

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 287 of 2017**

Prabha Sahu W/o Yogesh Sahu, Aged About 22 Years R/o Bhawarmara,
Police Station- Dondilohara, District- Balod Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh through the Station House, Police Station- Suregaon, District- Balod Chhattisgarh.
2. Yogesh Sahu, S/o Puran Lal Sahu, Aged About 26 Years R/o Village- Ranitarai, Police Station- Suregaon, District- Balod Chhattisgarh.

---- Respondents

For Appellant	:	Shri B.P. Singh, Advocate
For Respondent 1 /State	:	Shri Prasun Bhaduri, Govt. Advocate
For Respondent 2	:	Shri Vipin Tiwari, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma

ORDER ON BOARD BY PRASHANT KUMAR MISHRA, J**12/03/2018**

1. The present Appeal arises out of the judgment of acquittal dated 28.5.2016 passed by the Sessions Judge, Balod in S.T.No.72/2015. Against the said order, State had preferred Leave to Appeal bearing Cr.M.P. No.1596/2017 which has been dismissed by this Court on merits vide order dated 8.2.2018.

2. The issue to be considered by us is whether the present Acquittal Appeal preferred on behalf of the complainant would be maintainable when the first Cr.M.P. preferred by the State has already been dismissed

on merits.

3. The answer to the question, as rightly argued by Shri Prasun Bhaduri learned counsel for the State, would be found in the Constitution Bench judgment in the matter of **Maqbool Hussain Vs. State of Bombay**, AIR 1953 SC 325, wherein referring to Article 20(2) of the Constitution of India, Section 403(1) of Cr.P.C.(old), Section 300 Cr.P.C., 1973 and Section 26 of the General Clauses Act 1897 for considering the question as to when a person would be said to suffer from double jeopardy, after quoting Halsbury's Laws of England- Hailsham Edition – Vol.9, Pages 152 & 153, Para 212, the following is held :

“(8). This is the principle on which the party pursued has available to him the plea of “autrefois convict” or “autrefois acquit”.

“The plea of 'autrefois convict' or “autrefois acquit” avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned... The question for the jury on the issue is whether the defendant has previously been in jeopardy in respect of the charge on which he is arraigned, for the rule of law is that a person must not be put in peril twice for the same offence. 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, not that the facts relied on by the Crown are the same in the two trials. A plea of “autrefois acquit” is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter”.

(9) This principle found recognition in section 26 of the General Clauses Act, 1897-

“Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence”.

4. The above legal principle has been reiterated by the Supreme Court in subsequent decision in the matter of **Manipur Administration, Manipur V. Thokchom Bira Singh**, (AIR 1965 SC 87) (Constitution Bench) in the following manner:

(6) Before referring to the decision of this Court in *Pritam Singh Vs. The State of Punjab* (S) AIR 1956 SC 415 it would be convenient to refer to and put aside one point for clearing the ground. Section 403, Criminal Procedure Code embodies in statutory form the accepted English rule of *autrefois acquit*. This section runs:

"403 (1) A person who has been once 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 offence for which a different charge from the one made against him might have been made under S. 236, or for which he might have been convicted under S. 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under S.235, sub-section (1).

(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) Nothing in this section shall affect the provisions of S.26 of the General Clauses Act, 1897, or S.188 of this Code.

Explanation-The dismissal of a complaint, the stopping of proceedings under S.249, the discharge of the

accused or any entry made upon a charge under S.273, is not an acquittal for the purposes of this section." Section 26 of the General Clauses Act which is referred to in S. 403 enacts:

"26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

We might also, in this connection, refer to Art.20(2) of the Constitution since it makes provision for a bar against a second prosecution in an analogous case. That provision reads:

"20(2). No person shall be prosecuted and punished for the same offence more than once."

As has been pointed out by this Court in *State of Bombay v. S.L. Apte*, 1961-3 SCR 107: (AIR 1961 SC 578) both in the case of Art. 20(2) of the Constitution as well as S. 26 of the General Clauses Act to operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence" i.e., an offence whose ingredients are the same. It has been pointed out in the same decision that the Vth Amendment of the American Constitution which provides that no person shall be subject, for the same offence, to be twice put in jeopardy of life or limb, proceeds on the same principle."

5. In the above matter of **Manipur Administration** (Supra), the Supreme Court has quoted the decision of Privy Council in **Sambasivam Vs. Public Prosecutor, Federation of Malaya**, 1950 AC 458, wherein it was observed 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".

6. The law has again been reiterated in the recent judgment in the

matter of **Union of India and Anr. Vs. Purushottam**, (2015) 3 SCC 779.

7. In the case at hand also, this Court has already considered the evidence adduced by the prosecution to affirm the judgment of acquittal, therefore, the present appeal on the same set of evidence cannot be considered to upset the finding of acquittal to convert it into a judgment of conviction because doing so would be hit by the principles of *autrefois acquit* or double jeopardy.

8. For the foregoing, the present Acquittal Appeal is dismissed as not maintainable.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Ram Prasanna Sharma)
Judge

HEADLINES

Acquittal appeal preferred by the State already dismissed on merits. Another acquittal appeal by the aggrieved party/victim is not maintainable on the principle of “*autrefois acquit*”.