
(1960) 02 GAU CK 0001
In the Gauhati High Court

Thingujam Tona Singh and Others

APPELLANT

Vs

Puyam Gulap Singh and Others

RESPONDENT

Date of Decision : 29-02-1960

Acts Referred:

Constitution of India, 1950 — Article 20

Penal Code, 1860 (IPC) — Section 143, 147, 447, 506

Citation : (1961) CriLJ 507

Hon'ble Judges : T.N.R. Tirumalpad, J

Bench : Single Bench

Judgement

T.N.R. Tirumalpad, J.—This is an application u/s 561-A of the Criminal Procedure Code to quash the criminal proceedings in Criminal Case No. 107 of 1958, Pending before the S.D.M., Thoubal.

2. The facts leading to this application are briefly thus: The first respondent herein filed a complaint before the District Magistrate on 18-10-58 against the 3 petitioners and two others under Sections 143/147/447/506 I. P. G stating that they formed themselves into an unlawful assembly with the common object of committing criminal trespass on the ingkhol under patta No. 100/212-Kh. and that they trespassed and ploughed the land by force. The case was taken on file and transferred to the S.D.M., Thoubal for trial. One of the accused was absconding and the Magistrate proceeded against the remaining 4 including the petitioners u/s 447 I.P.C. On 18-4-1959, the Magistrate explained the Particulars of the offence to the accused as required u/s 242 Cr. P.C. in summons cases and the accused pleaded not guilty.

He then proceeded to examine two P. Ws. and adjourned the case to 16-5-1959 for the examination of further P. Ws. P. W. 1 the complainant is the course of his evidence had admitted that the ingkhol in question originally belonged to the petitioner Tona Singh as his paternal property, that P. W. 1 had purchased it from him under a sale deed, that Tona Singh had filed a suit against F. W. 1 in respect of the said sale deed, that the suit was decreed ultimately in favour of the said

Tona Singh and that Tona Singh had a dwelling house in the disputed land.

In the face of such admission by P. W. 1, the complaint of criminal trespass u/s 447 I.P.C. against the accused persons became considerably weak. It was in this situation that on 16-5-59, the complainant absented himself while the accused were all present with their counsel. Thereupon, the Magistrate passed an order acquitting all the accused u/s 247 Cr. P.C. for default of the complainant remarking that it appeared to him that the complainant did not take any interest in his case.

3. On 25-5-59, the complainant appeared before the Magistrate and filed a petition for revival of the criminal case stating that at he was under the bona fide impression that the case was posted to that date and that he had come to learn that the case was struck off on 16-5-59, due to his absence. On this application, the Magistrate passed an order on 25-5-59, that he was satisfied from a chit Produced by the complainant said to have been given by the Magistrate's Bench clerk in which the date of hearing was mentioned as 25-5-59 and also from the Bench clerk's admission that the chit was in his handwriting that the Bench Clerk through a bona fide mistake had given a wrong date to the complainant and further that the order of acquittal passed under such circumstances in the absence of the complainant due to the wrong date given to him can be ignored and the case Can be taken up again. He therefore ignored the order of acquittal passed on 16-5-59 and revived the case and issued summons to the accused persons on the revived case. It is, against the said order that the present petition has been filed for quashing the proceedings.

4. It was urged for the petitioners that the revival of the criminal case after the acquittal of the accused persons u/s 247 Cr. P.C. clearly violated the mandatory provisions of Article 20(2) of the Indian Constitution and of Section 403, Cr. P.C.

5. The question under Article 20(2) of the Constitution can be easily disposed of. What Article 20(2) says is that no person shall be prosecuted and punished for the same offence more than once. This means that if a person is prosecuted and punished once for an offence he cannot be prosecuted and punished again for the same offence. This does not prohibit proceedings against a person for an offence when he has been Prosecuted and acquitted previously for the said offence. In other words, the principle of autrefois convict or of double jeopardy alone is accepted by the Constitution and not the plea of autrefois acquit. This has been ruled by the Supreme Court in Maqbool Hussain Vs. The State of Bombay, In the present case the accused were acquitted in the first instance by the Magistrate. Hence the revival of the case will not offend Article 20(2) of the Constitution.

6. But the second contention of the Petitioner, namely, that the revival of the case is against the provisions of Section 403 Cr. P.C. must prevail. u/s 403(1) when a person has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence he shall not be tried again for the said

offence, while such conviction or acquittal remains in force. The question in the present case is whether the petitioners herein were tried and acquitted of the offence. What was argued for the respondent was that an acquittal u/s 247 Cr. P.C. for the absence of the complainant will not be an acquittal after trial and hence Section 403(1) Cr. P.C. will not apply.

7. The word "trial" or "tried" has not been defined in the Cr. P.C. Chapter XX Cr. P.C. deals with the trial of Summons-cases by Magistrates and lays down the procedure for such trial. Section 242 Cr. P.C. in Chapter XX is the first section dealing with the procedure at the trial and state what the Magistrate has got to do when the accused appeared or is brought before him. We may take it therefore that the trial in a Summons case commences when the accused appears or is brought before the Magistrate. In the present case, the accused appeared before the Magistrate on 18-4-59, and the Magistrate explained the particulars of the offence to the accused as required under 242 Cr. P.C. and the accused pleaded not guilty and two P. Ws. were examined.

Thus, it is clear that the trial of the case had commenced on 18-4-59. Section 247 Cr. P.C. deals with the procedure to be followed by the Magistrate when the complainant fails to appear on the day appointed for the appearance of the accused or on any day subsequent thereto, that is, it deals with the procedure when the trial of the case has commenced. Thus, when a Magistrate acquits the accused u/s 247 for the non-appearance of the complainant it means that the acquittal is after the trial had commenced or in other words such acquittal will come within the meaning of Section 403 Cr. P.C. and the accused must be treated as having been tried and acquitted by the Magistrate.

8. It was pointed out for the respondent that the Magistrate did not acquit the accused on the merits of the case, but only on account of the absence of the complainant. Now if we read Section 247 Cr. P.C. we find that the Magistrate has got 3 courses open before him when the complainant is absent on the date of the trial. One course is, he can adjourn the hearing to some other day. Another course is to acquit the accused. Again, there is a third course where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, in which case, the Magistrate may dispense with his attendance and proceed with the case. Now if on the evidence adduced by the complainant in this case, the Magistrate thought that a case has been made out against the accused, he could have dispensed with the appearance of the complainant and proceeded with the case and called upon the accused to enter on his defence.

As I pointed out, the evidence of P. W. 1 had showed that the accused had a dwelling house in the ingkhola in question and that there was no case of any criminal trespass in the face of that admission by P. W. 1. Hence no case had been made out against the accused by the evidence of the two P. Ws. Or if the Magistrate thought that a further opportunity should be given to the Complainant to adduce still more evidence, he could have adjourned the case. Instead of adopting either of these two courses, the Magistrate acquitted the accused. It

means that he acquitted them, because he was satisfied that on the evidence so far adduced, no case had been made out against the accused. It is clear therefore, that the accused had been tried and acquitted.

9. It follows from this that the Magistrate cannot simply ignore such an acquittal passed by himself u/s 247 and Proceed with the case as if there has been no acquittal at all, as the Magistrate has done in the present case. He has cited a decision in support of his order, namely, Achambit Mandal Vs. Mahatab Singh, But that decision has no application to the present case. That was a case where the Magistrate took up the trial on a date to which the case had not been posted and acquitted the accused for the absence of the complainant. Then the complainant appeared on the correct date to which the case had been posted. The Magistrate thereupon ignored the previous order of acquittal. That was quite correct procedure for the Magistrate concerned in that case.

He had no jurisdiction to dispose of a case on a date to which it had not been posted. Such an order was a nullity and could be ignored. In the present case, the case had been posted to 16-5-58 and the accused was acquitted on that date for the absence of the complainant. If the complainant, by a bona fide mistake thought that the case had been posted to some other date and appeared on that date and put in an application, the Magistrate had no jurisdiction to treat his previous order of acquittal as a nullity. There is no provision in the Cr. P.C. for a Magistrate to revive a case under such circumstances. He cannot ignore a valid order of acquittal passed by him. The only provision in the Cr. P.C. by which such an acquittal can be interfered with is by an appeal u/s 417 Cr. P.C. to the High Court and that can be done only by the High Court. A Magistrate has no power to set aside his own acquittal and proceed with the case. Section 403(1) is a clear bar to such a procedure. It follows therefore that the order of the Magistrate dated 25-5-59 has been passed without jurisdiction and has to be quashed,

10. The petition is, therefore, allowed and the order of the Magistrate dated 25-5-59 reviving the criminal case against the petitioners is quashed.