

**I.L.R. 1996 KAR 109**

**K.H.N. KURANGA, J**

**K.R. Sashidara vs Shivaram Putturaya\***

**CRIMINAL PROCEDURE CODE, 1973 - (Central Act No.2 of 1974) - Sections 203 & 362 - No powers to Magistrate to review earlier order or restore complaint dismissed.**

**HELD :**

The learned Magistrate has got the power to dismiss the complaint, but he has no power to restore the same. The Criminal Procedure Code does not contain any provision enabling the Magistrate to exercise an inherent power or jurisdiction. In the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction to restore the case. (Para-22)

**ON FACTS :**

Since the learned Sessions Judge has not specifically set aside the finding recorded by the learned Magistrate that sanction to prosecute the petitioners is necessary, the subsequent order passed by the learned Magistrate taking cognisance of the offences against the petitioners is illegal and without jurisdiction. Taking cognisance of the offences alleged against the petitioners by the learned Magistrate amounts to reviewing the earlier order passed by him holding that sanction is necessary to prosecute the petitioners. The learned Magistrate has no power under the Code to review the order passed by him earlier... the order passed by the learned Magistrate on 8.12.1993 setting aside the order dated 26.10.1983 passed by him dismissing the complaint is illegal and without jurisdiction. The subsequent proceedings subsequent to the order dated 26.10.1983 on the file of the Magistrate is, therefore illegal and without jurisdiction and the same is liable to be quashed.

(Paras-18 & 25)

**CASE REFERRED :**

*AIR 1986 SC 1440 - Gauraya vs Thakur*

(Foll)

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\*CrI. Petns. Nos. 141 & 473 of 1991 dated 14th November 1995

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Mr. H.S. Chandramouli, Mr. Shankaranarayana Bhat for  
Mr. B.M. Krishna Bhat for Petitioners  
Mr. S.S. Sripathy for Respondent

**ORDER**

Kuranga, J

The petitioner in Cr. Petition No.141/91 is Accused No.1 and the petitioner in Cr. Petition No.473/91 is Accused No.2 in C.C.No. 454/88 pending on the file of the Additional J.M.F.C., Puttur.

2. The petitioners have in these Petitions prayed for setting aside the order dated 30.10.90 passed by the learned Magistrate and to quash the proceedings in C.C.No. 454/88 pending on the file of the learned JMFC., Puttur. Hence, these two Petitions are disposed of by this Common Order.

3. Heard Mr. H.S. Chandramouli, learned Counsel for the petitioners and Mr. Shankaranarayana Bhat, learned Counsel appearing for Sri B.M. Krishna Bhat for respondent in both these Petitions and Sri S.S. Sripathy, learned Counsel appearing for respondent in Cr.Petn. No. 473/91.

4. The Respondent-Shivaram Putturaya filed a private complaint under Section 200 Cr.P.C., before the learned JMFC., Puttur, against 56 persons alleging the commission of the offences punishable under Sections 143, 144, 148, 447, 427, 448, 380 read with Section 149 I.P.C., on 14.8.1980.

5. The learned Magistrate referred the complaint for investigation to the Police under Section 156(3) Cr.P.C.

6. The Police, after completing the investigation filed a 'B' report on 20.8.1980. The complainant filed 'protest-petition' on 30.1.81 undertaking to substantiate the allegations made against the accused-persons. The learned Magistrate recorded the statement of the complainant on 27.2.1981. Thereafter, the learned Magistrate issued process against 14 accused-persons, excluding the petitioners by his order dated 20.3.1981.

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7. Against the order dated 20.3.81 passed by the learned Magistrate, the respondent-complainant filed a Criminal Revision Petition - No.49/1981 before the learned Sessions Judge, Dakshina Kannada at Mangalore on 7.5.1981.

8. The learned Sessions Judge by his order dated 24.6.1983 set aside the order dated 20.3.81 passed by the learned JMFC.

9. Thereafter, the learned Magistrate passed an order on 30.9.83 as follows :

"Records received from the District Court, Mangalore on 28.7.83 setting aside the orders of this Court passed on 20.3.1981 complainant is present. Enquiry or to hear by 26.10.83."

10. When the case was posted on 26.10.83, the learned Magistrate has passed the order as follows :-

"C. in person. Enquiry. Complainant is absent. No application is filed. Not diligent in prosecuting the petition. Complaint dismissed."

11. On 29.10.83, the Advocate appearing for the complainant filed an application under Sections 203 and 362 Cr.P.C., with a medical certificate. The case was adjourned to 18.11.1983. Again, it was adjourned to 24.11.83 and thereafter to 8.12.83. On 8.12.83, the Magistrate has passed the order as follows:

"Complainant is present. Relying on the decision reported in 1980 Cr.L.J.No.C.5. The order dated 26.10.83, is set aside. The original complaint is restored and posted the case for enquiry."

The case was being adjourned from time to time. When the case was posted on 8.3.88 the Magistrate has passed an order as follows:

"Complainant by Mr.M.S.P. Enquiry. Complainant present. Heard, perused the complaint and its connected records, cognizance taken. Complainant's witnesses not present. Sworn statement complainant recorded, heard, orders by 15.3.88."

Thereafter the case was adjourned to 19.3.88. The order sheet dated 19.3.88 reads thus:-

"Complainant present. Orders pronounced, Registrar Calendar Case against A1 to A5 and issue ss. to them by 30.4.88."

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Thereafter, Accused No.1-petitioner in CrI.Petn.No. 141/91 filed an application before the learned Magistrate under Section 245(2) and Section 197 Cr.P.C., to drop the proceedings against him and discharge him from the prosecution on the ground that sanction as required under Section 197 Cr.P.C., was not obtained by the complainant before filing the complaint.

The learned Magistrate directed A-1 to agitate the said point at proper stage and deferred the order on the application filed by Accused No.1 till the evidence before the charge is recorded. This order was passed by the Magistrate on 31.10.90. It is this order passed by the learned Magistrate and the entire proceedings that are challenged by the petitioners in these two Petitions.

12. The learned Counsel for the petitioners submitted that the learned Magistrate had passed the order issuing process against the 14 accused persons, excluding the petitioners on 20.3.81. The relevant portion of the said order dated - 20.3.1981 reads thus:-

"The investigation conducted by C.I. disclosed that A1 and A2 being the Government officials went there on the mass petition filed by the other accused persons in respect of dispute of land between the complainant and the other accused. So at this stage whether the case of the complainant can be believed that A1 and A2 were not discharging their duties. On the other hand the court has to place reliance on the report of the C.I. who has stated that Tahsildar and A.C. went there on official duty. When they were discharging the official duty whether any acts committed by them can be termed as an offence unless the previous sanction from the Government, i.e., Governor of Karnataka has to be obtained to prosecute them. Sri K. Manmohan cited the decisions Cr.L.J. 1977 page 1383 and Cri.L.J. 1978 page 735. With due respect to those decisions and after going through the sworn statement of the complainant it is clear that A1 and A2 the alleged A.C. and Tahsildar have not done any overt act and their action can be termed as hasty action and they cannot be dragged to the court of law at the instance of the complainant. So I am of the opinion that the complainant has failed to prove the prima facie case against the Assistant Commissioner and Tahsildar and in respect of other accused there is prima facie case to take cognizance of the offence committed by them. So, a case for an offence under

Section 147, 447, and 427 I.P.Code be registered against those accused persons, i.e. A4, A5, A3, A8, A9, A11, A49, A57, A7, A33, A32, A45, A12, A51. Summonses be issued against those accused persons."

13. This finding recorded by the Magistrate has not been set aside by the learned Sessions Judge in the Revision Petition filed by the respondent-complainant. The learned Sessions Judge has also not remanded the case to the Magistrate. Hence, the learned Magistrate ought not to have restored the case to his file and ought not to have proceeded with the same.

14. While passing the said order the learned Magistrate was of the opinion that sanction to prosecute the petitioners was necessary under Section 197 Cr.P.C. The complainant had not obtained any such sanction. Since this finding recorded by the learned Magistrate was not set aside by the learned Sessions Judge, the learned Magistrate ought not to have taken cognizance of the offences against the petitioners without the sanction of the Government. Hence, the subsequent order passed by the learned Magistrate amounts to reviewing his own earlier order dated 20.3.81.

15. The learned Counsel for the petitioners further urged that the learned Magistrate has dismissed the complaint on 26.10.83 and on the application filed by the complainant restored the complaint relying upon the Judgment reported in 1980 Cr.L.J.No.C.5 on 8.12.1983. The learned Magistrate had no jurisdiction or power to review or recall his own order dismissing the complaint filed by the complainant on 26.10.83. Hence, the subsequent proceedings, i.e., subsequent to 26.10.83 on the file of the learned Magistrate is without jurisdiction and illegal and, therefore, the proceedings are liable to be quashed.

16. The learned Counsel for the respondents submitted that the learned Magistrate had held that sanction was necessary to prosecute the petitioners by his order dated 20.3.81. But the learned Sessions Judge has set aside this order. Therefore, the learned Magistrate was right in proceeding with the complaint. Merely because the learned Sessions Judge has not stated that he has remanded the case to the learned Magistrate, the very fact that he has set aside the order passed by the learned Magistrate on 20.3.91, shows that the learned

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Magistrate is at liberty to proceed with the proceedings initiated on the complaint filed by the complainant. There are no grounds to quash the proceedings. He, further, submitted that though the learned Magistrate has dismissed the complaint filed by the petitioners by his order dated 26.10.83, on the application filed by the complainant, he has restored the complaint by his order dated 8.12.83. This order passed by the learned Magistrate is in accordance with law.

17. By the order dated 20.3.81 the learned Magistrate held that, "sanction to prosecute the petitioners was necessary before filing the complaint by the complainant." This order was challenged before the learned Sessions Judge and the learned Sessions Judge has set aside that order passed by the Magistrate on the ground that the learned Magistrate has not followed the proper procedure. By relying upon the Judgment of this Court in the case of *REVANAPPA vs RAGHUNATH* reported in 1982(2) Kar.L.J. 350, the learned Sessions Judge set aside the order dated 20.3.81 passed by the learned Magistrate only on that ground. He has not specifically set aside the order passed by the learned Magistrate on the ground that sanction was not necessary. Moreover, the learned Sessions Judge has not remanded the case to the learned Magistrate. He has simply set aside the order passed by the learned Magistrate and left it at that.

18. Since the learned Sessions Judge has not specifically set aside the finding recorded by the learned Magistrate that sanction to prosecute the petitioners is necessary, the subsequent order passed by the learned Magistrate taking cognizance of the offences against the petitioners is illegal and without jurisdiction. Taking cognizance of the offences alleged against the petitioners by the learned Magistrate amounts to reviewing the earlier order passed by him holding that sanction is necessary to prosecute the petitioners. The learned Magistrate has no power under the Code to review the order passed by him earlier.

19. The learned Magistrate passed an order dated 20.3.81 and held thus:-

"The investigation conducted by C.I. disclosed that A1 and A2 being the Government officials went there on the mass petition filed by the other accused persons in respect of dispute

of land between the complainant and the other accused. So at this stage whether the case of the complainant can be believed that A1 and A2 were not discharging their duties. On the other hand the Court has to place reliance on the report of the C.I. who has stated that Tahsildar and A.C. went there on official duty. When they were discharging the official duty whether any acts committed by them can be termed as an offence unless the previous sanction from the Government, i.e., Governor of Karnataka has to be obtained to prosecute them. Sri K. Manmohan cited the decisions Cr.L.J.1977 page 1383 and Cr.L.J.1978 page 735. With due respect to those decisions and after going through the sworn statement of the complainant it is clear that A1 and A2 the alleged A.C. and Tahsildar have not done any over-act and their action can be termed as hasty action and they cannot be dragged to the court of law at the instance of the complainant. So I am of the opinion that the complainant has failed to prove the prima facie case against the Assistant Commissioner and Tahsildar....."

This shows that the petitioners were discharging their duties as A.C. and Tahsildar when they went to the spot. In the circumstances, it cannot be said that the sanction is not necessary to prosecute the petitioners.

20. After the learned Sessions Judge passed the order allowing the revision-petition filed by the complainant, the learned Magistrate restored the complaint to his file and posted the case for enquiry.

21. When the case was posted on 26.10.83 the complainant was absent. No application was filed. The learned Magistrate dismissed the complaint on the ground that the complainant was not diligent in prosecuting the complaint. Thereafter, on the application filed by the complainant under Sections 203 and 362 Cr.P.C. the learned Magistrate set aside the order dated 26.10.83 relying upon the Decision reported in 1980 Cr.L.J.No.C.5. This order was passed by the learned Magistrate on 8.12.93.

22. The learned Magistrate has got the power to dismiss the complaint, but he has no power to restore the same. The Criminal Procedure Code does not contain any provision enabling the Magistrate to exercise an inherent power or jurisdiction. In the

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absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction to restore the case.

23. The Supreme Court in the case of - MAJ. GENL.A.S.GAURAYA AND ANOTHER vs S.N.THAKUR AND ANOTHER\*, has held thus:-

"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, to restore the case. A second complaint is permissible in law if it could be brought within the limitations imposed by the Supreme Court in Pramatha Nath Taluqdar vs Saroj Ranjan Sarka, AIR 1962 SC 876. Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal Procedure Code does not contain any provision enabling the criminal court to exercise such an inherent power. Also, what the Court has to see is not whether the Code contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have."

The case before the Supreme Court had moved along the files of various Courts for more than 15 years and therefore, the Court after observing that it is high-time to give it a decent burial, set aside the order of the High Court and restored the order of the Magistrate dismissing the complaint. In this case the complaint was filed by the complainant on 14.8.80. 15 years and 3 months have elapsed from the date of the filing of the complaint.

24. The petitioner-A1 has taken a ground in the Petition. Ground No.11 reads thus:-

"The Court below grossly erred in restoring the complaint which was earlier dismissed by the same court and the proceedings subsequent to the dismissal of complaint is ab initio void."

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\* AIR 1986 SC 1440

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25. Therefore, it is clear that the order passed by the learned Magistrate on 8.12.1993 setting aside the order dated 26.10.1983 passed by him dismissing the complaint is illegal and without jurisdiction. The subsequent proceedings subsequent to the order dated 26.10.1983 on the file of the Magistrate is, therefore, illegal and without jurisdiction and the same is liable to be quashed.

26. Accordingly, the Petitions are allowed. The proceedings subsequent to the order dated - 26.10.1983, on the file of the Additional Munsiff and JMFC., Puttur in C.C.No.454/88 are liable to be quashed and accordingly they are quashed. The order dated 26.10.83 passed by the learned Magistrate dismissing the complaint filed by the complainant is restored.

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**I.L.R. 1996 KAR 117**

**TIRATH S. THAKUR, J**

**N.S. Rama Rao vs Regional Transport Authority\***

**MOTOR VEHICLES ACT, 1988 (Central Act No.59 of 1988)-  
Section 89 - Appeal where variation ordered: Order of  
refusal to grant variation not appealable.**

**HELD**

A plain reading of the provision makes it abundantly clear that the same envisages an appeal at the instance of a person aggrieved by the revocation or suspension of the permit or by "any variation of the conditions thereof". The expression "any variation of the conditions thereof" implies that it is only in cases where variation is actually ordered that such an order can possibly be questioned in Appeal under the provisions. In other words, an order by which the grant of a variation in the conditions of a permit is refused is not, on a plain reading of Section, appealable. (Para-5)

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\*W.P.No. 27694 of 1995 dated 4th September 1995