

(2019) 05 CHH CK 0020

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 260 Of 2017

Jawahar Agrawal

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 20(2)
Indian Penal Code, 1860 — Section 34, 71, 419, 420, 467, 468, 471
Scheduled Caste And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3(1)(iv)
Code Of Criminal Procedure, 1973 — Section 188, 220(1), 221(1), 256, 258, 300,
300(1), 300(5), 320(1), 320(2), 320(8), 403, 482
General Clauses Act, 1897 — Section 26

Citation : (2019) 05 CHH CK 0020

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Dr. N.K. Shukla, Shailendra Shukla, Chandresh Shrivastava

Final Decision : Allowed

Judgement

1. The petitioner herein and two other persons were charge-sheeted by the jurisdictional police for offences punishable under Sections 419, 420 read with Section 34, 467 read with Section 34, 468 read with Section 34 and 471 read with Section 34 of the IPC and Section 3(1)(iv) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 alleging that on 23-4-2008, co- accused Pardesi impersonating himself as Ramsai - complainant, who is a member of Scheduled Tribe, got his land (land of Ramsai) transferred in favour of the petitioner herein by executing a sale deed in the office of the Deputy Registrar, Korba and thereby they have committed the aforesaid offences, before the Special Judge (SC / ST Act), Korba. The charges against the petitioner were framed on 11-11-2016 for the aforesaid offences. Thereafter, the petitioner made an application under Section 320(1) of the CrPC for compounding the aforesaid offences in which complainant Ramsai also filed an application for compounding the offence, under Section 320(2) of the CrPC separately as well as jointly with

the accused persons for compounding the offence under Sections 419 & 420 of the IPC and in which the statement of Ramsai was recorded on 6-1- 2017 and thereafter, by order dated 6-1-2017, the learned Special Judge permitted the offence under Sections 419 & 420 read with Section 34 of the IPC to be compounded and acquitted the petitioner herein under Section 320(8) of the CrPC and one more accused person Rajendra Prasad Yadav finding the compromise to be bona fide, but ultimately, held that the petitioner has also committed offence under Sections 419 & 420 read with Section 34 of the IPC qua the Deputy Registrar, Korba, where the sale deed was produced for registration by co-accused Pardesi and registered in the name of the petitioner, therefore, apart from other offences which have not been compounded, prosecution of the petitioner for offence under Sections 419 & 420 read with Section 34 of the IPC would continue. The petitioner is aggrieved only against this part of the order by which the learned Special Judge has directed continuation of prosecution of the petitioner even for offences under Sections 419 & 420 read with Section 34 of the IPC, qua the Deputy Registrar, Korba on the ground that such a prosecution of the petitioner after having been acquitted for offence under Sections 419 & 420 of the IPC is impermissible under the law, as the effect of compounding would be the acquittal of the petitioner for the said offences under Sections 419 & 420 of the IPC by virtue of the provision contained in Section 320(8) of the CrPC, as such, he cannot be prosecuted in an offence in which he has already been acquitted and the same is in teeth of the provision contained in Section 300(1) of the CrPC read with Article 20(3) of the Constitution of India.

2. The State/respondents No.1 & 2 filed reply inter alia contending that though the offences punishable under Sections 419 & 420 of the IPC have been allowed to be compounded, but offences under Sections 419 & 420 of the IPC have also been committed qua the Deputy Registrar, Korba in whose office the alleged offences were committed by the petitioner with complainant Ramsai, as such, the learned Special Judge is absolutely justified in directing continuance of prosecution of the petitioner for offence under Sections 419 & 420 of the IPC, qua the Deputy Registrar, Korba, after having acquitted the petitioner qua complainant Ramsai. As such, the petition deserves to be dismissed.

3. Dr. N.K. Shukla, learned Senior Counsel appearing on behalf of the petitioner, would submit that the offences of cheating and dishonestly inducing delivery of property i.e. Sections 419 & 420 of the IPC are compoundable under Section 320(2) of the CrPC with the leave of the Court. The person who has been allegedly cheated in the instant case is Ramsai - member of Scheduled Tribe, on whose application for compounding the offences the matter has been considered and the learned Special Judge has rightly allowed the application, and grant of application would have the effect of acquittal of the accused under Section 320(8) of the CrPC which the learned Special Judge has already recorded and once the petitioner has been acquitted for offences under Sections 419 & 420 of the IPC by virtue of the provision contained in Section 320(1) of the CrPC, he cannot be further prosecuted as the provision contained in Section 300(1) of the

CrPC is based on the general principle of "autrefois convict" read with Article 20(2) of the Constitution of India recognised by the English Court. He would further submit that the offence is one and same and once the petitioner has been acquitted, prosecution for the said offences cannot be allowed to continue and that would be the sheer abuse of the process of the court and that deserves to be quashed to the extent of direction for continuance of prosecution of the petitioner for offence under Sections 419 & 420 of the IPC, qua the Deputy Registrar, Korba, as the petitioner is ready and willing to face the trial for other offences which he has been charged and which have not been compounded by the complainant and the petitioner. He would rely upon the decisions of the Supreme Court in the matters of Maqbool Hussain v. State of Bombay AIR 1953 SC 325 and Rajinder Singh v. The State (Delhi Admn.) AIR 1980 SC 1200 to buttress his submissions.

4. Mr. Chandresh Shrivastava, learned Deputy Advocate General appearing for the State/respondents No.1 & 2, would submit that though the complainant has been allowed to compound the offences under Sections 419 & 420 of the IPC, but that is qua complainant Ramsai only for said offence whereas, offence under Sections 419 & 420 of the IPC has also been committed by the petitioner qua the Deputy Registrar, Korba in whose office the alleged offences have been committed which is apparent from the charge which has been framed by the learned Special Judge on 11- 11-2016 and it is not in violation of Section 300(1) of the CrPC and thus, further continuance of the petitioner's prosecution is strictly in accordance with law and no interference is warranted in this petition in exercise of inherent jurisdiction under Section 482 of the CrPC. As such, this petition under Section 482 of the CrPC deserves to be dismissed.

5. I have heard learned counsel for the parties and considered the respective submissions made herein-above and also went through the record with utmost circumspection.

6. Admittedly and undisputedly, the present petitioner was charge- sheeted and charges were framed against him by order dated 11- 11-2016 for offence punishable under Sections 419, 420 read with Section 34, 467 read with Section 34, 468 read with Section 34 and 471 read with Section 34 of the IPC and Section 3(1)(iv) Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and in order to compound the offence punishable under Sections 419 & 420 of the IPC, the complainant himself filed an application for compounding the offence before the Special Judge (SC / ST Act), Korba and that application was in fact, an application under Section 320(2) of the CrPC. Section 419 of the IPC - cheating by personation, can be compounded by the person cheated. Likewise, Section 420 of the IPC - cheating and dishonestly inducing delivery of property, or making, altering or destroying the whole or any part of a valuable security, is also compoundable by the person, cheated under Section 320(2) of the CrPC with the permission of the court. The Special Judge considered the application so filed by the complainant and the petitioner as well

and by order dated 6-1-2017, allowed the same after satisfying himself that the application for compounding the offence has been made voluntarily, bona fide and deserves to be granted, by recording the following finding: -

06.01.2017 राज्य द्वारा श्री रमेश सिंह यादव, विशेष लोक अभियोजक ।

अभियुक्त जवाहर अग्रवाल सहित श्री सुरेश पटेल अधिवक्ता ।

अभियुक्त राजेंद्र यादव सहित श्री मानसिंह यादव अधिवक्ता ।

आवेदक रामसाय सहित श्री उपेन्द्र वर्मा अधिवक्ता ।

आवेदक रामसाय के अधिवक्ता श्री उपेन्द्र वर्मा ने स्वयं द्वारा और आवेदक रामसाय एवं अभियुक्त राजेन्द्र यादव, जवाहर अग्रवाल के द्वारा एव उनके अधिवक्ताओं द्वारा हस्ताक्षरित राजीमाना आवेदन पेश किया, जिसमें आवेदक रामसाय के द्वारा अभियुक्तमण के साथ धारा 419, 420 भा०दं०वि० के अपराध के संबंध में स्वेच्छा पूर्वक राजीनामा किया जाना उल्लेखित किया है । आवेदक रामसाय को अपने विरुद्ध आरोपीगण के द्वारा भा०दं०सं० की धारा 416, 420/34 के अपराध में राजीनामा करने हेतु अनुमति दी गई है ।

अतः प्रकरण में स्वेच्छया सक्षम व्यक्ति रामसाय पिता दोंदरो उरांव की ओर से संयुक्त रूप से हस्ताक्षरित राजीनामा आवेदन पत्र स्वीकार किया जाता है और आवेदक रामसाय पिता दोंदरो उरांव के द्वारा की गई राजीनामा के परिणामस्वरूप धारा 320 (8) दं०प्र०सं० के विधिक उपबंध के तहत आरोपीगण के द्वारा उसके /आवेदक रामसाय के विरुद्ध किये गये छल के अपराध के संबंध में धारा 419, 420/34 भा०दं०वि० के अपराध के संबंध में अभियुक्त जवाहर अग्रवाल, राजेन्द्र यादव को दोषमुक्त किया जाता है । प्रकरण में आरोपीगण के द्वारा उप पंजीयक कोरबा को छल किये जाने के संबंध में धारा 419, 420/34 भा०दं०वि० के अपराध का और भा०दं०सं० की धारा 467/34, 468/34, 471/34 एवं अनुसूचित जाति/जनजाति (अत्या०निवा०) अधिनियम की धारा 3(1)(4) के अपराध का विचारण यथावत जारी रहेगा ।

प्रकरण मध्यान्ह चायकाल बाद अभियोजन साक्ष्य हेतु पुनः पेश हो।

7. According to Section 320(8) of the CrPC, the composition of an offence shall have the effect of an acquittal of the accused with whom the offence has been compounded. The effect is automatic. Wherever composition of an offence takes place it has instantaneous effect of statutory acquittal of the accused. Their Lordships of the Supreme Court in Rajinder Singh (supra) held that once permission is granted to compound the offence, effect would be acquittal of accused in respect of offence compounded, by virtue of Section 320(8) of the CrPC.

8. The learned Special Judge rightly in terms of Section 320(8) of the CrPC, recorded the finding of acquittal of the petitioner in the first part of the order for offences punishable under Sections 419 & 420 read with Section 34 of the IPC, but further proceeded and held that the offences punishable under Sections 419 & 420 of the IPC, qua the Deputy Registrar, Korba, would continue.

9. The petitioner herein mainly questions this part of the order by which the learned Special Judge has directed to proceed with the trial after having acquitted the petitioner for offence under Sections 419 & 420 read with Section 34 of the IPC. The principal contention is that the effect of the compounding of

offence is statutory acquittal of the petitioner for all practical purposes including that for the purpose of Section 300(1) of the CrPC, therefore, further prosecution of the petitioner is barred by virtue of Section 300(1) of the CrPC, as he has been acquitted for the offence under Sections 419 & 420 of the IPC and thus, he cannot be tried again for the same offence by virtue of the aforesaid provision. In light of submission, it would be appropriate to notice the provisions contained in Article 20(2) of the Constitution of India as well as Section 300 of the CrPC.

10. (1) Article 20(2) of the Constitution of India provides as under: -

"(2) No person shall be prosecuted and punished for the same offence more than once."

(2) Section 300 of the CrPC provides as under: -

"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 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 afterwards 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 220.

(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 afterwards 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 under Section 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.

Explanation.-The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

11. The provision contained in Section 300(1) of the CrPC is mainly based on the doctrine of double jeopardy. The rule against double jeopardy provides foundation for the pleas of autrefois acquit and autrefois convict. Section 300 of the CrPC incorporates the principle of autre fois acquit namely, that no one shall be punished or put in peril twice for the same matter. For the applicability of the rule of autre fois acquit three essential conditions have to be satisfied namely; (1) there must have been a trial of the accused for the offence charged against him; (2) the trial must have been by a Court of competent jurisdiction and (3) there must have been a judgment or order of acquittal. (See Mohammad Safi v. The State of W.B. AIR 1966 SC 69.) It has been held by Their Lordships of the Supreme Court in Mohammad Safi (supra) as under: -

"These provisions are based upon the general principle of autrefois acquit recognised by the English Courts. The principle on which the right to plead autrefois acquit depends is that a man may not be put twice in jeopardy for the same offence. This principle has now been incorporated in Art. 20 of the Constitution."

12. In order to get the benefit of Section 300 of the CrPC (Section 403 of the old CrPC) or Article 20(2) of the Constitution of India, it is necessary for an accused person to establish that he had been tried by a Court of competent jurisdiction for an offence and be convicted or acquitted of that offence and the said conviction or acquittal as in force. (See The Assistant Collector of Customs, Bombay v. L.R. Metwani AIR 1970 SC 962.)

13. The sub-section of Section 300 of the CrPC consists of two limbs.

The first limb deals with the Case of a person, who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence. Such a person shall not be liable to be tried again for the same offence while such conviction or acquittal remains in force. The second limb of the sub-section deals with the same facts for any other offence for which a different charge for 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.

14. The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is no completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. Their Lordships of the Supreme Court in the matter of Pritam Singh and another v. The State of Punjab AIR 1956 SC 415 clearly held that the maxim 'res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings and relying upon the observations of Lord MacDermott in the matter of Sambasivam v. Public Prosecutor, Federal of Malaya 1950 AC 458 (A) held as under: -

"The maxim 'res judicata pro veritate accipitur' is no less applicable to criminal

than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

15. The principle of law laid down in *Pritam Singh* (supra) has been followed in the matter of *N.R. Ghose v. The State of W.B.* AIR 1960 SC 239 in which it has been held as under: -

"29. I feel no doubt that the principle of the finality of judgment obtains in criminal law as well as it does in civil law. Section 403 of the Code is no doubt based on the same principle. But I find no reason to confine its application within the limits of the section. I find clear support for this view in the judgment of the Privy Council in *Sambasivam v. Public Prosecutor, Federation of Malaya* (1950 AC 458), where it was said at p. 479:

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive on all subsequent proceedings between the parties to the adjudication. The maxim "*res judicata pro veritate accipitor*" is no less applicable to criminal than to civil proceedings.""

16. In the matter of *Sangeetaben Mahendrabhai Patel v. State of Gujarat and another* (2012) 7 SCC 621, Their Lordships of the Supreme Court considered the earlier decisions of the Supreme Court on the point and held that to attract Article 20(2) of the Constitution of India i.e. doctrine of *autrefois acquit* or Section 300 of the CrPC or Section 71 of the IPC or Section 26 of the General Clauses Act, 1897, ingredients of offences in the earlier case as well as in the latter case must be the same and not different. The Supreme Court revisited the issue and considering all the earlier judgments held as under: -

"14. This Court in *Maqbool Hussain* (AIR 1953 SC 325) held that the fundamental right which is guaranteed under Article 20(2) enunciates the principle of "*autrefois convict*" or "*double jeopardy*" i.e. a person must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim *nemo debet bis punire pro uno delicto*, that is to say, that no one ought to be twice punished for one offence. The plea of *autrefois convict* or *autrefois acquit* avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned. The test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials. A plea of *autrefois acquit* is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter.

15. The Constitution Bench of this Court in *S.A. Venkataraman v. Union of India*

AIR 1954 SC 375 explained the scope of doctrine of double jeopardy, observing that in order to attract the provisions of Article 20(2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted" and "punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must coexist in order that the operation of the clause may be attracted."

17. In the matter of State of Jharkhand Through SP, Central Bureau of Investigation v. Lalu Prasad Yadav alias Lalu Prasad (2017) 8 SCC 1 highlighting the doctrine of double jeopardy, Their Lordships held that the objective of the said provision is to avoid harassment by successive criminal proceeding for one crime and observed as under: -

"22. Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. This is called the doctrine of double jeopardy. The objective of the Article is to avoid harassment, which may be caused by successive criminal proceedings, where the person has committed only one crime. There is a law maxim related to this, *nemo debet bis vexari*. This means that no man shall be put twice in peril for the same offence. There are two aspects of doctrine of jeopardy viz. *autrefois convict* and *autrefois acquit*. *Autrefois convict* means that the person has been previously convicted in respect of the same offence. *Autrefois acquit* means that the person has been acquitted on a same charge on which he is being prosecuted. The Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter even if some ingredients of these two offences are common."

18. The conspectus of the above-quoted authorities would show that to attract the bar contained in Article 20(2) of the Constitution of India or Section 300 of the CrPC, the accused must establish two important facts: -

(i) the offence for which he / she was earlier tried / prosecuted is the same in second prosecution / trial lodged against him / her; and

(ii) there has been a determination / finding in regard to such an offence in the earlier trial / prosecution.

19. Now, the question would be, whether the statutory acquittal by virtue of the provisions contained in Section 320(8) of the CrPC on account of composition of an offence with the leave of the court would be the acquittal covered by Section 300(1) of the CrPC so as to bar the further trial?

20. Section 320(8) of the CrPC specifically incorporates the legislative provision of acquittal on the ground of compounding of an offence with the leave of the Court and therefore that statutory acquittal, in my considered opinion, is good enough to constitute acquittal under Section 300 of the CrPC, as sub-section (5) of Section 300 of the CrPC clearly provides that even a person discharged under Section 258 shall not be tried again for the same offence except with the consent

of the Court by which he was discharged.

21. The Allahabad High Court in the matter of Mohammad Mansoor v. Hira Singh and another AIR 1959 Allahabad 627 has held that compromise of compoundable offence automatically results in acquittal, Magistrate cannot proceed with trial and defer decision on question of alleged compromise, as upon acquittal further trial will be barred by Section 300(1) of the CrPC and the Magistrate is bound to decide the application for compromise expeditiously, he has no jurisdiction to defer the decision till the end of trial and he must not proceed with the trial if it is barred by Section 300 of the CrPC. Likewise, withdrawal of the prosecution ending in acquittal bars a fresh trial. (See In re Velayudha Mudali and others AIR 1949 Madras 508 and Haveli Ram v. Municipal Corporation of Delhi AIR 1966 P&H 82.) Acquittal of accused in a complaint case for absence of complainant under Section 256 of the CrPC operates as bar to fresh complaint on same fact. (See Suchana Roy and others v. Paresh Kr. Ray 1978 Cri.L.J. 555.)

22. Thus, in my considered opinion, the acquittal contemplated by virtue of sub-section (8) of Section 320 of the CrPC on compounding of an offence, though it is before the conclusion of full-dressed trial, and by virtue of composition of offence will be an acquittal of offence of an accused person for the purpose of Section 300(1) of the CrPC.

23. Reverting to the facts and circumstances of the present case in light of the aforesaid discussion, the petitioner having been acquitted for offence under Sections 419 & 420 of the IPC with the leave of the Court, will have the effect of statutory acquittal by virtue of the provision contained in Section 320(8) of the CrPC and therefore the petitioner having been acquitted clearly for offences under Sections 419 & 420 of the IPC and the order of acquittal is still in force as not having been challenged and set-aside by the competent court, his further trial is expressly barred by virtue of the provision contained in Section 300(1) of the CrPC and he cannot be subjected to any other further trial of offences under Sections 419 & 420 of the IPC having been committed against the State. Offence under Sections 419 & 420 of the IPC allegedly committed by the petitioner was one and all and it cannot be even bifurcated one against the complainant and another against the officer / Deputy Registrar in whose office the offence was allegedly committed, such a concept is unknown to law. In my considered opinion, further trial of the petitioner is clearly barred by virtue of Section 300(1) of the CrPC, as in teeth of Article 20(2) of the Constitution of India and therefore that part of the order is liable to be set-aside.

24. As a fallout and consequence of the aforesaid discussion, the part of the order of the learned Special Judge (SC / ST Act) directing trial of the petitioner after acquitting him for offence under Sections 419 & 420 of the IPC in Special Sessions Trial No.14/2015 (State v. Rajendra Prasad Yadav and others) deserves to be and is hereby quashed. However, trial of the petitioner for the offences punishable under Sections 467 read with Section 34, 468 read with Section 34 and 471 read with Section 34 of the IPC and Section 3(1)(iv) of the Scheduled

Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 would continue.

25. A copy of the order be sent to the Special Judge (SC / ST Act) for compliance and further needful action.

26. The petition is allowed to the extent sketched herein-above.