

Lallan Prasad Vs. State of U.P.

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Court : Allahabad

Decided On : May-29-1998

Reported in : 1999CriLJ319

Judge : J.C. Mishra, J.

Acts : Prevention of Corruption Act - Sections 2, 5 and 5(2); Indian Penal Code (IPC) - Sections 161; Telegraph Wires Act - Sections 5; Code of Criminal Procedure (CrPC) , 1974 - Sections 221(1), 221(2), 300, 403 and 403(1); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 403

Appeal No. : Criminal Misc. Appln. No. 9987 of 1983

Appellant : Lallan Prasad

Respondent : State of U.P.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : A.R. Dube, Adv.

Disposition : Application dismissed

Judgement :

ORDER

J.C. Mishra, J.

1. This application has been filed for quashing the criminal proceeding (S.T. No. 448 of 1983 State v. Lallan Prasad) pending in the Court of 1st Additional Sessions Judge, Moradabad on the ground that the applicant was tried for the same offence and acquitted.

2. The learned counsel contended that on the principle of *autre fois acquit* or *autre fois convict* the accused cannot be tried for the same offence and, therefore, the sessions trial is liable to be quashed.

3. Section 300 of the Code of Criminal Procedure provides that 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 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.

4. The applicant was challaned by Vigilance Department for the offence punishable under Section 161 of the Indian Penal Code and 5/2 of Prevention of Corruption Act for having accepted a sum of Rs. 100/- as illegal gratification on 2-6-76 at about 4-16 p.m. He was tried by Special Judge/1st Additional Sessions Judge, Moradabad in S.T. No. 11 of 1979. The prosecution examined eight witnesses and closed its evidence.

5. During the argument the learned counsel for the accused attacked the sanction order on the ground that the accused was not removeable from service by an officer below the rank of Senior Deputy Accountant , General (Administration) and, therefore, the sanctioning authority had no power to grant sanction for prosecution of the accused. This plea was accepted. The learned counsel for the prosecution requested the learned Additional Sessions Judge to refrain from recording any finding on merit. The learned Judge observed that as a result of invalid sanction the trial was vitiated and the accused was entitled to acquittal. The learned Additional Sessions Judge acquitted the applicant-accused of the offences punishable under Section 161, IPC and 5(2) of the Prevention of Corruption Act.

6. It appears that after obtaining a fresh sanction for prosecution of the accused from the competent authority a chargesheet was submitted, on the basis of which the learned Additional Sessions Judge took cognizance of the case. The applicant has approached this Court in invoking inherent powers in quashing the trial on the ground that the trial is barred by Section 300, Cr. P.C.

7. Heard Sri A. R. Dubey, learned counsel for the applicant and learned A.G.A.

8. Learned counsel for the applicant referred to a decision of the Supreme Court in Mohd. Iqbat Ahmed v. State of Andhra Pradesh : 1979 CriLJ633 and contended that since the prosecution had earlier failed to prove the sanction as a consequence of which the applicant was acquitted he cannot be tried again on the strength of fresh sanction.

9. The question whether second trial is barred or not was not considered by the Supreme Court in the pronouncement relied on by the learned counsel. In the said decision the Supreme Court has discussed how sanction should be granted and in what manner it can be proved. It was observed that grant of sanction is not an idle formality or an acrimonious exercise but a solemn arid sacrosanct act which affords protection to Government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

10. It was then observed that the question of sanction arises before the proceedings come to the Court and the question of drawing the presumption, therefore, does not arise at this stage. The prosecution cannot be given a chance to produce the materials in the appeal before the Supreme Court to satisfy that the Sanctioning Authority had duly applied its mind to the facts constituting the offence.

11. The Supreme Court further observed that it is well settled that in a criminal case this Court or for that matter any Court should not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution. The liberty of the subject was put in jeopardy and it cannot be allowed to put in jeopardy again at the instance of the prosecution which failed to avail of the opportunity afforded to it.

12. The question before the Supreme Court was whether the appellate Court can permit fresh evidence to prove sanction and bring materials on record which were not available to the Sanctioning Authority. The question which is involved in the case before us neither arose nor was considered by the Supreme Court.

13. The scope of Section 403 of the Code of Criminal Procedure (1898) (hereinafter called the Old Code) arose for consideration before the Allahabad High Court in Mahabir v. State : AIR1959 All783 . In that case the applicant had challenged his conviction for the offence of Section 5 Telegraph Wires Act only on one ground, namely that his trial was barred by Section 403, Cr. P.C. (S. 300 of New Code). The applicant was once tried for the same offence on the basis of sanction obtained from Senior Superintendent of Police. Under the law he could be tried on a sanction from the Superintendent of Police. The trial Court convicted the applicant and he filled an appeal. In the appellate Court he took the plea that the sanction having been given by Senior Superintendent of Police was invalid because 'Senior Superintendent of Police' is not the same thing as 'Superintendent of Police.' This plea was accepted by the appellate Court and the conviction was set aside. The applicant was acquitted Thereupon the prosecution obtained a sanction from the Sub-Divisional Officer Telegraph, who is another valid competent authority to sanction prosecution and on the basis of that sanction the appellant was put on trial again on the same allegation and was convicted.

14. It was argued that since the applicant was acquitted for the same offence for want of sanction he could not be tried. The High Court rejected this plea. It was observed that the applicant himself pleaded in the previous trial that it was invalid on account of want of sanction of a competent authority, and that plea was accepted by the appellate Court and he was acquitted with the necessary legal consequence that on a fresh sanction of a competent authority he could be tried again. The applicant can be estopped from pleading that the previous sanction was valid and was so estopped by his getting his previous conviction quashed on the ground that it was invalid. Once he was estopped from pleading that the previous sanction was valid, the previous trial must be held to be invalid and the second trial cannot be held to be barred by Section 403.

Reference was made to 22 Corpus Juris Secundum, 'Criminal Law' paragraph 244.

What cannot be waived is an absolute want of jurisdiction of the subject-matter or cause of action vide paragraph 109. The trial Court in this case had jurisdiction over the subject-matter and also over the person of the applicant; it was competent to try him and to try an offence under Section 5, Telegraph Wires Act. A person cannot be said to be in second jeopardy unless his prior conviction; (sic) where an accused got his prior conviction set aside on the ground of want of jurisdiction he is estopped subsequently from asserting in support of defence of previous jeopardy, that such Court had jurisdiction.

15. Reliance was placed on a decision of Patna High Court in Hakim Syed Shah Khurshed Ali v. Commr. of Tirhut Division : AIR1955 Pat198 .

16. Privy Council in Yusofalli Mulla Noorbhoy v. The King , held that 'the whole basis of Section 403(1) is that the first trial should have been before a Court competent to hear and determine the case and to record a verdict of conviction or acquittal. If the Court was not so competent as for example where the required sanction for the prosecution was not obtained, it is irrelevant that it was competent to try other cases of the same class, or indeed the case against the particular accused in different circumstances, for example, if a sanction had been obtained.

17. It further held that under the common law also a plea of autre fois acquit or autre fois convict can only be raised where the first trial was before a Court 'competent to pass a valid order of acquittal or conviction.

18. Similar view was taken by the Madras High Court in P.N. Venkatarama Naicker v. State AIR 1962 Madras 497, relying on the decision of the Allahabad High Court in : AIR1936 All742 .

19. On the consideration of above-mentioned pronouncements I am of the view that second trial is not barred. The application has no force and it is hereby dismissed.

