

(2011) 08 PAT CK 0113

Patna High Court

Case No: Criminal Miscellaneous No. 23252 of 2010

Sanjay Kumar Verma @ Sanjay
Verma and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: Aug. 17, 2011

Acts Referred:

- Constitution of India, 1950 - Article 20, 20(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 161, 202, 300, 300(1)
- Penal Code, 1860 (IPC) - Section 304B, 34, 498A

Hon'ble Judges: Aditya Kumar Trivedi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aditya Kumar Trivedi, J.

Heard Learned Counsel of both sides. Petitioners being aggrieved by and dissatisfied with an order dated 19.12.2009 passed by Chief Judicial Magistrate, Nalanda at Biharsharif in Complaint Case No. 747(c) of 2008 summoning the Petitioner to face trial for an offence punishable under Sections 498A, 304B and 34 of the I.P.C. have invoked extraordinary power to this Court so provided u/s 482 of the Code of Criminal Procedure .

2. Shorn of unnecessary details, one Rupa who was married with one of the Petitioner, namely, Sanjay Kumar Verma alias Sanjay Verma met with an unnatural death within seven years of her marriage at Gurudwara Road, Sheopuri, District-Sheopuri (MP.) for which on the statement of Sanjay Kumar Verma alias Sanjay Verma U.D. Case No. 58/2006 was registered which was subsequently converted into a substantial case after having appearance of OP. No. 2 bearing Sheopuri P.S. Case No. 38/2008 under Sections 304B, 498A, 34 of the I.P.C. where

under cognizance was also taken after submission of charge-sheet and accordingly, Petitioners were put on trial and were acquitted vide judgment dated 4.8.2008 from the Court of 3rd Additional Sessions Judge, Sheopuri delivered in connection with S. Tr. No. 147/2008. While the aforesaid matter was pending, OP. No. 2 filed Complaint Petition No. 1257/2006 before Chief Judicial Magistrate, Nalanda at Bihar Sharif which was sent to the local police for registration and investigation as provided u/s 156(3) of the Code of Criminal Procedure which led initiation of Bihar P.S. Case No. 350/ 2006 under Sections 498A, 304B, 34 of the I.P.C, wherein after concluding investigation final report was submitted. However, as protest petition was already pending consequent thereupon after having the final report accepted by the learned Chief Judicial Magistrate, the matter proceeded treating the protest petition as complaint petition, wherein after concluding inquiry as provided u/s 202 of the Code of Criminal Procedure , by the order impugned Petitioners have been summoned to face trial for an offence punishable under Sections 498A, 304B, 34 of the I.P.C. which has caused grievance to the Petitioner to file instant petition. It is worth mention to note that OP. No. 2 failed to place information before either of the court regarding pendency of case.

3. It has been submitted on behalf of the Petitioner that the order of cognizance and summoning of Petitioner is bad in law and so the order impugned cannot be found to be tenable in the eye of law. To buttress his submission, Learned Counsel for the Petitioner drew attention towards Section 300 of the Code of Criminal Procedure and submitted that once Petitioners have already tried for the same allegation and acquitted, then under such situation he cannot be prosecuted and tried in subsequent proceeding for the same cause which is also found to be contrary to Sub-clause 2 of Article 20 of the Constitution. To support his plea also relied upon decision reported in 2011(1) PLJR (SC) 159 (Kolla Veera Raghav Rao v. Gorantla Venkateshwara Rao and Anr.).

4. At the other hand the learned Additional Public Prosecutor though opposed, but fairly concedes so far legal position is concerned and submitted that after having chronological reading of Article 20 Sub-clause 2 of the Constitution as well as Section 300 of the Code of Criminal Procedure , subsequent trial is prohibited.

5. So far OP. No. 2 is concerned, it has been submitted that before conversion of U.D. Case to regular case bearing Sheopuri P.S. Case No. 38 of 2008, O.P.-informant had already taken legal recourse by filing complaint petition which was sent to the P.S. concerned for registration and investigation of the case and then and then only, the accused coming to know about the aforesaid development and further having the police official acknowledged with the aforesaid development, transformed the U.D. Case as regular case and then thereafter the matter proceeded at Sheopuri where trial commenced and concluded. Therefore, the submission is that the present case happens to be earlier instituted case and so this case should have been allowed to proceed instead of Sheopuri P.S. Case No. 38 of 2008 which was the

subsequent event. So submitted that for the present Petitioners are not at all entitled for the privilege for which they have approach the court. The better recourse, as submitted, to appear before the court below and to face trial.

6. It goes without saying that for the death of Rupa Devi though earlier U.D. Case was registered, but subsequently was converted into substantial case bearing Sheopuri P.S. Case No. 38 of 2008 under Sections 304B, 498A, 34 of the I.P.C. for which the present case happens to be. There is also no controversy amongst the parties with regard to appearance of O.P. No. 2 and his family members during course of investigation of Sheopuri P.S. Case No. 38 of 2008, their statement recorded u/s 161 of the Code of Criminal Procedure , commencement of trial and having their presence as prosecution witnesses which lastly culminated under acquittal of the Petitioners, However, it is surprising that none of the prosecution witness disclosed regarding pendency of instant case. Therefore, suddenly in the instant case though it origin happens to be before conversion of U.D. Case as substantial case, but as none of the party raised any objection nay challenged, therefore, the prosecution of Petitioner with regard to Sheopuri P.S. Case No. 38 of 2008 certainly prohibits their repeated prosecution under the instant trial which happens to be for the same cause and further the same appears to be prohibited u/s 300 of the Code of Criminal Procedure At this juncture, I would like to refer the principle laid down by the Hon"ble Apex Court reported in 2011(1) P.L.J.R. (SC) 159, para-7:-

7. Thus, it can be seen that Section 300(1) of Code of Criminal Procedure is wider than Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that "no one can be prosecuted and punished for the same offence more than once", Section 300(1) of Code of Criminal Procedure states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

For the reason stated above, the instant petition is allowed consequent thereupon the order of cognizance dated 19.12.2009 taken with regard to Complaint Case No. 747 of 2008 by the learned Chief Judicial Magistrate, Nalanda at Biharshariff is quashed.