(2001) ILR (MP) 1775 : (2001) 4 MPHT 82

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Revision No. 275 of 2001

Smt. Nirmala Bai	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision: June 28, 2001

Acts Referred:

- Constitution of India, 1950 - Article 20
- Criminal Procedure Code, 1973 (CrPC) - Section 300, 386
- Penal Code, 1860 (IPC) - Section 304

Citation: (2001) ILR (MP) 1775 : (2001) 4 MPHT 82

Hon'ble Judges: Nirmal Kumar Jain, J

Bench: Single Bench

Advocate: Shri H.S. Uberoi and Mr. P. Prasad, for the Appellant; Shri G. Desai, Dy. A.G., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.K. Jain, J.

1.By this revision applicant Smt. Nirmalabai seeks to impugn the judgment dated 12-2-2001 passed by 1st Addl. Sessions Judge, Neemuch, in Cr. Appeal No. 168/98 as also the order dated 16-5-2001 passed by IInd Addl. Sessions Judge, Neemuch in S.T. No. 76/2001.

2. By the judgment dated 12-2-2001 in Appeal No. 168/98, the learned ASJ has set-aside the conviction, and sentence passed against the applicant u/s 304A of IPC by the Trial Magistrate and remanded the case back to the Magistrate with the direction that it be committed to the Court of Sessions for trial under Sections 314 and 315 of IPC. The order dated 16-5-2001 is passed by the ASJ after committal of the said case by the Magistrate,

framing charges under Sections 314 and 315 of IPC against the applicant.

3. Applicant Smt. Nirmalabai at the relevant time was working as a Nurse at village Sarvania, Dist. Neemuch. One Shantabai (since deceased) who was having two months pregnancy, accompanied by her husband, approached the applicant and requested for abortion. It is said that the applicant administered some medicines to her which led to severe bleeding. She was shifted to a Nursing Home at Neemuch where she died on 27-6-1989. On receiving information from the treating Doctor of the said Nursing Home, the Police Javad registered a crime u/s 304A of IPC and after investigation filed charge-sheet against the applicant. She was tried by the ACJM, Javad who vide his judgment dated 7-11-1998 convicted her u/s 304A of IPC and sentenced her to 2 years RI with fine of Rs. 5,000/-. On appeal (No. 168/98) the learned Ist ASJ, Neemuch, set aside the said conviction and ordered for committing the case for trial by the Sessions Court on the charge u/s 315 of IPC. The Magistrate accordingly vide his order dated 31-3-2001 committed the case to the Court of Sessions and ultimately the learned IInd ASJ, Neemuch has framed charges under Sections 314, 315 and 304A of IPC against the applicant. All these proceedings are sought to he impugned by the applicant in the present revision.

4. I have heard Shri H.S. Uberoi, learned Sr. Counsel appearing with Mr. P. Prasad, Advocate for applicant and Mr. G. Desai, Dy. A.G. for respondent-State.

5. Shri Uberoi has assailed the impugned orders mainly on two grounds : one : that no order for committal could legally be made by the Sessions Court while hearing appeal against conviction, and, two: that the trial of the applicant for the additional charges under Sections 314 and 315 of IPC is hit by Section 300 of Cr.PC. It was contended that the applicant having been tried and convicted for the offence u/s 304A, IPC, is not liable to be tried again for any other offence for which a different charge from the one already made against her might have been made under sub-section (1) of Section 221 or for which she might have been convicted under sub-section (2) thereof. This second trial by the Court of Sessions, it is contended, is violative not only of the bar contained u/s 300 of the Cr.PC but also of the Article 20 of the Constitution which are based on the same principle that man''s life or liberty shall not be twice put in jeopardy for the same offence or for different offence on the same set of facts. Reliance has been placed on a Supreme Court decision in Nalini 1999 SCC (Cr.) 691.

As against it, Shri G. Desai, Dy. A.G. for respondent-State has supported the order of remand also the charges framed against the applicant. It is submitted that learned AST, while hearing appeal against conviction passed by the Magistrate, has power u/s 386 of Cr.PC to order for committal of the case to the Court of Sessions. It is further contended that Section 300, Cr.PC has no application in the case as there is no conviction or acquittal in force. In fact, the proceedings of committal and further trial by the Court of Sessions against the applicant are in continuation of the prosecution launched initially before the Magistrate.

6. I have given serious consideration to the rival contentions and I am clearly of the view that this revision must fail.

7. Clause (b) of Section 386, Cr.PC enumerate powers of the Appellate Court in an appeal from a conviction and thus reads :

386. .....

(a) .....

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) .....

(iii).....

8. It will be thus seen that Section 386 of the Code expressly gives power to the Appellate Court to dismiss the appeal, to acquit or discharge the accused or order him to be retried or committed for trial. In the instant case, therefore, the learned ASI was well within his powers to order commitment of the accused applicant for trial by the Sessions Court as prima facie an offence (under Section 315 of IPC) triable exclusively by Sessions Court, was made out against her.

9. As regards the bar contained u/s 300 of the Code, three things are required to attract the bar. It must be shown that:

(1) (a) A person has once been actually tried by a Competent Court for the same offence charged in the second trial; or

(b) though not actually tried for the same offence charged in the second trial, he could not have been on the same facts charged with it u/s 221(1) or convicted of it u/s 221(2).

(2) He has been convicted or acquitted in the earlier trial; and

(3) The conviction or acquittal is in force, i.e., it has not been set aside by a Superior Court.

10. In the instant case, although the accused applicant was tried by the Court of Judicial Magistrate and convicted for the offence u/s 304A, IPC but the said conviction has been set aside in appeal by the Sessions Court which has further ordered for its committal to the Court of Sessions for trial for another offence u/s 315 of IPC. Obviously, the earlier conviction of the applicant (under Section 304A) is no more in force when she is put on

trial again for the offences under Sections 314, 315 and 304A, IPC. In fact, it is a case of continuation of the same trial and there is thus no question of the bar contained u/s 300, Cr.PC coming into way of her trial by the Sessions Court. As already pointed out, the order for her committal to the Sessions Court was in accordance with law so her trial pursuant to that order is not vitiated by the bar contained u/s 300.

11. The ratio in Nalini (supra), I am afraid is not available to the applicant in the instant case. In that case there was acquittal recorded by a Court of Competent Jurisdiction against the accused and the same was in force when she was put to trial co-jointly with other accused persons on the same charge. The position, as already mentioned above, is different in the instant case inasmuch as no acquittal or conviction was in force when the present applicant was put to trial again for some higher offences.

12. In the Memo of Revision a further ground is taken that there is no evidentiary material on record to justify framing of charge under Sections 314 and 315 of IPC against the accused applicant. This point was not pressed seriously at the time of arguments. It was further stated at the bar that the trial before the Sessions Court is almost over and the entire prosecution evidence has already been recorded. I do not, therefore, consider it proper to comment on the facts of the case lest it may prejudice one party or the other at the trial. Needless to add that the accused applicant is free to demonstrate her innocence before the Trial Court.

13. Resultantly the revision fails and is dismissed.

14. Criminal Revision dismissed.