

A.F.R.

Court No. - 11

Case :- APPLICATION U/S 482 No. - 2622 of 2004

Applicant :- Satish Pandey

Opposite Party :- State Of U.P.And Another.

Counsel for Applicant :- Manish Bajpai,Kapil Misra

Counsel for Opposite Party :- Govt.Advocate

Hon'ble Saurabh Lavania,J.

1. Supplementary affidavit(s) filed today in support of present application are taken on record.

2. Heard Shri Kapil Misra, Advocate, who appeared for applicant and learned A.G.A., Shri Anirudha Kumar Singh, who appeared for State.

3. The present application has been filed with following prayer:-

"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may kindly be pleased to quash the orders dated 07.03.2003 (Annexure-I) and 30.09.2004 (Annexure-2) passed by the learned Chief Judicial Magistrate, Barabanki and every proceeding arising out of the same.

It is further prayed that the Hon'ble Court may kindly be pleased to quash the chargesheet no.290A/02 dated 22.2.2003 filed by the police against the petitioner contained in Annexure-9 and every proceeding arising out of the same.

It is further prayed that pending decision of the present petition, the further proceedings of Criminal Case No. 1773 of 2003, Crime No. 523 of 2002, U/s. 147,148,149,307,120-B,506 I.P.C. and Section 7 Criminal Law Amendment Act, P.S. Kotwali, District Barabanki, Pending in the Court of Chief Judicial Magistrate, Barabanki including the operation of the impugned orders dated 7.3.2003 and 30.9.2004 contained in Annexures-1 and 2 may kindly be stayed.

It is further prayed that if this Hon'ble Court finds a Criminal Revision U/s.397,401 Cr.P.C. maintainable against the impugned orders, the instant petition U/s.482 Cr.P.C. may kindly be treated as a revision U/ s.397,401 Cr.P.C."

4. Brief facts of the case are to the effect that an FIR was lodged on 14.06.2002 at about 04:30 P.M. by one Pawan Kumar Trivedi, Deputy Jailor, District-Barabanki. As per this FIR, when the informant was getting his electric heater repaired at a

shop namely "Adarsh Electrical and Light House" situated at Dewa Road near Faizabad Railway Crossing, District-Barabanki, seven persons riding on two motorcycles and one white Cielo car arrived there and with intention to cause death, one Jitendra, armed with revolver; Saurabh and Sudhir Verma, armed with Katta (country made pistol) opened the fire on the informant and other accused opened fire in air so that no one could come to rescue the informant and accordingly the FIR was lodged under Section 147, 148, 149, 307 I.P.C. and Section 7 of Criminal Law Amendment Act.

5. After the aforesaid FIR, the investigation was carried out by the Investigating Officer and upon conclusion of investigation, the charge sheet dated 16.08.2002 was submitted in terms of Section 173 (3) CrPC against persons namely, 1. Shailendra alias Shailu, 2. Jitendra alias Jitu, 3. Vikas Shukla, 4. Saurabh Dwivedi, 5. Rajiv alias Raju Pandey, 6. Sudhir Verma, 7. Saroj Dwivedi, 8. Saddam and 9. Atul.

6. Out of above named accused two accused namely Atul and Saddam @ Mohd. Kafil were discharged vide order dated 30.04.2003.

7. It would be apt to refer that the additional charge sheet dated 22.02.2003 was submitted by the Investigating Officer against the applicant and on account of non appearance, despite issuance of summon, the court proceeded to pass an order in exercise of power under Section 82/83 CrPC on 30.09.2004.

8. It would not be out of place to indicate that the applicant, prior to filing of his application, had approached this Court by means of the writ petition No.3544 (MB) of 2002, (Satish Kumar Pandey vs. State of U.P. and others) and after considering the allegations levelled against the applicants, this Court protected the interest of the applicant vide order dated 24.06.2002, which reads as under:-

"1 Three weeks' time is allowed to the learned Government Advocate for filing counter affidavit and thereafter two weeks is allowed to the learned counsel for the petitioner to file rejoinder affidavit. List thereafter.

Till the next date of listing or till filing of the charge sheet whichever is earlier, the arrest of the petitioner shall remain stayed in Case Crime No. 523 of 2002, under Sections 147, 148, 149, 307 IPC and Section 7 Criminal Law Amendment Act of Police Station Kotwali Nagar, district Barabanki.

However, the investigation shall continue and the petitioner shall co-operate with the same."

9. The aforesaid order indicates that the protection was given

till filing of the charge sheet.

10. The petition aforesaid in which the interim protection was provided to the petitioner vide order dated 24.06.2002 became infructuous upon filing of charge sheet against the applicant.

11. Thereafter, the present application under Section 482 CrPC was filed by the applicant and this Court upon due consideration of facts of the case protected the interest of the petitioner vide order dated 02.12.2004, which reads as under:-

"Heard the learned counsel for the applicant, AGA and perused the record.

Learned counsel for the applicant has argued that the applicant has neither appeared in the court below as yet nor furnished bail bond. His arrest was earlier stayed by this court but the learned Magistrate has issued coercive measures by observing that the accused and his sureties are aware of the proceeding and are not appearing.

It has been argued that the applicant was not aware of filing of the charge-sheet till 27.9.2004. He came to know the same when the State filed counter affidavit in the writ petition filed by him. Further it has been argued that the investigating officer has not collected any evidence against the applicant with regard to conspiracy.

APP wants time to file counter affidavit Let counter affidavit be filed within two weeks.

Till then, coercive measures issued against the applicant in Crime No. 523 of 2004 P.S. Kotwali Nagar, District- Barabanki shall remain stayed."

12. During the pendency of the present application, the trial court acquitted the co-accused namely, Shailendra alias Shailu, Jitendra alias Jitu, Vikas Shukla, Saurabh Dwivedi, Rajiv alias Raju Pandey, Sudhir Verma, Saroj Dwivedi vide judgment and order dated 25.09.2006, certified copy of which has been placed on record by means of supplementary affidavit dated 28.11.2023.

13. From the aforesaid, it is apparent that the judgment of acquittal passed by the trial court dated 25.09.2006 in relation to the accused namely Shailendra alias Shailu, Jitendra alias Jitu, Vikas Shukla, Saurabh Dwivedi, Rajiv alias Raju Pandey, Sudhir Verma and Saroj Dwivedi has not been challenged till date.

14. At this stage, it would be appropriate to refer paras 1 and 3 of supplementary affidavit dated 21.12.2023. The same are as under:-

"2. That to the knowledge of the applicant/deponent neither any appeal

has been filed nor pending on behalf of the state nor any revision has been filed on behalf of the complainant against the judgement and order dated 25.09.2006 passed by the learned Additional Sessions Judge, Court No. 9, Barabanki in sessions trial no. 200/ 2003 relating to case crime no. 523/2002, police station Kotwali, District Barabanki.

3. That the above stated fact has also been verified from the case status report of the official website of Allahabad High Court i.e. allahabadhighcourt.in."

15. In the aforesaid background of the case, learned counsel for the applicant says that no purpose would be served in keeping the proceedings pending before the trial court and the present application for the reliefs sought be allowed after taking note of the fact that the applicant was implicated by invoking the provisions of Section 120B IPC and the accused namely 1. Shailendra alias Shailu, 2. Jitendra alias Jitu, 3. Vikas Shukla, 4. Saurabh Dwivedi, 5. Rajiv alias Raju Pandey, 6. Sudhir Verma, 7. Saroj Dwivedi were acquitted vide judgment and order dated 25.09.2006 by the trial court and other two accused namely Atul and Saddam @ Mohd. Kalif were discharged earlier vide order dated 30.04.2003.

16. In support of his submission, learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court passed in the case of **Manoj Kumar Soni vs. The State of Madhya Pradesh** reported in **2023 SCC OnLine SC 984**. The relevant paras are extracted hereinunder:-

"39. It is intriguing that among all five accused persons, only Kallu has been convicted for criminal conspiracy under Section 120-B, IPC. At this stage, we cannot help but wonder: can a single individual conspire with oneself? We cannot but disagree. It logically follows that one person alone can never be held guilty of criminal conspiracy because one cannot conspire with oneself. As per Black's Law Dictionary (8th Edn), 'conspiracy' is an 'agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and action or conduct that furthers the agreement'. The wordings of Section 120-A, IPC make it abundantly clear-the offence of criminal conspiracy is committed only when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. The position in English law too is well- settled. In The King vs. Plummer¹⁰, the King's Bench, speaking through Lord Justice Bruce, held:

It logically follows from the nature of the offence of conspiracy that, where two or more persons are charged in the same indictment with conspiracy with one another, and the indictment contains no charge of their conspiring with other persons not named in the indictment, then, if all but one of the persons named in the indictment are acquitted, no valid judgment can be passed upon the one remaining person. (page 343)

40. In *I.G. Singleton v. King-Emperor*¹¹, the Calcutta High Court further clarified the law related to criminal conspiracy:

The rule of English law that is now well settled is that where two persons are indicted for conspiring together and they are tried together, both must be acquitted, or both convicted. (page 265)

41. The decision of this Court in Topandas (supra) affirmed the aforesaid position and held:

14.... on the charge as it was framed against the Accused 1, 2, 3 and 4 in this case, the Accused 1 could not be convicted of the offence under Section 120-B of the Indian Penal Code when his alleged co-conspirators Accused 2, 3 and 4 were acquitted of that offence.

42. Having regard to the position of law as aforesaid, the conviction of Kallu under Section 120-B, IPC stands completely vitiated because of the simple reason that one cannot alone conspire. There is no evidence to even remotely suggest that there existed any agreement between Kallu and the co-accused while none of the others, except Kallu, has been convicted for criminal conspiracy.

CONCLUSION

43. What could have more aptly summarise the entire prosecution case, especially the flawed investigation in the matter at hand, than the words of Daniel J. Boorstin, the American historian: "The greatest obstacle to true discovery is not ignorance, but rather the illusion of knowledge".

44. Against this background, to say that the convictions of Manoj and Kallu can still sustain, appears far-fetched; their convictions cannot be justified solely on the basis of illusory knowledge regarding their involvement in the crime.

45. For all the foregoing reasons, Manoj and Kallu are acquitted and set free. Consequently, conviction of Manoj and Kallu as recorded by the Trial Court and the sentence imposed upon them, since affirmed by the High Court, stand set aside. Manoj and Kallu, reportedly, have been enlarged on bail pending decision on their respective appeals; hence, they shall stand discharged of their bail bonds.

46. The appeals are, accordingly, allowed. No costs."

*17. The reliance has also been placed on the judgment of the Coordinate Bench of this Court passed in **Application Under Section 482 No.1325 of 2021, (Anant Mishra @ Amit Mishra @ Surya Prakash Mishra vs. State of U.P. and Another)**. The same reads as under:-*

"Heard learned counsel for petitioner, learned State and perused the material available on record.

By means of this petition under Section 482 Cr.P.C. the petitioner has sought following reliefs:-

"Wherefore it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned charge sheet no. 02 of 2018 dated 4.12.2018 submitted by the police relating to Case Crime No. 372 of

2016, under Section 364- A/34 IPC, Police Station Lambhuwa, District Sultanpur against the petitioner and summoning order dated 18.01.2019 passed by learned Chief Judicial Magistrate, Court No. 16, Sultanpur in Criminal Case No. 141 of 2019 (State of U.P. Vs. Anand Deep Dubey and others) and the entire proceedings of aforesaid case may also be quashed."

Brief facts giving rise to the present petition are that opposite party no. 2 - Matadeen lodged an FIR on 08.10.2016 against the unknown persons bearing Case Crime No. 372 of 2016 under Section 364 IPC, Police Station Lambhuwa, District Sultanpur with the allegation that some unknown accused abducted his brother Sikander. During investigation, the name of five persons, namely, Jitendra Pandey alias Chintu, Jitenra Pathak, Dharam Raj Nishad, Anand Deep Dubey alias Ashu Deubey and Anan Mishra (present applicant) came into light. Thereafter the police submitted charge sheet against Jitendra Pandey, Jitendra Pathak and Dharam Raj Nishad and they were arrested. The trial against three persons were commenced before the learned Additional District Judge Court No. 3 Sultanpur vide Sessions Trial No. 111 of 2017 in which statement of PW-1 complainant Matadeen was recorded on 06.03.2018.

Learned counsel for petitioner has submitted that in this case three witnesses were examined. PW-1 Matadeen is the first informant, brother of the abductee has not supported the prosecution case. PW-2 Monu alias Dilip Kumar, who is niece of abductee, has clearly stated that no one had called him on mobile phone for ransom of Rs.25,00,000/- and he also did not support the prosecution case. PW-3 is the abductee Sikander. He also did not support the prosecution case. He clearly stated that nobody abducted him nor any ransom was demanded. Thus PW-3 has also not supported the case of the prosecution. Therefore, all the three accused persons were exonerated of the charges levelled against them under Section 364-A IPC and they have been acquitted by learned IIIrd Additional Sessions Judge, Sultanpur vide order dated 28.09.2018.

Further submission of learned counsel for petitioner is that after passing the judgment of trial court dated 28.09.2018, this fact was within the knowledge of Investigating Officer but the Investigating Officer intentionally filed charge sheet on 24.12.2018 before the court concerned ignoring the judgment passed by trial court dated 28.09.2018.

It is further submitted that since the witnesses were examined in Sessions Trial No. 111 of 2017 and they did not support the prosecution case, so it will be futile exercise to face the trial. In support of his submission, learned counsel for petitioner has relied upon a judgment of this Court in the case of Diwan Singh Vs. State reported in 1964 Lawsuit (All) 182, in that case also the accused were discharged on the ground of acquittal of co-accused, which are having the similar allegation and same prosecution witnesses.

Learned counsel for petitioner has submitted that in the case of Diwan Singh (supra) it was held that if the allegation and witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. this Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained.

Learned AGA for the State has opposed the prayer made by learned

counsel for the applicants, but could not dispute the fact of acquittal of other co-accused persons.

I have considered the rival submissions made by learned counsel for the parties, perused the record and the judgements relied upon by learned counsel for the applicant.

In the matter of Diwan Singh (Supra), this was the issue that if allegation & witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. This Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained.

Relevant paragraph Nos. 4, 5 & 6 of the judgment of Diwan Singh (supra) are quoted hereinbelow:-

"4. Learned counsel for the applicant has argued that both Manohar and the applicant were arrested together, searched together and as a single recovery list was prepared about the articles alleged to have been recovered from them and as the same witnesses were examined. by the prosecution in both the trials before the Magistrate, it will be incongruous to convict one of them on the basis of the same evidence and to acquit the other. I find force in this contention,

5. The judgment of the learned Sessions Judge in Criminal Appeal No. 262 of 1963 setting aside the conviction and sentence of Manoliar was not challenged by the State by filing an appeal and, as such, has become final. It is no doubt true that the learned Sessions judge acquitted Manohar on a technical ground because, in his opinion, "the prosecution suffers from a patent infirmity creating reasonable doubt regarding the identity of the alleged fire arms". He did not disbelieve the evidence of the prosecution on facts. The reasoning given by the learned Sessions Judge in acquitting Manohar is not very appealing but the fact remains that Manohar who was arrested along with the applicant on the same charge and against whom the same evidence has been produced by the prosecution, has been acquitted, while the appeal of the applicant against his conviction was dismissed by the learned 1st Additional Sessions Judge of Etawah. In view of the acquittal of Manohar on the same facts and on the same evidence which has become absolute, it is not possible to maintain the conviction of the applicant.

6. If two persons are prosecuted, though separately, under the same charge for offences having been committed in the same transaction and on the basis of the same evidence, and if one of them is acquitted for whatever may be the reason and the other is convicted, then it will create an anomalous position in law and is likely to shake the confidence of the people in the administration of justice. Justice is not only to be done but also seem to be done. Therefore, I am clearly of opinion that as has been held in the case of Pritam Singh v. State of Punjab. (S) AIR 1956 SC 415, the principle of stare decisis will apply in the present case and the applicant's conviction cannot be sustained."

After going through the judgements relied by learned counsel for the applicant, it is very much clear that Court has held that considering the testimony of witnesses, if one accused is acquitted, no criminal proceeding can be sustained against co-accused on the same set of witnesses and in

the present case too, there is no separate witness and on the basis of testimony of same prosecution witnesses, main accused was acquitted by the court below, Whenever there is no prospect of the case ending in conviction, valuable time of court should not be wasted for holding trial only for the purpose of completing the procedure to pronounce the conclusion on future date. Therefore, criminal proceeding cannot be permitted to continue against the applicant.

Therefore, under such facts and circumstances of the case as well as law laid down by the Apex Court, criminal proceeding against the applicants in Criminal Case No. 141 of 2019 (State of U.P. Vs. Anand Deep Dubey and others), arising out of Case Crime No. 372 of 2016, under Section 364-A/34 IPC, Police Station Lambhuwa, District Sultanpur cannot be sustained and is hereby quashed.

With the aforesaid observation/direction, this petition under Section 482 Cr.PC. is allowed.

Office is directed to communicate this order to the trial court concerned for necessary action and compliance."

18. He has further placed reliance on the judgment of this Court passed in Application under Section 482 No.17127 of 2006, (Smt. Jaitoon And Others vs. State of U.P. and Another). The same reads as under:-

"Heard learned counsel for the applicants and learned AGA for State. No one appeared on behalf of opposite party no. 2 nor any counter affidavit has been filed on his behalf.

The present application has been filed with a prayer to quash the entire proceeding of S.T. No. 48-A of 1990 (State Vs. Irshad and others), under section 302 I.P.C., P.S. Bhawan, District Muzaffarnagar, pending in the court of A.D.J.-IV, Muzaffarnagar.

At the very outset, learned counsel for the applicants submits that applicant no. 1 died, therefore, this application may be abated against applicant no. 1.

Accordingly, the present application is abated against applicant no. 1.

Learned counsel for the applicants submitted that one FIR dated 16.9.1989 has been lodged against Abdul Razzak, which was registered as case crime no. 102 of 1989, under section 302 I.P.C. He further submitted that after completion of investigation, Investigating Officer submitted charge sheet against named accused Abdul Razzak on 22.10.1989. During the course of trial, statement of opposite party no. 2 was recorded on 8.6.1990 as prosecution witness and thereafter, he has moved an application dated 22.6.1990 before trial court under section 319 Cr.P.C. for summoning the applicant as accused for prosecution along with main accused. Thereafter, court below vide order dated 8.2.1991 has summoned the applicant along with other co-accused for trial under section 319 Cr.P.C. Pursuant to the summoning order dated 8.2.1991, S.T. No. 48-A of 1990 (State Vs. Irshad and others) was also started against the applicants. He further submitted that trial of main accused Abdul Razzak was already running as S.T. No. 48 of 1990 and ultimately, he was acquitted by the

court below vide order dated 30.8.1996 and against the said judgement and order of acquittal dated 30.8.1996, no appeal has been filed either by private respondent or by State. He further submitted that as per settled provision of law, if the allegation and prosecution witnesses are same and co-accused are acquitted on the basis of testimony of the same prosecution witnesses, applicant may also be discharged and he cannot be punished. In support of his contention, he has placed reliance upon the judgments of this Court in the cases of Diwan Singh vs. State reported in 1964 Lawsuit (All) 182, D.K. Agarwal Vs. State of U.P decided on 15.9.2016, Aagoshe Iram vs. State of U.P. & Another reported in 2017 Lawsuit (All) 1546 and Pradeep Kumar Tank Vs. State of U.P. and another decided on 29.03.2019 in Criminal Misc. Application No. 10015 of 2006 in which criminal proceeding was quashed and accused were discharged on the ground of acquittal of co-accused, which are having the same allegation and same prosecution witnesses.

He also placed reliance upon the judgments of this Court passed in Criminal Misc. Application Nos. 5779 of 1999, (Begum & Others vs. State of U.P. & Ors) decided on 15.07.2005, 13760 of 2005 (Zahrn Nisa vs. State of U.P. & Ors) decided on 22.09.2005 and 15521 of 2005 (Darshan Singh and Ors vs. State of U.P) decided on 24.10.2005 in which too, Court has quashed the criminal proceedings on the ground of acquittal of co-accused on the same set of witnesses. Lastly, he submitted that under such set of fact as well as settled provisions of law, criminal proceeding may also be quashed against the applicants.

Learned AGA for the State has opposed the prayer made by learned counsel for the applicants, but could not dispute the fact of acquittal of main accused, Abdul Razzak and non filing of appeal by State and legal proposition of law.

I have considered the rival submissions made by learned counsel for the parties, perused the record, judgement and order of acquittal dated 30.8.1996 and the judgements relied upon by learned counsel for the applicant.

In the matter of Diwan Singh (Supra), this was the issue that if allegation & witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. This Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained.

Relevant paragraph Nos. 4, 5 & 6 of the judgment of Diwan Singh (supra) are quoted hereinbelow:-

"4. Learned counsel for the applicant has argued that both Manohar and the applicant were arrested together, searched together and as a single recovery list was prepared about the articles alleged to have been recovered from them and as the same witnesses were examined by the prosecution in both the trials before the Magistrate, it will be incongruous to convict one of them on the basis of the same evidence and to acquit the other. I find force in this contention,

5. The judgment of the learned Sessions Judge in Criminal Appeal No. 262 of 1963 setting aside the conviction and sentence of Manolior was not challenged by the State by filing an appeal and, as such, has become final.

It is no doubt true that the learned Sessions judge acquitted Manohar on a technical ground because, in his opinion, "the prosecution suffers from a patent infirmity creating reasonable doubt regarding the identity of the alleged fire arms". He did not disbelieve the evidence of the prosecution on facts. The reasoning given by the learned Sessions Judge in acquitting Manohar is not very appealing but the fact remains that Manohar who was arrested along with the applicant on the same charge and against whom the same evidence has been produced by the prosecution, has been acquitted, while the appeal of the applicant against his conviction was dismissed by the learned Ist Additional Sessions Judge of Etawah. In view of the acquittal of Manohar on the same facts and on the same evidence which has become absolute, it is not possible to maintain the conviction of the applicant.

6. If two persons are prosecuted, though separately, under the same charge for offences having been committed in the same transaction and on the basis of the same evidence, and if one of them is acquitted for whatever may be the reason and the other is convicted, then it will create an anomalous position in law and is likely to shake the confidence of the people in the administration of justice. Justice is not only to be done but also seem to be done. Therefore, I am clearly of opinion that as has been held in the case of Pritam Singh v. State of Punjab. (S) AIR 1956 SC 415, the principle of stare decisis will apply in the present case and the applicant's conviction cannot be sustained."

Following the said judgments, in the matter of D.K. Agarwal, Aagoshe Iram and Pradeep Kumar Tank (supra), this Court has quashed the criminal proceedings against the co-accused. Not only this, on the same ratio of law, this Court in the matter of Begum, Zahrun Nisa and Darshan Singh (supra), criminal proceedings are quashed after acquittal of co-accused.

After going through the judgements relied by learned counsel for the applicant, it is very much clear that Court has held that considering the testimony of witnesses, if one accused is acquitted, no criminal proceeding can be sustained against co-accused on the same set of witnesses and in the present case too, there is no separate witness and on the basis of testimony of same prosecution witnesses, main accused was acquitted by the court below, therefore, criminal proceeding cannot be permitted to continue against the applicants.

Therefore, under such facts and circumstances of the case as well as law laid down by the Apex Court, criminal proceeding against the applicants in S.T. No. 48-A of 1990 (State Vs. Irshad and others), under section 302 I.P.C., P.S. Bhawan, District Muzaffarnagar, pending in the court of A.D.J.-IV, Muzaffarnagar cannot be sustained and is hereby quashed.

Accordingly, the application is allowed. No order as to costs."

19. Learned AGA for the State has opposed the prayer made by learned counsel for the applicants, but could not dispute facts aforesaid including that two co-accused were discharged vide order dated 30.04.2003 and other co-accused were acquitted vide judgment and order dated 25.09.2006 as also that allegation of conspiracy is against the applicant and the law

propounded in the judgments referred by the counsel for the applicant.

20. Considered the aforesaid and perused the record.

21. As per the observation of the Hon'ble Apex Court in the case of Manoj Kumar Soni (Supra), one person alone never be held guilty of criminal conspiracy because one cannot conspire with oneself.

22. In the matter of Diwan Singh (Supra) referred in the judgment passed by this Court in the case of Anant Mishra (Supra) and Smt. Jaitoon (Supra), the issue was that if allegation & witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. This Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained.

23. Considering the aforesaid particularly that two co-accused namely Atul and Saddam @ Mohd. Khalif were discharged by the trial court vide order dated 30.04.2003 and other co-accused namely Shailendra alias Shailu, Jitendra alias Jitu, Vikas Shukla, Saurabh Dwivedi, Rajiv alias Raju Pandey, Sudhir Verma and Saroj Dwivedi were acquitted by the trial court on 30.04.2003 and the said judgment has not been assailed till date, this Court is of the view that no purpose would be served in keeping the present proceedings against the applicant pending as there is no chance of conviction of the applicant in the instant case. Therefore, criminal proceedings cannot be permitted to continue against the applicant. Accordingly, the impugned orders dated 07.03.2003 and 30.09.2004 passed by the learned Chief Judicial Magistrate, Barabanki as also the proceedings of Criminal Case No. 1773 of 2003, Crime No. 523 of 2002, U/s. 147,148,149,307,120-B,506 I.P.C. and Section 7 Criminal Law Amendment Act, Police Station-Kotwali, District Barabanki against the applicant including the chargesheet No.290A/02 dated 22.02.2003 are hereby quashed.

24. The petition is **allowed** in above terms.

Order Date :- 21.12.2023

Raj