

**REVISIONAL CRIMINAL.***Before Bhide J.*

ALLAH DITTA (ACCUSED) Petitioner

*versus*

KARAM BAKHISH (COMPLAINANT) Respondent.

1930

May 30.**Criminal Revision No. 285 of 1930.**

*Criminal Procedure Code, Act V of 1898, section 203—Dismissal of complaint—upheld by Sessions Judge on revision—no bar to second complaint on the same facts—but only entertained in exceptional circumstances, even where the complainant is another person.*

A complaint having been dismissed on the ground that the dispute was one of a civil nature and a petition for revision of this order having been rejected by the Sessions Judge, the brother of the complainant filed a fresh complaint on the same facts.

*Held*, that a second complaint for an alleged offence is entertainable, and it is not absolutely necessary to get a previous order of dismissal under section 203 set aside by a superior Court before lodging such a complaint.

*Emperor v. Kiru* (1), followed.

*And*, the mere fact that a superior Court has dismissed a petition for revision would not legally be a bar to the institution of the fresh complaint.

*Jyotindra Nath v. Hem Chandra* (2), followed.

*Mohammad Yaqub v. Emperor* (3), referred to.

*Held further*, however, that it would be only in exceptional circumstances that a second complaint would be entertained on the same facts; as pointed out in *Emperor v. Kiru* (1), *e.g.*, where the previous order was passed on an incomplete record or where the previous order was manifestly absurd or foolish; and the mere fact that the complainant is not the same person would make no difference.

*Application for revision of the order of J. K. M.*

(1) 10 P.R. (Cr.) 1911 (F.B.).

(2) (1909) I.L.R. 36 Cal. 415.

(3) (1910) 5 I. C. 991.

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*Tapp, Esquire, Sessions Judge, Lahore, dated the 19th February 1930, affirming that of Khan Bahadur Sheikh Shah Nawaz Khan, Sub-Divisional Magistrate, Kasur, dated the 6th February 1930, directing that the further proceedings should be had in the present case.*

J. G. SETHI, for Petitioner.

SHUJA-UD-DIN for Respondent.

BHIDE J.

BHIDE J.—The material facts for the purpose of this revision petition are briefly as follows :—

On the 23rd July 1928, one Ghulam Muhammad, son of Imam Din, filed a criminal complaint under sections 406/109, Indian Penal Code, against the petitioner Allah Ditta. The complaint was dismissed after a summary inquiry on 9th October 1928, on the ground that the dispute was of a civil nature. A petition for revision of this order was lodged but was dismissed by the Additional Sessions Judge, who agreed with the view of the Magistrate that the dispute was of a civil nature.

On the 9th December 1929, Karam Bakhsh, brother of Ghulam Muhammad, son of Imam Din (the previous complainant), filed a complaint against the petitioner on the same facts and thereupon fresh proceedings were taken against the petitioner. A petition for revision was filed in the Sessions Court but failed and hence the petitioner has come up to this Court.

The learned counsel for the petitioner has urged that a second complaint was not legally entertainable on the same facts in the circumstances stated above and that in any case it was nothing short of an abuse of the processes of law and hence the proceedings taken thereon should be quashed.

In *Emperor v. Kiru* (1), it was held by a Full Bench of the Punjab Chief Court that a second complaint for an alleged offence is entertainable by a Magistrate and that it is not absolutely necessary to get a previous order of dismissal under section 203, Criminal Procedure Code, set aside by a superior Court before lodging such a complaint. The learned counsel for the petitioner seeks to distinguish this ruling on the ground that in the present instance the previous order of dismissal was confirmed by a superior Court. He relies in support of this contention on *Mohammad Yaqub v. Emperor* (2), a Single Bench decision of the Punjab Chief Court of the year 1910, *i.e.*, prior to the Full Bench decision referred to above. In view of the line of reasoning adopted by the Full Bench, I doubt if the mere fact that a superior Court has dismissed a petition for revision would legally be a bar to the institution of a fresh complaint. The order of the superior Court would only mean an expression of opinion that the order of dismissal was justified on the facts as they stood on the record at the time when that order was passed. But if the order was passed, for instance, on an incomplete record and valuable fresh evidence became subsequently available, I do not see why a second complaint should be incompetent merely because a superior Court had already dismissed a petition for revision of the previous order. A second complaint appears to have been entertained in similar circumstances in *Jyotindra Nath v. Hem Chandra* (3).

But although a previous dismissal under section 203, Criminal Procedure Code, may not be legally a bar to the institution of a fresh complaint, it would

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be only in exceptional circumstances that a second complaint would be entertained on the same facts, as pointed out in *Emperor v. Kiru* (1), e.g. where the previous order was passed on an incomplete record or where the previous order was manifestly absurd or foolish. But nothing of this sort has been alleged here. The previous order was not only not absurd or foolish but perfectly reasonable, and the view taken by the Magistrate was upheld by a superior Court. The learned Magistrate has not considered this aspect of the question at all, and given no reason for reconsidering the case. It has been urged that the complainant in this case was a different person. But when it is admitted that the facts are identical and there are no good grounds for reconsideration of the case, the mere fact that the complainant is not the same person would, in my opinion, make no difference. If this were not so, it would be easy enough for a complainant to harass an accused person with complaints on the same facts by his friends and relations as often as he likes. It is, in my opinion, nothing short of an abuse of the process of the Court to entertain a fresh complaint in such circumstances. I, therefore, accept this petition for revision and quash the proceedings taken on the second complaint.

N. F. E.

*Revision accepted.*