

CRR-605-2015

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

**CRR-605-2015 (O & M)
Date of Decision: 27.07.2015**

Sharanjeet Kaur

... Petitioner(s)

Versus

Chanan Kaur

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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 ?

Present: Mr. Sanjay Gupta, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

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Having heard learned counsel for the petitioner and in view of grounds mentioned in application, delay of 41 days in filing the revision is condoned.

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Instant revision has been filed challenging the judgment dated 17.09.2014 passed by the Additional Chief Judicial Magistrate, S.B.S.Nagar whereby respondent has been discharged in a complaint filed by the petitioner under Sections 406/498-A read with Section 34 of the Indian Penal Code (in short, 'IPC').

Brief facts of the case are to the effect that initially, the

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petitioner filed criminal complaint under Sections 406/498-A read with Section 34 IPC against respondent and others. Thereafter, FIR No.13 dated 23.09.2008, under Sections 406 and 498-A of IPC was got registered by the petitioner against respondent-Charan Kaur and Kuldeep Singh. In complaint case, respondent-Charan Kaur and Kuldeep Singh were ordered to be summoned vide order dated 21.09.2013. Vide judgment dated 15.04.2013, the respondent has been acquitted in FIR case due to lack of material evidence. During the pendency of proceedings in complaint case, the respondent moved application for discharge. The trial Court after taking into consideration the provisions of Section 300 of the Code of Criminal Procedure (in short, 'the Code') came to the conclusion that judgment dated 15.04.2013 has already been passed for the same very offences and the respondent has been acquitted and resultantly, vide impugned order dated 17.09.2014, the respondent has been discharged in the complaint case. Hence, this revision.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner contends that in FIR case, the prosecution had not examined even material witnesses, therefore, the respondent was acquitted vide judgment dated 15.04.2013. An appeal has been filed against the judgment dated 15.04.2013 in the lower Appellate Court which is still pending. The pendency of appeal is continuation of proceedings, therefore, provisions of Section 300 of the Code are not attracted. He further contends that further proceedings

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before the trial Court in complaint case have been stayed by a Coordinate Bench of this Court.

I have considered the rival contentions of learned counsel for the petitioner.

It would be apposite to reproduce relevant provisions.

Section 300 of the Code reads as under:

“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

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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. Illustrations

(a) 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.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub- section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.”

Article 20(2) of the Constitution of India reads as under:

“20. Protection in respect of conviction for offences

(1) xxxx

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

(3) xxx

Admittedly, the respondent has been involved for the commission of offences punishable under Sections 406 and 498-A of IPC in two cases i.e. one complaint filed by the petitioner in which respondent has been discharged vide impugned order dated 17.09.2014 and another case got registered by the petitioner in the shape of FIR in

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which respondent has been acquitted vide judgment dated 15.04.2014. There is no dispute regarding the contention of learned counsel for the petitioner that appeal is continuation of the proceedings, but the same is not applicable to the facts and circumstances of the present case. It is settled proposition of law that once a person has already faced trial for some offences, he cannot be prosecuted twice on the same set of allegations.

Section 300 of the Code clearly postulates that person once convicted or acquitted, is not to be tried again for the same.

Besides this, Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. In view of Article 20(2) of the Constitution of India, the petitioner should have moved application for consolidation of complaint case with FIR case. The acquittal of the respondent by the trial Court is subject matter of appeal, but the respondent cannot be prosecuted twice for the same set of allegations in view of Section 300 of the Code and Article 20(2) of the Constitution of India. The stay in complaint cannot effect the statutory provisions of law.

In view of above discussion, I do not find any illegality or perversity in the impugned order.

Dismissed.

27.07.2015
parveen kumar

(Paramjeet Singh)
Judge