Versus**

1. The State of Maharashtra  
(At the instance of the  
Inspector of Police, Respondent No. 1  
Marine Drive Police Station,  
Churchgate, Mumbai)
2. Mr. Deepak Kripalani  
3/13, Western Court  
Co-op Hsg. Soc. Ltd., 83,  
Marine Drive F Road, Respondent No. 2  
Mumbai – 400 002.

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Ms. Sneha Singh a/w Mr. Irfan Unwala, Mr. Aman Dhruva and Mr.  
Darshit Jain i/by Sneha Singh and Associates for the Petitioner.  
Mr. Subodh Desai a/w Mr. A.S. Pal i/by Ms. Purnima Singh for  
Respondent No.2.  
Mrs. S. D. Shinde, APP for Respondent – State.

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**CORAM : S.S. SHINDE &  
MANISH PITALE, JJ.**

**RESERVED ON : 12/03/2021  
PRONOUNCED ON : 29/04/2021**

**JUDGMENT (PER MANISH PITALE, J)**

**Rule.** Rule made returnable forthwith. The Writ Petition is heard finally with the consent of learned counsel for the rival parties.

(2) By this Writ Petition, the Petitioner is seeking quashing of an First Information Report (FIR) dated 05/03/2015, registered against him for an offence punishable under Sections 193, 211, 406 and 420 of the Indian Penal Code (IPC), on the basis of an order dated 24/02/2015 passed by the Court of Additional Chief Metropolitan Magistrate under Section 156(3) of the Code of Criminal Procedure (Cr.PC.). The order was passed by the Magistrate on a complaint dated 04/02/2015 filed by the Respondent No.2 alleging certain acts on the part of the Petitioner which had the ingredients of the said offences. The Petitioner has also sought quashing of charge-sheet filed in pursuance of registration of the said FIR.

(3) The principal ground for pressing the prayer for quashing of the FIR and the charge-sheet is that the Respondent No.2 (original complainant) had filed an identical complaint earlier in the year 2013 before the Magistrate, which was pending consideration and filing

of the said subsequent complaint in the year 2015 on the same allegations was not maintainable.

(4) The facts discernible from the material placed on record, the Writ Petition and the reply are that the Respondent No.2 along with his brothers claimed to have inherited a flat in a Society, wherein the Petitioner was at the relevant time functioning as the Secretary. The Petitioner also has a flat in the said Society. Although one of the relatives of the Respondent No.2 had raised an objection to the claim of the said Respondent and his brothers, the dispute was settled amicably and accordingly, the Respondent No.2 and his brothers had sought transfer of the Share Certificate pertaining to the flat in question in their name. The thrust of the allegations levelled by Respondent No.2 against the Petitioner is that while functioning as the Secretary of the Society, the Petitioner illegally exerted pressure on the Respondent No.2 and his brothers pertaining to issuance of duplicate Share Certificate of the flat, as the original Share Certificate was misplaced. The Petitioner allegedly misused his position as Secretary of the Society and pressurized the brothers of Respondent No.2 to enter into an agreement of sale of the said flat to the Petitioner on a price much less than the market price.

(5) The Respondent No.2 alleged that subsequently the Petitioner further reduced the amount of consideration and forced the brothers of Respondent No.2 to sign a memorandum of understanding dated 21/02/2014 to sell the flat at reduced consideration amount of Rs.65 Lakhs, recording that a token amount of Rs.5000/- was paid by the Petitioner.

(6) As dispute arose between the parties, a civil suit for decree of specific performance was filed by the Petitioner before this Court, wherein an order of status-quo was passed. The said suit is still pending consideration. In the interregnum, allegations and counter allegations were made by the Petitioner and Respondent No.2 against each other. In the year 2010, the Petitioner had filed a private complaint before the Magistrate claiming that the Respondent No.2 and his brothers had cheated him and he sought registration of offence under Section 420 of the IPC. The complaint was dismissed and the Revision Application filed there against was also rejected.

(7) On the other hand, the Respondent No.2 also filed a private complaint on 17/05/2013, against the Petitioner before the Magistrate alleging that he had committed offences inter-alia under

Sections 409 and 420 of the IPC. The Respondent No.2 stated facts in detail from the beginning till filing of the complaint as regards the alleged actions of the Petitioner and how he had duped the Respondent No.2 and his brothers by misusing his position of Secretary of the Society. This complaint was pending inquiry. Instead of directing investigation under Section 156(3) of the Cr.P.C., the Magistrate thought it fit to call for an inquiry report under Section 202 of the Cr.P.C. after the Respondent No.2 submitted his sworn verification statement as per Section 201 of the Cr.P.C. The proceedings in the said complaint bearing CC No. SW/800072/2013 were pending and at this stage on 04/02/2015, the Respondent No.2 filed another complaint before the Magistrate against the Petitioner making similar allegations and seeking inquiry/investigation as also action as per Section 156(3) of the Cr.P.C. In this complaint, the Respondent No.2 did not disclose the fact that he had already filed the aforesaid complaint in the year 2013 against the Petitioner on similar allegations and that inquiry in the said complaint was being conducted as per the order of the Magistrate.

(8) On 24/02/2015, the Magistrate recorded the grievances of the Respondent No.2 and passed an order directing investigation under Section 156(3) of the Cr.P.C. In pursuance of the said

order, the impugned FIR dated 05/03/2015 was registered, which eventually led to filing of charge-sheet in the year 2016 against the Petitioner for offences punishable under Sections 193, 211, 406 and 420 of the IPC.

(9) In December 2015, the Petitioner filed the instant petition, seeking quashing of the FIR on the ground that the second complaint filed by the Respondent No.2 in the year 2015, during pendency of earlier complaint in the year 2013 on identical allegations, was not maintainable and that the registration of FIR in pursuance of the second complaint was inappropriate and that the prayer in the Writ Petition deserved to be granted.

(10) On 25/07/2018, this Court recorded the aforesaid principal contention raised in the Writ Petition and prima facie found that both the complaints were *pari materia* and in view of the fact that an arguable issue arose in the matter, this Court granted stay of further proceedings in pursuance of charge-sheet bearing CC No.183/PW/2016 filed in pursuance of the impugned FIR dated 05/03/2015. This Court specifically directed that the Magistrate shall dispose of the earlier complaint bearing No. SW/800072/2013 expeditiously and not later than

31/09/2018. It was also recorded that a decision in respect of the aforesaid charge-sheet bearing No. 183/PW/2016, would be contingent upon the decision of the Magistrate in the aforesaid earlier complaint of the year 2013.

(11) As a result, proceedings against the Petitioner in pursuance of FIR dated 05/03/2015 and charge-sheet filed in the year 2016 remain stayed. In subsequent orders, this Court recorded the fact that despite specific directions given by this Court, the Magistrate had failed to decide and dispose of the earlier complaint filed in the year 2013. Eventually, the Magistrate decided the complaint and by order dated 12/01/2021, the Magistrate dismissed the aforesaid complaint bearing SW/800072/2013, under Section 203 of the Cr.P.C. holding that the Respondent No.2 had miserably failed to establish sufficient ground for issuance of process against the proposed accused i.e. Petitioner herein.

(12) The present Writ Petition was finally heard in this backdrop on 12/03/2021 and judgment was reserved.

(13) Ms. Sneha Singh, learned counsel appearing for the

Petitioner submitted that the instant Writ Petition deserved to be allowed, because the second complaint filed in the year 2015 by Respondent No.2 was not maintainable in view of the identical earlier complaint filed by the same Respondent in the year 2013 against the Petitioner. It was submitted that when the earlier complaint of the year 2013 based on same allegations was pending at the stage of inquiry ordered under Section 202 of the Cr.P.C. by the Magistrate, the Respondent No.2 was not entitled to file the second complaint in the year 2015. It was further submitted that filing and pendency of the earlier complaint of the year 2013, was not divulged in the complaint filed in the year 2015 and that this was another ground on which the present Writ Petition deserved to be allowed.

(14) According the learned counsel for the Petitioner, the second complaint filed in the year 2015 did not make any new allegations and it was filed only with a view to harass the Petitioner and further that a purely civil dispute was sought to be given the colour of a criminal proceeding.

(15) The learned counsel for the Petitioner submitted that the Hon'ble Supreme Court had laid down in various judgments that a

second complaint on the same set of allegations would be maintainable, if at all, only in exceptional circumstances and not otherwise. If the earlier complaint had been dismissed-in-default or it stood withdrawn, the second complaint could perhaps be entertained, but during pendency of an earlier complaint on the same set of allegations, the complainant was certainly not entitled to file a fresh complaint before the Magistrate. The modus operandi adopted by Respondent No.2 was only with a view to harass the Petitioner and to somehow force him to enter into a settlement with Respondent No.2 – complainant, so that even the civil proceeding initiated in the matter could be disposed of. The second complaint was nothing but a pressure tactic used by the Respondent No.2 and since filing and pendency of the earlier complaint of the year 2013 was not brought to the notice of the Magistrate, the order dated 24/02/2015 was passed directing investigation under Section 156(3) of the Cr.PC., leading to registration of impugned FIR dated 05/03/2015. According to the learned counsel for the Petitioner, the entire exercise was stillborn and that therefore, the present Writ Petition deserved to be allowed.

(16) The learned counsel for the Petitioner relied upon the judgments of Hon'ble Supreme Court in the case of **Pramatha Nath**

Talukdar and anr. vs. Saroj Ranjan Sarkar<sup>1</sup>, T.T.Antony vs. State of Kerala and others<sup>2</sup>, Krishna Lal Chawla and others vs. State of U.P. and another<sup>3</sup>, and Samta Naidu and another vs. State of Madhya Pradesh and another<sup>4</sup>.

(17) On the other hand, Mr. Subhod Desai, learned counsel appearing for Respondent No.2 submitted that there was no substance in the present Writ Petition for the reason that the Magistrate had found sufficient material for directing investigation under Section 156(3) of the Cr.P.C. by order dated 24/02/2015 and that FIR dated 05/03/2015 was registered, leading to even filing of charge-sheet against the Petitioner in the year 2016. It was submitted that sufficient material had come on record during investigation for filing of charge-sheet for the aforesaid offences and that it was too late in the day now to seek quashing of the FIR and subsequent proceedings. It was further submitted that in the complaint filed by Respondent No.2 on 04/02/2015, certain facts different from those stated in the complaint of the year 2013 were pleaded and that it was not correct to say that the second complaint was identical to the first. Even otherwise it was submitted that the second

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1 AIR 1962 SC 876

2 (2001) 6 supreme Court Cases 181

3 Criminal Appeal No.283 of 2021 (decided on 08/03/2021)

4 Criminal Appeal Nos.367-368 of 2020 (decided on 02/03/2020)

complaint on the same allegations was clearly maintainable and that therefore, there was no substance in the present Writ Petition. The learned counsel for Respondent No.2 placed reliance on judgments of the Hon'ble Supreme Court in the case of **Jatinder Singh and others vs. Ranjit Kaur<sup>5</sup>** and **V. Ravi Kumar vs. State<sup>6</sup>** to contend that second complaint on the same allegations was maintainable, even if the second complaint did not mention filing of the earlier complaint by the same complainant. It was further submitted that when ingredients of the offences were made out and now charge-sheet was already filed, the present Writ Petition deserved to be dismissed.

(18) We have heard the learned counsel of the rival parties and perused the material on record. It is clear from the documents placed on record that the Respondent No.2 indeed filed two complaints against the Petitioner in the present case. A perusal of the complaint dated 17/05/2013 bearing CC No. SW/800072/2013, shows that the Respondent No.2 had stated in detail, the manner in which the events occurred leading to allegations of cheating raised against the Petitioner. the allegations pertained to alleged misuse of position of Secretary of the Society by the Petitioner and how he allegedly, illegally retained the

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5 (2001) 2 Supreme Court Cases 570

6 (2019) 14 Supreme Court Cases 568

duplicate Share Certificate pertaining to the flat in question. In the said complaint, the Magistrate called for an inquiry report under Section 202 of the Cr.P.C.

(19) It is at this stage that the subsequent complaint bearing CC No. SW/800021/2015 was filed by the respondent No.2 on 04/02/2015. A perusal of the said complaint shows that the allegations levelled against the Petitioner were similar to the allegations raised in the above mentioned earlier complaint filed in the year 2013. Although certain further events were stated in this complaint filed on 04/02/20105, but the substance of the allegations against the Petitioner was the same as was stated in the earlier complaint of the year 2013. Therefore, we are not in agreement with the learned counsel for Respondent No.2 that the subsequent complaint filed in the year 2015 was materially different from the earlier complaint filed in the year 2013, which was still pending before the Magistrate.

(20) The question therefore, that arises for consideration is, as to whether the subsequent complaint filed by Respondent No.2 against the Petitioner on allegations similar to the allegations made in the earlier complaint of 2013, was maintainable in view of the fact that the

said earlier complaint was pending inquiry under Section 202 of the Cr.PC. before the Magistrate and it was yet to be disposed of.

(21) In order to answer the said question, it would be appropriate to first refer to the judgments relied upon by the learned counsel for the rival parties, so as to appreciate the position of law as regards the maintainability of second complaint on similar allegations.

(22) In the case of Pramatha vs. Saroj (supra) the Hon'ble Supreme Court took note of earlier judgments on the said point and reiterated the position that a second complaint on similar allegations would be maintainable only in exceptional circumstances. It was specifically laid down that the test for such exceptional circumstances would be under three categories i.e. when the earlier complaint stood disposed of firstly on the basis of a manifest error, secondly, when there was manifest miscarriage of justice in disposal of such complaint and thirdly, when new facts which the complainant had no knowledge or could not with reasonable diligence have brought forward in the previous proceeding, had come to light.

(23) In the case of T.T.Antony vs. State of Kerala (supra),

while dealing with a situation where subsequent FIR was filed on same set of allegations, it was held that if second or successive FIRs were permitted and fresh investigation were undertaken, it would amount to abuse of the process of law.

(24) In the case of *Jatinder Singh vs. Ranjit Kaur* (supra), the Hon'ble Supreme Court held that there is no provision in the Cr.PC. or any other statute which debars a complainant from preferring a second complaint on the same allegations, but it was further held that the second complaint on the same facts cannot be made unless there are very exceptional circumstances. It was noted that the second complaint would be permissible depending upon how the first complaint was dismissed. If the dismissal of the complaint was not on merit, but on default of the complainant, the second complaint would certainly be maintainable.

(25) In the case of *V. Ravi Kumar vs. State* (supra), the Hon'ble Supreme Court reiterated that if the first complaint was dismissed or disposed of for default, the second complaint could certainly be maintainable, but it was specifically noted by relying upon judgment in the case of **Shivshankar Singh vs. State of Bihar**<sup>7</sup> that if the earlier

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<sup>7</sup> (2012) 1 SCC 130

complaint was disposed of on full consideration of the complaint on merits, the second complaint would not be maintainable.

(26) In the case of Krishna Lal Chawla vs. State of U.P (supra), the Hon'ble Supreme Court reiterated that the complainant cannot subject the accused to a double whammy of investigation by the police and inquiry before the Magistrate.

(27) In the case of Samta Naidu vs. State of M. P (supra), the Hon'ble Supreme Court took note of earlier judgments and held that if the earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on almost identical facts, which were raised in the first complaint would not be maintainable. It was observed that what was laid down in the earlier judgments was that if the core of both the complaints was the same, the second complaint ought not to be entertained.

(28) Thus, the position of law in respect of the question arising in the present case becomes clear, to the effect that although a second complaint on same allegations can be filed by a complainant, but it could be entertained by the Magistrate only in certain exceptional

circumstances. It is also clarified by the said judgments that if the earlier complaint was merely dismissed-in-default, the second complaint would certainly be maintainable, but when the earlier complaint was disposed of on merits and no exceptional circumstances were made out by the complainant in the second complaint and the core of the two complaints was the same, the second complaint would not be maintainable.

(29) Applying the said position of law to the facts of the present case, we are of the opinion that the second complaint dated 04/02/2015 filed by the Respondent No.2 was not maintainable before the Magistrate. First and foremost, because the earlier complaint filed in the year 2013 was pending at the stage of inquiry directed by the Magistrate under Section 202 of the Cr.P.C. We have already noted above that the allegations in the two complaints were almost identical and therefore, the core of the two complaints was the same. In this situation, even before the earlier complaint filed by the Respondent No.2 in the year 2013 was inquired into and disposed of by the Magistrate in a manner known to law, the Respondent No.2 could not have rushed to file the second complaint on self-same allegations before the Magistrate. Although, it has been held by the Hon'ble Supreme Court that even if filing of the earlier complaint is not divulged in the second complaint, it

would not render the second complaint ineffective, but, in the peculiar facts and circumstance of the present case, we are of the opinion that when the earlier complaint filed in the year 2013 was still pending at the stage of inquiry ordered by the Magistrate under Section 202 of the Cr.P.C., the Respondent No.2 ought not to have suppressed filing and pendency of the aforesaid earlier complaint in the second complaint filed on 04/02/2015. If the said fact was brought to the notice of the Magistrate in the second complaint filed on 04/02/2015, the matter would have proceeded in a different manner.

(30) In the instant case, the earlier complaint was still alive when the second complaint was filed by the Respondent no.2 in the year 2015 and this is a glaring fact against the Respondent No.2. It is for this reason that while granting stay of further proceedings in pursuance of the impugned FIR and charge-sheet, by order dated 25/07/2018, this Court specifically directed the Magistrate to take up proceedings in earlier complaint filed in the year 2013 and to dispose them of at the earliest. Eventually, the said complaint stood dismissed by order dated 12/01/2021 passed by the Magistrate. A perusal of the said order brought to the notice of this Court on behalf of the Petitioner shows that the Magistrate considered the material that came on record in pursuance

of inquiry directed under Section 202 of the Cr.P.C. and on merits concluded that the Respondent No.2 had miserably failed to establish sufficient ground for issuance of process against the proposed accused i.e. the Petitioner herein. In fact, in the said order the Magistrate took note of the fact that the said subsequent complaint was filed by the Respondent No.2 in the year 2015 on similar allegations, without divulging the filing and pendency of the said earlier complaint filed in the year 2013. The Magistrate also took note of the fact that a FIR stood registered in pursuance of the second complaint and that even a charge-sheet was filed. Yet, the Magistrate took into consideration the material that came on record in pursuance of the inquiry directed under Section 202 of the Cr.P.C. and came to conclusions on merits against Respondent No.2, while dismissing the said earlier complaint filed in the year 2013.

**(31)** We are of the opinion that applying the position of law laid down by the Hon'ble Supreme Court in the aforementioned judgments, the Magistrate ought not to have entertained the second complaint filed by the Respondent No.2 in the year 2015, in the facts and circumstances of the present case, particularly because the earlier complaint filed in the year 2013 was pending. The earlier complaint of the year 2013 was yet to be disposed of and still the second complaint

was filed by Respondent No.2 suppressing the fact regarding the pendency of the earlier complaint. As noted above, the earlier complaint of the year 2013 has been dismissed on merits on 12/01/2021 and it is clear that there are no exceptional circumstances in the present case to even consider whether the second complaint could have been entertained. Thus, it becomes clear that all consequent proceedings in pursuance of filing of the second complaint of the year 2015 cannot be sustained and that therefore, the present Writ Petition deserves to be allowed.

(32) In view of the above, the Writ Petition is allowed and the FIR dated 05/03/2015 bearing MECR No. 02 of 2015 registered against the Petitioner is quashed.

(33) The charge-sheet bearing No.183/PW/2016 filed in pursuance of the said FIR against the Petitioner also stands quashed.

(34) Needless to say this order will not come in the way of the Respondent No.2 in challenging the order dated 12/01/2021 passed by the Magistrate dismissing complaint bearing CC No.SW/800072/2013, in accordance with law. If such challenge is raised or it has been

already raised by the respondent No.2, the concerned Court shall consider the same on merits, without being influenced by this order. We have allowed the present Writ Petition on the aforesaid pure question of law and we have not made any observations on merits. All questions on merits of the complaint of the respondent No. 2 dated 17.5.2013 are kept open. This includes the question as to whether the dispute raised by respondent No. 2 is civil in nature, as held by the Magistrate in the said order dated 12.1.2021. The concerned Court shall apply its mind independently on all questions, including the said question, while considering the challenge to the said order dated 12.1.2021.

(35) Rule made absolute in above terms.

[ MANISH PITALE J. ]

[ S. S. SHINDE, J. ]