

Kundan Mal Vs. State

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SooperKanoon Citation : sooperkanoon.com/973575

Court : Rajasthan Jodhpur

Decided On : Jul-06-2012

Appellant : Kundan Mal

Respondent : State

Judgement :

1. (1) S. B. CRIMINAL REVISION PETITION NO. 912/2008 (Kundan Mal Vs. The State of Rajasthan) (2) S. B. CRIMINAL REVISION PETITION NO. 913/2008 (Kundan Mal Vs. The State of Rajasthan) (3) S. B. CRIMINAL REVISION PETITION NO. 914/2008 (Kundan Mal Vs. The State of Rajasthan) DATE OF ORDER :

6. 7.2012 HON'BLE MR. JUSTICE SANDEEP MEHTA Mr. S.D. Purohit, for the petitioner. Mr. A.R. Nikub, Public Prosecutor. The instant revision petitions have been preferred challenging the order dated 21.6.2008 passed by the learned Addl. Sessions Judge, Bali (Camp Sumerpur), whereby, the application filed by the petitioner under Section 300 Cr.P.C. read with Section 219 and Article 20(2) of the Constitution of India has been rejected by the appellate court. The contention advanced on behalf of the petitioner is that for identical allegations, the petitioner was tried and has been acquitted in another criminal case and, therefore, the petitioner's prosecution in the instant three cases is unjustified because the same amounts to second trial for the same offences. It is therefore submitted to this Court that the order whereby the appellate court has refused to drop the proceedings on the ground of the prosecution of the petitioner being a second trial

for the same offences is absolutely illegal. Learned Public Prosecutor has opposed the submissions advanced on behalf of the petitioner and submits that the 2. petitioner did not challenge the proceedings at the stage of the trial despite being aware of the fact that he was being prosecuted separately. He submits that once the conviction has been recorded by the competent court, then, the only course of action for the petitioner to canvass before the appellate court is that he has been acquitted in relation to the same charges and for the same incident. Learned Public Prosecutor submits that it is only the appellate court who after factual evaluation of the facts can come to a conclusion that the petitioner was prosecuted for the similar charges earlier and was acquitted, therefore, the order whereby the appellate court has given this liberty to the petitioner does not call for any interference by this Court. Having heard and considered the arguments advanced by learned counsel for the parties at the bar and after having gone through the record of the case, it is evident that when the petitioner was convicted for the charges which were framed against him, he preferred three appeals which are pending consideration before the appellate court. The contention which has been advanced in the application is that exactly for the same charges, the petitioner was acquitted in the Appeal No.16/99 by the judgment dated 20.3.2004 passed by the learned Addl. Sessions Judge, Bali, Distt. Pali. If at all, the petitioner's contention is that the allegations against him in the case No.103/90 in relation whereto the petitioner has been acquitted are identical and same as in the case at hand, then, the petitioner has to advance his contentions before the learned appellate court and if the contentions are found to be correct, 3. then, the appellate court would be left with no option but to accept the appeal filed by the petitioner. In view of the aforesaid discussion, the petitioner is permitted to raise all his contentions which are available to him before the appellate court and the appellate court shall decide the same in accordance with the law. Record be sent back forthwith to the appellate court for disposal of the appeal expeditiously in accordance with law. Accordingly, these revision petitions as well as stay petitions stand disposed of. (SANDEEP MEHTA), J.

ms rathore