

(2009) 12 JH CK 0073

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 328 of 2008

Dinesh Kumar Singh @ Dinesh Singh, Mangra Uraon and
Sanjay Toppo

APPELLANT

Vs

State of Jharkhand, Superinendent of Police, Rural and
Officer-in-Charge

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 188, 200(1), 221(1), 258, 300
Explosive Substances Act, 1908 — Section 3, 4, 5
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 399, 402

Citation : (2010) CriLJ 2209 : (2011) 6 RCR(Criminal) 1637

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : S.K. Keshri and A.K. Gupta, for the Appellant; R.R. Mishra, G.P. II, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed for quashing the order dated 19.11.2007 passed by the learned Chief Judicial Magistrate, Ranchi in Ratu P.S. case No. 95 of 1997 (G.R. No. 2109 of 1997) whereby cognizance of the offence u/s 4/5 of the Explosive Substances Act has been taken against the petitioners.

2. The facts giving rise this application are that on 9.9.1997, a case bearing Ratu P.S. case No. 95 of 1997 was registered under Sections 399 and 402 of the Indian Penal Code and also u/s 4/5 of the Explosive Substance Act on the allegation that the police, in course of patrolling when received information that six miscreants have been assembled at a place for making a plan for committing dacoity, it raided that place and apprehended one person, namely, Mangra Oraon, who was found in possession of one live Bomb and one Nepala. However, other accused persons succeeded in taking to their needs. On being quizzed said

Mangra Oraon disclosed their names as Dinesh Kumar Singh @ Dinesh Singh and Sanjay Toppo, petitioners No. 1 and 3. After investigation, charge sheet was submitted against the petitioners. Subsequently, when the case was committed to the court of sessions, the petitioners were put on trial to face charges u/s 3/5 of the Explosive Substances Act and also u/s 399 and 402 of the Indian Penal Code.

3. In course of trial, the prosecution failed to prove the charges and hence, learned Additional Judicial Commissioner-cum- FTC No. VII, vide its judgment dated 9.9.2005 passed in Session Trial No. 602 of 1999 acquitted the petitioners of all the charges under Sections 399/402 of the Indian Penal Code and also under Sections 3/5 of the Explosive Substances Act.

4. Later on the Investigating Officer, after taking permission from the learned Chief Judicial Magistrate, Ranchi, sent the sample of explosive substances before the Forensic Science Laboratory, Ranchi. On receipt of the report of the Forensic Science Laboratory, the prosecuting agency obtained sanction for prosecution by the competent authority. Thereupon, the prosecuting agency made a prayer before the learned Chief Judicial Magistrate, Ranchi for taking cognizance of the offence u/s 4/5 of the Explosive Substance Act which prayer was allowed.

5. Being aggrieved with that order, this writ application has been preferred.

6. Learned Counsel appearing for the petitioners submits that admittedly all the petitioners were put on trial to face charges u/s 399 and 402 of the Indian Penal Code and also under the Explosive Substances Act but the prosecution failed to establish the charges and as such, all the petitioners were acquitted of all the charges including the charges under the Explosive Substances Act but now the prosecution has again sought to put the petitioners on trial for the charges under the Explosive Substances Act which is not permissible under the principal of *autrefois acquit* and, therefore, the order taking cognizance is quite bad.

7. I do find substance in the submission advanced on behalf of the petitioners. Admittedly, the petitioners when were put on trial for the charges under Sections 399 and 402 of the Indian Penal Code and also for the charges under the Explosive Substance Act were acquitted. In spite of that, all the petitioners are being sought to be tried now for the charges under the Explosive Substance Act which is not permissible under the principal of *autrefois acquit* and *autrefois convict* which speaks that so long as an order of acquittal or conviction at a trial held by a court of competent jurisdiction of a person charged with committing an offence stands, that person cannot again be tried on the same facts for the offence for which he was tried or for any other offence arising therefrom. The said principle has been embodied in Article 20(2) of the Constitution of India and also u/s 300 of the Code of Criminal Procedure which reads as follows:

300 - 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 to 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 alter-wards 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 200.

(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 alter-wards 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 or 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 u/s 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.

8. On perusal of it, one does find that Sub-section (1) of Section 300 lays down the rule that a person who has once been tried by a court for an offence and convicted or acquitted of such offence, he is not liable to be tried again for the same offence so long conviction or acquittal remains in force whereas Sub-sections (2) to (5) are exceptions. Sub-section (1) of Section 300 becomes applicable when following prerequisites exist:

- (i) the accused should have been tried;
- (ii) the trial should have been by a Court of competent jurisdiction; and
- (iii) the result for the trial should have been either a conviction or an acquittal.

9. In the instant case, for attracting Sub-section (1) of Section 300 all the aforesaid three ingredients are present. As the petitioners had earlier been put to trial for the charges under the Indian Penal Code and also under the Explosive Substance Act and were acquitted and under these circumstances, the petitioners cannot be allowed to be put to trial to face charges under the Explosive Substances Act again.

10. In that view of the matter, the order taking cognizance seems to be quite bad

and hence, the same is set aside.

11. In the result, this application is allowed.