

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6455 of 2016

Arising Out of PS. Case No. -166 Year- 2015 Thana -MANJHI District- SARAN

SATYA PRAKASH TIWARI SON OF NAGENDRA TIWARI RESIDENT OF
VILLAGE-SADHPUR BALI, POLICE STATION-KOPA, DISTRICT SARAN
AT CHAPRA.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

Appearance:

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.

For the Opposite Party/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 30-10-2018

Petitioner has asked for to quash order dated 09.12.2015 whereby and whereunder, the learned lower court has summoned the petitioner to face trial for an offence punishable under Section 25(1-b) a, 27 of the Arms Act relating to Manjhi P.S. Case No.166/2015.

2. Briefly, the case of the prosecution which is based upon the self-statement of ASI, Sri Ram Ram dated 06.08.2015 is that on the same day at about 03:00 PM he received telephonic information with regard to shooting of his wife by the petitioner Satya Prakash Tiwari son-in-law of Chandra Prakash Mishra at village Bhalua Khurd. Accordingly, he reached at the house of Chandra Prakash Mishra lying at village-Bhalua Khurdh where had seen presence of large number of persons as well as having one person locked in a room. On query, the family members disclosed that he is Satya Prakash Tiwary, son of Nagendra Tiwary of village-Sadhpur Balli, P.S.-Kopa, District-Saran who, at about 02:00 PM came to his Sasural where, his pregnant wife was staying. Just after coming, he began to abuse her whereupon, she



protested. Satya Prakash Tiwary took out pistol and began to fire causing severe injury to his wife Silpi Devi. Bhabhi of Silpi Devi namely, Renu Devi came in rescue who was also shot at. Then, thereafter, the other family members anyhow caught hold him and snatched away firearm and confined in a room. Police was informed. One of the family members namely Hridya Kumar Mishra has produced countrymade pistol, three live cartridges, one empty cartridges which has been seized in presence of Ram Kumar Yadav and Ranjeet Yadav and for that production cum seizure list has been prepared. Then thereafter, Satya Prakash was taken out from the room and was asked for to produce relevant document regarding possession of the same which he declined. On the written report of the informant ASI Sri Ram Ram, Manjhi P.S. Case No.166/2015 has been registered, investigated upon and after concluding the same, charge sheet has been submitted followed with order impugned whereupon petitioner has been summoned to face trial for an offence as indicated hereinabove. It is further evident from different annexures that the wife of the petitioner namely Silpi Devi gave her fardbeyan in an injured condition whereupon Manjhi P.S. Case No.164/2015 has been registered against others including the petitioner. Side by side petitioner filed Complaint Petition No. 2456/2015 which was sent to the local police and on the basis thereof, Manjhi P.S. Case No.241/2015 has been registered against his Sasuralwala.

3. It has been submitted at the end of the petitioner that order impugned is bad, illegal and without any jurisdiction, in the background of the fact that for the same occurrence no two FIR is permissible as second FIR happens to be barred in the eye



of law more particularly, considering the prohibition as prescribed under Section 162 of the Cr.P.C. That being so, the learned lower court should not have summoned the petitioner to face trial for an offence punishable under Section 25(1-b)a, 27 of the Arms Act.

4. It has also been submitted that an accused cannot be repeatedly vexed for the same occurrence. The concept of double jeopardy is not strange rather article 20(2) of the Constitution of India as well as Section 300 of the Cr.P.C. duly recognize the same whereupon, the petitioner could not be prosecuted twice from the same occurrence.

5. The Apex Court considered the issue repeatedly and, the prevailing settled principle of law as laid down by the Apex Court as culled out by catena of decisions on that very score is that, version and counter version is permissible for the same occurrence but, no second FIR for the same occurrence has been permitted recognized and to support the same also referred (2001) 6 SCC 181, 2013 (2) PLJR (SC) 373, 2015 (3) PLJR 633.

6. The learned Additional Public Prosecutor opposed the prayer and submitted that the prayer having been made at the end of the petitioner is not at all found to be acceptable in the eye of law more particularly, in the present scenario as, from perusal of the Manjhi P.S. Case No.166/2015 instituted on the self statement of the ASI and Manjhi P.S. Case No.164/2015 registered on the fardbeyan of an injured Silpi Devi are not at all depicting the same occurrence and so, the prayer of the petitioner goes out of consideration. That being so, this petition happens to be misconceived as well as non-maintainable in the eye of law,



consequent thereupon, be dismissed.

7. Prayer for quashing of the prosecution and prayer for quashing of order of cognizance are two distinct event guided by two different principles of law. So far challenging the order of cognizance is concerned, it has to be seen whether the learned Magistrate had acted against the settled principle of law so prescribed to be exercised during course of taking of cognizance in terms of Section 190 of the Cr.P.C. At this stage, the Magistrate has to see only a prima facie case coming out from the materials having been submitted in accordance with Section 173 of the Cr.P.C., if it happens to be a police case. The learned counsel for the petitioner failed to identify the illegality on that very score.

8. Now coming to the legal question having been raised at the end of the petitioner that for the same occurrence no two FIR could be allowed to survive as settled by the Apex Court as referred herein above. In order to adjudge the same, first of all facts of the case are to be seen. The present one is the case having been registered at the end of the informant, an ASI. Basically it happens to be a case registered with regard to recovery of firearms from the possession of the petitioner which was produced by one of the Naiharwala of the petitioner, which he used during commission of an occurrence causing injury to two persons. Annexure-3 is the fardbeyan of Manjhi P.S. Case No.164/2015 which has been registered on the fardbeyan of Silipi Devi, wife of the petitioner and, after perusal of the same, it is evident that its divulges with regard to harassment and cruelty having inflicted upon her from the year 2013 when she came to her Sasural on marriage in continuation thereof, forced to stay at her Maika,



carrying pregnancy of eight months, where she along with her Bhabhi was shot at. It also discloses that apart from petitioners, other persons have also been arrayed as an accused. So, narration of both the cases are distinct to each other. As stated above Manjhi P.S. Case No.166/2015 happens to be with regard to recovery of arms and ammunition while Manjhi P.S. Case No.164/2015 relates with torture, criminal conspiracy and an attempt upon the life of the Silpi & Renu. It is needless to say that prosecution under special law as well as IPC are permissible. Illegally possession of arm is liable to be prosecuted under special law i.e. under Arms Act while, the act of torture and other allied activity as alleged is permissible under the Indian Penal Code. In the aforesaid background the facts of both the cases are distinct to each other. The informant of both the cases are different persons. Ingredients of both the offences are distinct to each other. Accused are also different save and except the petitioner. In the aforesaid background it could not be said that both the FIR related with the same occurrence.

9. In State of Jharkhand Vs. Lalu Prasad Yadav @

Lalu Prasad reported in **(2017) 8 SCC 1** it has been held:-

“40. In the instant case, offences are not the same offence. There can be different trials for the same offence if tried under two different enactments altogether and comprised of two different offences under different Acts/statutes without violation of the provisions of Article 20(2) or Section 300 Cr.PC. This Court has decided the issue in various cases:

40.1. In *Kharkan & Ors. v. The State of U.P.* (1964) 4 SCR 673 this Court has laid down thus :

“10. ... Even if the two incidents could be viewed as connected so as to form parts of one transaction it is obvious that the offences were distinct and required different charges. The assault on Tikam in fulfilment of the common object of the unlawful assembly was over



when the unlawful assembly proceeded to the house of Tikam to loot it. The new common object to beat Puran was formed at a time when the common object in respect of Tikam had been fully worked out and even if the two incidents could be taken to be connected by unity of time and place (which they were not), the offences were distinct and required separate charges. The learned Sessions judge was right in breaking up the single charge framed by the magistrate and ordering separate trials. In this view the prior acquittal cannot create a bar in respect of the conviction herein reached.”

40.2. In *Maqbool Hussain v. The State of Bombay* (1953) SCR 730 this Court has laid down thus :

“The appellant had smuggled gold into India and was booked u/s 167(8) of the Sea Customs Act, 1878 and subsequently when no one came to claim the gold, he was charged under Section 8 Of FERA. He challenged this as violation of Art. 20(2). The Court analysed the scope of Art. 20(2) and held that the “prosecution” must be before a court of law or judicial tribunal. The plea of double jeopardy was discarded as it was held that the Customs authorities were not a judicial tribunal or court. For double jeopardy, the test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials.”

40.3. In *State of Bombay v. S.L. Apte* (1961) 3 SCR 107 a Constitution Bench of this Court has laid down as to the issue regarding conviction under section 409 IPC and section 105 of Insurance Act. The submission of double jeopardy was repelled with respect to offences under section 11 of IPC and section 105 of Insurance Act. It was held that the offences under both the Acts are distinct due to their ingredients. So as to constitute double jeopardy two offences should be identical.

40.4. In *T.S. Baliah v. T.S. Rengachari* (1969) 3 SCR 65, appellant was sought to be prosecuted under section 177 IPC and section 52 of Income Tax Act, 1922 for furnishing wrong information in his tax returns. On consideration of section 26 of General Clauses Act, this Court held that the provision did not provide a bar on trial and conviction for the same offence under more than one enactment in case ingredients of offences are distinct. It only barred double punishment and not double conviction.

40.5 In *V.K. Agarwal v. Vasantraj B. Bhatia* (1988) 3 SCC 467 the question arose whether acquittal of an accused charged with having committed the



offence punishable under section 111 read with section 135 of Customs Act, 1969 created a legal bar to the accused, subsequently being prosecuted under section 85 of the Gold (Control) Act, 1968. It was held that the ingredients of offence under each of the enactments were quite different. The Court applied the test developed in *Maqbool Hussain (supra)* and held the two offences to be different in scope and contents of their ingredients. The Court also relied upon *S.L. Apte's decision (supra)* and observed that what is necessary is to analyse the ingredients of the two offences and not the allegations made in two complaints. No doubt about it that there can be separate offences but ingredients would remain same under penal provision but that would also not make out a case of violating the provisions of Article 20(2) of the Constitution and Section 300 Cr.P.C.

40.6 In case ingredients of the offences to be tried separately arise out of the same offence, there can be separate trials under two enactments, if the ingredients constituting two offences are different under different Acts, there is no bar for separate trials. In *State of Bihar v. Murad Ali Khan & Ors.* (1988) 4 SCC 655 it was held :

“The expression “any act or omission which constitutes any offence under this Act” in Section 56 of the Wild Life (Protection) Act, 1972 merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also. Further held that, if there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. The same set of facts can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law.”

40.7 In *State of Rajasthan v. Hat Singh & Ors.* (2003) 2 SCC 152 this Court was dealing with vires of Rajasthan Sati (Prevention) Act, 1987. It was urged that sections 5 and 6 of new Sati Act were overlapping. It was held that with regard to Article 20(2) that subsequent trial or a prosecution and punishment are not barred if the ingredients of two offences are distinct. There can be separate offences from same set of facts and hence no double jeopardy.

40.8 In *Monica Bedi v. State of Andhra Pradesh* (2011) 1 SCC 284 this Court considered the meaning of the expression “same offence” employed in Article 20(2) and observed that second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. This Court has observed thus:



“26. What is the meaning of the expression used in Article 20(2) “for the same offence”?

What is prohibited under Article 20(2) is, that the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

x x x x x

29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence.”

40.9 In *Sangeetaben Mahendrabhai Patel v. State of M.P.* (2012) 7 SCC 621, with respect to double jeopardy, this Court has laid down thus :

“33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of *autrefois acquit* or Section 300 Code of Criminal Procedure. or Section 71 Indian Penal Code or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of *autrefois acquit* is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.”

40.10. In *State of Rajasthan v. Bhagwan Das Agrawal* (2013) 16 SCC 574 there were 3 FIRs. registered with respect to illegal supply of explosives. Charge was under the Explosives Act. This Court held that the nature and manner of the offences committed by the accused persons were not identical but were different, and as such FIRs. were not relating to the same offence as different acts happened in different places. As such the provisions contained in section 186 Cr.PC would not apply.

40.11 In *State of NCT of Delhi v. Sanjay etc.* (2014) 9 SCC 772 this Court considered the maxim “*nemo debet bis vexari pro una et eadem causa*” i.e. no man shall be put in jeopardy twice for one and the same offence. In case ingredients are different there can be separate trial for the same offence also. This Court has laid down thus :



“52. It is well known principle that the rule against double jeopardy is based on a maxim nemo debet bis vexari pro una et eadem causa, which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once. However, it is also settled that a subsequent trial or a prosecution and punishment has no bar if the ingredients of the two offences are distinct.”

10. In **Chirag M. Pathak vs Dollyben Kantilal Patel**

reported in **2017(4) PLJR 358 (SC)**, it has been held:

“30) Learned counsel for the respondents (accused) however, vehemently tried to support the impugned judgment and took us through the entire factual allegations of all six FIRs. It was his submission that on perusal of the impugned FIRs, there does exist overlapping of the offences in the FIRs on identical allegations with no change in any of the six FIRs except repetition of the words and hence the High Court was right in quashing the five FIRs.

31) We are afraid to accept this submission of learned counsel for the respondents (accused). Having noticed few significant distinguishing features in six FIRs mentioned above, the submission has no merit.

32) In view of foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the High Court in the impugned judgment. The appeals thus succeed and are allowed. The impugned judgment is set aside.

11. Accordingly, this petition sans merit and is accordingly dismissed

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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