

CASE NO.:
Appeal (crl.) 319 of 2007

PETITIONER:
Satish Sharma

RESPONDENT:
Pinki Dhawan

DATE OF JUDGMENT: 12/03/2007

BENCH:
K.G. BALAKRISHNAN, R.V. RAVEENDRAN & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT

O R D E R
(ARISING OUT OF S.L.P. (CRL.) 1453 OF 2005)

Leave granted.

The appellant herein filed a complaint before the Chief Judicial Magistrate (CJM), Gurgaon against the respondent and another alleging that they had committed offences under Sections 448, 427 read with Sections 34, 504 and 506 of the Indian Penal Code (IPC). When the complaint was posted for preliminary enquiry, the appellant failed to appear before the Court and the complaint was dismissed. The appellant again filed a complaint on 08.02.1994 raising the very same allegations and, as part of the enquiry, the appellant gave sworn statement in support of the complaint. Two other witnesses had also given sworn statements supporting the appellant's contentions. The said complaint was posted for further steps, and on that day the appellant remained absent and the complaint was dismissed by the CJM on 11.11.1995. On 16.11.1995 the appellant again filed another complaint alleging the very same allegations against the respondent and another. On 23.11.1995 again the complainant's statement was taken and he moved an application that the statements taken previously may be taken as part of the complaint. The learned Magistrate allowed this plea and, by an order dated 13.12.1995, took cognizance of the offence under Sections 448, 427, 506 read with Section 34 IPC. Aggrieved by the issue of summons, the respondent herein filed a criminal revision before the Sessions Judge, Gurgaon. The learned Additional Sessions Judge, Gurgaon allowed the revision and remanded the case for trial. Aggrieved by the said order, respondent filed a Criminal Miscellaneous Petition before the High Court. The High Court by the impugned order dismissed the complaint by holding that by dismissal of the earlier two complaints by the CJM, the appellant herein was not entitled to file fresh complaint and it was an abuse of the process of the Court and, further observed that by the dismissal of the complaint by the Magistrate, the accused stood acquitted of the charges, therefore the subsequent criminal complaint was not maintainable. This order is challenged by the appellant herein.

We have heard the learned counsel for the appellant and the learned counsel for the respondent.

It is admitted by both sides that the first two complaints were dismissed by the CJM before any summons was issued to the accused. The CJM had not taken cognizance of any offence on the basis of the first two complaints. The counsel for the appellant argues that as the summons was not issued in first two complaints, the dismissal of the third complaint under Section 256 of the Criminal Procedure Code (Cr.P.C.) was not warranted. The plea raised by the appellant is correct. Section 256 of the Cr.P.C. reads as follows :-

"256. non-appearance or death of complainant.- (1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

Section 256 of the Cr.P.C. is applicable only in a case where summons had been issued to the accused based on a complaint filed by the complainant and, only if the complaints were dismissed after issuance of the summons to the accused, then only the accused could claim that he had been acquitted by the Court.

In this case, in the earlier two complaint proceedings the accused was not before the Court and, therefore, the accused cannot be deemed to have been either discharged or acquitted and it is only in the third complaint filed by the appellant, the Magistrate had taken cognizance and the summons was issued to the accused. The learned Single Judge of the High Court was not justified in observing that the accused-respondent had been acquitted in the earlier two complaints as the accused himself was not a party in such proceedings. It was not an abuse of the process of the Court as the accused was not, in any way, prejudiced by any such previous proceedings as the accused got summons only in the third complaint proceedings.

In the result, the impugned order of the High Court is set aside and the order passed by the Additional Sessions Judge, Gurgaon is upheld. The CJM shall proceed with the complaint in accordance with law.

The Appeal is allowed accordingly.