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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.26402 of 2013(O&M)

Date of Decision: 13.05.2015

Om Parkash and others

.....Petitioners

Vs

Ravi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akashdeep Singh, Advocate
for the petitioners.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioners have prayed for quashing of complaint No.189/1 dated 01.03.2006 titled as **Parveen Vs. Om Parkash & others** (Annexure P-3) and summoning order dated 15.06.2013 passed by Judicial Magistrate Ist Class, Rohtak (Annexure P-4) along with entire subsequent proceedings arising therefrom.

[2]. Petitioners allege that FIR No.146 dated 13.03.2006, under Sections 323, 325, 34 IPC was registered in Police Station City, Rohtak against the petitioners on account of an incident which took place on 27.12.2005. Statement of Parveen son of Paras Ram was recorded by the Police in lodging the aforesaid FIR, who stated that

his brother Ravi was running STD shop. On 27.12.2005 complainant-Parveen along with his brother-Ravi reached at the turning point of street of their house on a motorcycle. Petitioners No.1 and 2 were standing there and petitioner No.4 was also standing there near them. Ravi was riding the motorcycle and the complainant was sitting as pillion rider. Petitioner No.1 was having the licensed rifle in his hand and he pointed the same at Ravi. Krishan was armed with sharp-edged weapon like *Khokhri*. Petitioner No.3-Gopal was armed with iron handle of a hand pump. Petitioner No.4 caught hold of the complainant from behind. Complainant raised objection, then in the meantime Krishan petitioner No.2 got the motorcycle felled down with his leg and gave abuse. Both the occupant of the motor cycle fell down. Krishan gave an iron rod blow on the head of the complainant. Gopal gave a iron handle blow on the face of the complainant. Complainant suffered injury on his teeth. Ravi got up and tried to rescue the complainant, whereupon Krishan gave injuries to Ravi on his head and feet with iron handle. Om Parkash gave blow from rifle butt to Ravi. Krishan inflicted fist blows to both the complainant and his brother. On raising alarm parents of the complainant reached there. On seeing them assailants fled away from the spot. While leaving the place, accused Krishan threatened the complainant that they have been escaped but they would kill them on finding opportunity.

[3]. With the aforesaid allegations, FIR was got registered by

Parveen. The said FIR was investigated and a cross-case of said FIR in the form of complaint was also filed by the petitioners.

[4]. Petitioners faced trial in the aforesaid FIR and during the course of trial the complaint filed by petitioners' side as a cross-case was withdrawn by petitioner No.2 on the ground that matter has been resolved between the parties. No independent witness was joined by the prosecution at the time of effecting alleged recovery of weapons. Ultimately Additional Chief Judicial Magistrate, Rohtak vide judgment dated 11.07.2013 acquitted the petitioners from the charges under Sections 323, 325, 34 IPC.

[5]. Petitioners were surprised to know that the brother of respondent-Ravi i.e. Parveen had filed a criminal complaint No.189/1 dated 01.03.2006 (Annexure P-3) in respect of same occurrence. Judicial Magistrate Ist Class, Rohtak vide order dated 15.06.2013 passed an order of summoning against the petitioners without complying with the provisions in terms of Section 202/210 Cr.P.C.

[6]. It appears that complaint filed in 2006 was kept pending intentionally and at the time of summoning the petitioners, Judicial Magistrate did not call for any report from Police in order to know the fate of criminal case. No effort was made by Judicial Magistrate to inquire about the proceedings, if any, undertaken by the Police in pursuance to DDR No.6 which was statedly got recorded by brother of respondent No.1 on 28.12.2005.

[7]. The petitioners have assailed the aforesaid complaint and order of summoning on the ground that prosecution in terms of complaint is squarely hit by Section 300 Cr.P.C., and petitioners cannot be tried again for the offences in which they have been acquitted in a trial. Secondly the order of summoning is totally non-speaking and has been passed in utter disregard to the judgment rendered by the Hon'ble Supreme Court in **M/s Pepsi Food Limited v. Special Judicial Magistrate, 1997 (4) RCR (Criminal) 761.**

[8]. Thirdly the Magistrate has not complied with provisions of Section 210 Cr.P.C. Had the report of Police been called before taking cognizance in the complaint, then the trial Court would have come to know that petitioners had already been acquitted on same allegations. Therefore, summoning order is in utter disregard of mandatory provisions of Section 210 Cr.P.C.

[9]. Lastly perusal of FIR shows that allegation of holding licensed revolver has been made, whereas in complaint mark improvement has been shown even by alleging firing.

[10]. Parveen died on 07.11.2007 and his brother Ravi was substituted in his place vide order dated 13.12.2007 before the trial Court. Learned counsel for the petitioners relied upon **Ravinder Singh v. Sukhbir Singh and others, 2013(1) RCR (Criminal) 1020** and submitted that rule of issue estoppel prevents re-litigation of an issue which has been concluded in a criminal trial between the parties. Second trial in respect of same offence is prohibited by the

rule of issue/estoppel. This Rule is also known as cause of action estoppel. Even if a particular issue has been agitated earlier or a particular argument was advanced but not considered, the said judgment does not lose its binding character. It is a settled principle of law that a frustrated litigant should not be allowed to vent his frustration by invoking jurisdiction of criminal Court in a cheap manner.

[11]. The Court is well within its jurisdiction to quash the said proceedings which are suffered with vices of malice and illegality. No fresh prosecution can be allowed to be launched in respect of a decided issue and for that it is a judicial obligation also to undo the wrong in the course of administration of justice and such a wrong can be prevented by invoking inherent jurisdiction of the Court under Section 482 Cr.P.C., in the larger interest of administration of justice and to curb the menace of criminal prosecution as an instrument of operation of needless harassment.

[12]. In **Shiv Shanker Singh v. State of Bihar and Anr., 2012 (1) R.C.R (Criminal) 14**, the Apex Court has observed that second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the complaint on merits. Even in case of technical flaws like invalid sanction for prosecution, if an accused is acquitted then also he cannot be tried again after obtaining valid sanction because no one can be vexed twice for the same offence as it will be a double

jeopardy. It is wholly immaterial on what ground the order of acquittal has been recorded. The sanction does not say that the order of acquittal must be made on merits before it operates as a bar for second prosecution. Even if order of acquittal is on technical grounds, it will prevent further prosecution of the accused on the principle of issue-estoppel.

[13]. In the present case order of acquittal was recorded on merits and, therefore, the present case is placed even on better footing. Section 403 Cr.P.C., does not contemplate that the order of acquittal must be made on merits before it operates as a bar for second prosecution. Division Bench of this Court in **AIR 1960 Punjab 149, The State v. Kuldeep Singh and others** held in the aforesaid context that even if order of acquittal is on technical grounds, it will prevent further prosecution of the accused. Said judgment was followed by this Court in **Bant Singh v. The State of Punjab 2003(1) R.C.R. (Criminal) 235.**

[14]. In **T.T. Antony vs. State of Kerala, AIR 2001 Supreme Court 2637**, the Hon'ble Supreme Court has strongly commented on such an issue. The issue of Police powers of investigation in respect of same incident in which persons have been acquitted, the registration of case and investigation thereof were held to be illegal and man who has been once tried and acquitted would be in jeopardy if the Court tries him again. In such an event, he would be placed in double jeopardy. Article 20(2) Constitution of India lays the

same phenomena as underlying Section 300 Cr.P.C. The provisions of Section 300 Cr.P.C are nothing more than an elaboration of principle of double jeopardy. The provisions of Article 20(2) of Constitution of India also contain the principle of *autrefois acquit* and such provisions have to be regulated by general law on broad features. The petitioners have staked their claim for quashing the entire prosecution arising out of criminal complaint.

[15]. After the death of Parveen, though respondent No.1 was impleaded before Trial Court, however none came forward to represent him despite service. It appears that factum of compromise during trial or FIR was in reality, when the present petitioner No.1, withdrew the cross case on the ground that the parties have resolved their differences. The factum of present complaint having arisen from same incident, has been admitted by respondent 1 in reply.

[16]. In para No.3 of the preliminary submission of reply of respondent No.2, it has been mentioned “that with regard to same incident/occurrence aforesaid Parveen had filed a criminal complaint with the Court of learned Ilqa Magistrate It is submitted here that while filing complaint the complainant Parveen has alleged that accused Om Parkash who fired shot from his licensed rifle, whereas such allegation was not there in the FIR which was got registered by him and only allegation was the accused-Om Parkash gave rifle butt blow to Ravi.”

[17]. During the course of pendency of criminal misc., production of statement of Ravi was sought to be produced on record. Statement of Ravi PW-1 was taken on record as Annexure P-5. The perusal of the statement also does not advance the case beyond the case pleaded in the FIR.

[18]. Looking to the entirety of the facts and circumstances, this Court is of the opinion that continuation of criminal complaint No.189/1 dated 01.03.2006, passing of summoning order 15.06.2013 by Judicial Magistrate Ist Class, Rohtak and entire subsequent proceedings undertaken in pursuance thereof are the result of abuse of process of law and same can be quashed in order to prevent abuse of process and to achieve ends of justice.

[19]. Resultantly, criminal complaint No.189/1 dated 01.03.2006 titled as **Parveen vs. Om Parkash and others**, order of summoning dated 15.06.2013 and entire subsequent proceedings, if any undertaken in pursuance thereof stand quashed.

[20]. Petition is allowed.

May 13, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE