
(2017) 10 PAT CK 0005

In the Patna High Court

Case No : 21735 of 2014

Shambhu Prasad @ Shambhu Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 300](#), [Section 245](#) - Person once convicted or acquitted not to be tried for same offence - When accused shall be discharged

Citation : (2017) 10 PAT CK 0005

Hon'ble Judges : Madhuresh Prasad

Bench : SINGLE BENCH

Advocate : Ajit Kumar Singh, Mustaque Alam

Final Decision : Dismissed

Judgement

1. The instant petition has been filed for quashing order dated 18.2.2014, passed by the learned Sessions Judge, Munger in Cr. Revision No. 287 of 2013, by which he has affirmed order dated 24.9.2013, passed by the Judicial Magistrate, 1 st Class, Munger dismissing petitioner's discharge petition in Complaint Case No. 824C/2005.
2. The aforesaid complaint has been filed by one Gita Devi, wife of the petitioner stating that she was married to him on 12.5.1999 following the Hindu Rites and Customs whereafter she started living at her in-laws' house at Garhara. At the time of marriage her father had given some articles to the petitioner and his

parents. She alleges that after sometime the accused persons including the petitioner started torturing her on non-fulfillment of dowry. The instant complainant filed a complaint case which gave rise to lodging of the FIR/GR Case no. 1129 of 2002 in the court of the Sub Divisional Judicial Magistrate, Munger. By practicing fraud, the petitioner along with other accused persons allured the father of the complainant to arrive at a compromise in the said GR case. It is the further case of the complainant that for some time, things were normal as her father was trying to arrange a job of "Khalasi" in the Railways for Accused no.1 (husband). After some time, when his job became permanent and when the complainant could not bear a child, all the accused persons started subjecting her to torture for fetching dowry. On 21.8.2004, attempts of the father of the complainant to pacify the situation prevailing at Garhara went futile, and he took her to his house at Jamalpur. The complainant has alleged that in the changed situation when her father went to the office of Accused no. 1 (the petitioner), he learnt that in his service record he had entered a different name in the column of wife i.e., Jailata Devi, which is the nick name of the complainant as also the name of sister-in-law (Bhabhi) of the petitioner (the accused). He also learnt that the petitioner has entered the names Sunil Kumar, Kamla Kumari and Radhika Kumari as his son and daughters, whereas they are his nephew and niece. When the father of the complainant came to know of the said fraud played by the petitioner (the husband) he objected on which Accused no.1 along with his father came to her "Maika" and abused and assaulted the complainant as well as her father. These events led to lodging of the complaint Case No. 824C of 2005. In the said complaint, cognizance was taken and it is in this case that the petitioner had moved for discharge.

3. Since the proceedings arising out of the complaint case, GR Case No.1129 of 2002 culminated into compromise and the proceedings had been closed, the petitioner has assailed the initiation of the criminal proceeding by filing second complaint, i.e., Complaint case No. 824C/2005 in respect of the same offence by filing a petition for discharge under section 245 Cr.P.C. before the learned Judicial Magistrate, 1st class, Munger. The petitioner has relied upon Section 300 Cr.P.C and prayed for discharge on the ground that he could not have been prosecuted twice for the same offence. He had also submitted that the allegations are false since it was not possible for him to cause any alleged occurrence on 10.11.2003 or thereafter as 10.11.2003 was the date of compromise in the earlier criminal case. He had also submitted that since it was the admitted case of the complainant in the Maintenance case filed by her that he was on running duty, so it was not possible to cause any occurrence at the alleged place of occurrence i.e, Garhara, at Begusarai

4. Vide order dated 24.9.2013 the court after hearing the parties observed that 3 before charge witnesses have been produced by the prosecution including the complainant and that all have supported the case. Considering it inappropriate to go into the details of the case at that stage and in view of the fact that there was sufficient evidence on the record which, if unrebutted, would warrant the conviction of the accused, the petition filed under section 245 Cr.P.C. by the petitioner, was dismissed and the direction was issued to the accused (petitioner) to appear physically. The petitioner preferred a revision before the court of the Sessions Judge, Munger vide Cr.Rev.No.287 of 2013 against order dated 24.9.2013. Said revision application was dismissed vide order dated 18.2.2014 on the ground that the said order was purely

interlocutory order which could not be looked into in revision.

5. Learned counsel for the petitioner submits that in fact he is a victim as he is a deserted husband. He also submits that his wife/complainant Gita Devi passed away on 10.5.2012 and subsequent upon her death his father-in-law, who is a greedy person, is pursuing the case in the court below on extraneous consideration so as to extract money from him. He also submits that since Gita Devi is no more, the allegation of torture levelled by her against him, cannot be proved as she is not alive to bring home the charges. He also submits that whatsoever may be deposed by her father, would at best be termed as the secondary evidence and on that basis the prosecution case cannot be proved against him.

6. Counsel for the petitioner submits that the instant proceedings are therefore in violation of the provisions contained in section 300 of the Cr.P.C. and are vexatious and cannot be proved against the petitioner in the trial.

7. To buttress his submissions in support of Section 300 Cr.P.C., the counsel for the petitioner has relied on two judgments of the Apex Court. He has relied upon the case of State of Andhra Pradesh v. Kokkligada reported in AIR 1970 SC. 771. It would be apt to re-produce a part of paragraph 12 of the said judgment:-

"The rule of issue estoppel prevents relitigation of the issue which has been determined in a criminal trial between the State and the accused. If in respect of an offence arising out of transaction a trial has taken place and the accused has been acquitted, another trial in respect of the offence alleged to arise out of that transaction or of a related transaction which requires the Court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial is prohibited by the rule of issue estoppel."

8. In the instant case, allegations made in Complaint Case No. 824C of 2005 constitute a distinct offence allegedly subsequent to the recording of acquittal in GR case no. 113 of 2005 arising out of the earlier complaint filed by opposite

party no.2.

9. The other judgment relied upon by the counsel for the petitioner is *Mukhtiar Ahmed Ansari v. State* (NCT of Delhi) reported in (2005) 5 SCC 258. Both the said two cases which have been relied upon by the counsel for the petitioner are misplaced. Neither "issue stopple" nor "Autre fois Acquit" would apply in the instant case.

10. From perusal of the complaint itself it is quite apparent that the same has been lodged in respect of offences committed by the accused persons including the petitioner subsequent to the acquittal having been recorded in the earlier case. The allegations pertain to a period subsequent to the acquittal recorded on the basis of compromise in the earlier case arising out of Complaint Case which gave rise to lodging of the FIR/G.R. Case No. 1129 of 2002. The allegations in the subsequent complaint i.e. Complaint Case No. 824C of 2005 constitute a distinct offence and the order of acquittal recorded on the basis of compromise in the earlier case on different accusations cannot give the accused (petitioner) the benefit of Section 300 Cr.P.C. Insofar as the factual denial of the allegations by placing reliance on some averments made in the maintenance case filed by the wife, this Court would only observe that it is trite law that while exercising jurisdiction under Section 482 Cr.P.C., the factual denial cannot be looked into. Whether the petitioner after entering into compromise and after closing the earlier criminal proceedings arising out of G.R. No. 229 of 2002 had again committed fresh/new offence against the complainant, or not is an issue which can only be appropriately looked at the trial. The factual denials cannot be made the basis for exercising the jurisdiction under Section 482 Cr.P.C to quash the criminal proceedings, arising out of accusations which are in

relation to offences committed subsequent to the petitioner's acquittal based on compromise.

11. Counsel for the petitioner has also informed the Court that the complainant/wife has passed away on 10.05.2012. He has informed the Court that since the complainant is no longer alive to support the allegations in the trial, this Court should exercise inherent jurisdiction to quash the proceedings. He also informed the Court that the father of the original complainant-Gita Devi has been allowed to proceed with the case in the Court below. He has submitted that there is no other eye-witness to support the allegation except the complainant. These submissions again are in respect of the sufficiency/insufficiency of evidence, which may be examined at trial, and this Court exercising jurisdiction under Section 482 Cr.P.C., must refrain from going into.

12. The application is, accordingly, dismissed. The factual denial and the submissions regarding insufficiency of evidence are matters which may be left for the trial court to examine on basis of such submissions without being prejudiced by the dismissal of this case.