

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

-

+CRIMINAL PETITION No.7868 of 2015

-

%Dated 12-11-2015

-

Konakalla Suresh @ Mukku Suresh @ Rushi

& 9 others

....Petitioners/ accused Nos.1 to 10

VERSUS

\$ The State of Telangana

Rep. by Public Prosecutor

High Court at Hyderabad & another

....Respondents

! Counsel for Petitioners : Sri Challa Dhanamjaya

^ Counsel for Respondents : Public Prosecutor (T.G)

< GIST :

> HEAD NOTE :

? Cases referred :

1. AIR 1970 AP 47

2 AIR 1969 SC 701

3. AIR 1965 SC 87 = CrI J 120

4. AIR 1956 SC 415

5. AIR 1963 SC 340

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7868 of 2015

ORDER :

The petitioners/A-1 to A-10 in Crime No.279 of 2009 of SHO, Chotutuppall, registered for the offences punishable under Section 400 IPC and police after registration of the crime and after completion of investigation filed final report against them that was taken cognizance by the learned Judicial First Class Magistrate, at Ramannapet as PRC No.8 of 2015 to commit the case to the Court of Sessions for the offence under Section 400 IPC, they filed the present criminal petition saying earlier on the same allegations they faced trial in S.C. No.61 of 2008 and SC No.34 of 2010 which cases were ended in acquittal after trial, thereby, the present PRC proceedings are barred by Section 300 Cr.P.C, for the reason even in the earlier offence mentioned as 395 IPC and presently mentioned as if under Section 400 IPC.

2) Heard learned counsel for the petitioners as well as 1st respondent—State and the 2nd respondent—SHO, Choutuppall represented by learned public prosecutor and perused the material on record.

3) Section 400 IPC and Section 395 IPC respectively read as under:

400.Punishment for belonging to gang of dacoits—Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395.Punishment for dacoity—Whoever commits dacoity shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

4) From the above, the punishment for the offence under Section 400 IPC is for belonging to gang of dacoits by associated in the gang for the purpose of habitually committing dacoity, there was a punishment for the offence under Section 395 IPC as per dacoity defined under Section 391 IPC. Section 391 IPC defines Dacoity –when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

5) Who ever commits dacoity (supra) shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years and also liable to fine and the punishment for Section 400 IPC is also with life or with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine. What Section 300 IPC speaks in the following lines:

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.

6) As per Section 300 Cr.P.C wording earlier acquittal or conviction as the case may be once tried is a bar for trial again for the same offence or even on same facts for any other offence even for which a different charge from the one made against him under Section 221 (1) or (2) Cr.P.C and what is stated by sub-section (4) of Section 300 Cr.P.C is where the Court by which he firstly tried the offence was not competent to trial. Sub-section (6) of Section 300 Cr.P.C speaks nothing in Section 300 Cr.P.C shall affect the provisions of Section 26 of General Clauses Act. What Section 26 of General Clauses Act 10 of 1897 (equal to Section 20 of the A.P General Clauses Act 1 of 1891) speaks is when an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. No doubt, what General Clauses Act supra speaks is the bar of second punishment to say for one offence under one enactment and not punishments under more than one enactment. Thus, to punish for the first one under one enactment or the second one under another enactment. Same is also laid down by this Court with reference to it in ***P.Bapanaiah vs Unknown***. In fact, Article 20 of Constitution of India speaks once convicted again cannot be tried for the same offence that speaks once there is first offence tried and convicted a bar again for the same or on the same facts for a different offence.

7) A perusal of the above show so far as Section 26 of General Clauses Act, 1897 speaks where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished under the two enactments to say twice for the same offence. Thus, there is no bar for trial under different enactments or for different offences, but for conviction under different

enactments for same offence. Where as Article 20 (2) of the Constitution of India speaks, no person shall be prosecuted and punished for the same offence more than once either for the same offence or on the same facts even it is under one enactment, provided the first trial ends in conviction, otherwise of no bar, whereas coming to Section 300 Cr.P.C, once tried by a competent Court and either acquitted or convicted the accused cannot be tried for the same offence nor on the same facts for the other offence again for which it constitutes different charge.

The illustration (a) of Section 300 Cr.P.C very clear in this regard which speaks is as under:

A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

8) What the Apex Court held under Section 26 of the General Clauses Act, 1897 in ***T.S.Baliah vs T.S.Rengachari*** as there is no bar for the false statement in the verification of income tax return for the prosecution under Section 52 of the Act and also under Section 177 of IPC he takes one trial for both offences under the different enactments but for a bar to the punishment of the offender twice for the same act or omission that constitutes an offence. Thus, if at all, the accused could not have charged at that time while charging for the offence under Section 395 IPC also, for the offence under Section 400 IPC for the Court to frame charges either separately for the distinct offences under Section 218 Cr.P.C if not the offence proved the other offences charged also under Sections 220 read with Sections 223 and 224 Cr.P.C.

9) In this regard, the learned counsel for the petitioner/ accused from the facts in relation to any dispute the earlier crime it was tried and for present charge, one and the same, placed reliance upon the expression of the five judge bench of Apex Court answered a reference in ***Manipur Administration, Manipur vs Thockchom Bira Singh*** in resulting conflicting expressions in ***Pritam Singh vs State of Punjab and Gurucharn Singh vs State of Punjab***. The reference answered was as per

Section 403 Cr.P.C, 1898 = 300 Cr.P.C, 1973 does not preclude the applicability of rule issue of estoppel, the rule being one which is in accordance with sound principles and supported by high authority find there being a decision of Supreme Court which has accepted it as a proper one to be adopted. We do not see any reason to discard it. The expression in Pritham Singh supra is thus held rightly decided. In Pritham Singh's case, it was observed that where the issue has been tried by a competent Court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403 (2), the verdict is binding and conclusive in all subsequent proceedings between the parties for adjudication. It was observed that, Pritham Singh supra referred and considered on several occasions and never dissented from, though in some of them it was distinguished on facts. It was observed that, issue estoppel does not prevent the trial of any evidence as does *autrofois acquit*; but only precludes evidence being led to prove a fact in issue, as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a Court of competent jurisdiction. In Pritham Singh supra, at para Nos.15 to 20 it is categorically held relating to 1950 AC 458 that the effect of a verdict of acquittal pronounced by a competent Court on lawful charge and after a lawful trial, is not completely stayed, by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that, the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim '**res judicata pro veritate accipitur**' is no less applicable to criminal than to civil proceedings. Thus, an acquittal of an accused in a trial under Section 19 (f) of the Arms Act, tantamounts to a finding that the prosecution had failed to establish the possession of certain revolver by the accused as alleged. The possession of that revolver was a fact in issue, which had to be established by the prosecution before he could be convicted of the offence under Section 19 (f) of the Act. That fact was found against the prosecution and could not be proved against the accused in the subsequent proceedings between the Crown and him, under a charge of murder. The evidence against him in the latter proceedings, would have to be considered regardless of the evidence of recovery of the revolver from him.

10) The Apex Court later in ***State through Superintendent of Police, CBI/SIT vs Nalini & others*** (Rajiv Gandhi Assassination case) observed at para Nos.235 to 239 at page No.337 referring to Section 300 (1) Cr.P.C in saying the well known maxim “***nemo debet bis vexari pro eadem causa***” (no person should be twice vexed for the same offence) is the well established common rule for no one should be put to peril twice for the same offence. The principle which is sought for incorporation into Section 300 Cr.P.C is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts.

11) Though Article 20 (2) of the Constitution of India embodies a protection against a second trial after a conviction of the same offence, the ambit of the clause is narrower than the protection afforded by Section 300 Cr.P.C as held in *Manipur Administration supra* that “if there is no punishment for the offences as a result of the prosecution, Article 20 (2) has no application for the clause embodies the principle of *autrefois convict*, whereas, Section 300 Cr.P.C combines both *autrefois convict* and *autrefois acquit*.”

12) Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts, even for a different offence, if a different charge against him for such offence could have been made under Section 221 (1) Cr.P.C, or he could have been convicted for such other offence under Section 221(2) Cr.P.C.

13) As the contours of the prohibition are so widely enlarged, it cannot be contended that the second trial can escape therefrom on the mere premise that some more allegations were not made in the first trial.

14) From the above propositions with application of the facts on hand, once there is a clear acquittal not even on a benefit of doubt for the alleged offence of committing dacoity, the other offence for which the present prosecution laid to charge, covered by committal proceedings from pre-trial cognizance by the learned Magistrate under Section 209 Cr.P.C for the alleged offence under Section 400 Cr.P.C as member of gang of dacoits does not arise and thereby the proceedings are liable to quashed from the bar under Section 300 Cr.P.C and from the precedents supra which rules as law of the land.

15) Having regard to the above, the Criminal Petition is allowed and all the proceedings relating to PRC No.8 of 2015 on the file of Judicial First Class Magistrate, at Ramannapet, are hereby quashed. The bail bonds of the petitioners/accused Nos.1 to 10, if any, shall stand cancelled.

16) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:12.11.2015

Note: LR Copy to be marked

Knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-

-

-

-

-

-
-
-

CRIMINAL PETITION No.7868 of 2015

Date:12.11.2015

Knl

