

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.952 of 2021

Arising Out of PS. Case No.-93 Year-2016 Thana- KHIJARSARAI District- Gaya

LALLAN KISHOR AROHI S/o SRI RAM CHANDRA SINGH R/o
VILLAGE-JANAKPURI (P.S.S) SCHOOL, P.S-MUFASSIL, DISTRICT-
GAYA ... Petitioner

Versus

1. THE STATE OF BIHAR THROUGH DIRECTOR, SECONDARY
EDUCATION DEPTT., GOVT. OF BIHAR
2. THE DISTRICT EDUCATION OFFICER, GAYA
3. THE DISTRICT PROGRAMME OFFICER, SECONDARY EDUCATION,
DISTRICT-GAYA
4. THE I.G. POLICE, GAYA, MAGADH DIVISION, GAYA
5. THE S.S.P, GAYA
6. THE S.D.P.O. BATHANI KHIZAR SARAI, GAYA ... Respondents

Appearance :

For the Petitioner : Mr. Shailesh Kumar Singh, Adv.
For the Respondents : Mr. Saroj Kumar Sharma, AC to AAG III

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 24-04-2023

Heard learned counsel for the petitioner and the
State.

2. The present writ petition has been filed for quashing
of the first information report of Khizarsarai P.S. Case No. 93 of
2016 registered under Sections 467, 468, 471, 420 and 409 of the
Indian Penal Code lodged by respondent no. 2, the District
Education Officer, Gaya.

3. Counsel for the petitioner submits that with the same
cause of action and with same allegation another case, namely,



Khizarsarai P.S. Case No. 95 of 2003 was filed before the Court of the Chief Judicial Magistrate, Gaya, against the petitioner, but, in the said proceeding final form has been submitted as mistake of fact which was accepted by the Chief Judicial Magistrate, Gaya, vide order, dated 06.11.2004. The counsel for the petitioner submits that it is the gross violation of Article 20(2) of the Constitution of India as the principles of double jeopardy is in the favour of the petitioner.

4. Counsel for the State submits that from the record, it transpires that with similar allegation case was filed in which final form has been submitted and with the same allegation the present first information report bearing Khizarsarai P.S. Case No. 93 of 2016 which is under challenge, has been filed.

5. For the just decision of the case it is necessary to discuss the entire case which is as follows :

6. The petitioner was appointed as Assistant Teacher at High School, Maqsoodpur, Gaya, on 04.08.1992 in the pay scale of 1640-2900 vide Memo No. 100 issued by the Department along with other teachers after following the process of law. Appointment letter is at Annexure 1. Counsel further submits that in the year 2003 particularly vide letter no. 734 dated 12.11.2003, the petitioner was terminated from his service and first information report bearing



Khizarsarai P.S. Case No. 95 of 2003 was filed. In the said case police has submitted the final form on 09.08.2004 stating that it is a mistake of facts. The termination letter of the petitioner (letter no. 734, dated 12.11.2003) was challenged before the Hon'ble High Court in C.W.J.C. No. 8721 of 2003, which was allowed in favour of the petitioner on 02.03.2007 on the ground of violation of natural justice. Subsequently, the Department has proceeded afresh in the light of order passed in C.W.J.C. No. 8721 of 2003 and upon hearing, the Department has terminated him on 27.06.2007 vide Memo No. 436. The petitioner has challenged his termination this time on merit in C.W.J.C. No. 13421 of 2009. The said order passed in C.W.J.C. No. 13421 of 2009 was finally decided in favour of the petitioner on 11.10.2012 in which the termination of the petitioner was set aside and the Department was directed to make payment.

7. Being aggrieved and dissatisfied, the State has preferred LPA No. 540 of 2013 against the said order, dated 11.10.2012, passed in C.W.J.C. No. 13421 of 2009. After hearing, the Hon'ble Division Bench of this Court has been pleased to dismissed the LPA No. 540 of 2013 vide order, dated 01.11.2013. Counsel submits that in the order of the LPA there was an observation given by the Division Bench, i.e., "*After some*



argument, in view of the observations contained in the penultimate lines at page 10/11 of the order under Appeal, leave is sought to withdraw the Appeal reserving the right of the Appellants to proceed further in accordance with law.

The Appeal is dismissed as withdrawn.”

8. On the ground that appellant of said LPA was directed to proceed further in accordance with law, the present respondents have filed the present first information report bearing Khizarsarai P.S. Case No. 93 of 2016. In the first information report this is the content that in the light of C.W.J.C. No. 13421 of 2009 and LPA No. 540 of 2013 departmental proceedings took place in which it has been decided to file first information report. Counsel submits that the allegation in the first information report of Khizarsarai P.S. Case No. 95 of 2003 and first information report of Khizarsarai P.S. Case No. 93 of 2016 are basically identical. He submits that earlier first information report Khizarsarai P.S. Case No. 95 of 2003 which resulted into final form and has been duly accepted by the Chief Judicial Magistrate, Gaya, which amounts to acquittal and against which no protest has been filed by the Department and it has been accepted in totality. Filing the new first information report is basically the gross violation of the provisions laid down in the Constitution and violation of doctrine of



double jeopardy. The said decision of the departmental proceedings, dated 25.08.2015, vide memo no. 258 (Law) has been challenged again before this Court in C.W.J.C. No. 15709 of 2016 in which an interim order has been passed by the coordinate Bench on 19.03.2018 in which everything has been discussed relating to legal position of this case.

9. A recent decision on the point of question of double jeopardy has been decided by the Hon'ble Supreme Court in the case of **T.P. Gopalakrishnan Vrs. State of Kerala** reported in **2023(1)PLJR (SC), 427**. In this regard, the finding of the Hon'ble Supreme in paragraphs 20, 21, 22, 23, 24, 25, 29 and 30 are hereinafter extracted :

“20. Part III of the Constitution of India deals with Fundamental Rights. Articles 20 to 22 deal with personal liberty of citizens and others. [Article 20\(2\)](#) expressly provides that no person shall be prosecuted or punished for the same offence, more than once. The protection against double jeopardy is also supplemented by statutory provisions contained in [Section 300](#) of the CrPC, [Section 40](#) of the Indian Evidence Act, 1872, [Section 71](#) of the IPC and [Section 26](#) of the [General Clauses Act](#), 1897. [Article 20\(2\)](#) of the Constitution of India reads as under:

*“20. Protection in respect of conviction for offences.—
(1) xxx xxx xxx (2) No person shall be prosecuted and punished for the same offence more than once.*



(3) xxx xxx xxx ”

21. It would also be useful to discuss on the import of [Section 300](#) of the CrPC. The said provision has been extracted hereinunder for ready reference:

“[Section 300](#) CrPC- 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 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 [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.”

22. [Section 300](#) of the CrPC embodies the general rule which affirms the validity of the pleas of *autrefois acquit* (previously acquitted) and *autrefois convict* (previously convicted). Sub-section (1) of [Section 300](#) lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section.



23. [Section 300](#) of the CrPC is based on the maxim *nemo debet bis vexari, si costest curiae quod sit pro una et eadem causa* which means that a person cannot be tried a second time for an offence which is involved in an offence with which he was previously charged. As per the decision of this Court in *Vijayalakshmi vs. Vasudevan* (1994) 4 SCC 656 in order to bar the trial of any person already tried, it must be shown that:

(i) he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at a trial, on the same facts,

(ii) he has been convicted or acquitted at the trial, and

(iii) such conviction or acquittal is in force.

24. The whole basis for this provision is that the first trial should have been before court of competent jurisdiction. There must have been a trial of the accused, that is to say, that there should have been a hearing and determination or adjudication of the case on merits. Where the accused has not been tried and as such convicted or acquitted, [Section 300\(1\)](#) shall not be applicable.

25. [Section 300](#) of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, vide [Thakur Ram vs. State of Bihar](#) AIR 1966 SC 911.

29. The concept of double jeopardy can also be understood in terms of [Article 21](#) of the Constitution of India which states that no person shall be deprived of his life or personal liberty except according to procedure established by law.



'Life' under [Article 21](#) of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider connotation; it includes the right to live with human dignity. In the celebrated judgment in the case of [Maneka Gandhi vs. Union of India](#) 1978 AIR 597, this Court gave a new dimension to [Article 21](#), wherein it stated that the right to live includes within its ambit the right to live with dignity. Under the umbrella of [Article 21](#), various rights like right to free legal aid, right to speedy trial, right to fair trial, etc. have been included. Similarly, protection against double jeopardy is also included under the scope of [Article 21](#) of the Constitution of India. Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity.

30. Double jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence.



10. Learned counsel for the State fairly submits that after going through the both the first information reports, it transpires that the basic allegation is same and in the earlier case of 2003, final form submitted which duly accepted by the Court of the Chief Judicial Magistrate, Gaya, against which State has not preferred any action and it acquired finality and, therefore, after lapse of about 13 years raising the same issue particularly when the question the of termination of the petitioner has been tested by this Hon’ble Court at least four times and again filing this case against the petitioner to proceed under criminal justice system is basically abuse to the process of the Court and it is due to this reason, this writ petition is hereby allowed and Khizarsarai P.S. Case No. 93 of 2016 registered under Sections 467, 468, 471, 420 and 409 of the Indian Penal Code, including all its proceedings, are quashed.

11. With this directions, this petition is **allowed**.

(Dr. Anshuman, J)

Shamshad/-

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