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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3047/2022 & CRL.M.A. 12822/2022**

RAJENDER KUMAR AND ANR.Petitioners
Through: Ms. Smita Maan, Mr.
Vishal Maan, Ms. Sakshi
Sejwal and Mr. Jayant
Tewathia, Advs.

versus

STATE & ANR.Respondent
Through: Mr.Naresh Kumar Chahar,
APP for the State with Ms.
Nandini Diesh, Adv. with
SI Rinku Kumari, PS
Janakpuri.
R-2 in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
07.10.2024

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1. By the present petition, the petitioner challenges the order dated 30.03.2021, passed by the learned Metropolitan Magistrate (MM)-11, Dwarka Courts, New Delhi in CC No. 9330/2019, pursuant to which the petitioners were summoned for offences under Sections 341/325/506 read with Section 34 of the Indian Penal Code, 1860 (IPC).
2. The learned counsel for the petitioners submits that the allegations made in the complaint had led to registration of an FIR being FIR No. 451/2004.
3. She submits that Respondent No. 2 / complainant, during the same time, had filed a complaint under Section 200 of the



Code of Criminal Procedure, 1973 (**CrPC**) without disclosing that an FIR had already been registered on a complaint given by the complainant.

4. She submits that it is an admitted position that the petitioners were discharged in the said FIR, pursuant to the order dated 08.02.2008, passed by the learned Additional Sessions Judge (**ASJ**), Rohini Courts, Delhi and in such circumstances, the proceedings in a complaint which was filed on the same allegations cannot proceed.

5. It is a settled law that criminal law cannot be set in motion twice in regard to the same set of allegations.

6. It is an undisputed position that the complainant had filed a complaint which led to registration of the FIR and had subsequently filed a complaint under Section 200 of the CrPC on the same allegations. The petitioner has admittedly been discharged by the order passed by the learned ASJ and the said order has attained finality.

7. It is apparent that the said order and the registration of the FIR was not brought to the knowledge of the learned Magistrate, which has led to the issuance of impugned summons.

8. The Hon'ble Apex Court in the case of **Krishna Lal Chawla v. State of U.P. : (2021) 5 SCC 435** has held as under:

"5. We are in agreement with the aforementioned construction of T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] . However, we fail to see how this position of law comes to Respondent 2's rescue. The question posed in the present case for consideration before us is wholly different, and concerns the validity of the private complaint filed by Respondent 2, after an earlier information filed as NCR No. 158 of 2012 — both of which were filed by the same party, against the same accused, and in relation to the same incident that too after the charge-sheet was filed in case arising out of NCR No. 160 of 12 in Crime No. 283 of 2017 after taking due permission of



the Magistrate. The aforementioned portion of Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] relied on by Respondent 2, thus, does not benefit his case.

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7. This Court in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] has clearly stated that any further complaint by the same complainant against the same accused, after the case has already been registered, will be deemed to be an improvement from the original complaint. Though Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] was rendered in the context of a case involving cognizable offences, the same principle would also apply where a person gives information of a non-cognizable offence and subsequently lodges a private complaint with respect to the same offence against the same accused person. Even in a non-cognizable case, the police officer after the order of the Magistrate, is empowered to investigate the offence in the same manner as a cognizable case, except the power to arrest without a warrant. Therefore, the complainant cannot subject the accused to a double whammy of investigation by the police and inquiry before the Magistrate.

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9. The grave implications of allowing such misuse may be understood better in light of the following exposition by this Court in Amitbhai Anilchandra Shah v. CBI [Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348 : (2014) 1 SCC (Cri) 309] : (SCC p. 373, para 37)

“37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution.”

(emphasis supplied)

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22. Frivolous litigation should not become the order of the day in India. From misusing the public interest litigation



jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in Subrata Roy Sahara v. Union of India [Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712] : (SCC p. 642, para 191)

“191. ... One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his.”

While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.

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24. As recorded by us above, the present controversy poses a typical example of frivolous litigants abusing court process to achieve their mischievous ends. In the case before us, the Magistrate was aware of the significant delay in the filing of private complaint by Respondent 2, and of the material improvements from the earlier NCR No. 158 of 2012 which were made in the private complaint. It was incumbent on the Magistrate to examine any possibility of abuse of process of the court, make further enquiries, and dismiss the frivolous complaint at the outset after judicial application of mind.

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26. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the



institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.

27. This Court's inherent powers under Article 142 of the Constitution to do "complete justice" empowers us to give preference to equity and a justice-oriented approach over the strict rigours of procedural law (State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2014) 8 SCC 883 : (2014) 4 SCC (Civ) 657 : (2014) 6 SCC (Cri) 154 : (2014) 3 SCC (L&S) 134]). This Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (Monica Kumar v. State of U.P. [Monica Kumar v. State of U.P., (2008) 8 SCC 781 : (2008) 3 SCC (Cri) 649]). Other decisions have held that inherent powers of High Courts provided in Section 482 CrPC may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or mala fide motives. (Sirajul v. State of U.P. [Sirajul v. State of U.P., (2015) 9 SCC 201 : (2015) 3 SCC (Cri) 749] ; State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604]). Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants."

9. Concededly, the petitioner has already been discharged in FIR No. 451/2004 which was registered on a complaint given by Respondent No.2. It is also not disputed that the same allegations have been made in CC No. 9330/2019. As noted above, it is settled law that any further complaint by the same complainant against the same accused in relation to the same incident will be deemed to be an improvement from the original complaint. The same is impermissible and violative of Article 21 of the Constitution of India.

10. In view of the above, the present petition is allowed and the order dated 30.03.2021 is set aside and the proceedings arising out of the CC No. 9330/2019 are quashed.



11. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

OCTOBER 7, 2024

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