

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32787-2014 (O&M)

Decided on 01.07.2024

Ramesh Chander Kapoor & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Puneet Sharma, Advocate for the petitioners
Mr. Japjot Singh, AAG Punjab
Mr. YP Malik, Advocate for respondent No.2

Sandeep Moudgil, J.

(1). This is a petition under Section 482 CrPC seeking to quash the complaint No.92/21.07.2009/24.09.2013 under Sections 452/307/148/149/323/324/342/427/506 IPC (Section 307 & 427 deleted later on) (Annexure P7) along with summoning order dated 05.04.2014 (Annexure P9).

(2). Learned counsel for the petitioners submits that the petitioners are aggrieved on account of being made to face criminal trial twice for the same offence, the respondent No.2 has sought to prosecute the petitioners for the incident with regard to which petitioners No.1 to 5 have already been convicted vide judgment dated 08.10.2012 (Annexure P5) and thus the order summoning the petitioners to face trial, again, would result into double jeopardy and in contravention of the provision of Article 20(2) of the Constitution read with Section 300 CrPC which bars second prosecution where the accused has been prosecuted and punished for the same offence previously and once a person stand convicted or acquitted, he is not to be tried for the same offence.

(3). Both the petitioners and the respondent No.2/complainant are family members and civil litigation was also going on between them.

However, a scuffle broke out as a result of which both the petitioners' side and respondent No.2/complainant received injuries leading to lodging of criminal case wherein both the parties stood convicted by the trial court vide separate judgments dated 08.10.2012 (Annexures P5 & P6, respectively) in case FIR No.103 dated 26.06.2009 under Sections 323/148/149/506 IPC, registered at PS Model Town, Hoshiarpur. Thereafter on 21.07.2009 (nearly one month after lodging of the above-said FIR), respondent No.2 filed criminal complaint against the petitioners including petitioner No.6 (daughter of petitioner No.1 who was earlier not named in the said FIR) regarding the same incident which had occurred on 25.06.2009.

(4). The parameters pertaining to the inherent powers and discretion of this Court under Section 482 of the CrPC have been well known and well read since the time of **State of Haryana & Others v. Bhajan Lal & Others, (1992) Supp. (1) SCC 335**, whereby it was held that powers under Section 482 CrPC could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice where the allegations made in the FIR, even if taken at the face value, does not prima facie constitute any offence or make out any case against the accused and moreover, the uncontroverted allegations/averments made in the FIR or the evidence collected in support of the same does not make out any case against the petitioner.

(5). A reading of Section 300 CrPC would show that it embodies a general rule affirming the validity of the pleas of *autrefois acquit* (previously acquitted) and *autrefois convict* (previously convicted) and so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, a person cannot be tried for the same offence for which he was tried earlier or

for any other offence arising from the same situation. The provisions enshrined in the Code are based on the maxim *Nemo Debet Bis Vexari Pro Una Et Eadem Causa* having originated from an old administrative law in Rome which translates that 'no one shall be harassed twice for the same cause' roughly. The principle refuses the need for subsequent trials where justice is served at the outset through the judicial mechanism adequately 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”.

(6). In **T. P. Gopalakrishnan vs State of Kerala, (2023) 1 SCALE 1**, it was held that where there are two distinct offences made up of different ingredients, embargo under Article 20 of Constitution of India, has no application, though offences may have some overlapping features. As per the decision of the Apex 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) the accused 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) the accused has been convicted or acquitted at the trial, and
- (iii) such conviction or acquittal is in force.

(7). 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.

(8). In the present case, the FIR is dated 26.06.2009 in which the petitioner has been tried, sentenced and convicted by the trial court vide its

judgment dated 08.10.2012. The complaint was made by respondent No.2 against the petitioners wherein allegations were made which were never deposed before the trial court and apparently were aggravated and improvised narration of the incident in relation to which the trial also stood culminated into conviction of both the parties.

(9). The petitioners having been tried by a competent court for the same offence as alleged in the subsequent complaint in question dated 21.07.2009 (Annexure P7) which is based on same facts and incident, were ultimately convicted vide judgment dated 08.10.2012 and the petitioners have even suffered the punishment meaning thereby that the conviction was in force. In such circumstances, letting to continue the proceedings initiated by the respondent No.2 pursuant to the complaint dated 21.07.2009 as well as the summoning order dated 05.04.2014 (Annexure P9) would be in contravention to the principles enunciated the Apex Court in **T. P. Gopalakrishnan's** case (supra).

(10). Accordingly, this petition is allowed and the complaint No.92/21.07.2009/24.09.2013 under Sections 452/307/148/149/323/324/342/427/506 IPC (Section 307 & 427 deleted later on) (Annexure P7) along with summoning order dated 05.04.2014 (Annexure P9) are hereby quashed.

01.07.2024

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No