Before Aman Chaudhary, J.

KAMAL SINGH AND ANOTHER—*Petitioners*

versus

SUMER SINGH—*Respondent*

CRM-M No. 23096 of 2017

September 30, 2022

Code of Criminal Procedure Code, 1973—S. 482—Indian Penal Code, 1860—Ss. 420, 467, 468, 471 and 120B—Order of Discharge—Revisional Court is not empowered to re-appreciate existing evidence and can only interfere in order of subordinate Court having any procedural irregularity, overlooking or misreading of material evidence by subordinate Court, which was not the basis of impugned order for purpose of setting aside order passed by trial Court whereby petitioners is discharged—Hence, order of discharge upheld.

Held, that Court does not have the power to even re-appreciate the existing evidence and can only interfere in an order passed by the subordinate Court if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court, which was not the basis made out in the impugned order for purpose of setting aside the order passed by the trial Court whereby the petitioners had been discharged.

(Para 22)

Jaivir Yadav, Senior Advocate assisted by Harshvardhan Ranga, Advocate, *for the petitioners.*

Shashi Kumar Yadav, Advocate, for the respondent.

AMAN CHAUDHARY, J.

(1) Challenge in the present petition filed under Section 482 Cr.P.C. is to the order dated 26.5.2017 passed by learned Sessions Judge, Rewari allowing the revision petition filed against the order dated 16.11.2016 passed by learned Sub Divisional Judicial Magistrate, Kosli in complaint case No.144 dated 26.7.2012 under Sections 420, 467, 468, 471, 120-B IPC, whereby the present petitioners were discharged.

Factual aspect:

(2) It is a case where a complaint has been filed by the respondent/complainant-Sumer Singh against the present petitioners, namely, Kamal Singh and Satpal Singh and one accused, namely, Smt. Mamta Yadav, for offences punishable under Sections 420, 467, 468, 471 and 120-B IPC on 26.07.2012. The present petitioners were summoned vide order dated 14.07.2015 by the Ld. Sub Divisional Judicial Magistrate, Kosli for offence punishable under Section 120-B IPC whereas accused Mamta Yadav was summoned for offences under Sections 420, 467, 468, 471 and 120-B IPC. Thereafter, the pre-charge evidence was led and charges came to be framed on 16.11.2016, thereby discharging the petitioners and framing charges against Mamta Yadav for offence punishable under Section 420 IPC.

(3) The complainant/respondent herein went up in revision against the aforesaid order of discharge on 28.04.2017, Annexure P-3, which was allowed vide order dated 26.05.2017, Annexure P-4, whereby the Revisional Court at Rewari has directed the trial Court to pass an order afresh on the issue of framing of the charge.

(4) Feeling aggrieved of the said order, the present petitioners have filed revision petition for setting aside the impugned judgment dated 26.05.2017, Annexure P-4, passed by the Ld. Sessions Judge, Rewari.

(5) At the outset, the learned Senior counsel has stated that the the complainant- respondent is a co-villagers of the petitioners, who bore a grudge against them, on account of which, the present complaint was filed by him. Otherwise, he was neither a candidate for the job that Mamta Yadav secure nor had he been denied obtaining of any educational qualification as acquired by Mamta Yadav or the domicile acquired by her. Further, Mamta Yadav has not challenged either the framing of the charge against her or the impugned order and is facing the trial.

(6) He also submitted that it may be worth a notice that Mamta Yadav against whom the charge has been framed had neither challenged the same before the revisional court nor is a petitioner before this Court.

Submissions:

(7) The First plank of arguments of the learned Senior counsel representing the petitioner is that the complainant had earlier filed a

similar complaint with same set of allegations against the present petitioners and one Mamta Yadav on 28.08.2007, which was withdrawn vide order dated 11.06.2009, Ex. D/3, without seeking liberty to file afresh. As such, the complaint filed on 26.07.2012 by the complainant-respondent was not maintainable. Learned Senior counsel further submits that the learned Revisional Court has recorded a finding that as per the record, the objection regarding the second complaint not being maintainable, was not taken before the learned Trial Court, which he submits, is contrary to the finding which was returned by the trial Court, which was to the effect that no person can be allowed to misuse the process of law and if once a criminal complaint was instituted and withdrawn without any liberty to file fresh on same facts, and if such complaint is re-instituted, then there would be no end to the litigation. In this regard he has taken this Court through para 25 of the impugned judgment and the finding of the trial Court in para 8 in this regard, which reads thus:-

> "8. Coming to culpability of accused No.1, question of double qualification and taking advantage thereof cannot be gone into because earlier criminal complaint Ex.D1 has been withdrawn by present complainant vide order Ex.D3. Similar allegations were levelled and after two yaers of it being pending in the Court, same was duly withdrawn vide statement of complainant Ex.D2. No reason is given in said statement why that complaint was withdrawn. No person can be allowed to misuse the process of law. If once a criminal complaint was instituted and it has been withdrawn, then complainant cannot be given any liberty to file fresh complaint on same facts. If such a complainant is allowed to keep on withdrawing the complaints as and when he deem fit and re-institute fresh criminal complaints, then there would be basically no end to litigation. Further, reliance in this regard can be placed upon ratio laid down by Hon'ble Punjab and Haryana High Court in ***Supinder Singh versus Provident Fund Inspector 1997(4) RCR (Criminal) 449 (P&H)."***

(8) As regard the maintainability of the second complaint is concerned, the learned Senior counsel makes a reference to Section 257 of the Cr.P.C. to submits that in case the complaint has been withdrawn, the same amounts to acquittal of the accused. He further refers to Section 300 Cr.P.C, to contend that once a person is acquitted,

he cannot be tried again for the same offence. To buttress this submission, learned Senior counsel relies upon a judgment passed by a coordinate Bench of this Court in the case of ***Supinder Singh*** *versus* ***Provident Fund Inspector***[1].

(9) Second plank of argument as raised by the learned Senior counsel is that the scope of the Revisional Court was limited and the evidence before the trial Court could not have been re-appreciated. He further contends that the trial Court had rightly considered the very aspect and the evidence, only then had come to a just conclusion to discharge the petitioners of the charge under Section 120-B IPC. He further contends that the Revisional Court while remitting the matter to the trial Court for deciding afresh the sole fact that has weighed with the Court is that as petitioner No.1-Kamal Singh and petitioner No.2-Satpal Singh, are father and husband of Mamta Yadav, respectively, therefore, without their help she could not have either got prepared the domicile certificate or get the admission in double education in the same academic session in two courses i.e. B.A 2nd year and B.A. 3rd year as well as two years' course of JBT.

(10) Insofar as the limited scope of revisional jurisdiction is concerned, the learned Senior counsel refers to a judgment of Hon'ble the Superme Court of India in the case of ***Hydru*** *versus* ***State of Kerala***[2], and a Coordinate Bench of this Court in the case of ***Ram Sarup*** *versus* ***State of Punjab***[3].

(11) Per contra, learned counsel for the respondent-complainant submits that Section 300 Cr.P.C. would not be attracted in this case for the reason that the previous complaint filed by the complainant was withdrawn at the stage of preliminary evidence and the subsequent complaint, based on which the present proceedings have been initiated was filed with some additional facts, as such, he further submits that no proceedings had been initiated pursuant to the first complaint, therefore, the second complaint would not amount to double jeopardy and Section 300 of Cr.P.C. is not attracted. He further submits that the learned trial Court did not dismiss the second complaint filed by the complaint on the ground of it being not maintainable. Rather, summons were issued and charge was framed against Mamta Yadav, however, petitioners were discharged, though wrongly. The second contention of

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[1] 1997(4) R.C.R. (Crl.) 449
[2] 2004 (12) SCC 374
[3] 2010(15) R.C.R. (Crl.) 965

the learned State counsel is that insofar as the amount is concerned, the Court has not appreciated any additional evidence as has been submitted by the learned State counsel, rather it has considered the evidence that was already on record, based on which the matter has been remanded back for a decision afresh to properly consider the evidence, already available on record. He further contended that the petitioners and Mamta Yadav were in conspiracy with each other in procuring the Domicile Certificates, both from Haryana and Rajasthan. On the basis of domicile obtained from the State of Haryana, Mamta Yadav had secured the appointment, which was prepared on the basis of mis-information given to the authorities concerned. It is also submitted by him, that similarly the dual educational qualification that Mamta Yadav had acquired with the signatures of her father, petitioner No.1, on the form of admission and the domicile from the State of Rajasthan was based on the documents of her husband, petitioner No.2. Similarly, the domicile which was procured from the State of Haryana, was without she having resided in the village Nehrugarh as per the statement of Sarpanch-Hoshiyar Singh as CW-3, Annexure P-5. So the domicile from the State of Haryana was procured by Mamta Yadav based on the documents of her husband. Thus, the learned counsel has submitted that the judgment passed by the Revisional Court is well reasoned and requires no interference.

(12) Heard the arguments advanced by the learned counsel for the parties at a considerable length.

Discussion:

(13) Admitted fact between the parties is that the complainant - respondent had filed a complaint in the year 2007, Ex.D1, which was withdrawn on his statement vide Ex.D2, order which was passed permitting him to withdraw was dated 11.6.2009, vide Ex.D3.

(14) Thereafter, the 2nd complaint came to be filed by him on 26.7.2012 on the same set of allegations against Mamta Yadav, her father, Kamal Singh, petitioner No.1 and her husband, Satpal Singh petitioner No.2 herein, wherein vide order dated 14.7.2015, Mamta Yadav was summoned to face the trial under Section 420, 467, 468, 471 and 120-B IPC, whereas petitioners herein under Section 120-B IPC. It is noticeable that the charge was framed vide order dated 16.11.2016 only against Mamta Yadav wife of Satpal under Section 420 IPC. However, vide order of even date, the petitioners herein were discharged holding that as no *prima facie* case was found to be made out against them, which if unrebutted could warrant their conviction.

(15) Relevant para in this regard requires to be reproduced hereunder:-

> "7. Having heard the arguments raised by learned counsels for both the parties, indeed there seems to be no evidence of any conspiracy between accused No.2 and 3. Mere fact that accused No.2 happens to be father of accused No.1 and accused No.3 happens to be the husband of accused No.1 cannot ipso-facto imply that they had any role to play in commission of any offence at all. If any wrong information was indeed furnished or any wrong certificate was issued or job was obtained by showing wrong particulars, then it cannot be deemed that it in conspiracy with accused No.2 and 3. There has no positive and cogent evidence against said accused No.2 and 3 to show that prima facie any criminal conspiracy was committed. As no prima facie case against accused No.2 and 3 is made out which, if unrebutted could warrant their conviction, accused No.2 and 3 stand discharged."

(16) A perusal of the said order reveals that a specific objection had been taken on behalf of the petitioners that in view of a similar complaint filed by the complainant-respondent, having been withdrawn in the year 2009, the second complaint on the same cause of action was not maintainable in view of the judgment of this Court in the case of ***Supinder Singh*** *(supra)*. A categoric finding was returned by the trial Court to the effect that no person can be allowed to misuse the process of law and if once, criminal complaint was withdrawn, the complainant cannot be permitted to reinstitute a fresh complaint, else there would be no end to litigation.

(17) In the revision whereby the Revisional Court has set aside the order and remitted the matter to pass a order afresh on the issue of framing of charges, it is relevant to note that with regard to the objection of 2nd complaint not being maintainable, it has so been recorded it ought to have been taken before the trial Court, which it seems has not so been done and thus, the said objection was held to be not tenable at the revisional stage, is contrary to the record.

Analysis:

(18) In the case of ***Supinder Singh*** *(supra)*, a Coordinate Bench of this Court had considered the same very issue as regard the maintainability of 2nd complaint, after the first having been withdrawn

and had held that the withdrawal of the complaint amounts to acquittal of the accused in terms of Section 257 Cr.P.C., even if in the order permitting withdrawal, it is not specifically mentioned that the accused stands acquitted. It was further held that a fresh complaint would not be maintainable in view of provision in Section 300 Cr.P.C. as well as Article 20(2) of the Constitution of India. A coordinate Bench of this Court in the case of ***Ram Sarup*** *(supra)* had also held that re-appreciation of evidence at the revisional stage is not permissible and the power of this Court to interfere at such a stage is very limited. It is thus, the considered opinion of this Court that the aforesaid judgment on all fours, applies to the facts of the present case.

(19) In so far as, the impugned order is concerned, the Court has come to the decision that the petitioners herein were wrongly discharged for the solitary reason that the petitioners herein being father and husband of Mamta Yadav without whose knowledge and active support the cheating allegedly committed by her could not have been done. Such conclusion having been drawn is *ex facie* perverse. The mere signature of father of petitioner No.1 on the application, whereby Mamta Yadav had sought admission, wherein it was mentioned that in case any fact was found to be incorrect the admission could be cancelled and the fact that she not having resided in village Nehrugarh or having a voter card or ration card, has been found to be the basis of conclusion that the husband of Mamta Yadav must have helped her in getting her domicile certificate issued does not *prima facie* attract Section 120-B IPC to them.

(20) The submission of learned counsel for the complainant-respondent that Section 300 Cr.P.C. would have been attracted only, if the previous complaint filed by the complainant was withdrawn after the preliminary evidence had been recorded, is not tenable in view of the judgment of in the case of ***Supinder Singh*** *(supra),* wherein also the complaint had been withdrawn at the initial stage itself and the ground mentioned therein was that accused firm had shifted to Calcutta and thus, the complainant did not want to proceed with the complaint.

(21) In this regard, it is imperative to make a specific reference to paras 11, 13 and 14 of the ***Supinder Singh*** *(supra),*which read thus**:-**

> "11.The learned counsel for the petitioners contends that similarly when a complaint is withdrawn by the complainant, the Magistrate has to permit him to withdraw the same and shall thereupon acquit the accused in view of Section 257 of the Criminal Procedure Code. He, therefore,

contends that even though the learned Additional C.J.M. has not mentioned that he was acquitting the petitioners herein, he should be taken to have done in view of the provisions of Section 257.

12. xx xx xx

13. The learned counsel for the petitioners also relied upon another decision of this Court *in* ***Surjit Kaur Vs. State of Punjab***, 1984(1) R.C.R. 169, in support of his contention that once the complaint is dismissed as withdrawn by the Magistrate, a fresh complaint on the same facts and cause of action is not competent. What happened was, the respondent (before the High Court) in that case filed a complaint before the Judicial Magistrate Ist Class under Sections 419, 420 465, 466, 467 and 471 Indian Penal Code against the petitioner. The complaint was dismissed as withdrawn in view of the statement given by the complainant. The Court had even given liberty to the complainant to file a fresh complaint after collecting the documents. On the very next day, a fresh complaint was filed by the respondent against the petitioner, which was challenged by the petitioners before the High Court as incompetent on the ground that it was on the same facts and cause of action. It was held that the second complaint is not competent.

14. In the light of the above discussions, the position that emerges is this: Though, a complaint is dismissed merely as withdrawn, the accused in the complaint should be considered to have been acquitted in view of the provisions contained in Section 257 Criminal Procedure Code, 1973 since this section mandates that while the Magistrate permits the complainant to withdraw the complaint, he shall acquit the accused against whom the complaint is so withdrawn. So even if in the final order of the learned Magistrate, it is not mentioned that the accused is/are accquitted, but the complaint is simply dismissed as withdrawn, we have to take the order to its legal consequence, i.e. we have to consider that the accused have been acquitted. Once the accused is acquitted, no fresh complaint is competent on the basis of the same facts and cause of action in view of the provisions contained in Section 300 Criminal Procedure Code, 1973 as well as the

> provisions contained in clause (2) of the Article 20 of the Constitution of India. Therefore, the contention of the learned counsel for the respondent that the complaint has been merely dismissed as withdrawn and that the accused have not been acquitted, will be of no avail."

It, thus was held, that though, a complaint was dismissed as withdrawn, the accused in the complaint should be considered as acquitted. Therefore, even if in the final order of the learned Magistrate, it does not find mentioned that the accused is/are acquitted but the complaint is simply dismissed as withdrawn, the legal consequence would remain the same.

(22) In so far as the submission of the learned counsel for the complainant-respondent that the Revisional Court had not appreciated any additional evidence rather had considered the evidence that was already on record, the same is permissible in the revisional jurisdiction, is flawed for the reason that the conclusion drawn by this Court based on the judgments of the Hon'ble Supreme Court of India and this Court is on the ground that the revisional Court does not have the power to even re-appreciate the existing evidence and can only interfere in an order passed by the subordinate Court if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court, which was not the basis made out in the impugned order for purpose of setting aside the order passed by the trial Court whereby the petitioners had been discharged.

(23) As per law laid down in a revision filed against acquittal by a private party, the Court exercising its power under Section 397 and 401 Cr.P.C. can interfere only if there is any procedural irregularity or if any material evidence has been overlooked or misread by the subordinate Court. In this regard, a specific reference to para 3 in the case of ***Hydru*** *(supra)* requires to be made, which reads thus:-

> "From the bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere

with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court. "

(24) Still further, a reference requires to be made to para 10 to 14 of the judgment in the case of ***Ram Sarup*** *(supra),* which reads thus:-

"10. Even otherwise, the scope of interference at the revisional stage is very limited in nature. It has been observed by the Apex Court in case **Duli Chand vs. Delhi Administration,** AIR 1975 SC 1960 that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence. Further, on the issue, it held as under :-

"Now, it is obvious that the question whether the appellant was guilty of negligence in driving the bus and the death of the deceased was caused on account of his negligent driving is a question of fact which depends, for its determination, on an appreciation of the evidence. Both the learned Magistrate trying the case at the original stage and the learned Additional Sessions Judge hearing the appeal arrived, on an assessment of the evidence, at a concurrent finding of fact that the death of the deceased was caused by negligent driving of the bus by the appellant. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct."

11. Similarly, while discussing the scope of revision, the Apex Court in case ***State of Kerala vs. Puttumana Illath Jathavedan Namboodiri***, AIR 1999 SC 981 held as under :-

"Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to

come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re[1]appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

12. In any case, the re-appreciation of the evidence at the revisional stage is not permissible and the power of this Court to interfere at such a stage is very limited. It was so observed in case **State of Maharashtra vs. Sanjay Mangesh Poyarekar** 2008 (4) RCR (Crl.) 555.

13. Similarly, the Apex Court in **Bindeshwari Prasad Singh alias B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another,** AIR 2002 SC 2907 observed that in the absence of any legal infirmity either in the procedure or in the conduct of the trial, there is no justification for the High Court to interfere in exercise of its revisional jurisdiction.

14. The records of the instant case transpire that the courts below have returned a finding of fact on proper appreciation of the evidence and the impugned judgment sans any perversity, irregularity or illegality. The sentence awarded also commensurates with the offence committed. Thus, there is no ground to interfere in the impugned judgments."

Conclusion:

(25) In view of the peculiarity of the facts and circumstances of the case as also in view of the law laid down referred to above, the

present petition is allowed. The impugned order dated 26.5.2017, Annexure P-4, is set aside.

(26) Nothing herein shall be treated as an expression on the merits of the case and the trial court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the present petition.

Dr. Payel Mehta