

2022 LiveLaw (All) 148

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Hon'ble Suresh Kumar Gupta, J.

APPLICATION U/S 482 No. 1325 of 2021; 29.3.2022

Anant Mishra @ Amit Mishra @ Surya Prakash Mishra v. State of U.P. and Another

Evidence Law - Considering the testimony of witnesses if one accused is acquitted, no criminal proceeding can be sustained against co-accused on the same set of witnesses with the same allegation/case.

Counsel for Applicant:- Ravindra Shukla;

Counsel for Opposite Party:- G.A.

Heard learned counsel for petitioner, learned A.G.A. for the State and perused the material available on record.

By means of this petition under Section 482 Cr.P.C. the petitioner has sought following reliefs:-

"Wherefore it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned charge sheet no. 02 of 2018 dated 4.12.2018 submitted by the police relating to Case Crime No. 372 of 2016, under Section 364- A/34 IPC, Police Station Lambhuwa, District Sultanpur against the petitioner and summoning order dated 18.01.2019 passed by learned Chief Judicial Magistrate, Court No. 16, Sultanpur in Criminal Case No. 141 of 2019 (State of U.P. Vs. Anand Deep Duibey and others) and the entire proceedings of aforesaid case may also be quashed."

Brief facts giving rise to the present petition are that opposite party no. 2 - Matadeen lodged an FIR on 08.10.2016 against the unknown persons bearing Case Crime No. 372 of 2016 under Section 364 IPC, Police Station Lambhuwa, District Sultanpur with the allegation that some unknown accused abducted his brother Sikander. During investigation, the name of five persons, namely, Jitendra Pandey alias Chintu, Jitenra Pathak, Dharam Raj Nishad, Anand Deep Dubey alias Ashu Deubey and Anan Mishra (present applicant) came into light. Thereafter the police submitted charge sheet against Jltendra Pandey, Jitendra Pathak and Dharam Raj Nishad and they were arrested. The trial against three persons were commenced before the learned Additional District Judge Court No. 3 Sultanpur vide Sessions Trial No. 111 of 2017 in which statement of PW-1 complainant Matadeen was recorded on 06.03.2018.

Learned counsel for petitioner has submitted that in this case three witnesses were examined. PW-1 Matadeen is the first informant, brother of the abductee has not supported the prosecution case. PW-2 Monu alias Dilip Kumar, who is niece of abductee, has clearly stated that no one had called him on mobile phone for ransom of Rs.25,00,000/- and he also did not support the prosecution case. PW-3 is the abductee Sikander. He also did not support the prosecution case. He clearly stated

that nobody abducted him nor any ransom was demanded. Thus PW-3 has also not supported the case of the prosecution. Therefore, all the three accused persons were exonerated of the charges levelled against them under Section 364-A IPC and they have been acquitted by learned IIIrd Additional Sessions Judge, Sultanpur vide order dated 28.09.2018.

Further submission of learned counsel for petitioner is that after passing the judgment of trial court dated 28.09.2018, this fact was within the knowledge of Investigating Officer but the Investigating Officer intentionally filed charge sheet on 24.12.2018 before the court concerned ignoring the judgment passed by trial court dated 28.09.2018.

It is further submitted that since the witnesses were examined in Sessions Trial No. 111 of 2017 and they did not support the prosecution case, so it will be futile exercise to face the trial. In support of his submission, learned counsel for petitioner has relied upon a judgment of this Court in the case of **Diwan Singh Vs. State** reported in **1964 Lawsuit (All) 182**, in that case also the accused were discharged on the ground of acquittal of co-accused, which are having the similar allegation and same prosecution witnesses.

Learned counsel for petitioner has submitted that in the case of **Diwan Singh (supra)** it was held that if the allegation and witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. this Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained.

Learned AGA for the State has opposed the prayer made by learned counsel for the applicants, but could not dispute the fact of acquittal of other co-accused persons.

I have considered the rival submissions made by learned counsel for the parties, perused the record and the judgements relied upon by learned counsel for the applicant.

In the matter of **Diwan Singh (Supra)**, this was the issue that if allegation & witnesses are same and after examination of witnesses one accused is acquitted, then other co-accused can be punished or not. This Court has clearly held that under such circumstances the conviction of co-accused cannot be sustained. Relevant paragraph Nos. 4, 5 & 6 of the judgment of **Diwan Singh (supra)** are quoted hereinbelow:-

"4. Learned counsel for the applicant has argued that both Manohar and the applicant were arrested together, searched together and as a single recovery list was prepared about the articles alleged to have been recovered from them and as the same witnesses were examined. by the prosecution in both the trials before the Magistrate, it will be incongruous to convict one of them on the basis of the same evidence and to acquit the other. I find force in this contention,

5. *The judgment of the learned Sessions Judge in Criminal Appeal No. 262 of 1963 setting aside the conviction and sentence of Manoliar was not challenged by the State by filing an appeal and, as such, has become final. It is no doubt true that the learned Sessions fudge acquitted Manohar on a technical ground because, in his opinion, "the prosecution suffers from a patent infirmity creating reasonable doubt regarding the identity of the alleged fire arms". He did not disbelieve the evidence of the prosecution on facts. The reasoning given by the learned Sessions Judge in acquitting Manohar is not very appealing but the fact remains that Manohar who was arrested along with the applicant on the same charge and against whom the same evidence has been produced by the prosecution, has been acquitted, while the appeal of the applicant against his conviction was dismissed by the learned 1st Additional Sessions Judge of Etawah. In view of the acquittal of Manohar on the same facts and on the same evidence which has become absolute, it is not possible to maintain the conviction of the applicant.*

6. *If two persons are prosecuted, though separately, under the same charge for offences having been committed in the same transaction and on the basis of the same evidence, and if one of them is acquitted for whatever may be the reason and the other is convicted, then it will create an anomalous position in law and is likely to shake the confidence of the people in the administration of justice. Justice is not only to be done but also seem to be done. Therefore, I am clearly of opinion that as has been held in the case of Pritam Singh v. State of Punjab. (S) AIR 1956 SC 415, the principle of stare decisis will apply in the present case and the applicant's conviction cannot be sustained."*

After going through the judgements relied by learned counsel for the applicant, it is very much clear that Court has held that considering the testimony of witnesses, if one accused is acquitted, no criminal proceeding can be sustained against co-accused on the same set of witnesses and in the present case too, there is no separate witness and on the basis of testimony of same prosecution witnesses, main accused was acquitted by the court below, Whenever there is no prospect of the case ending in conviction, valuable time of court should not be wasted for holding trial only for the purpose of completing the procedure to pronounce the conclusion on future date. Therefore, criminal proceeding cannot be permitted to continue against the applicant.

Therefore, under such facts and circumstances of the case as well as law laid down by the Apex Court, criminal proceeding against the applicants in S.T. No. 111 of 2017, arising out of Case Crime No. 372 of 2016, under Section 364-A/34 IPC, Police Station Lambhuwa, District Sultanpur cannot be sustained and is hereby quashed.

With the aforesaid observation/direction, this petition under Section 482 Cr.PC. is allowed. Office is directed to communicate this order to the trial court concerned for necessary action and compliance.