

Citation No. - 2024:AHC-LKO:59891

Court No. - 13

Case :- APPLICATION U/S 482 No. - 7624 of 2024

Applicant :- Sona Pati

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And
Another

Counsel for Applicant :- Bahar Ali

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard Shri Bahar Ali, learned counsel for applicant and learned
A.G.A. for State.

2. In view of order proposed to be passed issuance of notice to
opposite party No. 2 is dispensed with.

3. By means of the present application, the applicant has been filed
for the following main relief:

"assailed to set aside the entire proceedings of Case No. 328/2020, 'State Vs Sona Pati', under section 498-A, 304-B, 201 I.P.C., & 3/4 Dowry Prohibition Act, Police Station - Kamlapur, District - Sitapur, arising out of Case Crime No. 218/2004, under section 498-A, 304-B, 201 I.P.C., & 3/4 Dowry Prohibition Act, Police Station Kamlapur, District Sitapur, including its Chargesheet no. 92/2004, dated 01.09.2004, as well as summoning order dated 22.01.2015, issued by the Learned Juvenile Justice Board, Sitapur, in Case No. 328/2020, 'State Vs Sona Pati'."

4. Brief facts of the case are to the effect that an FIR registered as
Case Crime No. 218 of 2004 to attract offense under Sections 498-A,
304-B, 201 I.P.C., & 3/4 Dowry Prohibition Act was lodged at Police
Station Kamlapur, District Sitapur.

5. After lodging of FIR, the Investigating Officer (in short "I.O.") , on completion of investigation, submitted the charge-sheet no. 92/2004 dated 01.09.2004 and after taking note of the evidence collected by the I.O. during the investigation, the concerned Court took cognizance and thereafter the matter was committed to the Court of Sessions where the case was registered as Sesion Trial No. 1093 of 2004 (State Vs. Ram and 2 Others).

6. It would be apt to indicate that the applicant namely Sona Pati was also implicated in the said case by the informant as she is *nanad* of the deceased.

7. The applicant was minor at relevant point of time as such Session Trial No. 1093 of 2004 was against Ramu S/o Satnu (husband of the deceased), Satnu S/o Lallu (father-in-law of the deceased) and Smt. Gangadai W/o Satnu (mother-in-law of the deceased).

8. The record indicates that presently the case against the applicant who at relevant point of time was minor aged about eleven years is pending against Juvenile Justice Board, Sitapur as Case No. 328/2020 (State Vs Sona Pati).

9. It would also be relevant to indicate that the FIR was lodged after an order was passed by the Magistrate concerned on the application under Section 156(3) Cr.P.C. preferred by the informant.

10. The record further reflects that vide final order and judgment dated 29.01.2011 (Annexure No. 5) passed by Additional Sessions Judge, Court No. 3, Sitapur all the accused namely Ramu S/o Satnu, Satnu S/o Lallu and Smt. Gangadai W/o Satnu have been acquitted after considering the evidence on record including the statement(s) made by Shivram, father of the deceased, (P.W.1), Vishwanath (P.W.2), uncle of

the deceased, Phoolwati, mother of the deceased, (P.W.4) and Ram Lal, maternal uncle of the deceased, (P.W. 5).

11. Relevant paras of the judgment dated 29.01.2011 is extracted herein-under:

"इस प्रकार पत्रावली पर उपलब्ध समस्त मौखिक तथा अभिलेखीय साक्ष्य पर विचारण किये जाने के उपरांत मैं इस निष्कर्ष पर पहुंचता हूँ कि अभियोजन पक्ष के साक्षीगण द्वारा अपराध अन्तर्गत धारा 498 ए, 304 बी० भा०दं०सं० के अन्तर्गत दिये गये प्राविधानों के अनुसार आरोप को साबित नहीं किया जा सका है। जहां तक धारा 113 बी० भारतीय साक्ष्य अधिनियम का प्रश्न है। वह उसी समय उत्पन्न होता है जब अभियोजन पक्ष की ओर से यह सन्देह से परे साबित किया गया हो कि मृतका का विवाह घटना के 7 वर्ष के भीतर हुआ हो। अभियुक्तगण द्वारा दहेज की मांग की जाती रही हो और दहेज हेतु प्रताड़ित किया जाता रहा हो। इसके अतिरिक्त घटना के ठीक पहले क्रूरता का व्यवहार किया गया हो और मृतका की मृत्यु असामान्य परिस्थितियों में हुयी हो। माननीय सर्वोच्च न्यायालय द्वारा 2004 (1) लखनऊ क्रिमिनल रिपोर्ट पेज 596 बलजीत सिंह व अन्य बनाम स्टेट आफ हरियाणा में यह स्पष्ट व्यवस्था दी गयी है कि अभियुक्तगण से यह अपेक्षा नहीं की जा सकती है कि वे यह साबित करें कि मृतका का विवाह घटना के 7 वर्ष के बाद हुआ था। बल्कि यह साबित किये जाने का दायित्व अभियोजन पक्ष पर है कि वह साक्ष्य के माध्यम से यह साबित करे कि मृतका का विवाह घटना के 7 वर्ष के अन्दर हुआ था। ऐसी परिस्थिति में यह स्पष्ट है कि अभियोजन पक्ष को ही यह साबित किया जाना था कि घटना के 7 वर्ष के भीतर मृतका का विवाह हुआ था और विवाह के उपरांत मृतका को दहेज हेतु प्रताड़ित किया जाता रहा हो तथा घटना के ठीक पहले मृतका के साथ क्रूरता का व्यवहार किया गया हो। यदि अभियोजन पक्ष इस बिन्दु को साबित करने में सफल हो जाता है उसी परिस्थिति में धारा 113 बी० भारतीय साक्ष्य अधिनियम के अन्तर्गत यह अवधारणा होगी कि अभियुक्तगण दहेज मृत्यु के दोषी हैं। परन्तु वर्तमान मामले में अभियोजन पक्ष उपरोक्त किसी भी बिन्दु को साबित करने में सफल नहीं रहा है। ऐसी परिस्थिति में माननीय सर्वोच्च न्यायालय द्वारा दिये गये निर्णय के आधार पर भी अभियुक्तगण के विरुद्ध कोई भी आरोप साबित नहीं हो सका है।

उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुंचता हूँ कि अभियुक्तगण रामू सतनू व श्रीमती गंगादेई उर्फ सताना के विरुद्ध कोई भी आरोप अन्तर्गत धारा 498 ए, 304 बी०, 201 भा०दं०सं० व धारा 4 दहेज

प्रतिषेध अधिनियम साबित नहीं किया जा सका है। अभियुक्तगण उपरोक्त आरोपों से दोषमुक्त किये जाने योग्य हैं।

आदेश

अभियुक्तगण रामू सतनू व श्रीमती गंगादई उर्फ सताना को आरोप अन्तर्गत धारा 498 ए, 304 बी, 201 भा०दं० सं० व धारा 4 दहेज प्रतिषेध अधिनियम से दोषमुक्त किया जाता है। अभियुक्तगण जमानत पर हैं। उनके जमानत पत्र व बंधपत्र निरस्त किये जाते हैं तथा प्रतिभुओं को उनके दायित्वों से उन्मोचित किया जाता है।"

12. In the aforesaid background of the case, learned counsel for the applicant while pressing the present application seeking main relief, quoted above, stated that against the applicant the Charge Sheet No. 92/2004 dated 01.09.2004 was filed and despite this no fruitful purpose would be served in permitting the criminal proceedings to continue before Juvenile Justice Board, Sitapur as the trial Court in the Session Trial No. 1093 of 2018 (supra) has acquitted the co-accused namely Ramu S/o Satnu, Satnu S/o Lallu and Smt. Gangadai W/o Satnu.

13. In support of his submission, learned counsel for the applicant placed reliance 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."

14. Reliance has also been placed 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 (Zahrin 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."

15. He has also submitted that the judgment of acquittal of co-accused dated 29.01.2011 was assailed before this Court by the State by way of filing **Government Appeal No. 1000093 of 2011 (State of U.P. Vs. Ramu & Ors.)** which has been dismissed vide order dated **26.05.2022** and the same has not been filed before the Hon'ble Apex Court.

16. Copy of the order dated 26.05.2022 passed by this Court and status report fetched from the website of the Hon'ble Apex Court placed before this Court are taken on record.

17. Learned AGA for the State has opposed the prayer made by learned counsel for the applicant, but could not dispute the facts aforesaid including that co-accused namely Ramu S/o Satnu, Satnu S/o Lallu and Smt. Gangadai W/o Satnu have already been acquitted vide judgment dated 29.01.2011 and the law propounded in the judgments referred by the counsel for the applicant.

18. Considered the aforesaid and perused the record.

19. Considering the aforesaid particularly that co-accused has been acquitted vide judgment dated 29.01.2011 by the trial court and the said

judgment was assailed before this Court by the State by way of filing **Government Appeal No. 1000093 of 2011** which has been dismissed vide order dated 26.05.2022 and the same has not been assailed before the Hon'ble Apex Court as also that in the instant case witnesses of the prosecution are the same and the observation made in the judgment passed in the case of **Anant Mishra (Supra)** and **Smt. Jaitoon (Supra)**, 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 pending criminal proceedings in Case No. 328 of 2020 (State Vs Sona Pati), under Sections 498-A, 304-B, 201 I.P.C., & Sections 3/4 Dowry Prohibition Act, Police Station - Kamlapur, District - Sitapur, arising out of Case Crime No. 218 of 2004, under Sections 498-A, 304-B, 201 I.P.C., & Sections 3/4 Dowry Prohibition Act, Police Station Kamlapur, District Sitapur pending before the Juvenile Justice Board, Sitapur are hereby quashed, qua the applicant/Sona Pati.

20. The application is **allowed** in above terms.

Order Date :- 31.08.2024

Mohit Singh/-