

Thakkar Dass v. The State of Haryana (H. S. Rai, J.)

was on account of any overt act by or on behalf of the petitioner. The conclusion is that the petition is accepted and the F.I.R. in question registered against the Petitioner at police station city Gurdaspur is hereby quashed.

P.C.G.

Before Harbans Singh Rai, & A. P. Chowdhri, JJ.

THAKKAR DASS,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 3056-M of 1990.

18th December, 1990.

Constitution of India, 1950—Art. 227—Criminal Procedure Code, 1973 (II of 1974)—S. 482—Prevention of Food Adulteration Act, 1954—Petition for quashing complaint, charge and other proceedings dismissed by High Court—No change in circumstances—Second petition—Whether competent.

Held, that when the petitioner prays that on the same facts, his subsequent petition be allowed. He does not allege any change of circumstances nor any fresh ground of attack. In such a situation, no petition under S. 482 Cr. P.C. read with Article 227 of the Constitution of India is competent. If there had been any change of circumstance then a petition under S. 482 Cr. P.C. read with Article 227 of the Constitution of India could be competent but without any change in the circumstances, on the same facts and grounds, no subsequent petition will be competent. It will amount to review of the earlier order. To our mind, the legal position is clear and this second petition on the same facts is not competent and is dismissed.

(Para 7)

Constitution of India, 1950, Article 227, Criminal Procedure Code, 1973, Section 482, Prevention of Food Adulteration Act, 1954.

Petition for quashing complaint, charge on other proceedings dismissed by High Court—Second petition under same circumstances—Whether competent.

Held, that when the petitioner prays that and is dismissed. (Para 7)

Petition under section 482, Cr. P.C. read with Article 227 of Constitution of India praying that the complaint and other proceedings there of pending in the Court of C.J.M. Rewari against the petitioner may be quashed.

It is further prayed that the proceedings pending in the court of trial court may be stayed during pendency of this petition.

G. S. Sawhney, Advocate, for the Petitioner.

S. V. Rathee, Advocate, for the Respondent State.

JUDGMENT

Harbans Singh Rai, J.

(1) Thakar Dass petitioner had filed a petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India for quashing the complaint, charge, order of additional evidence and other proceedings thereof pending in the Court of Sub Divisional Judicial Magistrate Rewari, District Mahendergarh under the Prevention of Food Adulteration Act, 1954. This petition came up for hearing before J. B. Garg, J. who,—*vide* his order dated February 7, 1990 set aside the order dated November 3, 1987 allowing additional evidence but did not accept the other contentions of the petitioner and directed the parties to appear before the trial Court on March 5, 1990 and further directed the Court for early disposal of the complaint.

(2) Thakar Dass filed another petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India on March 21, 1990 in this Court for quashing the complaint, charge and other proceedings. The heading of the petition filed by Thakar Dass reads as under :—

“Petition under Section 482 Cr.P.C. read with Article 227 of Constitution of India for quashing the complaint, charge and other proceedings thereof pending in the court of Chief Judicial Magistrate Rewari, under Prevention of Food Adulteration Act, 1954.”

The prayer is as under :—

“It is therefore prayed that the complaint and other proceedings thereof pending in the court of C.J.M., Rewari against the petitioner may be quashed.

It is further prayed that the proceedings pending in the court of trial court may be stayed during the pendency of this petition”.

(3) On may 9, 1990, the petition came up before me for hearing and when it was pointed out by the State counsel that a similar petition has already been dismissed, it was contended by G. S. Sawhney that he was entitled to move another petition under Section 482 Cr.P.C. in the same case on the same grounds and on some additional grounds also. As I was of the view that this involves substantial question of law so I had referred the matter to a larger Bench for decision. Consequently this petition has come before us.

(4) It is not disputed that no fresh ground has been taken by Mr. Sawhney and the second petition is on the same grounds on which first petition was filed. To support his contention that second petition is competent, Mr. Sawhney has relied upon “*Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh and others*” (1), wherein it was held as follows :—

“Inherent power of High Court to quash criminal proceedings in lower court—Proceedings long drawn out. No *prima facie* case made out against accused—Proceedings may be quashed by High Court to prevent abuse of process of court and to secure ends of justice. Fact that a similar application for quashing the proceedings on a former occasion was rejected by the High Court on the ground that questions involved were purely questions of fact which were for the Court of fact to decide, is no bar to the quashing of the proceedings at the later stage. Such quashing will not amount to revision or review of the High Court's earlier order—Order under Section 561-A should be passed in view of the circumstances existing at the time when the order is passed.”

(1) A.I.R. 1975 S.C. 1002.

So, according to Mr. Sawhney, second petition is maintainable.

(5) The learned counsel for the State has cited "*M/s Malerkotla Auto Udyog, Malerkotla and others v. Deputy Chief Controller of Imports and Exports, New Delhi* (2), wherein I. S. Tiwana, J. held as under :—

"Second petition filed is in substance the review of the earlier order of the High Court wherein the petitioners had sought revision or quashing of the orders passed by the trial Magistrate and their affirmance by the revisional court. Petition not competent".

(6) We have given careful consideration to the argument and gone through the authorities cited by the counsel for the parties.

(7) In "*Superintendent and Remembrancer of Legal Affairs's case* (supra), the Apex Court held as follows :—

"It is, however, not necessary for us to examine the true effect of these observations as they have no application, because the present case is not one where the High Court was invited to revise or review an earlier order made by it in exercise of its revisional jurisdiction finally disposing of a criminal proceeding. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the Code of Criminal Procedure to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage."

J. B. Garg, J. had applied his mind and dismissed the petition of the petitioner and now the petitioner prays that on the same facts, his subsequent petition be allowed. He does not allege any change of circumstances nor any fresh ground of attack. In such a situation, no petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India is competent. If there had been any change of circumstance then a petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India could be

Balwant v. Jai Singh and another (J. S. Sekhon, J.)

competent but without any change in the circumstances, on the same facts and grounds, no subsequent petition will be competent. It will amount to review of the earlier order. To our mind, the legal position is clear and this second petition on the same facts is not competent and is dismissed. The parties are directed to appear in the trial Court on January 21, 1991 and the trial Court will decide the case on day to day basis.

P.C.G.

Before Jai Singh Sekhon, J.

BALWANT,—Petitioner.

versus

JAI SINGH AND ANOTHER,—Respondents.

Criminal Misc. No. 11884-M of 1990.

26th March, 1991.

Criminal Procedure Code, 1973 (II of 1974)—Ss. 132, 133, 137, 138 & 482—Encroachment on public street denied—Trial Court passing conditional order under Section 133 in absence of evidence and enquiry—Trial Court—Whether can pass such orders—Provisions of S. 137 held mandatory.

Held, that it was incumbent upon the trial Court to have first tried the question of existence or non-existence of such right at the said place, before embarking upon the regular inquiry, in accordance with the provisions of S. 138 of the Code. (Para 4)

Held, that there is a provision for staying the proceedings initiated under S. 133 of the Code, till the existence of such right has been decided by a competent Court, it is clear that the provisions of S. 137 are mandatory and any Magistrate taking cognizance of the nuisance under S. 138, is bound to first adjudge the existence or non-existence of the public right. In the case in hand, admittedly, the trial Court had failed to do so, which has certainly resulted in vitiating the proceedings because a valuable right of the petitioner to get the matter decided from a competent Court has been taken away. (Para 4)