

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.1412 OF 2002**

Ashok Hari Khedkar ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

with

**CRIMINAL WRIT PETITION NO.1452 OF 2002**

Gopal Rajlingam ... Petitioner

Vs.

The State of Maharashtra ... Respondent

Mr.R.N. Misra for the Petitioner in WP/1412/2002

Mr.Rajendra Shirodkar with Mr.Archit Sakhalkar for Petitioner in  
WP/1452/2002

Mr.V.V. Gangurde, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **DECEMBER 14, 2016**

**ORAL JUDGMENT:**

1. In these writ petitions, the order dated 25.8.1999 passed by the Special Judge, NDPS Court, in Special Case No.125 of 1997. is challenged. The accused Gopal Rajlingam, who is the petitioner in

writ petition No.1452 of 2002, was the accused in NDPS Special Case No.518 of 1998. In Special Case No.125 of 1997, the accused was prosecuted for the offences under section 8(c), 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 which was registered at C.R. No.170 of 1996. It was a case of the prosecution that 10 gms of heroin alongwith 3 audio cassettes were found in his possession. The 10gms heroin and audio cassettes were seized by the police under panchanama dated 29.11.1996 from the house at Colaba of Gopal Rajlingam, the petitioner in Writ Petition No.1452 of 2002. After going through the contents in the audio cassette, the police found that though the petitioner Ashok Khedkar was a police officer at the relevant time, when he was on duty, he had in connivance with the petitioner Gopal Rajlingam and the other co-accused have committed offence under section 59 of the NDPS Act. Thus, both the accused and the co-accused were also prosecuted for the offences punishable under sections 59 and 27(a) of the NDPS Act read with sections 201, 204, 218 and 34 r/w section 120B of the Indian Penal Code.

2. The trial of the NDPS Case No.120 of 1997 wherein Gopal Rajlingam was the only accused commenced and concluded in

acquittal of the petitioner by judgment and order dated 25.8.1999 by Special Judge, NDPS Court. Thereafter, the trial of the NDPS Special Case No.518 of 1998 commenced on 18.9.2001 and PW1 was examined. Thereafter, the prosecution wanted to tender and rely on panchanama dated 29.11.1996 in respect of seizure of the articles i.e., three audio cassettes. Therefore, on the point of issue estoppel, the defence filed application (exhibit 75) objecting to admit the seizure panchanama dated 29.11.1996. The learned Judge by order dated 16.8.2002, which is the subject matter of these writ petitions, dismissed the said applications, hence, these writ petitions.

3. Both the learned Counsel for the petitioners submitted that the seizure panchanama dated 29.11.1996 was disbelieved by the learned Special Judge in NDPS Case No.125 of 1997 and the petitioner accused was acquitted. The said judgment of acquittal was not challenged by the State in appeal. Hence, the said judgment and the issues on the facts decided by the said Court attained finality; so is the case of seizure panchanama of the cassettes. The learned Counsel has relied on section 300 of the Code of Criminal Procedure and mainly on the ratio laid down in the judgments of the Supreme Court in **Pritam Singh & anr. vs. The**

**State of Punjab<sup>1</sup>; Manipur Administration, Manipur vs. Thokchom Bira Singh<sup>2</sup> and in the case of Ashwani Kuma alias Ashu & anr. vs. State of Punjab<sup>3</sup>.**

4. The learned Counsel for the State has submitted to the orders of this Court as it involved a legal issue.

5. Perused the impugned order and the judgments relied on by the learned Counsel for the Petitioner. The short issue involved in these petitions is whether due to finding given by the competent Court in a previous trial in respect of a document i.e., panchanama, admission of the said documentary evidence in later trial is precluded by virtue of the principal of issue estoppel under section 115 and section 40 of the Indian Evidence Act. It is useful to reproduce sections 40 and 115 which are as under:

“40. Previous judgments relevant to bar a second suit or trial.— The existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

115. Estoppel. —When one person has, by his declaration, act or omission, intentionally caused or permitted another person

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1 1956 Cri.L.J. 805  
2 1965(1) Cri.L.J. 120  
3 (2015) 6 SCC 308

to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

6. By seizure panchanama dated 29.11.1996, the police have seized 10gms heroin and three audio cassettes. In Special Case No.125 of 1997, recovery of heroin was the main issue. In Special Case No.125 of 1997, there was only one accused before the court. The petitioner Ashok Khedkar was not accused in Special Case No.125 of 1997. The seizure panchanama is a common document of recovery of incriminating articles. It is an admitted fact by the prosecution and by defence that the said panchanama was disbelieved by the Special Judge, NDPS Court, while deciding the Special Case No.125 of 1997. It is not disputed that the said judgment was not challenged in appeal and has attained finality. Under such circumstances, if the prosecution wants to use the said judgment or a part of that judgment in subsequent trial, then, it is barred under section 115 of the Evidence Act. Thus, the finding given in the former judgment results in estoppel or *res judicata* against the prosecution in later trial. It is made clear that *res judicata* or estoppel is *qua* the said seizure panchanama and it does not bar the later trial. The prosecution is precluded from receiving the said document in

evidence. Thus, such evidence is to be stopped at the threshold so that the finding of the former Court is not disturbed. In support of this, I rely on the judgment of the Supreme Court in the case of **Pritam Singh (supra)**. The Supreme Court in the said case has reproduced the observations of Lord MacDermott in the case of **Sambasivam vs. Public Prosecutor, Federal of Malaya, 1950 A.C. 458(A)** which is thus:

“The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated 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. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial”.

7. In the case of **Manipur Administration, Manipur (supra)**, the principle underlying the decision in **Pritam Singh's case (supra)** came up for consideration before the Supreme Court and so also on several occasions but it was never dissented from and confirmed.

8. In the case of **Ashwani Kumar (supra)**, the Supreme Court has relied on the judgment in the case of **Sangeetaben**

**Mahendrabhai Patel vs. State of Gujarat**<sup>4</sup>. The finding given by the Supreme Court in **Sangeetaben Mahendrabhai Patel (supra)** is reproduced in the judgment of **Ashwani Kumar (supra)**, which is exactly on the point thus:

"20. ...

23. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of the 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 acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, the rule relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue..."

9. In view of the above, Rule is made absolute in terms of prayer clause (a) and (b) in Writ Petition No.1412 of 2002 and in terms of prayer clause (b) in Writ Petition No.1452 of 2002.

10. Both the Writ Petitions are disposed of accordingly.

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4 (2012) 7 SCC 621

11. As the matter is old, the learned Special Judge, NDPS Court, is hereby directed to proceed with the matter after giving notice to the concerned parties and expedite the matter, preferably on or before 30<sup>th</sup> May, 2017.

**(MRS.MRIDULA BHATKAR, J.)**