



2026:DHC:912



\$~30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 20.01.2026*+ **CRL.M.C. 6275/2024 & CRL.M.A. 24023/2024**

VISHAL CHANDRA GUPTAPetitioner

Through: Mr. Shrutanjaya Bhardwaj
along with Mr. Bhaskar
Bhardwaj, Mr. Vakeel Ahmed,
Ms. Siddhi Nagwekar and Mr.
Yash Tayal, Advocates.

versus

REGISTRAR OF COMPANIES THROUGH DY
REGISTRAR NCT OF DELHI HARYANARespondent

Through: Mr. Sandeep Kumar
Mahapatra, CGSC with Ms.
Mrinmayee Sahu, and Mr.
Tribhuvan, Advocates.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J (Oral)**

1. By way of this petition, the petitioner has assailed the orders dated 13.08.2019 and 16.04.2022 passed by the learned ASJ-03 & Special Judge (Companies Act), Dwarka Courts, Delhi [hereafter 'Special Court'] in CC/439/2019 titled '*ROC vs. Vishal Chandra Gupta*'.
2. It is stated on behalf of the petitioner that the learned Special



Court *vide* orders dated 13.08.2019 had directed restoration of complaints filed by respondent, i.e CC/438/2019 and CC/439/2019 (*present case*) in relation to M/s Tarini International Limited (CC/438/2019 was filed against the Directors and Company Secretary, and CC/439/2019 was filed against the Petitioner who was auditor of M/s Tarini International Limited.). It is stated that the restoration orders and consequently, the summoning orders passed in both complaints suffers from an error apparent on the face of the record as the same have been passed without any authority of law. It is apposite to note that by way of order dated 16.04.2022, which has also been assailed in the present petition, the petitioner herein was summoned for offence under Sections 447/448 Companies Act, 2013.

3. The learned counsel appearing for the petitioner argues that the learned Special Court has passed orders in direct contravention of the settled law that the criminal court does not have the inherent power to restore a complaint after its dismissal. It is pointed out that the Coordinate Bench of this Court, in CRL.M.C. 2372/2022, *vide* judgment dated 15.05.2024, has already set aside the order dated 13.08.2019 as well as 16.04.2022 passed in CC/438/2019. As a result, the proceedings in CC/439/2019 are an abuse of process and are in violation of the petitioner's fundamental right under Article 21 and are liable to be declared a nullity.

4. The learned CGSC appearing for the respondent, on the other hand, opposes the petition and argues that there is no infirmity in the



impugned orders passed by the learned Sessions Court. He however does not dispute the fact that similar orders passed by the learned Special Court in the connected case have already been quashed by the Coordinate Bench of this Court.

5. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondent, and has pursued the case file.

6. This Court notes that the Coordinate Bench, *vide* judgment dated 15.05.2024 passed in CRL.M.C. 2373/2022, has referred to the decision of Hon'ble Supreme Court in case of ***Maj. Gen. A.S Gauraya & Anr. v. S.N. Thakur & Anr.***: (1986) 2 SCC 709 and held that the order dated 13.08.2019 – restoring the complaints dismissed earlier due to non-prosecution – was without jurisdiction and could not be sustained.

7. In the aforesaid judgment, the Hon'ble Supreme Court, in answering the question as to “Whether a Subordinate Criminal Court has any inherent jurisdiction outside the provisions of the Criminal Procedure Code?”, and in similar fact situation where the complaint dismissed due to the absence of the complainant therein has been restored by the learned Magistrate, had observed as under:

“9. Section 249 of the Criminal Procedure Code enables a Magistrate to discharge the accused when the complainant is absent and when the conditions laid down in the said section are satisfied. Section 256 (1) of the Criminal Procedure Code enables a Magistrate to acquit the accused if the complainant does not appear. Thus, the order of dismissal of a complaint by a criminal court due to the absence of a complainant is a proper order. But the question remains whether a Magistrate can restore a complaint to his file by revoking his earlier order dismissing it for the non-appearance of the complainant and



proceed with it when an application is made by the complainant to revive it. A second complaint is permissible in law if it could be brought within the limitations imposed by this Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* [AIR 1962 SC 876] . Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal Procedure Code does not contain any provision enabling the criminal court to exercise such an inherent power.

10. In *B.D. Sethi v. V.P. Dewan* [1971 DLT 162] a Division Bench of the Delhi High Court held that a Magistrate could revive a dismissed complaint since the order dismissing the complaint was not a judgment or a final order. In para 9, the court observes as follows:

“9. As long as the order of the Magistrate does not amount to a judgment or a final order there is nothing in the Code of Criminal Procedure prohibiting the Magistrate from entertaining a fresh application asking for the same relief on the same facts or from reconsidering that order. During the course of the proceedings, a Magistrate has to pass various interlocutory orders and it will not be correct to say that he has no jurisdiction to reconsider them....”

We would like to point out that this approach is wrong. What the court has to see is not whether the Code of Criminal Procedure contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have. It was relying upon this decision that the Delhi High Court in this case directed the Magistrate to recall the order of dismissal of the complaint. The Delhi High Court referred to various decisions dealing with Section 367 (old Code) of the Criminal Procedure Code as to what should be the contents of a judgment. In our view, the entire discussion is misplaced. So far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction.

11. For our purpose, this matter is now concluded by a judgment of this Court in the case of *Bindeshwari Prasad*



Singh v. Kali Singh (1977) 1 SCC 57. We may usefully quote the following passage at p. 126 of the Reports: (SCC pp. 59-60, para 4)

“Even if the Magistrate had any jurisdiction to recall this order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the Code of Criminal Procedure of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of the Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact, after having passed the order dated November 23, 1968, the Sub-divisional Magistrate became functus officio and had no power to review or recall that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, recalling order dismissing the complaint, was entirely without jurisdiction. This being the position, all subsequent proceedings following upon recalling the said order, would fall to the ground including order dated May 3, 1972, summoning the accused which must also be treated to be a nullity and destitute of any legal effect. The High Court has not at all considered this important aspect of the matter which alone was sufficient to put an end to these proceedings. It was suggested by Mr D. Goburdhan that the application given by him for recalling the order of dismissal of the complaint would amount to a fresh complaint. We are, however, unable to agree with this contention because there was no fresh complaint and it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. This has been held by this Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* [AIR 1962 SC 876] . For these reasons, therefore, the appeal is allowed. The order of the High Court maintaining the



2026:DHC:912



order of the Magistrate dated May 3, 1972 is set aside and the order of the Magistrate dated May 3, 1972 summoning the appellant is hereby quashed.”

8. In view of the above facts and circumstances of the case, clearly, the order dated 13.08.2019 passed by the learned Special Judge is liable to be set aside. Consequently, the order dated 13.08.2019 as well as the order dated 16.04.2022 passed by learned Special Judge, and all consequential proceedings emanating therefrom, are quashed and set aside.

9. The petition, alongwith pending application, is disposed of.

10. It is, however, clarified that this judgment shall not have any effect on the respondent adopting proper remedy for seeking restoration of the complaint in accordance with law, if so advised.

11. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JANUARY 20, 2026/vc

T.D.