

GAHC010005202013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./95/2013

SUBRATA CHOUDHURY @ SANTOSH CHOUDHURY and 9 ORS
S/O LT. SUKUMAR CHOUDHURY OF DHARMIKHAL GRANT, AMRAGHAT,
P.S. DHOLAI, DIST- CACHAR, ASSAM

2: BISWAJIT DEBROY
S/O RANJIT DEBROY
OF MONIARKHAL T.E. P.S. DHOLAI
DIST- CACHAR
ASSAM

3: AMARENDRA BHATTACHARJEE
S/O LATE HARANATH BHATTACHARJEE OF DHARMIKHAL GRANT
AMARGHAT
P.S. DHOLAI
DIST- CACHAR
ASSAM

4: HARAN CHAKRABARTY
S/O LT. HEMENDRA CHAKRABARTY OF AMRAGHAT
P.S. SONAI
DIST- CACHAR
ASSAM

5: KANU RANJAN DAS @ SRI KANU DAS
S/O LATE PRAFULLA CH. DAS
OF BHUBAN KHAL
P.S. SONAI
DIST- CACHAR
ASSAM

6: ANJANA BARMAN
W/O ANIL BARMAN
OF CHAKARCHAM
P.S. SONAI

DIST- CACHAR
ASSAM

7: HIMANGSHU CHAKRABARTY
S/O SRI HARAN CHAKRABARTY
OF AMRAGHAT
P.S. SONAI
DIST- CACHAR
ASSAM

8: TUSHAR KANTI DAS @ SRI RAHUL DAS TUSHAR
S/O SRI RAKHIT DAS OF PALENGHAT
P.S. DHOLAI
DIST- CACHAR

9: DILIP KUMAR DAS @ SRI DILIP DAS
S/O SRI GOURA MOHAN DAS OF DHARMIKHAL GRANT
AMRAGHAT
P.S. DHOLAI
DIST- CACHAR
ASSAM

10: MD. JASIM UDDIN
S/O MD. AZIR UDDIN OF DIDARKOSH
P.S. SONAI
DIST- CACHAR
ASSA

VERSUS

THE STATE OF ASSAM and ANR

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2:PHANI BHUSAN DEY
S/O LATE MOHENDRA KUMAR DEY
R/O DARMIKHAL GRANT AMRAGHAT
P.O. DARMIKHAL
P.S. DHOLAI
PIN-788016
DIST- CACHAR
ASSA

Advocate for the Petitioner : MRJ RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI**

ORDER

Date : 08-01-2021

JUDGMENT & ORDER (CAV)

Learned Sr. Counsel, Mr. HRA Choudhury, assisted by Mr. M. Khan, learned advocate for the petitioners and learned Sr. Counsel, Mr. A.M. Bora assisted by Mr. V. Choudhury, learned advocate for the respondent have been heard.

2. The question raised in this revision petition is whether after acceptance of final report upon hearing the informant/complainant, a fresh complaint on the same set of fact is maintainable.

3. The facts leading to the present revision petition, are as under:

4. The respondent No. 2, as complainant lodged a complaint before the Chief Judicial Magistrate, Cachar, Silchar on 12.11.2010, which was forwarded to police by the learned Magistrate under Section 156 (3) of the CrPC for investigation. After investigation, police submitted a final report stating that the allegation was not proved, whereupon, learned Magistrate issued notice to the complainant/informant. Pursuant to the notice regarding submission of final report, the respondent/complainant filed an objection against the final report, alleging that the investigation was not conducted properly and prayed for taking cognizance. However, learned Magistrate after hearing the complainant/informant accepted the final report and rejected the prayer of the informant. Thereafter, the complainant filed a fresh complaint, whereupon the learned Magistrate took cognizance treating the same to be a narazi complaint and issued process. Against the said order of the learned Magistrate taking cognizance against the revision petitioners, they preferred a revision petition before this court challenging maintainability of the complaint. This court by order dated 24.05.2012 passed in

Crl. Petition No. 12/2012 remanded the matter to the learned Magistrate to decide the question of maintainability of the complaint first and then to proceed with the case. Upon remand, learned Magistrate by its order dated 12.07.2012 held that the complaint is not maintainable. Against the said order, the respondent preferred a revision petition before the learned Sessions Judge and the learned Sessions Judge by order dated 18.02.2013 set aside the order of the learned Magistrate and send back the complaint to the learned Magistrate for taking cognizance. Aggrieved by the order of the learned Sessions Judge in Criminal Revision Petition No. 101/2012, the accused/petitioners have preferred the instant revision petition.

5. Learned Sr. Counsel for the petitioners Mr. HRA Choudhury submitted that the facts alleged in the original complaint, which was registered as FIR and the facts alleged in the present complaint in question were same and therefore on the same set of facts, the second complaint is not maintainable after acceptance of the final report upon hearing the complainant. Further contention of Mr. Choudhury is that the protest petition filed by the respondent against the final report shall be treated as the first narazi complainant, and therefore, the subsequent complaint in question after rejection of the protest petition is also not maintainable being a second narazi complainant. To buttress his submission, Mr. Choudhury placed reliance on the following decisions.

(2012) 1 SCC 130: Shivshankar Singh Vs. State of Bihar & Anr.

AIR 1980 SC 1883: H.S. Bains Vs. State (Union Territory of Chandigarh

AIR 1977 SC 2432: Bindeshwari Prasad Singh Vs. Kali Singh

(2010) 2 SCC 631:Poonam Chand Jain & Anr. Vs. Fazru

6. Learned Sr. Counsel for the respondents Mr. A.M. Bora submitted that acceptance of final report is not a bar to a fresh complaint on the same facts, inasmuch as, such complaints are to be treated as narazi complainant. Further contention of Mr. Bora is that even if the objection petition filed by the respondent/complainant is taken to be first narazi complainant, the second narazi complainant is also not barred by law. In support of his submission, Mr. Bora placed reliance on the following decisions:

2001 (2) GLT 427: Jamuna Shah & Ors. Vs. Bhuban Chandra Kalita

2003) 1 SCC 734: Mahesh Chand Vs. B. Janardhan Reddy & Anr.

(2012) 1 SCC 130: Shivshankar Singh Vs. State of Bihar & Anr.

7. In **Shivsankar Singh** (supra), two FIRs were lodged for the same occurrence resulting in registration of two cases and both the cases were investigated by police. During investigation, the informant of one of the case filed a protest petition, but the same was not pursued. In the meantime, in one of the police case, charge sheet was filed and trial was also concluded in favour of the accused persons. In the other police case, final report was submitted. After submission of the final report, the informant lodged a complaint, on the basis of which, learned Magistrate took cognizance and issued process, which was challenged by the accused and eventually the matter landed in the Supreme Court. The question before the Apex Court was whether in view of the earlier protest petition, which was not pursued, the second complaint was maintainable. The Apex Court observed that a second narazi complaint is not barred by law and the same can be entertained under exceptional circumstances and held in paragraph-19 as under:

“19. The Protest Petition can always be treated as a complaint and proceeded with in terms of Chapter XV of Cr.P.C. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second Protest Petition can also similarly be entertained only under exceptional circumstances. In case the first Protest Petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh Protest Petition is filed giving full details, we fail to understand as to why it should not be maintainable.”

8. In paragraph-18 of the said judgment in **Sivshankar Singh's** case, relied by the learned counsel for the petitioner, the Apex Court held that second complaint would not be maintainable where the earlier complaint has been disposed of on full consideration of the case on merit. The Apex Court further held that law does not prohibit filing or entertaining second complaint even on the same facts, provided the earlier complaint has not been decided on the basis of insufficient material or order has been passed without understanding the nature of the complaint or complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour.

9. In **H.S. Bains** (supra), the Apex Court considered the three available options before the Magistrate when a final report is submitted by police upon investigation of a complaint

forwarded to it by Magistrate under Section 156(3) CrPC. The Apex Court held as under:

“6. The mere fact that he had earlier ordered an investigation under Sec. 156(3) and received a report under Sec. 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Sec. 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200. If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.....”

10. In ***Bindeswari Prasad Singh*** (supra), the Apex Court held that a second complaint lies only on fresh facts or even on the previous facts only if a special case is made out. In ***Poonam Chand Jain*** (supra), the question before the Apex Court was whether after an order of dismissal of complaint attained finality, can the complainant file another complaint on almost identical facts without disclosing in the second complaint, the fact of either filing of the first complaint or its dismissal. Referring to an earlier decision of three judges bench in ***Pramatha Nath Talukdar Vs. Saroj Ranjan Sarkar*** reported in ***AIR 1962 SC 876***, the Apex Court held that a second complaint on the same fact is maintainable only under exceptional circumstances as laid down in ***Pramatha Nath Talukdar's*** case.

11. In ***Jamuna Shah*** (supra), where a complaint was filed after acceptance of the final report, this court held that acceptance of final report is not a bar for filing a fresh complaint on the same facts. However, in appropriate cases the Magistrate may before issue of process hold an enquiry under Section 202 CrPC to satisfy himself about the existence of any prima facie case. In ***Mahesh Chand*** (supra) also the Apex Court held that a second complaint on the same fact could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with

reasonable diligence, have been brought on record in the previous proceedings, have been adduced. Thus, law is well settled as regards maintainability of second complaint. Once, the first complaint is dismissed after full consideration, the second complaint on the same fact can be maintainable only under exceptional circumstances as laid down in the case of ***Pramatha Nath Talukdar*** (supra) viz. manifest error, manifest miscarriage of justice, new facts which complainant had no knowledge or could not with reasonable diligence have brought forward in the previous proceeding, previous order of dismissal on an incomplete record or misunderstanding of the nature of complaint.

12. When the Magistrate takes cognizance under Section 190 (1)(a) of the CrPC upon a complaint, the Magistrate is required to examine the complainant and the witnesses present under Section 200 CrPC and upon such examination if the Magistrate is satisfied that there is sufficient ground for proceeding against the accused, he may issue process under Section 204 CrPC. The Magistrate may also postpone the issue of process and conduct an enquiry himself under Section 202 CrPC or direct an investigation by police or any other person. Once the Magistrate after examining the complainant and the witnesses produced by it or upon enquiry under Section 202 CrPC come to the conclusion that no prima facie case has been found, he may dismiss the complaint under Section 203 CrPC. Thus, when a complaint is dismissed under Section 203 CrPC upon full consideration, maintainability of the second complaint on the same fact is circumscribed. The second complaint on the same fact shall be maintainable only under exceptional circumstances as indicated above. Therefore, law does not create a blanket bar against a second complaint on the same facts.

13. In the instant case, it is not the case of a second complaint being filed after dismissal of the first complaint under Section 203 CrPC. Although, initially the informant lodged a complaint, the same was forwarded to police under Section 156 (3) CrPC for investigation, which was registered as FIR and after investigation final report was submitted. The final report was accepted by the learned Magistrate after giving opportunity of being heard to the informant and thereafter the complaint in question was filed. Therefore, filing of a complaint after acceptance of final report, which is popularly known as narazi complaint and the second complaint after dismissal of the first one under Section 203 CrPC on full consideration does not

stand on the same footing, inasmuch as, the narazi complaint after acceptance of the final report submitted under Section 173 CrPC cannot be considered as a second complaint.

14. As noticed in the case of ***H.S. Bains Vs. State*** (supra), there are three options available before the Magistrate, when a final report is submitted after the investigation carried out on the basis of a complaint forwarded by Magistrate under Section 156 (3) CrPC. Firstly, the Magistrate may accept the final report and drop the proceeding, secondly, may reject the final report and may take cognizance irrespective of the conclusion arrived at by police and thirdly take cognizance of offence under Section 190(1)(a) CrPC on the basis of the original complaint and issue process. If the Magistrate adopt the third alternative of taking cognizance on the basis of the original complaint, the Magistrate has to proceed under Section 200 CrPC with regard to examination of the complainant and witnesses present or may also hold an enquiry by himself or direct an investigation under Section 202 CrPC in order to take decision whether to proceed further under Section 203 or 204 CrPC. If the Magistrate having adopted the third alternative, dismisses the complaint and thereafter a fresh complaint is filed, then only, it can be treated as a second complaint in reference to the original complaint which ended in final report. If the Magistrate adopts the first option and drop the proceeding by accepting the final report, and thereafter a complaint is filed even on the same facts, which is generally called narazi complaint, the said complaint filed after acceptance of final report shall not be considered as second complaint with reference to first complaint which was registered as FIR, nor such complaint after acceptance of final report is barred by law. In the present case, since the Magistrate did not adopt the third alternative of taking cognizance and dismissal of the complaint, the subsequent complaint upon acceptance of the final report can by no stretch of imagination be called a second complaint on the same fact.

15. One must bear in mind the distinction between the dismissal of a complaint under Section 203 CrPC after full consideration and dropping the proceeding by accepting final report submitted under Section 173 CrPC. When the Magistrate takes cognizance on the basis of a complaint under Section 190(1)(a), the Magistrate is required to examine the complainant and the witnesses present and the Magistrate may also hold an enquiry himself or direct an investigation under Section 202 CrPC for the purpose of taking a decision whether there is

sufficient ground for proceeding against the accused. In such circumstances, it is the complainant, who has to prima facie establish his case by adducing evidence or material before the Magistrate. However, when the Magistrate takes cognizance on the basis of police report under Section 190(1)(b) or refused to take cognizance and accept the final report, the Magistrate usually acts on the basis of the materials produced by the investigating agency along with the final report. Therefore, when the complainant being aggrieved by the final report and acceptance thereof, files a protest petition or a narazi complaint on the same facts alleging that the investigation was faulty, such narazi complaint cannot be called second complaint, nor the complainant can be debarred from filing such complaint on the same facts after acceptance of the final report.

16. In the instant case, evidently after submission of the final report, notice was issued and the complaint by filing an application raised objection against the final report, stating that the investigation was not carried out properly. After hearing the complainant/informant, learned Magistrate, by an elaborate order rejected the objection raised by the complainant and accepted the final report. The order, by which, learned Magistrate accepted the final report would show that the learned Magistrate considered only the materials collected by police during investigation. When the respondent/ complainant raised objection against the bonafide of the investigation, the respondent/complainant cannot be debarred from filing a narazi complaint only because he was heard before accepting the final report. Issuing notice of the final report or giving opportunity of being heard to the informant before acceptance of final report is a legal requirement. Therefore, even the final report is accepted upon hearing the informant that does not debar the informant from filing a protest petition or a narazi complaint. Right of the complainant to file a narazi complaint is irrespective of the fact whether final report was accepted ex-parte or upon hearing the informant. Therefore, in my considered opinion, the narazi complaint on the same facts shall not be barred only because the final report was accepted after hearing the complainant nor the same can be treated as a second complaint, inasmuch as, there was no dismissal of any first complaint under Section 203 CrPC after full consideration.

17. The second submission of Mr. HRA Choudhury, learned Sr. Counsel for the petitioners is

that the objection petition filed by the informant/ complainant upon receipt of notice regarding submission of final report was itself a protest petition/narazi complaint, and as such, there could not be a second narazi complaint on the same set of facts. On the fact situation of the present case, even if the objection petition filed by the complainant is treated as a protest petition or first narazi complaint, which, if, deemed to have been dismissed by the learned Magistrate by virtue of the order of accepting the final report, the only question that may arise is whether the complaint in question in the present case is barred being a second narazi complaint on the same facts.

18. The question is answered by the Apex Court in Shiv Shankar Singh Vs. State (supra). The Apex Court in paragraph-19 of the judgment clearly held that a second narazi complaint on the same facts is maintainable under exceptional circumstance. Therefore, it needs to be seen whether there was any special or exceptional circumstances to entertain the so-called second narazi complaint.

19. A perusal of the objection petition would show that the objection petition was filed without full facts and particulars. For better appreciation, the contention of the said petition is reproduced below.

“1. The informant-petitioner has recently learnt that the police has submitted Final Report in connection the case. The informant-petitioner being aggrieved with the said final report likes to submit that no proper investigation in this case and the requisite documents revealing the involvement of the accused in connection with the offence have also not been seized by the police.

2. As such, the petitioner-informant submits that there is sufficient materials for taking cognizance in the case and the petitioner will take all requisite steps in connection with the case.”

20. Evidently, the learned Magistrate did not act upon the said protest petition, inasmuch as, the learned Magistrate did not proceed under Section 200/202 of the CrPC treating the same as narazi complaint. When the learned Magistrate did not proceed under Section 200 to 204 CrPC for taking cognizance upon received of the first protest petition nor the protest petition was dismissed under Section 203 CrPC, the complaint in question though considered

to be a second narazi complaint with reference to the first protest petition as indicated above, the same is not barred under law, reason being that the alleged first protest petition did not contain detailed particulars of the case required for decision nor the learned Magistrate proceed on the basis of the first petition under Section 200/202 CrPC and therefore the alleged first protest petition in my considered view cannot be held to have been dismissed after full consideration under Section 203 CrPC. Even if it is assumed for the sake of argument that the first protest petition was dismissed after full consideration, the narazi complaint in question is maintainable for special circumstances, namely the first protest petition did not contain the full facts and particulars necessary to decide the case and the same was considered on incomplete facts and particulars and the learned Magistrate also did not examine the complainant or any witnesses under Section 200 CrPC nor proceeded under Section 202 CrPC to decide whether there was sufficient ground for proceeding. Therefore, in any view of the matter, the present complaint in question cannot be considered as second complaint and the same also cannot be held to be barred for acceptance of the final report. Secondly, even if it is considered to be second narazi complaint with reference to the first protest petition, then also the complainant is not barred in the facts situation of the case because of the special or exceptional circumstances as indicated above.

21. For the reasons stated above, this court do not find any fault with the impugned order passed by the learned Sessions Judge and accordingly, the revision petition is dismissed. The matter be remanded back to the learned Magistrate to proceed with the complaint in accordance with law.

JUDGE

Comparing Assistant