
Rakesh Kumar Vs State of U.P.

Criminal Misc. Case No. 1576 of 2012

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Jan. 17, 2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 300, 482#Evidence Act, 1872 - Section 34, 40, 40, 40, 40#Penal Code, 1860 (IPC) - Section 363, 366, 368, 376, 466

Citation: (2015) 89 ALLCC 577

Hon'ble Judges: Vishnu Chandra Gupta, J.

Bench: Single Bench

Advocate: Balram Yadav, for the Appellant; Rajendra Kumar Dwivedi, AGA, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Vishnu Chandra Gupta, J.

Heard Sri Balram Yadav, learned counsel for the petitioners and Sri Rajendra Kumar Dwivedi, learned A.G.A.

for the State.

2. By means of this petition, under Section 482 of Code of Criminal Procedure (In short "Cr.P.C."), the petitioner has prayed for quashing the

proceedings of Criminal Case No. 2215 of 2011 pending in the court of learned Additional Chief Judicial magistrate-III, Raebareli as well as the

charge-sheet dated 10.07.1997 and cognizance order dated 22.09.2011 passed by learned Additional Chief Judicial Magistrate-III, Raebareli.

3. Brief facts for deciding this petition are that the opposite party no. 2 lodged a first information report against the petitioner Rakesh Kumar and

Smt. Krishna Devi in Case Crime No. 232 of 1997, under Sections 363, 366 IPC, Police Station Kotwali Lalganj, District Raebareli. After

investigation, the police submitted charge-sheet against Smt. Krishna Devi and Virendra Kumar Dwivedi alias Chhotey Babuwa on 09.07.1997.

4. Thereafter the police submitted another charge-sheet with same case crime number against the petitioner Rakesh Kumar under Sections 363,

366, 376, 506, 368, 466, 468 IPC. The trial of co-accused Smt. Krishna Devi and Virendra Kumar Dwivedi was conducted and they have been

acquitted by the trial court vide Judgment and order dated 16.11.2005.

5. It has been contended by learned counsel for the petitioner that on the basis of aforesaid judgment of the trial court, the proceedings initiated

against the petitioner is liable to be quashed. The principle of stare decisis is applicable in this case. Learned counsel relied upon the judgment of

this Court in the case of Mohammad Amzad and another Vs. State of U.P. and another [2005 (Suppl.) ACC 895 (All)] wherein it has been

observed that the trial of other accused on the same very evidence or on the future statement of witnesses if comes to contrary shall be barred by

the principle of stare decisis. Learned counsel also relied upon the judgment of this Court in the case of Narayan Rai Vs. State of U.P. and others

[2004 (Suppl.) ACC 391 (All)] and the judgment of the Apex Court in the case of State of Andhra Pradesh Vs. Bajjori Kanthaiah [2008 (63)

ACC 612 (SC)] wherein the Apex Court has held that if any case falls within the category of latest judgment of State of Haryana Vs. Bhajan Lal

[1991 (28) ACC 111 (SC)], the proceedings may be quashed.

6. Another judgment of the Apex Court has also been cited by learned counsel for the petitioner rendered in Rajesh Talwar Vs. Central Bureau of

Investigation and Others, . On the strength of this judgment, it has been stated that the learned Magistrate must have applied his mind before taking

cognizance against an accused. He also relied upon the judgment of the Apex Court in the case of Umesh Kumar Vs. State of Andhra Pradesh, .

On the strength of this judgment, it has been urged that once the petition under Section 482, Cr.P.C. is filed before framing of the charges, petition

cannot be rejected on the ground that the accused can argue legal and factual issues at the time of framing of charge.

7. On the contrary, learned A.G.A. relying upon judgments rendered in the cases of Km. Rinki Vs. State of U.P. and others [2008 (3) JIC 267

(All) (DB)], Rajan Rai Vs. State of Bihar, , K.G. Premshanker Vs. Inspector of Police and another [2003 (1) JIC 2006 (SC)] and the judgment

of Constitution Bench of the Apex Court in the case of M.S. Sheriff Vs. The State of Madras and Others, submitted that the principle of stare

decisis cannot be applied in this case.

8. In this case, the only plea of stare decisis has been taken for quashing the proceedings. Hence, it is necessary to discuss the principle of stare

decisis.

9. The Black's Laws Dictionary defines "stare decisis" as under:-

Under doctrine a deliberate or solemn decision of court made after argument of question of law fairly arising in the case, and necessary to its

determination, is an authority, or binding precedent in the same court or in other courts of equal or lower rank in subsequent cases where the very

point is again in controversy. Doctrine is one of the policy, grounded on theory that security and certainty require that accepted and established

legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous

holding of court shall be adhered to, modified, or overruled is within court's discretion under circumstances of case before it. When point of law

has been settled by decision, it forms precedent which is not afterwards to be departed from, and, while it should ordinarily be strictly adhered to,

there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. The

doctrine is not ordinarily departed from where decision is of longstanding and rights have been acquired under it, unless considerations of public

policy demand it. The doctrine is limited to actual determinations in respect to litigated and necessarily decided questions and is not applicable to

dicta or obiter dicta.

10. "Stare Decisis" is only doctrine derived from "stare decisis et non quieta movere," which differs from that of doctrine of res judicata in the

following ways:

(1) Res judicata applies to the decision in the dispute, while stare decisis operates as to the rule of law involved.

(2) The former binds only the parties and their successors, whereas the latter binds everyone.

(3) Res Judicata applies to all Courts, but stare decisis is brought into operation only by the decisions of higher Courts.

(4) The former takes effect after the time for appeal is past; the latter operates at once. Dias of Jurisprudence, Edn., 1964.

11. The principles of stare decisis has been considered in several cases by this Court as well by the Hon^{ble} Supreme Court.

12. The Hon^{ble} Supreme Court in K.K. Premshanker's case (Supra) considered the relevancy of judgments in light of the provisions of section

41 to 43 of the Indian Evidence Act relying upon its earlier judgment of M.S. Sheriff's case (Supra) and gave conclusive opinion as under:-

Para 26. "What emerges from the aforesaid discussion is - (1) the previous judgment which is final can be relied upon as provided under Sections

40 to 43 of the Indian Evidence Act; (2) in civil Suits between the same parties, principle of res-judicata may apply; (3) in a criminal case Section

300 Cr.P.C. makes provision that once a person is convicted or acquitted he may not be tried again for the same offence if the conditions

mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be

relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in

section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

13. In the M.S. Sheriff's Case (supra), the Hon^{ble} Supreme Court held that no hard and fast rule can be laid down and that possibility of

conflicting decision in civil and criminal Courts is not a relevant consideration. The law envisages ""such an eventuality when it expressly refrains

from making the decision of one Court binding on the other, or even relevant, except for limited purpose such as sentence or damages.

14. In the case of Karan Singh Vs. State of Madhya Pradesh, , Hon"ble Supreme Court considered the same question, the relevant paragraph 6

of which is extracted below:-

6. ""We are therefore of opinion that the judgment in Krishna Govind Patil Vs. State of Maharashtra, does not assist the appellant at all. On the

other hand we think that the judgments earlier referred to on which the High Court relied, clearly justify the view that in spite of the acquittal of a

person in one case it is open to the Court in another case to proceed on the basis-of course if the evidence warrants it-that the acquitted person

was guilty of the offence of which he had been tried in the other case and to find in the later case that the person tried in it was guilty of an offence

under S. 34 by virtue of having committed the offence along with the acquitted person. There is nothing in principle to prevent this being done. The

principle of Sambasivam"s case, 1950 AC 458 has no application here because the two cases we are concerned with are against two different

persons though for the commission of the same offence. Furthermore, as we have already said, each case has to be decided on the evidence led in

it and this irrespective of any view of the same act that might have been taken on different evidence led in another case.

15. In Rajan Rai"s case (Supra), the police after registering the case took up the investigation and on completion thereof submitted the charge-

sheet against all the six accused on receipt whereof cognizance was taken and all of them were committed to the Court of Sessions to face trial. As

one of the accused was absconding, his trial was separated from that of other five accused persons, out of whom one died before the

commencement of trial, as such, the trial proceeded against the remaining four accused persons and all were convicted. Against the said judgment

they preferred the appeals. During the course of pendency of appeals, the other one co-accused was apprehended and was put on trial ultimately

the trial court convicted him. He also filed an appeal before the High Court. The appeals preferred by the other four convicted accused persons

challenging their convictions, which were decided by the High Court and the same were allowed and their convictions and sentences set aside. The

appeal filed by the other co-accused was taken up later. The High Court upheld his convictions and sentences. Then, he preferred appeal by

Special Leave before the Hon"ble Supreme Court to attack the impugned Judgment on three counts. One of the ground was that in appeal arising

out of the earlier trial, the High Court acquitted the other four accused persons on merit, therefore, it was not permissible for it to uphold the

conviction of the appellant on the basis of evidence of the same witnesses examined during the course of trial of the appellant. In considering the

case the Hon^{ble} Supreme Court also cited the provisions of section 40 to 44 of the Evidence Act 1872, which are under the heading ""Judgments

of courts of justice when relevant"" and found that it has not been shown that the judgment of the acquittal rendered by the High Court in appeals

arising out of the earlier sessions trial could be said to be relevant under the other provisions of the Evidence Act, it was clearly ""irrelevant"" and

could not have been taken into consideration by the High Court while passing the impugned judgment. The Hon^{ble} Court also considered other

earlier judgments rendered in the trial and ultimately formulated the following opinion.

We are clearly of the view that the judgment of acquittal rendered in the trial of the other four accused persons is wholly irrelevant in the appeal

arising out of the trial of the appellant Rajan Rai as the said judgment was not admissible under the provisions of sections 40 to 44 of the Evidence

Act. Every case has to be considered on the evidence adduced therein. Case of the four acquitted accused persons was decided on the basis of

evidence led there while the case of present appellant has to be decided only on the basis of evidence adduced during the course of his trial"".

16. The relevancy of judgment of course of justice derives a power from the provisions of Sections 40 to 43 of the Indian Evidence Act, which are

reproduced herein under:-

40. ""Previous judgments relevant to bar a second suit or trial.- The existence of any judgment, order or decree which by law prevents any Court

from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit,

or to hold such trial.

41. Relevancy of certain judgments in probate, etc., jurisdiction.- A final judgment, order or decree of a competent Court, in the exercise of

probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which

declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is

relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof-

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or

decree declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which

such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or

decree declares that it had been or should be his property.

42. ""Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.-Judgments, orders or decrees other than

those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees

are not conclusive proof of that which they state.

43. ""Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.- Judgments, orders or decrees, other than those mentioned

in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other

provisions of this Act.

17. After considering several decisions, the Division Bench of this Court in Kumar Rinki's case (Supra) concluded its opinion on the point as under

paragraphs 13 and 14:

13. The inference that is deducible from discussion of the above decisions that the judgment of acquittal rendered in the trial of other co-accused

is wholly irrelevant as the said judgment would not be admissible under the provisions of Sections 40 to 44 of the Evidence Act. It also leaves no

manner of doubt that every case has to be decided on the evidence adduced therein and therefore, the case of the petitioner has to be decided on

the basis of evidence which may be adduced during the course of trial.

14. ""The principles that are distilled from the discussion of the above decisions are:

(i) the acquittal of a co-accused in a separate trial cannot be made basis for quashing the proceedings against another co-accused who is being

separately tried on the principle that each case has to be decided on the evidence adduced in that case;

(ii) Judgment of acquittal rendered in one case is not relevant in the case of co-accused separately tried inasmuch as Sections 40 to 44 of the

evidence Act deal with relevancy of certain judgments in probate, matrimonial, admiralty and insolvency jurisdiction and therefore, inapplicable to a

criminal case.

18. In this case, a separate charge-sheet has been filed against the petitioner, therefore, separate case has been registered against him.

19. It has been contended by learned counsel for the petitioner that a perusal of the judgment of acquittal reveals that main accused Virendra

Kumar Dwivedi married with the prosecutrix later on. The charges framed against the petitioner is not only of Section 376, 363 or 366 IPC but

also for other sections. The court passed acquittal on the ground of document in the form of marriage certificate. The case of the present applicant

is not based on the same defence. Moreover as discussed above, it could not be said that the case is squarely covered under Section 300 of

Cr.P.C., therefore, I am of the view that the present proceeding does not warrant any interference on the basis of doctrine of stare decisis.

20. Hence, petition lacks merit and is accordingly dismissed.