

Madhya Pradesh High Court
Smt. Snehlata vs Vireshwar Singh on 2 May, 2022
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1

THE HIGH COURT OF MADHYA PRADESH
Criminal Revision No.3494/2021
Smt. Snehlata Vs. Vireshwar Singh and others

Gwalior, Dated:02/05/2022

Shri J.P. Mishra, Advocate for applicant.

Shri Pallav Tripathi, Advocate for respondents no.1 and 4.

Shri R.K. Sharma, Senior Advocate with Shri A.R. Shivhare and Shri V.K. Agrawal, Advocates for respondents no.2 and 3.

This Criminal Revision under Sections 397, 401 of Cr.P.C. has been filed against the order dated 18/11/2021 passed by Additional Sessions Judge, Gwalior in Criminal Revision No.507/2017 filed by Avtar Singh Kushwah/respondent no.4, Criminal Revision No.506/2017 filed by Vireshwar Singh/Respondent no.1 and Criminal Revision No.497/2017 filed by Ravindra Singh Ghuraiya and Smt. Omlata/Respondents no.2 and 3, thereby setting aside the order dated 31/7/2021 passed by JMFC, Gwalior in Criminal Complaint Case No.3230/2017, and dismissed the complaint.

2. The necessary facts for disposal of the present application in short are that the applicant filed a criminal complaint against the respondents for offence under Sections 420, 463, 464, 467, 468, 471, 472 and 120-B/34 of IPC on the allegation that her brother-in-law Ravindra Singh was assisting her in looking after her agricultural land situated in village Sirsod, Police Station Hastinapur, District Gwalior. After the death of grandmother of the applicant as well as marriage of the applicant and as she was residing at a different THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others places, therefore, she had authorized her brother-in-law Ravindra Singh Ghuraiya to look after the property and he was giving a lump-sum amount by way of agricultural income in every year. When the respondent no.2-Ravindra Singh Ghuraiya did not make payment of agricultural income for the last one and a half year, then the applicant came to Gwalior in the month of December, 2015 and enquired from the respondent no.2. The respondent no.2 informed that the land does not belong to the applicant and the same has been sold. Thereafter, she enquired from the office of Sub Registrar Gwalior and obtained the certified copy of the sale deeds dated 20/1/2017. From inspection of those sale deeds, it was found that respondents no.1, 2 and 3 by preparing a forged power of attorney of the applicant have sold her joint property, i.e. survey no.693/1 situated in village Sirsod to one Bhupendra on 6/9/1992. Thus, it was alleged that with an intention to deprive the applicant of her property, a forged power of attorney was executed and accordingly, she made a police complaint on 17/2/2017 in Police Station Hastinapur, District Gwalior, but no action was taken and accordingly, a complaint was also sent to SSP, Gwalior on 4/3/2017, but no action was taken and thus, the criminal complaint was filed.

3. In support of the complaint, the applicant examined herself under Section 200 of Cr.P.C. and stated that the name of her husband THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others is Late Shri Ajay Chaudhary. Respondent no.1 is her brother, whereas respondent no.2 is her brother-in-law and respondent no.3 is her sister and Smt. Virmadevi is her mother. Avtar Singh/respondent no.4 is also known to her. Avtar and Sitaram were servants, who were doing the agricultural work. The respondent no.2 was authorized to look after the disputed land bearing survey no.693/1 situated in Mauza Sirsod, District Gwalior. The respondent no.2 did not give her share in the agricultural income and accordingly, she enquired at her own level. Thereafter, she came to know that by executing a forged power of attorney, all the appellants have sold the said land. It was specifically alleged that she had never given any power of attorney to respondent no.1 or to Smt. Omlata or Virmadevi or to anybody. Neither she has put her signatures nor her thumb impressions. At that time, neither she was in Gwalior nor she has given any type of consent. It was further alleged that the respondents by using her forged power of attorney, have sold her land dishonestly to Bhupendra Singh. The power of attorney which is allegedly executed by her on 13/6/1998 in favour of Vireshwar Singh does not contain her signatures nor she had given any consent for the same. Her forged signatures and thumb impressions have been affixed. A report in Police Station Hastinapur was made. As no action was taken, therefore, she made a complaint to the SP, Gwalior and when no THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others action was taken by the authorities, then the present complaint has been filed.

4. Phayaji has also been examined by the applicant under Section 202 of Cr.P.C. and she has stated that she is the resident of Rampur Manihar, District Saharanpur. Her house was opposite to the house of applicant. The applicant is known to her. On 12/6/1988 she had gone to the house of the applicant in connection with her work. The health condition of the applicant was not good as she was pregnant and the doctor had advised bed rest and because of that, this witness was doing the work of preparation of meals, cleaning utensils and was looking after the applicant. She further stated that Ravindra Singh is known to her. He used to visit the house of the applicant. The applicant had authorized Ravindra Singh to look after her land and he used to come to the house of the applicant in connection with giving the accounts of agricultural income. On 13/6/1988 the applicant was in Rampur, as she was pregnant and she was on bed rest.

5. Pakeeja, whose statement has also been recorded under Section 202 of Cr.P.C., has also stated the same thing.

6. Mohanlal has brought the record of Sub Registrar Office, Circle-1, Gwalior. A power of attorney was executed by Virmadevi, Omlata and the applicant in favour of Visheshwar Singh, which is Ex.P/1 and its photocopy is Ex.P/1-C.

THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others

7. Rajiv Verma has stated that he had compared the disputed signatures of the applicant on the power of attorney with the signatures of the applicant available on unregistered complaint case and

both the signatures, i.e. on power of attorney and on the complaint, were different.

8. The Trial Magistrate by order dated 31/7/2021 took cognizance of offence under Sections 420, 463, 467, 468 and 471 of IPC.

9. The respondents preferred three different Criminal Revisions, which have been allowed by the impugned order dated 18/11/2021 passed by the Court below.

10. It is not out of place to mention here that co-accused Virmadevi has expired during pendency of the Criminal Revisions.

11. Challenging the order passed by the Court below, it is submitted by the counsel for the applicant that the Revisional Court has exceeded its revisional jurisdiction by meticulously appreciating the evidence. It is submitted that at the stage of issuance of summons although application of judicial mind is required, but meticulous appreciation of evidence is not necessary. The Revisional Court has wrongly held that the complaint was filed belatedly. The Revisional Court has also exceeded its jurisdiction by holding that since the applicant had not claimed that she was pregnant on the date of execution of forged power of attorney and, therefore, the evidence of THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others Phayaji and Pakeeja in this respect is not reliable. The Revisional Court has also committed a material illegality by disbelieving the report of the handwriting expert. It is submitted that it is a specific case of the applicant that the power of attorney does not contain her signatures and her signatures and thumb impressions are forged. She had specifically given an explanation that till 2015 the respondent no.2 was regularly making payment of agricultural income and, therefore, she had no reason to get suspicious. Furthermore, unless and until the cognizance is barred by limitation, the complaint cannot be dismissed only on the ground that the complaint was made belatedly, specifically when a plausible explanation has been given.

12. Per contra, the application is vehemently opposed by the counsel for the State. It is submitted that the applicant has not stated in her statement under Section 200 of Cr.P.C. that she was pregnant on the day of execution of the power of attorney. She has merely alleged that she was not in Gwalior on the said date. The power of attorney was executed on 13/6/1988, whereas the complaint was filed on 11/4/2017. It is further submitted that even according to the complaint, the applicant had come to Gwalior in the month of December, 2015 in order to verify the situation, whereas the complaint was filed on 11/4/2017 and no explanation has been given for not filing the complaint immediately after obtaining the copies of THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others the power of attorney. It is further submitted that the report of the handwriting expert is not reliable because the thumb impressions as well as the signatures of the applicant on the power of attorney have not been compared with her admitted signatures and anybody can make a different signature on the complaint in order to claim that the disputed document does not contain her signatures.

13. Heard learned counsel for the parties.

14. The moot question for consideration is "as to whether the Revisional Court can meticulously appreciate the evidence led by the complainant at the stage of issuance of summons or not?"

15. Enquiry under Section 202 of Cr.P.C. is of a limited nature to find out as to whether there is a prima facie case to issue process against the person accused of the offence or not. The evidence is not required to be meticulously appreciated.

16. The Supreme Court in the case of Mehmood Ul Rehman v. Khazir Mohammad Tunda and others reported in (2015) 12 SCC 420 has held as under:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. to set in motion the process of criminal law against a person is a serious matter."

The Supreme Court in the case of Rosy and another v. State of Kerala and others reported in (2000) 2 SCC 230, has held as under:-

"11. In the case Ranjit Singh v. State of Pepsu (now Punjab) where the Sub-Inspector of Police was convicted under Section 193 IPC by a Ist Class Magistrate, it was contended that the procedure adopted by the Magistrate was erroneous because he did not hold an inquiry as required under Sections 200 and 202 of the Code. This Court negated the said contention and held thus:

"That contention is equally untenable because under Section 200 proviso (aa) it is not necessary for a Magistrate when a complaint is made by a court to examine the complainant and neither Section 200 nor Section 202 requires a preliminary inquiry before the Magistrate can assume jurisdiction to issue process against the person complained against."

Further, it is settled law that the inquiry under Section 202 is of a limited nature. Firstly, to find out whether there is a prima facie case in issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose being of finding out "whether or not there is sufficient ground for proceeding against the accused". The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in view at

the stage of framing charges. At the stage of inquiry under Section 202 CrPC the accused has no right to THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others intervene and that it is the duty of the Magistrate while making an inquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. (Chandra Deo Singh v. Prokash Chandra Bose, Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, Nirmaljit Singh Hoon v. State of W.B. and Mohinder Singh v. Gulwant Singh.)"

The Supreme Court in the case of Kewal Krishan v. Suraj Bhan reported in 1980 (Supp) SCC 499 = 1981 SCC (Cri) 438, has held as under:-

"10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh case that even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges.

THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.

11. The proposition that in cases instituted on complaint in regard to an offence exclusively triable by the Court of Session, the standard for ascertaining whether or not the evidence collected in the preliminary inquiry discloses sufficient grounds for proceeding against the accused is lower than the one to be adopted at the stage of framing charges in a warrant case triable by the Magistrate, is now evident from the scheme of the new Code of 1973. Section 209 of the Code of 1973 dispenses with the inquiry preliminary to commitment in cases triable exclusively by a Court of Session, irrespective of whether such a case is instituted on a criminal complaint or a police report. Section 209 says: "When in a case instituted on a police report or otherwise the accused appears or is

brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the case to the Court of Session." If the Committing Magistrate thinks that it is not necessary to commit the accused who may be on bail to custody, he may not cancel the bail. This has been made clear by the words "subject to the provisions of this Code relating to bail" occurring in clause (b) of Section

209. Therefore, if the accused is already on bail, his bail should not be arbitrarily cancelled. Section 227 of the Code of 1973 has made another beneficent provision to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial. This section provides that if upon considering the record of the case, the documents submitted with it and the submissions of the accused and the prosecution, the judge is not convinced that there is sufficient ground for proceeding against the accused, he has to discharge the accused under this section and record his reasons for so doing."

THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others

12. Although the reasons given by the magistrate for rejecting the evidence produced by the complainant in the preliminary inquiry against Suraj Bhan in regard to the accusation that he had shot dead Banta Singh, are not devoid of merit, yet, it appears that in meticulously appreciating the evidence the magistrate had overstepped the limits of his discretion. In other words, this is not a case where the magistrate lacked inherent jurisdiction to pass the impugned order. This is only a case where the magistrate has committed an error amounting to an irregularity, if not a clear illegality, in the exercise of his jurisdiction....."

The Supreme Court in the case of Mohinder Singh v.

Gulwant Singh and others reported in (1992) 2 SCC 213, has held as under:-

"11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows:

The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for

supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar."

The Supreme Court in the case of Pramatha Nath Talukdar and another Vs. Saroj Ranjan Sarkar reported in AIR 1962 SC 876 has held as under:-

Under the Code of Criminal Procedure the subject of "Complaints to Magistrates" is dealt with in Chapter XVI of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Ss.200, 202 and 203. Section 200 deals with examination of complainants and Ss.

202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Ss. 202 and 203 were laid down in 1961(1) SCR 1 at pp.9,10: (AIR 1960 SC 1113 at pp.1116, 1117). The scope of enquiry under s. 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and s. 203 lays down what materials are to be considered for the purpose. Under s. 103 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under s. 202, Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under s. 203, Criminal Procedure THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into ILR 12 Lah. 9 at p.12: (AIR 1930 Lah 879 at p.880); AIR 1949 Pat 256; AIR 1949 Bom 384; Doraisami v. Subramania AIR 1918 Mad 484. In regard to the adducing of new facts

for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in the cases above quoted and adopted the opinion of Maclean, C. J. in ILR 28 Cal 211 at p.216, affirmed by a Full Bench in ILR 28 Cal. 652 (FB). It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.

The Supreme Court in the case of Shivjee Singh v. Nagendra Tiwary and others reported in (2010) 7 SCC 578 has held as under:-

"18. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI CrPC finds adequate support from the judgments of this Court in Ramgopal Ganpatrai Ruia v. State of Bombay, Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, Chandra Deo Singh v. Prokash Chandra Bose, Nirmaljit Singh Hoon v. State of W.B., Kewal Krishan v. Suraj Bhan, Mohinder Singh v.

THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others Gulwant Singh and Chief Enforcement Officer v. Videocon International Ltd"

17. If the reasonings assigned by the Revisional Court are considered, then it is clear that it has exceeded its jurisdiction by meticulously appreciating the evidence / material available on record. It is the case of the applicant that the power of attorney was never executed by her and her signatures / thumb impressions on the power of attorney are forged. Whether the report of the handwriting expert can be relied upon or not, is a matter which is to be considered at the stage of trial. Further when the cognizance is not barred by limitation, the complaint cannot be dismissed under Section 203 of Cr.P.C on the ground that it was filed belatedly. If the Court, after recording evidence in the trial, comes to a conclusion that plausible explanation for the delay has been given, then the delay in filing the complaint would be of no importance.

18. Accordingly, this Court is of the considered opinion that the order passed by the Revisional Court cannot be given the stamp of judicial approval.

19. As a consequence thereof, the order dated 18/11/2021 passed by Additional Sessions Judge, Gwalior in Criminal Revision No.507/2017 filed by Avtar Singh Kushwah/respondent no.4, Criminal Revision No.506/2017 filed by Vireshwar THE HIGH COURT OF MADHYA PRADESH Criminal Revision No.3494/2021 Smt. Snehlata Vs. Vireshwar Singh and others Singh/Respondent no.1 and Criminal Revision No.497/2017 filed by Ravindra Singh Ghuraiya and Smt. Omlata/Respondents no.2 and 3 are hereby quashed. The order dated 31/7/2021 passed by JMFC, Gwalior in Criminal Complaint Case No.3230/2017 is hereby restored.

20. The parties are directed to appear before the Court of Trial Magistrate on 13th June, 2022. The Trial Magistrate is directed to proceed further in accordance with law. Since the complaint was filed in the year 2017 and no proceedings could take place as the record was requisitioned by the Revisional Court, therefore, the Trial Magistrate is directed to conclude the trial within a period of one year and the time gap between two dates should not be more than 15 days.

21. With aforesaid, the Criminal Revision succeeds and is hereby allowed.

(G.S. Ahluwalia) Judge Arun* ARUN KUMAR MISHRA 2022.05.06 15:10:04 +05'30'