

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 706 of 2020

Sumitra Maity

Vs

The State of West Bengal and Anr.

For the Petitioner : Mr. Kamalesh Ch. Sahu.

For the State : Mr. Bidyut Kr. Roy,
Ms. Rita Dutta.

Heard on : 07.02.2023

Judgment on : 02.03.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred praying for quashing of the first Information Report, the Charge Sheet and the entire proceedings including all orders therein in connection with Digha Mohana Coastal P.S. Case No.10/19 dated 09.04.2019 being S.C. Case No-148 of 2019 & Charge Sheet No-22/19 dated 24/06/2019 under Section 366A/368/370/370A/372/378/120B/34 of the Indian Penal Code, Section 3/4/5/7/9 of the Immoral Traffic Prevention Act, 1956 and section 4/8/17/21 of the POCSO Act now pending before the Learned Additional Sessions Judge, Special Court at Contai, Purba Medinipur (1st Court).

The petitioner's case is that she was not named in the F.I.R initially but subsequently after completion of Investigation the name of the petitioner has been mentioned in the charge sheet and she has been charged under Section 120B I.P.C. and 21 POCSO Act, 2012 & 3/5/9 of the Immoral Traffic Act.

Mr. Kamalesh Chandra Sahu, learned counsel for the petitioner has submitted that it is the settled principle of law that offence under the Immoral Trafficking Act should be investigated by the Special Police Officer after due sanction by the State Government by way of gazette notification but so far the present case is concerned the method of the investigation done by the police officer culminating into

the filing of the charge sheet/final report are absolutely contrary to the present position of law and thus the police report submitted against the petitioner is liable to be quashed.

It is further stated that there is no specific allegation against the petitioner in the F.I.R. and in fact the filing of the F.I.R by the police authority/opposite party no.2 is a defective one and is not permitted in law and thus the F.I.R. is liable to be quashed.

The place where the offence was allegedly committed was given on lease by one Sri Sachinandan Das Adhikary to the present petitioner and in this context there was an agreement between the parties.

Petitioner states that at the time of alleged commission of offence she was not present there, moreover she was unknown to the other accused persons and in fact she has got no knowledge regarding the alleged offence.

Petitioner further states that the instant criminal proceedings has been initiated against your petitioner in order to harass and to spite her in the eye of the society which is nothing but an abuse of the process of law and the same should be quashed.

That the initiation and/or continuation of the impugned proceedings in the Learned Trial Court has caused severe prejudice to the petitioner and thus liable to be quashed and/or set aside in the interest of justice to prevent the abuse of the process of the Court.

The entire impugned proceedings of the Learned Trial Court is an abuse of the process of law as the instant proceeding is going on out of jurisdiction of the Learned Trial Court and thus the entire proceeding is liable to be quashed.

The cognizance taken by the Learned Trial Court is bad in law and liable to be quashed.

The continuation of the instant proceeding is nothing but an abuse of the process of the Court and it is imperative in the interest of justice, that the instant proceeding should be quashed.

That as the chance of ultimate conviction in the instant case is nil; no useful purpose is likely to be served by allowing the criminal prosecution to be continued by the learned Trial Court and as such the said proceedings should be quashed.

That if there is continuation of proceedings in absence of materials, it constitutes an abuse of the process of the Court. Machinery of the court cannot be utilized for personal benefit. The object of invoking under Section 482 of the Code of Criminal Procedure is to prevent miscarriage of justice.

Supplementary affidavit has been filed by the petitioner along with a copy of the judgment in Sessions Trial case 148 of 2019 arising out of the same police station case, acquitting the other accused persons who faced the trial.

The prosecution case is that one Inspector, Sujoy Kumar Mukherjee, C.I Contai, Purba Medinipur lodged a complaint (Suo-moto) to the effect that on 09.04.2019, he received an information from O/C Digha Mohana Coastal P.S. SI that at a Hotel namely Sathi Guest House at Old Digha, a racket of commercial sexual exploitation was going on in which minor girls were being forced to do such prostitution. On receipt of this information, he consulted with his superiors and obtained permission to hold raid. Then the complainant along with raid team and force of Digha Mohana Coastal Police Station organized raid and rescue operation in the ground floor of the said hotel and found the VG Arbina Khatun in compromising position with arrested accused and they were caught red handed. They confessed about the racket of commercial sexual exploitation going on since long by procuring minor girls and selling them out of India. Accordingly, arrest was affected, minor girls were rescued. On the basis of the aforesaid complaint a specific case under Section 366A/368/370/370A/372/373/120B/34 of the Immoral Traffic Prevention Act, 1956 and Section 4/8/17/21 of the POCSO Act had been started against the arrested persons.

The petitioner was not named in the F.I.R. initially but subsequently after completion of Investigation the name of the petitioner has been mentioned in the charge sheet and she has been charged under Section 120B I.P.C. and 21 POCSO Act, 2012 & 3/5/9 of the Immoral Traffic Act.

The petitioner states that during the pendency of the instant proceeding the petitioner preferred a Special Leave Petition (Criminal) being no. 10391 of 2019 before the Hon'ble Supreme Court of India and the matter was heard out on 29.11.2019 and after hearing the same Their Lordships Hon'ble Mr. Justice Navin Sinha and Hon'ble Mr. Justice Krishna Murari passed an interim order as follows:-

“Issue notice.

In the meantime, no coercive steps will be taken against the petitioner.”

Mr. Bidyut Kumar Roy, learned counsel for the State has placed the case diary.

Lower court records are also before the court.

The following judgments have been relied upon by the learned counsel for the petitioner.

- (1) Anant Mishra @ Amit Mishra @ Surya Prakash Mishra vs. State of U.P. and another, Cr.I.M.C. No. 1325 of 2021, on 29.03.2022.
- (2) Noushad vs State of Kerala and Anr., Cr.I M.C. No. 2964 of 2014, on 02.12.2015.
- (3) Mr. Zakeer Khan vs The State of Karnataka & Ors., Criminal Petition No. 3017 of 2022, on 22.04.2022.
- (4) Central Bureau of Investigation vs Akhilesh Singh, Appeal (Crl.) 727 of 1997, on 08.12.2004.

Heard the learned counsel for the petitioner and the learned counsel for the state. Perused the materials on record. Considered.

Admittedly the place of occurrence (Hotel) had been taken on lease by the petitioner at the time of the alleged occurrence.

The co-accuseds have been acquitted after trial.

The following judgments of the **Supreme Court** are relevant in the present case:-

(a) Umesh vs State of Kerala, Criminal Appeal No. 227 of 2017, on 3 February, 2017.

“5. According to the appellant, since he was not available for trial, trial in his case was separated and the Trial Court proceeded as against all the other accused. In CC No.289/1996, the first accused was convicted and the rest of the accused persons were acquitted and in the CC No.280/1996 all the accused persons have been acquitted. Therefore, according to the learned counsel for the appellant, the continuance of the proceedings before the Magistrate Court, as far as the appellant is concerned, is unnecessary harassment and wastage of time.

6. We find it difficult to appreciate the contention. Even if all contentions taken by the appellant are taken on their face value also, it is for the Magistrate concerned to consider those contentions in an appropriate application filed under Section 239 of the Cr.P.C.”

(b) Yanab Sheikh @ Gagu vs State of West Bengal, Criminal Appeal No. 905 of 2009, on 13 December, 2012.

“22. In the present case, we are concerned with the merit or otherwise of the above reasoning leading

to the acquittal of the accused Najrul. We are primarily concerned with the effect of this acquittal upon the case of the appellant-accused. The Trial Court in its judgment clearly stated that there was direct and circumstantial evidence against the accused implicating him with the commission of the crime. Finding the appellant guilty of the offence, the Trial Court punished him accordingly. Where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused. It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other. In the case of Dalbir Singh v. State of Haryana [(2008) 11 SCC 425], this Court held as under:

“13. Coming to the applicability of the principle of falsus in uno, falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the court has to carefully screen the evidence:

“51. ... It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as

liars. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See *Nisar Ali v. State of U.P.*) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See *Gurcharan Singh v. State of Punjab.*) The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be

disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P.⁴ and Ugar Ahir v. State of Bihar.) An attempt has to be made to in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. and Balaka Singh v. State of Punjab.) As observed by this Court in State of Rajasthan v. Kalki⁸ normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so."

23. *The cumulative effect of the above discussion is that the acquittal of a co-accused per se is not sufficient to result in acquittal of the other accused. The Court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case."*

(c) Rajan Rai vs State of Bihar, Appeal (Crl.) 199 of 2000, on 10 November, 2005.

*".....In that case, after laying down the law, the Court further considered as to whether the High Court was justified in converting the conviction of accused Karan Singh from Section 302/149 to one under Section 302 read with section 34 IPC after recording a finding that the murder was committed by Ram Hans in furtherance of common intention of both himself and accused Karan Singh. This Court was of the view that in spite of the fact that accused Ram Hans was acquitted by the trial court and his acquittal attained finality, it was open to the High Court, as an appellate court, while considering appeal of accused Karan Singh, to consider evidence recorded in the trial of Karan Singh only for a limited purpose to find out as to whether Karan Singh could have shared common intention with accused Ram Hans to commit murder of the deceased, though the same could not have otherwise affected the acquittal of Ram Hans. **In view of the foregoing discussion, we are clearly of the view that the judgment of acquittal rendered in the trial of other four accused persons is wholly irrelevant in the appeal arising out of trial of appellant. Rajan Rai as the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein. Case of the four acquitted accused persons was decided on the basis of evidence led there while case***

of the present appellant has to be decided only on the basis of evidence adduced during the course of his trial.....”

Thus considering the said facts and circumstances, the judgment of acquittal rendered in the trial of the other accused persons is wholly irrelevant in respect of trial of the petitioner, as the said judgment is not admissible under the relevant provisions of the Evidence Act. **Every case has to be decided on the evidence adduced therein. Case of the other acquitted accused persons was decided on the basis of evidence led there while case of the present petitioner has to be decided only on the basis of evidence adduced during the course of her trial.**

CRR 706 of 2020 is dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)

