

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.78 of 2009

1. Sri Surendra Reang,
son of late Pardihum Reang

2. Sri Rahaman Reang,
son of Sri Laljoy Reang

-both are residents of D.M. Colony (Rajkandi)
P.S. Kumarghat, North Tripura

..... **Petitioners**

V e r s u s

1. The State of Tripura,
to be represented by the Secretary,
Department of Home, Government of Tripura

2. The commissioner- Secretary,
Home Department, Government of Tripura,
Agartala

3. The Director General of Police,
Tripura, Agartala

4. Sri Satyendra Basu Roy Choudhury,
Sub Inspector of Police, now posted at Amtali Police Station,
P.S. Amtali, West Tripura.

5. Sri Babul Das,
Inspector of Police,
now posted at C.I.D. under West Tripura P.S.

..... **Respondents**

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Ms. R. Guha, Advocate
Ms. N. Guha, Advocate

For the respondents No.1,2 & 3 : Mr. A. Ghosh, Advocate

For the respondents No.4 & 5 : Mr. S. Chakraborty, Addl. G.A.

Date of hearing : 28.05.2015

Date of delivery
of Judgment & Order : **31.08.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

By this writ petition, the petitioners have claimed compensation to the extent of Rs.10,00,000/- (Rupees ten lacs) for suffering double jeopardy under the 'public law remedy'. The petitioners namely, Surendra Reang and Rahman Reang were incriminated in two police cases but initially one was arrested in one police case being Kumarghat P.S. Case No.56 of 2002 under Sections 148/149/302/120(B)/185/121 of the I.P.C. and under Section 27 of the Arms Act and Sections 10/13 of the Unlawful Activities (Prevention) Act. In connection with that case, the petitioners were arrested on 25.10.2002 and produced before the court of the Chief Judicial Magistrate, North Tripura Judicial District, Kailashahar, when a prayer had been made from the investigating officer another police case being Kamalpur P.S. Case No.51 of 2002 under Sections 395/364-A of the I.P.C. read with Section 27 of the Arms Act to show the petitioners arrested in the said case. The petitioners by means of this writ petition have contended that both the police cases have been registered for the same occurrence which took place at Rajkandi on 25.10.2002 on the allegation that three young miscreants kidnapped two persons on the gunpoint and demanded ransom of huge amount. Finally, on completion of the investigation, the police filed the chargesheets in both the cases. However, the trial of Kumarghat P.S. Case No.56 of 2002, corresponding to Sessions Trial No.58(NT/K) of 2005 commenced first in absence of the other accused person namely, Gulsingh

Reang. The petitioners were charged in that sessions trial under Section 307 read with Section 149 of the I.P.C. and Section 27(1) of the Arms Act. There is no dispute that by the judgment and order dated 21.09.2005 delivered in Sessions Trial No.58(NT/K) of 2005, the petitioners were acquitted from the charge.

[2] The grievance of the petitioners as emerged from the writ petition in short is that despite knowledge of the investigation officer of Kamalpur P.S. Case No.51 of 2002 that the petitioners have been investigated for the same occurrence in the Kumarghat P.S. Case No.56 of 2002, the said investigating officer filed the chargesheet against the petitioners under Sections 395/364-A of the Indian Penal Code and also under Section 27 of the Arms Act which culminated in the Sessions Trial 09(NT/KMP) of 2006. After the trial, the petitioners were convicted under Sections 395/364-A of the Indian Penal Code, however, they were acquitted from the charge as framed under Section 27(1) of the Arms Act. The petitioners were sentenced to suffer imprisonment for 10(ten) years with fine of Rs.5,000/-, with default imprisonment. It is not in dispute that the said judgment and order of conviction and sentence dated 24.06.2008 was challenged by the petitioners in the appeal, in the Gauhati High Court, being Crl.A.(J) No.79 of 2008. The said appeal was allowed by the judgment and order dated 08.12.2008 holding that merely because the petitioners were found with the persons kidnapped, it cannot be held that they committed dacoity

and kidnapping. The finding returned by the trial court according to the High Court was contrary to the evidence on record and it has been observed in Para-17 of the said judgment as under:

"Thus, on both counts, merit of the own case of the prosecution as well as the fact that the appellants having already tried by another competent court of jurisdiction, they could not have tried again by another court for the same offence and/or incident, the accused/appellants are entitled to get acquittal."

[3] The facts laid by the petitioners are mostly not disputed by the respondents. In this backdrop, appearing for the petitioners Ms. R. Guha, learned counsel has strenuously contended that the investigating officers (the respondents No.3 & 4) are instrumental in prosecuting the petitioners for the same offence twice in two different police cases. It has been further asserted that it clearly transpires from the record that for their action the petitioners suffered serious breach of their right as guaranteed under Article 20 (2) read with Article 21 of the Constitution of India and hence, they are entitled to realise the damage from the respondents under the public law remedy. In support of her contention, Ms. Guha, learned counsel has relied on **State of Bihar vs. Morad Ali Khan and others**, reported in **(1988) 4 SCC 655**, **Manica Bedi vs. State of Andhra Pradesh**, reported in **(2011) 1 SCC 284**, **Institute of Chartered Accounts of India vs. Bimal Kumar Surana and other**, reported in **2011 1 SCC 534** and **State (NCT of Delhi) vs. Sanjay**, reported in **(2014) 9 SCC 772**. All these reports broadly encompass the doctrine of double jeopardy as provided under

Article 20(2) of the Constitution of India. As the Gauhati High Court by their judgment and order dated 08.12.2008 delivered in CrI.A.(J) No.79 of 2008 has already held that the petitioners should not have been tried again, no further inquiry according to this Court is required into this aspect of the matter inasmuch as Mr. A. Ghosh, learned State counsel has confirmed that no further action challenging the said judgment dated 08.12.2008 has been carried out by the State. Therefore, this Court is confronted with two pertinent questions namely:

(i) Whether the petitioners suffered any damage for any State action for which they are entitled to compensation as claimed and

(ii) Whether the public law jurisdiction can be invoked for awarding such compensation?

[4] Mr. A. Ghosh, learned State counsel appearing for the respondents has submitted that the occurrence of kidnapping had taken place under the jurisdiction of Kamalpur Police Station and on the basis of a specific ejahar, the above stated Kamalpur Police Station case was registered. Subsequently, the Kumarghat Police when carrying out security operations, fired at and there occurred exchange of fire. Later on, they recovered the abducted persons and apprehended the petitioners. Thus, a separate police case was registered. It is the admitted position that the Kamalpur P.S case No.51 of 2002 was registered under Sections 395/364-A of Indian Penal Code read with Section 27 of the Arms Act, whereas the Kumarghat P.S. case No.56 of 2002 was registered under Sections

148/149/307/120-B/385/121 of the I.P.C. read with Section 27 of the Arms Act. Mr. Ghosh, learned State counsel has emphatically submitted that it is apparent that in the Kumarghat P.S case No.56 of 2002 the petitioners were incriminated for committing separate and distinct offences within the jurisdiction of Kumarghat Police Station. Therefore, there had been no infirmity in filing two chargesheets. When the distinct offences had been investigated by the jurisdictional police stations, the investigating officers cannot be stated to have committed any illegality or infringement as alleged. Further it has been contended by Mr. Ghosh, learned State counsel that it cannot be contended that the offences were committed in a single transaction. In Para-12 of the counter affidavit filed by the respondents No.1,2 and 3 it has been asserted that :

"the Investigating Officer of the Kumarghat police station has got a secret information that some group of armed extremists were moving at Kalatilla area. Accordingly after entering the said fact in G.D. book, he proceeded along with Sub-Divisional Police Officer, one platoon of T.S.R. jawans towards Kaillitilla area to nab the extremist and as soon as they reached near the said tilla and conducted search at that time some extremist opened fire towards them and they also replied by opening fire towards those miscreants. After some time they conducted search adjacent to the tong hut and during search they have found two Bengali persons and three accused persons and thereafter they came back to the police station and registered a case under Kumarghat P.S. Case No.56/2002 U/s 148/149/307/120(B)/385/121 and other Acts. This incident occurred on 24/25.10.2002. But in the Kamalpur P.S. an F.I.R. was lodged by one Sri Dulal Deb and which was charge sheeted under Section 395/364(A) of Indian Penal Code and 27 of the Arms Act and that incident happened on 19.10.2002. So it is very clear that one incident is not at all connected with other

incident, one incident i.e. Kamalpur P.S. case for dacoity and kidnapping and Kumarghat P.S. case was for attempt to murder. So the question of double jeopardy does not arise, though the Investigating Officer of the Kumarghat P.S. recovered the kidnapped persons along with the accused persons and the accused are also F.I.R. named persons. But in the Kamalpur P.S., the F.I.R. was lodged against unknown miscreants. The plea of the petitioners regarding double jeopardy is not at all attracted."

[5] The respondents No.4 and 5 have taken an identical stand by filing their counter affidavit. In their counter affidavit they have contended in addition that the doctrine of double jeopardy as the defence plea is subject to the test as provided under Section 300 of the Cr.P.C.

[6] On query from this Court, Ms. R. Guha, learned counsel has fairly submitted that the charge-sheet in Kamalpur P.S. case No.51 of 2002 was filed on 08.06.2003 and the charge was framed against the petitioners by the Addl. Sessions Judge, North Tripura, Kamalpur on 29.08.2006. With leave of the court, Ms. Guha, learned counsel has submitted a copy of the charge-sheet and the certified copy of the charge for inspection. The judgment and order, acquitting the petitioners in Sessions Trial No.58(NT/K) of 2005 emerged from the Kumarghat P.S. case No.56 of 2002 was delivered on 21.09.2005 by the Sessions Judge, North Tripura, Kailashahar, much before the Addl. Sessions Judge, Kamalpur framed the charge against the petitioners. The charge framed in Sessions Trial No.58(NT/K) of 2005 is as under:

"Firstly, that, both of you along with 3(three) others on 25.10.2002 at about 0530 hours at Kallitilla under police station –Kumarghat were members of an unlawful assembly in prosecution of the common object of that assembly opened fire from fire arms towards the informant, Sub-Inspector S. Basu Roy Choudhury and his other accompanying police and Tripura State Rifle personnel with such intention and under such circumstances that if by that act of firing you had caused the death of said Sub-Inspector S. Basu Roy Choudhury or any other of his accompanying police and Tripura State Rifle personnel, you would have been guilty of murder and as such, both of you have committed an offence punishable under Section 307 read with Section 149 I.P.C. and within my cognizance.

Secondly, that, on the same date, time and place both of you along with 3(three) others at the time of attacking the informant, Sub-Inspector S. Basu Roy Choudhury and his accompanying police and Tripura State Rifle personnel had used fire arms, but for using the said fire arms you had no valid document or authority, for which you have violated the provisions of Section 5 of the Arms Act and thereby committed offence punishable under Section 27(1) of the Arms Act and within my cognizance."

[7] The charge framed in Sessions Trial No.09(NT/KMP) of 2006, emerged from Kamalpur P.S. case No.51 of 2002 is as follows:

'Firstly, that you on 20.10.02 at 0030 hrs at Bamancherra in the house of Sri Dulal Deb, under Kamalpur P.S committed dacoity and that you thereby committed an offence punishable u/s 395 of I.P.C. and within my cognizance.

Secondly, that you on the above mentioned date time and place, kidnapped Sri Biplab Deb and Sri Sibnarayan Gour and kept them in detention and that your conduct gave rise to a reasonable apprehension that the person so kidnapped may be put to death and you had done these act in order to compel somebody to pay a ransom and that

you there committed an offence punishable u/s 364(A) of I.P.C. and within my cognizance.

Thirdly, that you on the above mentioned date, time and place have used fire arms, viz, pistol, gun etc. in contravention of the provision of Section 5 of Arms Act, for any illegal purpose, to wit, to commit dacoity in the house of Sri Dulal Deb and to kidnap Sri Biplab Deb and Sri Shib Narayan Gour for ransom and that you thereby committed an offence punishable under Section 27(1) of the Arms Act and within my cognizance."

[8] From a comparative reading of both the charges it would clearly emerge that the petitioners were tried for two distinct offences committed at two different places, though may or may not occur in the single transaction. This aspect of the matter was not examined by the Gauhati High Court while passing the judgment dated 08.12.2008. But it has been observed that in view of Section 300 of the Cr.P.C. a person who was once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence is, while such conviction or acquittal remains in force, not liable to be tried again for the same offence. On such basis, the Gauhati High Court came to the conclusion that the petitioners were tried by the competent courts for the same offence and/or incident. The acquittal by the said judgment, as it appears, is fundamentally based on appreciation of the evidence. Article 20(2) of the Constitution of India embodied the doctrine of double jeopardy as under:

"2. No person shall be prosecuted and punished for the same offence more than once."

This clause has fallen for consideration of the apex court on several occasions. In **Makbool vs. State of Bombay**, reported in **(1953) SCR 730**, **Kalawati vs. State of Himachal Pradesh**, reported in **(1953) SCR 546**, **State of Bombay vs. Apte**, reported in **AIR 1961 SC 29**, **Leo Roy vs. Superintendent, District Jail**, reported in **AIR 1958 SC 119** and **Assistant Customs Collector vs. Melwani**, reported in **AIR 1970 SC 962**, the apex court has succinctly held that what Article 20(2) prohibits is prosecution and punishment once a person was prosecuted and convicted or acquitted for the same offence. 'Offence' means the offence as defined in Section 3 of the General Clauses Act, 1897 as adopted by Article 367 of the Constitution. The offence must be the same, that is to say, involving the same ingredients in all respects and but trial for a sperate and distinct offence is not barred under Article 20(2).

[9] Section 300 of the Cr.P.C. deals with the principle of estoppel in the criminal jurisprudence viz. *autrefois convict* and *autrefois acquit*. Section 300 of the Cr.P.C. is structured on the doctrine of double jeopardy. For purpose of reference, Section 300 of the Cr.P.C. is extracted hereunder:

"300. Person once convicted or acquitted not to be tried for same offence-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on

the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897) or of section 188 of this Code. Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

[10] Section 300 of the Cr.P.C. has laid the procedural law to act on the doctrine of double jeopardy providing that a person

who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal would remain in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-Section 1 of Section 221 or for which he might have been convicted under sub-section 2 thereof. By sub sections 2, 3 and 4 of Section 300 of the Cr.P.C., exceptions have been carved out from the general doctrine of double jeopardy. Thus, merely someone has been tried and acquitted from the charge of committing an offence is not be all and end all of the prosecution. If the offence or the consequence of the offence was not distinctly charged or the offence constituted by any act causing consequence together with such act constituted a different offence from that, of which he was convicted may be afterwards tried, if the consequence had not happened or were not known to the court to have happened at the time when he was convicted or acquitted.

[11] The right guaranteed under Article 20 of the Constitution provides the protection against the double jeopardy, meaning no person shall be prosecuted and punished for the same offence more than once. From the discussion made above, it is clear that the petitioners were not prosecuted for the same offence. It is so said having due regard to the observation made by the

Gauhati High Court in the judgment and order dated 08.12.2008 delivered in Crl.A (J) No.79 of 2008 by way of *obiter dicta*. In Para-17 of the said judgment and order it has been observed that the petitioners were tried by another court for the same offence and/or incident.

[12] Whether the respondents can be held liable for any damage even if it is presumed that the petitioners had been prosecuted for the same offence in the sessions trial being Sessions Trial No. 09(NT/KMP) of 2006 for the same offence for which they were tried in the Sessions Trial No.58(NT/K) of 2005?

The right guaranteed under Article 20(2) of the Constitution of India is a tool of defence to be exercised by the person who is sought to be prosecuted again on the same charge for which that person had already been tried. Therefore, even if someone suffered double jeopardy it cannot be said that the double jeopardy has been suffered for any action of the state or its officers. The person apprehending double jeopardy has been given the right to raise a complete defence in this regard in view of the former trial, conviction or acquittal. Failure to raise such defence would not make the state liable in any manner for any damage, whatsoever. If such plea of double jeopardy is raised it is not the state or its officer to decide whether or not the person who raised such plea would suffer double jeopardy or not. The court of the competent jurisdiction would decide that issue. Hence, the state is

completely immune from any liability in the event of double jeopardy. It is to be reiterated that the double jeopardy is a protective right as a complete defence. For purpose of reference, it would be apposite to reproduce what the apex court has observed in **Manica Bedi vs. State of Andhra Pradesh**.

22. Article 20(2) embodies a protection against a second trial and conviction for the same offence. The fundamental right guaranteed is the manifestation of a long struggle by the mankind for human rights. A similar guarantee is to be found in almost all civilised societies governed by rule of law. The well-known maxim *nemo debet bis vexari pro una et eadem causa* embodies the well-established common law rule that no one should be put on peril twice for the same offence. *Blackstone* referred to this universal maxim of the common law of England that no man is to be brought into jeopardy of his life more than once for the same offence.

23. The fundamental right guaranteed under Article 20(2) has its roots in common law maxim *nemo debet bis vexari*- a man shall not be brought into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former conviction or as it is technically expressed, take the plea of *autrefois convict*. This in essence is the common law principle. The corresponding provision in the American Constitution is enshrined in that part of the Fifth Amendment which declares that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. The principle has been recognised in the existing law in India and is enacted in Section 26 of the General Clauses Act, 1897 and Section 300 of the Criminal Procedure Code, 1973. This was the inspiration and background for incorporating sub-clause (2) into Article 20 of the Constitution. But the ambit and content of the guaranteed fundamental right are much narrower than those of the common law in England or the doctrine of 'double jeopardy' in the American Constitution.

[Emphasis supplied]

[13] It is an admitted position that the petitioners did not raise the plea of double jeopardy in the trial court when the charge was framed in the criminal trial being Sessions Trial No.09(NT/KMP) of 2006. This plea in this writ petition has evidently been inspired by the observation made in Para-17 of the judgment and order dated 08.12.2008 by the Gauhati High Court in CrI.A.(J) No.79 of 2008. When a protection is guaranteed by a constitutional provision that protection is liable to be wielded at the relevant point of time. The petitioners had the right to raise that plea of double jeopardy as a complete defence. As the petitioners did not exercise that right in any manner, the respondents cannot be held responsible for any damage suffered by them for non-exercising that right, irrespective of its applicability in the circumstances of the case.

[14] Having held so, this writ petition is entirely misconceived and accordingly, the same is dismissed. However, there shall be no order as to costs.

JUDGE

Sujay