

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No. 216 of 2015 (O&M)
Date of Decision: 16.11.2015**

Ravinder Singh

.....Petitioner

Vs.

Tejinder Singh

.....Respondent

CRR No. 734 of 2015 (O&M)

Gurcharan Singh

.....Petitioner

Vs.

Tejinder Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ranjan Lakhana, Advocate
for the petitioner in CRR No.216 of 2015.

Mr. GBS Dhillon, Advocate
for the petitioner in CRR No. 734 of 2015.

Mr. S.S. Behl, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

The important question of law that falls for consideration of this Court in these petitions. is whether the petitioners could have been forced to face re-trial which would amount to double jeopardy,

as the petitioners have already faced criminal trial for the same offences and were acquitted.

Feeling aggrieved against the impugned order dated 10.10.2014 passed by the learned trial court, dismissing the application of the petitioners under Section 300 of the Code of Criminal Procedure ('Cr.P.C.' for short) read with Article 20 (3) of the Constitution of India, to drop the proceedings of a complaint case, as it amounts to double jeopardy and re-trial for the same offence in which the petitioners have already been tried and acquitted, petitioners have approached this Court by way of these two criminal revision petitions.

Notice in the applications for condonation of delay in both the petitions were issued and thereafter, delay in both these cases was condoned.

Basic facts which are necessary for disposal of these matters are that both the petitioners were tried for the offence punishable under Section 302/120-B of the Indian Penal Code ('IPC' for short) and Sections 25/27 of the Arms Act, in a case arising out of FIR No. 30 dated 22.2.2005, registered at Police Station Division No.6, Ludhiana. However, both the petitioners came to be acquitted vide judgment dated 3.2.2014 (Annexure P-1) passed by the learned Additional Sessions Judge, Ludhiana

Complainant-respondent did not file any appeal against the judgment of acquittal and the abovesaid judgment of acquittal has become final in favour of the petitioners. Thereafter, complaint

(Annexure P-2) was filed by the respondent. Petitioners moved an application invoking the provisions of Section 300 Cr.P.C. and also the provisions of Article 20 of the Constitution, for dropping criminal proceedings against them, arising out of the complaint. However, learned trial court dismissed the application of the petitioners vide impugned order dated 10.10.2014. Hence these two criminal revision petitions at the hands of the accused.

Learned counsel for the petitioners in both the cases submit that learned Additional Sessions Judge has failed to appreciate true facts of the case, as well as scope of the relevant provisions of law contained in Section 300 Cr.P.C., besides Article 20 of the Constitution of India, while passing the impugned order. Petitioners cannot be forced to face re-trial for the same offence. They further submit that although the abovesaid FIR was registered under Section 302 IPC, yet during the course of trial, the learned trial court did not find even a prima facie case against the petitioners, for framing charge against them for the offence punishable under Section 302 IPC. However, finally they were charge sheeted for the offence under Sections 304/34 IPC but were acquitted even qua the said charge, vide judgment of acquittal dated 3.2.2014 (Annexure P-1). They concluded by submitting that neither the complainant-respondent was entitled to file the complaint against the petitioners, for the same offence for which they have already faced trial and acquitted, nor the petitioners could have been forced to face re-trial for the same offence because it would clearly amount to double

jeopardy. They pray for setting aside the impugned order, by allowing both these petitions.

On the other hand, learned counsel for the respondent-complainant submits that although the incident was same, yet learned trial court was well justified in passing the order dismissing the application of the petitioners because in view of the facts and circumstances of the case, re-trial would not amount to double jeopardy. He further submits that petitioners are liable to face a fresh trial for the same offence because some material aspects of the matter were not appreciated by the investigating agency in the correct perspective, because of which the petitioners were acquitted. Due to defective investigation, complainant was constrained to file present complaint (Annexure -2). He prays for dismissal of both these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation, both these cases have been found to be fit cases warranting interference at the hands of this Court, for the following more than one reasons.

Before appreciating rival contentions raised on behalf of both the parties, it would be appropriate to refer to the provisions of law contained in Article 20 of the Constitution of India as well as Section 300 Cr.P.C. and the same read as under:-

Article 20 of the Constitution of India

Protection in respect of conviction for offences-(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

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

(3) No person accused of any offence shall be compelled to be a witness against himself.

Section 300 of The Code Of Criminal Procedure, 1973

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

A bare reading of the abovesaid provisions of law would make it clear that no accused can be tried twice over for the same offence. It is the constitutional protection as clearly envisaged under

Article 20 (2) of the Constitution of India that no person shall be prosecuted and punished for the same offence more than once.

Similarly, provisions of Section 300 Cr.P.C., since based on the abovesaid constitutional philosophy, are mandatory in nature and have to be complied with meticulously. The fundamental right of any accused, as provided to him under the relevant provisions of law, cannot be ignored either by the prosecuting agency or by the complainant, as in the present case, or by the court. However, since the learned trial court has fallen in serious error of law, while not appreciating the abovesaid fundamental right of the petitioner, at the time of passing of the impugned order, the same has resulted in serious miscarriage of justice which cannot be sustained.

A bare reading of the impugned order would show that learned trial court has completely misread the judgment of the Hon'ble Supreme Court in Monica Bedi Vs. State of Andhra Pradesh, 2011 (1) SCC 284. In para 17 of the judgment in Monica Bedi's case (supra), the Hon'ble Supreme Court was faced with a situation where the accused was facing two distinct offences made out against her out of different incidents, because of which she was not found entitled for the protection under Article 20 (2) of the Constitution of India and rightly so, as both the offence were completely separate and independent of each other. However, in the present cases, it is not even argued case on behalf of the respondent that either the incident was different or the offence was different.

On the other hand, it is the uncontroverted fact situation in

both these cases that not only the allegations were same, but it was the same incident as well as offences were exactly the same for which the petitioners have been tried and acquitted. Having said that, this Court feels no hesitation to conclude that the judgment in Monica Bedi's case (supra) would not be applicable in these cases, being clearly distinguishable on facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Further, sometimes difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Under somewhat similar fact situation, an identical issue fell for consideration before the Constitution Bench of the Hon'ble Supreme Court in **Maqbool Hussain Vs. State of Bombay, 1953 AIR (SC) 325.** The law laid down by the Hon'ble Supreme Court in **Maqbool Hussain's case** (supra) has been consistently followed by the different High Courts of the country including this Court. Again, the Hon'ble Supreme Court, in its recent judgment in the case of **Union of India and another Vs. Purushottam, 2015 (2) SCC 779,** had the occasion to deal with an identical situation.

The relevant observations made by the Hon'ble Supreme Court in para 10, 12 and 13 in Purushottam's (supra), which can be gainfully followed in the present case, read as under:-

“It would be relevant to mention that modern

jurisprudence is presently partial to the perusal of Parliamentary Debates in the context of interpreting statutory provisions, although earlier this exercise was looked upon askance. Suffice it to mention the analysis of the Constitution Bench in **R.S. Nayak vs. A.R. Antulay (1984) 2 SCC 183** and in **Haldiram Bhujiawala vs. Anand Kumar Deepak Kumar (2000) 3 SCC 250**; and particularly **Samatha vs. State of Andhra Pradesh (1997) 8 SCC 191**, where Parliamentary Debates were studied by this Court. It appears to be beyond debate that the framers of our Constitution were fully alive to the differing and disparate concepts of *autrefois* acquit and *autrefois* convict and consciously chose to circumscribe the doctrine of double jeopardy only to prosecution culminating in a conviction. This facet of the law has already been carefully considered by the Constitution Bench in **Maqbool Hussain vs. State of Bombay 1953 SCR 730**, and we cannot do better than extract the relevant portions therefrom:

7. The fundamental right which is guaranteed in Article 20(2) enunciates the principle of “*autrefois* convict” or “double jeopardy”. The roots of that principle are to be found in the well established rule of the common law of England “that where a person has been convicted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence”. (Per Charles, J. in **Reg v. Miles**). To the same effect is the ancient maxim “*Nimo Bis Debet Puniri pro Uno Delicto*”, that is to say that no one ought to be twice punished for one offence or as it is sometimes written “*Pro Eadem Causa*”, that is, for

the same cause.

11. These were the materials which formed the background of the guarantee of fundamental right given in Article 20(2). It incorporated within its scope the plea of “autrefois convict” as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

12. The words “before a court of law or judicial tribunal” are not to be found in Article 20(2). But if regard be had to the whole background indicated above it is clear that in order that the protection of Article 20(2) be invoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of Article 20 and the words used therein:— “convicted”, “commission of the act charged as an offence”, “be subjected to a penalty”, “commission of the offence”, “prosecuted, and punished, accused of any offence, would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would

mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

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12. The US Supreme Court has extensively excogitated over the conundrum as to what constitutes a successive “punishment” for the purposes of attracting Constitutional protection against Double Jeopardy, under the 5th Amendment. The Court, in **John Hudson v United States, 522 U.S. 93 (1997)**, affirmed the distinction between civil punishment and proceedings and criminal punishment and prosecution, and held that the Fifth Amendment proscribes two (or more) successive punishments or prosecutions of a criminal nature only, and permits civil punishment or proceedings either preceding or succeeding a criminal prosecution or punishment. In the case before the U.S. Supreme Court, John Hudson was the Chairman of the First National Bank of Tipton and the First National Bank of Hammon, and used his position to regain bank stock he had used as collateral on defaulted loans through a series of bank loans to other parties. Upon investigation the Office of the Comptroller of Currency (OCC) found that the loans were made in violation of several banking statues and regulations. The OCC fined and debarred Hudson for the violations. Later, he faced criminal indictment in the Federal District Court for violations tied to those same events. Hudson objected, arguing that the indictment violated the Double Jeopardy clause of the 5th Amendment. Overruling **United States v. Halper, 490 U.S. 436**

(1989), wherein the Court had ruled as unconstitutional successive proceedings taking place in similar circumstances to Hudson case, the Court in Hudson reaffirmed the distinction established between the “civil” and “criminal” nature of the particular successive punishment, in ***United States v. Ward*, 448 U.S. 242 (1980)**. The U.S. Supreme Court thus held in Hudson’s case that the Double Jeopardy clause did not preclude his subsequent criminal prosecution, because the OCC administrative proceedings were civil, not criminal. *Inter alia*, the civil nature of the punishment was ascertained with reference to the money penalties statutes’ express designation of their sanctions as “civil”. This reference indubitably eases the resolution of the Double Jeopardy question in the present Appeal. As has been detailed earlier, Article 20(2) does not within it imbibe the principle of *autrefois acquit*. The Fifth Amendment safeguards, inasmuch as it postulates both *autrefois acquit* and *autrefois convict*, could have been interpreted to prohibit civil punishment even in the wake of an acquittal in prosecution, but was not found by the U.S. Supreme Court to do so. *A fortiori* Article 20(2), which contemplates “prosecuted and punished” thus evincing the conscious exclusion of *autrefois acquit*, palpably postulates that the prescribed successive punishment must be of a criminal character. It irresistibly follows that departmental or disciplinary proceedings, even if punitive in amplitude, would not be outlawed by Article 20(2).

13 In **R. P. Kapur vs. Union of India AIR 1964 SC 787**

the question before the Constitution Bench was that

the Petitioner therein had been suspended owing to the pendency of criminal proceedings against him which was challenged on the anvil of Article 314 of the Constitution. Thus, this decision is not of much relevance for the resolution of the legal nodus before us, save for the observations that “if criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant is convicted, even in case of acquittal proceedings may follow where the acquittal is other than honourable.” However, on this aspect of the law we need go no further than the recent decision in **Deputy General of Police vs. S. Samuthiram (2013) 1 SCC 598**, since it contains a comprehensive discourse on all the prominent precedents. This Court has concluded, and we respectfully think correctly, that acquittal of an employee by a Criminal Court would not automatically and conclusively impact Departmental proceedings. Firstly, this is because of the disparate degrees of proof in the two, viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries. Secondly, criminal prosecution is not within the control of the concerned department and acquittal could be the consequence of shoddy investigation or slovenly assimilation of

evidence, or lackadaisical if not collusive conduct of the Trial etc. Thirdly, an acquittal in a criminal prosecution may preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the Criminal Court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt.”

Following are the other judgments on the subject:-

1. Kola Veera Raghav Rao Vs. Gorantla Venkateshwara Rao and another, 2011 AIR (SC) 641
2. Rakesh Kumar Vs. State of Haryana, 2011 (3) RCR (criminal) 629 (P&H)
3. Prince Kumar Vs. State of Punjab and another, 2013 (2) RCR (criminal) 874 (P&H)
4. Jaimol Jisam Vs. State of Kerala, 2015 (1) Crimes (SN) 463 (Kerala High Court)

It is a matter of record that in the present case, incident was the same. It is also not in dispute that neither the complainant-respondent, nor the State challenged the judgment of acquittal. The complainant-respondent also did not challenge the alleged defective investigation for the reasons best known to him. Under this undisputed fact situation, it was too late in the day for the complainant to file the present complaint seeking re-trial of the

petitioners, on the basis of some alleged new facts, but constituting the same offence. This Court is afraid, it is not permissible in law for the complainant to force the petitioners to face re-trial for the same offence, for which they have already faced the criminal trial and were acquitted by the learned court of competent jurisdiction.

It is so said, because such a re-trial would certainly amount to double jeopardy and would also violate the fundamental right of the petitioners under Article 20 (2) of the Constitution of India. Under these circumstances, it can be safely concluded that since learned Additional Sessions Judge has failed to appreciate the true object of Article 20 (2) of the Constitution of India, as well as that of Section 300 Cr.P.C. in the correct perspective, the impugned order cannot be sustained.

During the course of hearing, learned counsel for the respondent-complainant could not substantiate any of his arguments to justify the re-trial against the petitioners, for the same offence for which they have already faced the trial and were acquitted vide judgment (Annexure P-1) and rightly so, it being a matter of record. It is also not in dispute that the abovesaid FIR No. 30 dated 22.2.2005 was registered under Section 302 IPC but the learned trial court did not find even a prima facie case against the petitioners for the purpose of framing charge against them for the offence under Section 302 IPC.

Finally, the charges under Sections 304/34 IPC were framed but the petitioners were acquitted even qua the said charges,

by way of judgment of acquittal (Annexure P-1). In this view of the matter, it is unhesitatingly held that since the learned Additional Sessions Judge has completely misread the judgment of the Hon'ble Supreme Court in Monica Bedi's case (supra) and has failed to appreciate the abovesaid factual as well as legal aspects of the matter in the correct perspective, while passing the impugned order, same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this Court is of the considered view that both these criminal revision petitions deserve to be accepted. Accordingly, impugned order dated 10.10.2014 passed by the learned Additional Sessions Judge is set aside.

Resultantly, with the abovesaid observations made, both the petitions stand allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

16.11.2015
Ak Sharma