

27.06.2022

CRR 1328 of 2022

**Chandi Puliya
-Vs-
The State of West Bengal**

For the petitioner: Mr. Arindam Jana, Adv.,
 Mr. Soumajit Chatterjee, Adv.,
 Mr. S. Chakraborty, Adv.,
 Mr. Akashdeep Mukherjee, Adv.

An order dated 4th March, 2022 passed by the learned Special Court, West Bengal (MP & MLA case), Bidhannagar at North 24 Parganas in Special Case No.120 of 2018 arising out of GR Case No.1364 of 2011 corresponding to Anandapur Police Station Case No. 36 of 2011 dated 6th June, 2011 under Sections 147/148/149/448/326/307 /302/506/201/120B of the IPC read with Sections 25/27 of the Arms Act is under challenge in the instant criminal revision.

The impugned order dated 4th March, 2022 passed by the Trial Judge on an application filed by the petitioner herein under Section 300(1) of the Cr.P.C along with an application under Section 227 of the Code of Criminal Procedure.

Anandapur Police Station Case No.36 of 2011 was registered on 6th June, 2011 on the basis of a complaint lodged by one Shyamal Acharya on the allegation that his

father Ajay Acharya and some other persons being the followers of a particular political party were ousted from their village by the rival political party. There was a meeting to maintain peace and law and order. In the locality in the year 2002 and pursuant to the decision of the meeting the father of the defacto complainant and others return to their house at village Raniorh on 22nd September, 2002. Then the accused person belonging to the rival political party attacked them with deadly weapons including fire arms and committed murder of seven persons. The body of the father of the complainant was buried on the ground at village Piashala. The family members of the said Ajay Acharya did not get any trace of him. On 26th September, 2002 a complaint was registered at Kespur Police Station. On the basis of which Kespur Police Station Case No.61 of 2002 was registered against the accused persons including the petitioner under Sections 148/149/448/307/323/364/506 of the IPC and Section 25/27 of the Arms Act. In the said case Police submitted charge-sheet on 15th February, 2005 under Sections 148/149/448/364/506 of the IPC against the accused persons including the petitioner. After trial the petitioner and six other accused persons were acquitted under Section 235 (1) of the Code of Criminal Procedure by the learned Additional Sessions Judge, 6th Court, Paschim Medinipur by a judgment dated 21st May, 2010.

Subsequently on 4th June, 2011 the defacto complainant came to know that some human skeletons were found after digging earth near Malikdanga under Police Station Garbeta. The defacato complainant rushed to the spot and indentified one of the said skeletons as that of his father seeing his wearing apparels. He lodged a complaint against the accused persons under Sections 147/148/149/341/367/449/326/307/302/201/109/114/115/117/120B of the IPC. After investigation Police submitted charge-sheet in Anandapur Police Station Case No.36 of 2011 against 46 accused persons including the present petitioner.

It is contended by the petitioner that he has already been tried and acquitted in respect of the offence which was allegedly committed on 26th September, 2002. After trial the trial court passed an order of acquittal. There was no appeal against the said order of acquittal passed in favour of the petitioner and the order reached its finality. In Anandapur Police Station Case No.36 of 2011 petitioner has been charged under the same offence, he cannot be tried for the same offence under Section 300 of the Cr.P.C. So he filed a petition under Section 300(1) of the Cr.P.C and Section 227 of the Cr.P.C before the Trial Court. The Trial Court rejected the said application.

Being aggrieved the petitioner has lodged the instant complaint.

I have heard Mr. Jana learned Advocate for the petitioner perused the impugned order and other materials on record. Section 300 of the Code of Criminal Procedure is based on the principle that no man's life or liberty shall be put twice in jeopardy for the same offence on the same set of facts. The principles of *autrefois acquit* and *autrefois convict* are crystallized in Section 300 of the Code of Criminal Procedure. The provision applies when a person is tried again on the same offence or on same facts for any other offence under conditions attracting Section 221 of the Code. The protection afforded by these words extends two different offences only when they are based on same facts and fall within Section 221. Section 221 of the Code deals with the provision of framing of charge where it is doubtful of the offence has been committed. It is thus:

“221. Where it is doubtful what offence has been committed- (1) *If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.*

(2) If, in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub- section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.”

Coming to the instant case it appears that the accused was acquitted in respect of offence under Sections

148/149/307/323/364/506 of the IPC in previously instituted suit. Thus the allegations against the accused he along with other accused persons formed unlawful assembly with deadly weapons, committed criminal trespass caused hurt and admitted to commit murder and also abducted some persons including father of the defacto complainant for the purpose of murder. In the subsequent case being Anandapur Police Station Case No.36 of 2011, charge-sheet has been submitted against the accused and other under Section 302 of the IPC on the allegation that he along with other accused persons committed murder of Ajay Acharya. Charge of murder and charge of abduction for the purpose of murder are completely and distinctly different penal offences. The accused cannot claim to be discharged from Special Case No.120 of 2018 on the ground that he was acquitted in Keshpur Police Station Case No.61 of 200.

In view of the above discussion, I do not find any merit in the instant criminal revision and accordingly this revision is summarily dismissed.

There shall however no order as to costs.

(Bibek Chaudhuri, J.)