

**THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-28211 of 2010 (O&M)
Date of decision : 21.01.2015**

Jeevan Kumar @ Bhola

....Petitioner

versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr. C.S. Bakshi, Addl. A.G., Haryana
for respondent No.1-State.

Mr. Arshdeep Singh Kaler, DAG, Punjab
for respondent No.2-State.

RITU BAHRI , J. (Oral)

Quashing of the subsequent FIR No.619 dated 26.08.2009 under Sections 379/411/467/468/471/420 of IPC, registered at Police Station Kotwali, Bathinda (Annexure P-2) as on the same alleged theft/transaction FIR bearing No.67 dated 22.05.2009 under Section 379 IPC at police Station Sector 40, Gurgaon (Annexure P-1), stands registered and registration of two FIRs for the same offence/transaction is not permissible in the eyes of law, is being sought.

By the judgment dated 21.02.2014 passed by the Judicial Magistrate 1st Class, Gurgaon, the petitioner has faced trial in FIR No.67

dated 22.05.2009 under Section 379 IPC. The trial was with respect to theft of a vehicle bearing No.HR-26-AQ-9741 and the trial Court has acquitted the petitioner in the said trial. A perusal of the judgment shows that on 27.08.2009, the stolen vehicle was recovered from the petitioner by the police of Police Station Bathinda, Punjab and was given on superdari to the respondent No.3/complainant-Om Parkash. The complainant produced the car obtained on superdari and thereafter investigation was carried out by Head Constable Anil Kumar. Co-accused Lakhvinder was declared a proclaimed offender on 28.02.2011 and challan was presented against the present petitioner. In the judgment it was so observed that the vehicle bearing registration No.HR-26-AQ-9741 was obtained on superdari was taken in police custody in FIR No.26 dated 26.08.2009 vide seizure memo Ex.PW2/A. During cross-examination, the complainant admitted that the accused has not committed theft in his presence. After the trial was proceeded on the basis of a disclosure statement of the accused made in police custody PW1/A. The prosecution version was found to be doubtful and the petitioner was acquitted. In the present case, the petitioner has faced a trial with regard to the vehicle stole in FIR No.67 dated 22.05.2009, the proceedings in FIR No.619 dated 26.08.2009 shall amount to abuse of the process of the law.

The Hon'ble Supreme Court in case **Kuljit Singh Vs. Jasbir**

Singh 2002 (4) RCR (Crl.) 707, has observed as under:-

“9. This Section embodies the ancient maxim "nemo debet bis vexari pro eadem causa" (no person should be twice disturbed for the same cause). One of the principle of this Section is that where an accused can be held at one trial for several offences and has not been so tried for all the offences but only for a few he should not be put again in jeopardy for the offences for which he could have been tried at the time but had not been tried. From the bare reading of the aforesaid Section, it is clear that if a person, who has once been tried by a Court of competent jurisdiction, for an offence and he has been convicted or acquitted for such an offence, shall not be tried again for the same offence or for any other offences, for which a different charge from the one made against him might have been made under Section 221(1) of the Code or for which he might have been convicted under sub-section (2) thereof. Sub- section (1) of Section 300 of the Code consists of two limbs. The first limb deals with the case of a person, who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence. Such person shall not be liable to be tried again for the same offence while such conviction of acquittal remains in force. The second limb of the sub- section deals with 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. The case of the petitioner is covered under second limb of this sub-section. Though in the police case, the petitioner and his parents were charged for offences punishable under Sections 302/304-B/34 IPC and they were not charged for offences punishable under Sections 406/498-A IPC, but on the basis of the facts alleged in the FIR, the challan and the evidence came before the Court during the trial, they could have been charged under these offences in exercise of power given under Section 221 (1) of the Code. But neither the complainant/prosecution nor the Court called upon the petitioner and his parents to face trial for offences under Sections 406/498-A IPC though the allegations constituting these offences were very much available. The petitioner has been convicted and his parents have been acquitted in the earlier trial vide judgment dated August 6,1998. In view of this fact, the petitioner and his parents cannot be tried again on the basis of the present complaint. This view of mine is supported by a decision of this **Court Narinder Singh vs. State of Punjab, 1985(2) Recent Criminal Reports 152** where an accused tried and acquitted of offences under Section 5(2) of the Prevention of Corruption Act then such accused could not be retried for offences under Sections 147/158/224/225 IPC. Thus, in view of Section 300 (1) of the Code, the present complaint filed by respondent No.1, brother of the deceased, is liable to be quashed, as the petitioner and his parents cannot be tried again for an offence under Sections

406/498-A IPC on the allegations made therein."

In the facts of the present case, the petitioner has faced trial with regard to stolen vehicle in FIR No.67 dated 22.05.2009 under Section 379 IPC. Therefore, the continuation proceedings in the present FIR No.619 dated 26.08.2009 under Sections 379/411/467/468/471/420 of IPC with regard to the same vehicle would amount to an abuse of process of Court. The petitioner could not be tried twice for the same offence.

Accordingly, the present petition is allowed and FIR No.619 dated 26.08.2009 under Sections 379/411/467/468/471/420 of IPC registered at Police Station Kotwali, Bathinda (Annexure P-2), is quashed qua the petitioner.

21.01.2015
Vinay

(RITU BAHRI)
JUDGE