
(2011) 08 AHC CK 0296

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 26426 of 2011

Shuban Khan and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300, 482
Penal Code, 1860 (IPC) — Section 34, 364, 506

Citation : (2011) 3 ACR 3345 : (2011) 8 ADJ 488 : (2011) 6 AWC 2411

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Advocate : Vidit Narayan Mishra, for the Appellant;

Judgement

Shri Kant Tripathi, J.—Heard learned Counsel for the Applicants and the learned AGA for the State and perused the record.

2. This petition u/s 482 of the Code of Criminal Procedure (in short "the Code") has been filed for quashing the charge-sheet filed in Case Crime No. 218 of 2005, under Sections 364 and 506/34 IPC, P.S. Jewar, District Gautambuddh Nagar against the Applicants Shuban Khan and Chokhey Khan.

With the consent of the learned Counsel for the parties, this petition is being disposed of finally at the stage of admission.

3. It appears that in Case Crime No. 218 of 2005 of P.S. Jewar, District Gautambuddh Nagar has submitted a charge-sheet against the Petitioners under Sections 364 and 506/34 IPC. The learned II-Additional Chief Judicial Magistrate took cognizance of the offences on 27.7.2007 and the matter is still peidng before him.

4. The learned Counsel for the Petitioners submitted that the Petitioners and co-accused persons (Riyazuddin and Shahabuddin) have already been tried and acquitted in the aforesaid case by the learned Additional Sessions Judge, Court No. 5, Gautambuddh Nagar vide his judgment and order dated 15.7.2008

rendered in ST. No. 30 of 2007 State of U.P. v Riazuddin and Ors. therefore, taking of cognizance by the learned Additional Chief Judicial Magistrate was barred by Section 300 of the Code. A copy of the judgment rendered in the aforesaid trial has been filed as Annexure 6. A perusal of the said judgment reveals that the Petitioners as also the aforesaid co-accused were tried and acquitted of the charges under Sections 364 and 506/34 IPC. The said session trial had originated vide the same crime number 218 of 2005 under Sections 364 and 506/34 IPC, P.S. Jewar, District Gautambuddh Nagar.

5. Section 300 of the Code operates as a bar to the subsequent trial. In other words Section 300 of the Code embodies principle of antrefois acquit. Once a person is tried by a competent Court for an offence and is convicted or acquitted of such offence, his trial for the same offence, is barred while such conviction or acquittal remains in force, in order to apply the principles of antrefois acquit, the case must be brought within the ambit of Section 300 of the Code. In order to attract the provisions of Section 300 of the Code there has to be, in force, either conviction or acquittal of a person, when he is sought to be tried either for the same offence or for a distinct offence based on the same set of facts. If the requirements of Section 300 of the Code are made out the subsequent proceeding must be dropped.

6. It further appears that the relevant materials relating to the previous trial had not been produced before the learned Magistrate when he took cognizance of the offences on the basis of the subsequent charge-sheet. In this view of the matter, the learned Magistrate had no occasion to consider the question of bar of Section 300 of the Code. This question cannot be permitted to be raised straightway in the High Court, therefore, it seems to be just and expedient to provide an opportunity to the Petitioners to move an application u/s 300 of the Code before the Magistrate for dropping the proceeding on the ground of bar of Section 300 of the Code. In case any such application is moved, the same shall be considered and disposed of by the learned Magistrate in accordance with law, if possible within three months. In case the learned Magistrate ultimately comes to the conclusion that the present trial is barred by Section 300 of the Code, it will be open to him to drop the proceedings of the criminal case pending against the Petitioners. So long as the prayer of the Petitioners for dropping the proceeding u/s 300 of the Code is not disposed of, the Petitioners may not be required to seek bail in the present matter and may be permitted to continue on their personal bonds only.

With the aforesaid observations, the petition is finally disposed of.