

Before Vikas Bahl, J.

M/S MINIKIN AGRO INDIA PVT. LTD. AND ANOTHER—
Petitioners

versus

STATE OF PUNJAB AND OTHERS—*Respondent*

CRM-M No. 3505 of 2020

May 02, 2022

Code Of Criminal Procedure, 1973—Ss. 362, 482—Insecticides Act, 1968—Ss. 3 (k) (i), 17, 18, 29, 33—Insecticides Rules, 1971—Rl. 27 (5)—Criminal Court – Functus Officio After Final Decision—Challenge to complaint filed by Insecticide Inspector and order of Judicial Magistrate First Class allowing application to restore complaint. Complaint dismissed in default—Failure of complainant to file copy of complaint. Application for restoration wrongly allowed—Despite specific objection—No provision in CrPC to restore criminal complaint—Once case finally decided—Court becomes functus officio—No power to review or recall order on any ground—Order of restoration set aside. Petition allowed.

Held, that a complaint was filed by the State of Punjab through Insecticide Inspector Sri Muksar Sahib, Block & District Sri Muksar Sahib and the petitioners were arrayed as accused No.7 and 8 in the said complaint. On 17.03.2017, the said complaint was dismissed in default as the complainant had failed to file a copy of the complaint. An application (Annexure P-3) was filed for restoration of the above-said complaint, which had been dismissed in default. A reply dated 01.08.2019 was filed to the said application by respondents No.5 and 6 therein, in which, it was specifically pointed out that there is no provision in the Cr.P.C. to restore the criminal complaint and a specific objection was taken that the Court has no power to review its own order and thus, the application deserves to be dismissed. It is submitted that in spite of the said objection, the Chief Judicial Magistrate, Sri Muksar Sahib, vide impugned order dated 30.09.2019 (P-5), has allowed the said application and restored the complaint to its original number and issued notice to the remaining accused.

(Para 2)

Further held, that the provision of law that emerges from a reading

of the above-said judgments is that once a case has been finally decided by a magistrate, then, the said Court became functus officio and has no power to review or recall the said order on any ground whatsoever. The order vide which a case has been dismissed in default, whether on the ground of the copy of the complaint having not been supplied or for want of prosecution, would be a final order and thus, no application for reviewing or recalling of the said order would be maintainable. There is no provision in the Cr.P.C. vesting in the magistrate inherent jurisdiction or giving the magistrate the power to review/recall a final order. Even the provisions under Section 362 of the Cr.P.C would bar the magistrate from recalling/reviewing such an order as an order vide which a petition or a complaint has been dismissed in default, cannot be stated to be a case of clerical or arithmetical error in the order. Thus, the impugned order is illegal and is liable to be set aside.

(Para 15)

Hitender Kansal, Advocate, *for the petitioner.*

Sukhbeer Singh, A.A.G., Punjab.

VIKASBAHL, J. (ORAL)

(1) This is a petition under Section 482 Cr.P.C. for quashing of complaint No.37 of 20.08.2015 titled as "State of Punjab Vs. M/s Mittal Pesticides and others", under Sections 3 (K) (i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971, pending before the Court of Judicial Magistrate First Class, Sri Muktsar Sahib (Annexure P-1) as well as the order dated 30.09.2019 (Annexure P-5), whereby an application for restoration of the complaint has been allowed and all other subsequent proceedings arising there from being illegal, unjust and an abuse of process of law, qua the petitioners.

(2) Learned counsel for the petitioners has submitted that in the present case, a complaint was filed by the State of Punjab through Insecticide Inspector Sri Muktsar Sahib, Block & District Sri Muktsar Sahib and the petitioners were arrayed as accused No.7 and 8 in the said complaint. It is further argued that on 17.03.2017, the said complaint was dismissed in default as the complainant had failed to file a copy of the complaint. It is further submitted that an application (Annexure P-3) was filed for restoration of the above-said complaint, which had been dismissed in default. A reply dated 01.08.2019 was filed to the said application by respondents No.5 and 6 therein, in which, it was specifically pointed out that there is no provision in the Cr.P.C. to

restore the criminal complaint and a specific objection was taken that the Court has no power to review its own order and thus, the application deserves to be dismissed. It is submitted that in spite of the said objection, the Chief Judicial Magistrate, Sri Muktsar Sahib, vide impugned order dated 30.09.2019 (P-5), has allowed the said application and restored the complaint to its original number and issued notice to the remaining accused. It is submitted that said order is absolutely illegal and against law, in as much as, it is the settled principle of law that the Judicial Magistrate 1st Class, does not have any power to review the order.

(3) Reliance in this regard has been placed on record upon the judgments of Co-ordinate Bench of this Court in *Daya Kishan versus Banarsi Dass*¹; *Revinder Kumar @ Ravinder Parshad versus Prem Kumar*² as well well judgment of the Hon'ble Supreme Court in *Hari Singh Mann versus Harbhajan Singh Bajwa*³.

(4) Learned counsel for the petitioners has further submitted that the reliance placed by the Judicial Magistrate 1st Class, Sri Muktsar Sahib, upon the judgment of Hon'ble Supreme Court in *Chandan Singh versus National Insurance Co. Ltd. & Anr*⁴, is completely misplaced, in as much as, the said case is a case under the Consumer Protection Act, 1986 and not the Code of Criminal Procedure.

(5) On 27.01.2020, a Co-ordinate Bench of this Court was pleased to pass the following order:-

"Prayer in the petition filed under Section 482 of the Code of Criminal Procedure, 1973 is for quashing of Complaint No. 37 of 20.08.2015 titled as State of Punjab Vs. M/s Mittal Pesticides and others under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971 and order dated 30.09.2019 passed by Judicial Magistrate Ist Class, Sri Muktsar Sahib whereby application for restoration of the complaint was allowed and all subsequent proceedings arising therefrom.

Learned Counsel for the petitioner has submitted that Judicial Magistrate Ist Class, Sri Muktsar Sahib, having

¹2010(2) R.C.R.(CrI) 451

²2010(9) R.C.R. (CrI) 597

³2000(4) R.C.R.(CrI) 650

⁴2015(1) R.C.R.(Civil) 920

dismissed the complaint on the ground of not filing of copy of the complaint could not in the absence of any enabling statutory provision, restore the complaint and the observations in **Chandan Singh Vs. National Insurance Co. Ltd and Anr., 2015 (1) RCR (Civil) 920 (Supreme Court)** relied upon by Judicial Magistrate Ist Class, Sri Muktsar Sahib, which pertain to condonation of delay, were not applicable to the case.

Notice of motion for 30.03.2020.

In the mean while, further proceedings in the case pending before Judicial Magistrate Ist Class, Sri Muktsar Sahib shall remain stayed.

To be shown in the urgent list.

27.01.2020

**(ARUN KUMAR TYAGI)
JUDGE"**

(6) In pursuance of the said order, the respondents have filed their reply. Learned State counsel has submitted that the present petition deserves to be dismissed, in as much as, the impugned order has been legally passed. It is further submitted that vide order dated 17.03.2017, the case was dismissed in default on account of the fact that a copy of the complaint had not been filed, thus, the order restoring the said complaint is rightly passed, in accordance with law.

(7) This Court has heard learned counsel for the parties and has gone through the record.

(8) The respondent-State, through Insecticide Inspector Sri Muktsar Sahib, Block & District Sri Muktsar Sahib, had filed a complaint (Annexure P-1) under Sections 3(K)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of the Insecticides Rules, 1971, before the Court of Chief Judicial Magistrate, Sri Muktsar Sahib, in which, the present petitioners were made accused No.7 and 8. It is not in dispute that on 17.03.2017, the said case was dismissed in default. The said order is reproduced herein below: -

"State through Insecticide vs Ms Mittal Pesticide

PBSM03-000757-2016

UID No.PB0288

CHA/37/2015

Present:-Sh. Suirnder K. Sachdeva, Addl. PP for the State

Accused no.1 and 2 on bail with counsel Sh. B.S. Sidhu Advocate

Accused no.3 and 4 on bail with counsel Sh. Ritesh Watts Advocate

Counsel for accused no.5 and 6 Bakshish Singh Sidhu Advocate

Accused no.7 on bail with counsel Sh.B.S.Sidhu Advocate

An application for exemption from personal appearance of accused no.5 has been moved which is allowed for the reason mentioned. Copy of complaint not filed. As complainant failed to file copy of complainant since 21.10.2016 and third consecutive date, there luctant and causal approach of complainant deserves no leniency and as a result, the present, complaint stands dismissed in default. File be consigned to there cord room.

Pronounced.

(MaheshKumar)17.03.2017
Judicial Magistrate
Ist Class Sri Muktsar Sahib"

(9) The application (Annexure P-3) was filed for restoration of the said complaint. Thereafter, reply dated 01.08.2019 (Annexure P-4) to the said application was filed and in para No.1of the preliminary objections, it was specifically stated that there is no provision in the Cr.P.C. to restore the criminal complaint and it was stated that the Court did not have the power to review its own order. Para No.1 of preliminary objection of the said reply is reproduced herein below:-

'Preliminary Objection:

1.That there is no provision in the Cr.P.C. to restore the criminal complaint and further the Hon'ble Court cannot review its own order, hence, the present application is without any merits and same be dismissed."

(10) However, in spite of the said specific objection raised by the respondent therein, the Judicial Magistrate 1st Class, Sri Muktsar Sahib, vide impugned order dated 30.09.2019, had allowed the application for restoration and restored the complaint to its original number. The said

order is illegal and against the law and deserves to be set aside.

(11) A Co-ordinate Bench of this Court in *Daya Kishan's case (supra)* has held as under:-

"Prayer in the present petition is for quashing of the order dated 13.12.2004 (AnnexureP-2) passed by the Additional Chief Judicial Magistrate, Ludhiana vide which the complaint which was dismissed in default for want of prosecution vide order dated 15.7.2004 (AnnexureP-1) stands restored and for quashing of all subsequent proceedings arising there from i.e. summoning order dated 16.1.2007 (AnnexureP-3) and further quashing of the complaint Annexure P-4.

xxx xxx xxx xxx

The Courts below, therefore, are bound by the powers as have been made available to them under the Code of Criminal Procedure. There is no provision under the Code of Criminal Procedure which empowers the Magistrate to recall or review his order, once passed by him, except in cases where they are all interim in nature. Dismissal of a complaint cannot be termed as an order which is not final whether it is due to default on the part of the complainant to appear before the Court or due to want of prosecution. Once a power vested in the Magistrate under the Code of Criminal Procedure has been exercised, the same cannot be modified, changed or recalled by the Magistrate unless such power is conferred upon the Magistrate under the Code of Criminal Procedure. There being no provision under the Criminal Procedure Code empowering the Magistrate to review or recall his earlier order dismissing the complaint in default and for want of prosecution, the order passed by the Magistrate attains finality which can only be set aside or modified by a superior Court in accordance with law. The other option available to the complainant in case the complaint has been dismissed for non-prosecution is to prefer another complaint on the same facts if permissible under the law.

5. The Hon'ble Supreme Court in Bindeshwari Prasad Singh's case (supra) in para 4 of the judgment has held as follows:-

“4. We might mention that the order dated 23rd November, 1968 was a judicial order by which the Magistrate had given full reasons for dismissing the complaint. 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 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 23-11-1968, the Sub Divisional Magistrate became *functus officio* and had no power to review or recall that order on any ground what so ever. 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 3-5-1972 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 1962 Supp (2) SCR 297: (AIR1962SC876). For these reasons, therefore, the appeal is allowed. The Order of the High

Court maintaining the order of the Magistrate dated 3-5-1972 is set aside and the order of the Magistrate dated 3-5-1972 summoning the appellant is hereby quashed.”

6. Relying upon this proposition, the Hon'ble Supreme Court in the case of Major General A.S. Gauraya's case (supra) wherein the facts of the case were similar to the case in hand has held that the Magistrate could not recall his order once the complaint has been dismissed for non-prosecution. It has been further held that no criminal Court has any inherent jurisdiction, being not provided for in the Criminal Procedure Code.

7. In the light of the above two judgments of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has held that the order passed by the Magistrate dismissing the complaint cannot be reviewed or recalled, the order dated 13.12.2004 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, Ludhiana, cannot be sustained and deserves to be set aside. The judgments relied upon by the counsel for the respondent in the light of the judgments of the Hon'ble Supreme Court referred to and relied upon above, will be of no help to the respondent.

8. Accordingly, the present petition is allowed, the order dated 13.12.2004 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, Ludhiana is hereby quashed. As a consequence of the quashing of the order dated 13.12.2004 (Annexure P-2) all subsequent proceedings and the orders in these proceedings passed by the Magistrate shall be deemed to have been quashed."

(12) Perusal of the above-said order would show that in the said case also, a complaint had been dismissed in default for want of prosecution and was subsequently restored by the order passed by the Chief Judicial Magistrate and it was the order of restoration, which was sought to be challenged. It was held that there is no provision under the Code of Criminal Procedure, which empowers the Magistrate to recall/review his own order, once the same has been passed by him and the only exception is in cases where the same are interim in nature. It was further observed that the dismissal of the complaint, whether it was on account of default or due to want of prosecution, cannot be termed as an interim order and it is a final order and thus, the said order can not be modified, changed or recalled by the Magistrate. It was further

observed that the said order dismissing the complaint in default could only be modified or set aside by a superior court in accordance with law and the other option available to the complainant is to prefer another complaint on the same facts if permissible under the law. The reliance in the said case was also placed upon a judgment of the Hon'ble Supreme Court in case *Bindeshwari Prasad Singh versus Kali Singh*⁵, in which, it was observed that in the said case, the Sub Divisional Magistrate had become functus officio after having passed the order in question and thus, he had no power to review or recall the order passed on any ground whatsoever. It was thus affirmatively observed by a Co-ordinate Bench of this Court in the above mentioned case that once a case has been dismissed in default by an order passed by the Magistrate, the magistrate can not review the same, as he does not have the inherent jurisdiction in the said respect.

(13) To the similar effect, was the judgment of another Co-ordinate Bench of this Court in *Revinder Kumar @ Ravinder Parshad's case (supra)*. The paragraphs No.4, 5 and 6 of the said judgment are reproduced here in below: -

" xxx xxx xxx xxx xxx

4. Learned counsel for the respondent, on the other hand, has submitted that the Magistrate had no inherent power to restore the complaint. Learned counsel has placed reliance on the decision of the Apex Court in **Major General A.S. Gauraya vs. S.N. Thakur 1988 (1) RCR (Criminal) 3**, wherein, it was held as under:-

“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.”

5. Learned counsel has further placed reliance on the decision of the Apex Court in **Bindeshwari Prasad Singh vs. Kali Singh 1977 AIR (SC) 2432**, wherein, it was held as under:-

“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

⁵AIR 1977 SC 2432

the Sessions Judge or the High Court in revision. In fact after having passed the order dated 23.11.1968, 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.”

6. Thus, the legal position that emerges is that once the complaint is dismissed in default, the remedy available to the complainant is to challenge the order of dismissal in default by filing a revision petition. However, the Magistrate has no power to recall the order of dismissal in default by exercising inherent jurisdiction. Hence, the judgments relied upon by learned counsel for the petitioner fail to advance the case of the petitioner. Learned Additional Sessions Judge has, thus, rightly set aside the order passed by the Magistrate, whereby the complaint was restored and the order, where by the complaint was dismissed in default, was set aside. No ground for interference is made out.

Accordingly, this petition is dismissed."

(14) The Hon'ble Supreme Court of India in *Hari Singh Mann's case (supra)*, after taking into consideration the provisions of Section 362 of the Code of Criminal Procedure, observed that once a judgment or final order has been signed, then no Court shall alter or review the order so passed by it, except to correct a clerical or arithmetical error. The relevant part of the said judgment is as under: -

"Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order of disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical

error. The reliance of the respondent on Talab Haji Hussain's case (*supra*) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

10. The impugned orders of the High Court dated 30.4.1999 and 21.7.1999 which is not referable to any statutory provisions having been passed apparently in a review petition in a criminal case is without jurisdiction and liable to be quashed. In view of what has been stated hereinabove, the appeals are allowed and the impugned order of the High Court dated 30.4.1999 and 21.7.1999 are set aside restoring its original order dated 7.1.1999.

Appeals allowed."

(15) Thus, the provision of law that emerges from a reading of the above-said judgments is that once a case has been finally decided by a magistrate, then, the said Court became *functus officio* and has no power to review or recall the said order on any ground whatsoever. The order *vide* which a case has been dismissed in default, whether on the ground of the copy of the complaint having not been supplied or for want of prosecution, would be a final order and thus, no application for reviewing or recalling of the said order would be maintainable. There is no provision in the Cr.P.C. vesting in the magistrate inherent jurisdiction or giving the magistrate the power to review/recall a final order. Even the provisions under Section 362 of the Cr.P.C would bar the magistrate from recalling/reviewing such an order as an order *vide* which a petition or a complaint has been dismissed in default, cannot be stated to be a case of clerical or arithmetical error in the order. Thus, the impugned order is illegal and is liable to be set aside.

(16) Further, the judgment in *Chandan Singh's case (supra)*

which had been relied upon by the trial Court while passing the impugned order, is completely irrelevant as the said judgment was passed in a case under the Consumer Protection Act and not under the Code of Criminal Procedure. Moreover, in the said case, the National Consumer Disputes Redressal Commission had dismissed the revision petition on the ground that there was a delay of 139 days in filing the said revision petition and it was in the said background, that the Hon'ble Supreme Court had observed that the said revision petition was required to be examined on merits and that the National Commission had viewed the matter on technicalities and on the said grounds, the impugned order therein was set aside. Thus, the said judgment does not further the case of the complainant in the present case.

(17) Keeping in view the above-said facts and circumstances as well as the settled principle of law, the present petition is allowed and the impugned order dated 30.09.2019 (Annexure P-5) is set aside and the order dated 17.03.2017 is restored.

(18) It is clarified that the present order, however, will not come in the way of the respondents to seek appropriate legal remedy in accordance with law with respect to the complaint in question.

Shubreet Kaur