P. Manikandan vs Central Bureau Of Investigation on 19 December, 2024

Author: Sanjay Karol

Bench: Sanjay Karol, C.T. Ravikumar

2024 INSC 1007 R

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2024
(Arising out of SLP(Crl.) No. 8700 of 2023)

P. MANIKANDAN …APP

Versus

CENTRAL BUREAU OF
INVESTIGATION AND ORS …RES

JUDGMENT

SANJAY KAROL J.

Leave Granted.

2. The present appeal arises from the judgment and order dated 4th July, 2023 passed by the High Court of Judicature at Madras in CRL.O. P. No.5826 of 2023 and CRL.M.P.Nos.3640 and 3642 of 2023, whereby the High Court dismissed the petition for quashing filed by the appellant under Section 482 of the Criminal Procedure Code, 19731 against the chargesheet/final report and proceedings pending before the Special Court for the trial of cases under the Protection of Children from Sexual Offences Act, 20122, Tiruvannamalai, Tamil Nadu in Special S.C.No.42 of 2021.

3. The crux of the present appeal is that on 19th June, 2013, a case was registered bearing Crime No.139 of 2013 under Section 364A and 302 of the Indian Penal Code, 18603 against the accused namely, P. Manikandan4, wherein it was alleged that the appellant kidnapped the 4-year-old child from Gandhi International Matriculation School, Mangalam by using his motorcycle and after murdering her, threw away the dead body in Well.

4. The background facts in which the present appeal has arisen are:

> 4.1 The father of the deceased, namely Paramasivam5, and the appellant were known to each other. The appellant borrowed a sum of Rs. 5,00,000/-

from the complainant due to losses incurred in his brick making business and he failed to return the money despite repeated demands from the complainant for repayment. The Complainant and his wife, Usha, had a daughter6, who was 4 years old and studied at Gandhi International Matriculation School, Mangalam7. The deceased child was regularly taken hereinafter referred to as "Cr.P.C." hereinafter referred to as the "POCSO Act", hereinafter referred to as 'IPC' hereinafter referred to as the "Appellant" hereinafter referred to as "Complainant" hereinafter referred to as the "Deceased child" hereinafter referred to as the "School" to school by one Chandrasekar, the van driver and in his absence, the appellant sometimes would take the deceased child to and from the school. On 13th June 2013, at about 01.30PM the deceased child was found to be missing from school. Allegedly, the father of the deceased informed the appellant about the same and requested his assistance in confirming her whereabouts. It was alleged that the appellant arrived at the location after a delay of two hours, pretending to be involved in the search for the deceased child, but being unable to locate her, subsequently, a complaint was filed at the Mangalam Police Station.

4.2 About a week later, the villagers informed the complainant about a body floating in a well at Aarpakkam and the same was later identified as that of his daughter. On 19th June 2013, the Complainant filed a complaint, which was registered as Crime No.139 of 2013, initially recorded under the head of 'Child Missing'; the case was later reclassified to include charges of kidnapping for ransom and murder. It was alleged that on 13th June 2013, the appellant kidnapped the deceased child from School, using his Hero Honda Splendor Motorcycle Plus bearing registration no. TN25-L-2391 and after murdering her, he disposed of her body in the well. 4.3 Thereafter, after completion of the investigation, the Mangalam Police Station, filed chargesheet on 28th November 2013 before the Learned Judicial Magistrate Court–II, Thiruvannamalai, who took cognizance thereof and assigned PRC No.51 of 2013, and committed the case to the Learned Fast Track Mahila Court, Thiruvannamalai8, where SC No. 102 of 2015 was assigned.

4.4 In order to prove the guilt of the accused, the prosecution examined witnesses PWs 1 to 20 and exhibited P-1 to P-16 and M.O. 1 to M.O. 8. Upon consideration of evidence, the Trial Court, vide judgment dated 31st January 2018, on the basis of the last seen theory held that the appellant was guilty for the offence punishable under Section 364A and 302 of the IPC. Sentence awarded to the appellant was life imprisonment and fine of Rs. 5,000/- for the offence under Section 304A IPC and death penalty for the offence under Section 302 IPC subject to the confirmation by the High Court of Madras. As required by the statute, the judgment was referred to a Division Bench of the High Court for confirmation of death sentence in Referred Trial No.2 of 2018. Being aggrieved by the conviction and sentence imposed upon him, the appellant preferred Criminal Appeal No.102 of 2018 before the High Court.

4.5 On 24th July 2018, the High Court, after considering the evidence on record, set aside the order of the Trial Court and came to the conclusion that the prosecution had failed to establish the guilt of

the appellant beyond all reasonable doubts; therefore, held that the appellant is entitled to the hereinafter referred to as the "Trial Court" acquittal of all charges. The High Court further directed the transfer of all relevant documents to the Central Bureau of Investigation9, Chennai, with the direction to conduct a de-novo investigation and submit a final report within three months. The High Court further directed that if the investigation reveals or confirms the involvement of the appellant, the prosecution may proceed against the appellant in accordance with law.

5. Subsequently, CBI re-registered the case on 18th January 2019, bearing FIR No.R.C.1/(S) of 2019 and after completion of the investigation, CBI filed chargesheet dated 25th August 2020 bearing Chargesheet No.2 of 2020 under Section 173 of Cr.P.C. against the appellant for the commission of offence under Sections 364 and 302 of IPC in Special S.C No.42 of 2021 before Special Court for the trial of cases under POCSO Act, Tiruvannamalai, Tamil Nadu, by confirming the role of the appellant with regard to the commission of offence of kidnapping of the deceased child.

6. In the year 2023, appellant preferred Crl.O.P.No.5826 before the High Court of Judicature at Madras under Section 482 of the Cr.P.C seeking quashing of the chargesheet/final report No.2 of 2020 and the pending proceeding of Special SC No.42 of 2021 on the ground that once the appellant was tried by the Trial Court for an offence and the appellate court acquitted the appellant of all hereinafter referred to as "CBI".

charges, the Court cannot order such acquitted person to be tried again for the same offence on the same set of facts, after re-investigation.

7. Resultantly, the High Court vide judgment and order dated 4th July, 2023 while dismissing the CRL.O.P.No.5826 of 2023, directed the Trial Court to complete the trial and pass judgment, within a period of 30 days from the date of this order, without being influenced by any of the observations either made in the order under Section 482 Cr.P.C or in the order passed by the Division Bench in the Criminal Appeal

8. The High Court vide the impugned order, after considering the contentions of the parties, gave the following findings while dismissing the Criminal Petition:

> (i) While considering the issue "whether the facts of the case attracts Section 300(i) of Cr.P.C?", the High Court concluded that the Division Bench rightly directed the CBI to conduct a de novo investigation. The said order was not challenged by the accused; he submitted himself to the trial.

Having realized that the trial is proceeding against him, the petitioner (appellant herein) has filed the present petition on the baseless claim that Section 300 Cr.P.C. offers him protection, which, in fact, it does not.

(ii) While relying on the decision of this Court in Satyajit Banerjee and Ors v. State of West of Bengal and Ors.10, Ajay Kumar Ghoshal and Ors v. State of Bihar and Anr.11, following Zahira Habibulla H. Sheikh v. (2015) 1 SCC 115 (2017) 12 SCC 699 State of Gujarat12(well known as the 'Best Bakery'

case), on the point that the Appellate court has power under Section 386(b)(i) of Cr.P.C. to order retrial/de novo trial if, it is satisfied that the omission or irregularities has caused miscarriage of justice.

(iii) Section 300 (i) of Cr.P.C., qualified the protection only in case the order of conviction or acquittal remains in force. Bare perusal of the Sub Sections (2) to (5) of Section 300 of Cr.P.C., makes it clear that explanation of "autrefois acquit", is not absolute but subject to conditions and held that the acquittal in previous trial with a direction for re-investigation is not an acquittal in force.

9. This order rejecting the appellant's quashing petition is assailed before this Court. Although questioned here is this order, challenge has also been laid to the direction to conduct de novo investigation to CBI. Learned counsel appearing on behalf of the appellant submitted that:

> (i) Article 20 (2) of the Constitution of India explicitly stipulates that no person shall be prosecuted or punished for the same offence more than once, as the appellant has previously been acquitted on the same facts and for the same offence and, therefore, subsequent prosecution in impermissible;
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> (2004) 4 SCC 158
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> (ii) This protection against double jeopardy is further reinforced by the statutory provisions, including Section 300 of Cr.P.C., Section 40 of the Evidence Act, 1872, Section 71 of IPC and Section 26 of the General Clauses Act, 1897.
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> (iii) Power under Section 386(b) of the Cr.P.C. does not include the power to direct de novo investigation in case of an appeal against conviction.
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> (iv) It was further submitted that an acquittal may be characterized as 'honorable' when, after a thorough examination of the prosecution's evidence, the court determines that the prosecution has entirely failed to substantiate the charges brought against the accused. In such circumstances, it may be inferred that the accused has been acquitted in a manner that implies full exoneration from blame.
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> (v) In furtherance of the submissions, the learned counsel for appellant relied upon various decisions of this court viz. T.P. Gopalkrishnan v. State of Kerala13, Subrata Choudhury alias Santosh Choudhury and Ors. v.

State of Assam & Anr.14, Amandeep Singh Saran v. State of Chhattisgarh15, Deputy Inspector General of Police V. S. Samuthiram16, Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr., Ajay Kumar Ghoshal & Ors. v. State of Bihar & Anr.17. (2022)14 SCC 323 2024 SCC Online SC 3126 (2024) 6 SCC 541 (2013) 1 SCC 598 (2017) 12 SCC 699

10. The stand of the respondent/CBI as reflected from record is as under:

(i) It was stated that the acquittal or discharge of the appellant was not based on the merits of the case. The acquittal order passed by the High Court does not have the effect of the final acquittal, as the appellate proceedings did not result in a determination by affirming the conviction or an acquittal on merits. The proceedings constitute a continuation of the trial against the appellant. Accordingly, the principle of double jeopardy under Article 20 (2) of the Constitution of India and Section 300 of Cr.P.C. does not apply.

(ii) The circumstances of this case do not meet the condition provided under Section 300 of Cr.P.C., in order to comply with the provision under Section 300 of Cr.P.C, the previous trial must pertain to the same offence and the same charges, and the resulting order of conviction or acquittal must be final and in force. The protection against double jeopardy, known as "autrefois acquit," provided under Section 300, is not absolute and is subject to the conditions specified in Sub-sections (2) to (5) of Section 300 CrPC.

(iii) Given the specific circumstances of the case, the accused can be retried for the same offence, as the previous trial has been annulled. Consequently, there is no subsisting acquittal or conviction in effect.

(iv) Further it was stated that the High Court has the power under Section 368 of Cr.P.C to order a new trial on the same offence or amend the charges and the Appellate Court has the power under Section 386 of Cr.P.C, in pursuance of the decisions laid down in Ajay Kumar Ghoshal & Ors. v. State of Bihar & Anr.18, Ukha Kolhe v. State of Maharashtra19, Mohd. Hussain v. State (Govt. of NCT of Delhi)20. Additionally, it was stated that the High Court has the power to order re-investigation while relying on the judgment of this court in Devendra Nath Singh v. State of Bihar21.

(v) That the appellant did not avail the remedy of approaching the High Court or this Court upon receiving summons from the Chief Judicial Magistrate, Chengalpattu, or during the initial stages of the trial proceedings. It was further stated that the appellant approached the High Court only subsequent to the examination of 34 prosecution witnesses and after the completion of the chief examination of the concerned Investigating Officer, at that stage the appellant was fully aware that sufficient evidence had been adduced to sustain a conviction against him.

11. We have heard the learned counsel for the parties. The issues which arise for the consideration before this court are:

(2017) 12 SCC 699 (1964) 1 SCR 926 (2012) 9 SCC 408 (2023) 1 SCC 48

(i) Whether the High Court was justified in directing re-investigation and retrial of the same offence on the same set of facts, after acquitting the accused by giving him the benefit of doubt? In other words, when considering an appeal against conviction under Section 386(b)(i) of Cr.P.C., is the High Court empowered to direct re-investigation, if yes, then could such a direction be given while acquitting the

accused, in the very same order;

(ii) Whether, in the attending fact and circumstances, the de novo investigation violated the principle of double jeopardy and the appellant's right under Article 20(ii) of the Constitution of India and Section 300 of the Cr.P.C.

12. In the present case, the High Court acquitted the appellant and directed to transfer the documents and relevant material to conduct the de novo investigation before CBI on the same facts for the same offences and to proceed against the appellant in accordance with law, by exercising the power under Section 386 of Cr.P.C.

13. The power of the Appellate Court as described under Section 386 of Cr.P.C is extracted below:

"386. Power of the Appellate Court- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may – a. in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

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) alter the finding, maintaining the sentence, or

(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

c. in an appeal for enhancement of sentence

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

d. in an appeal from any other order, alter or reverse such order; e. make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement;

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal." (Emphasis supplied)

14. Section 386 (b) of Cr.P.C. enumerates power of the Appellate Court which inter alia includes the power to order the appellant to be retried by the competent authority or committed for trial in case of appeal from a conviction. This court in several decisions deals with the power of Appellate Court to direct a re-trial.

15. The Constitution Bench, while dealing with such an issue, that when such power should be exercised by the Appellate Court in Ukha Kolhe v. State of Maharashtra22, observed that:

> "11. An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re-trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons. " (Emphasis supplied)

16. In the "Best Bakery Case", wherein the Trial Court directed the acquittal of the accused person in a case of mass killings, the same was upheld by the High Court of Gujarat while dismissing the criminal appeal, this Court, after considering the facts and circumstances of the case, directed the de novo trial of the accused person by observing that:

> "73. ... We are satisfied that it is a fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation a retrial is a must and essentially called for in order to save and preserve the justice-delivery system unsullied and unscathed by vested interests. We should not be understood to have held that

> whenever additional evidence is accepted, retrial is a necessary corollary. The case on hand is without parallel and comparison to any of the cases where even such grievances were sought to be made. It AIR 1963 SC 1531 stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence. It is normally for the appellate court to decide whether the adjudication itself by taking into account the additional evidence would be proper or it would be appropriate to direct a fresh trial, though, on the facts of this case, the direction for retrial becomes inevitable."

17. A Three Judge Bench of this Court in Mohd. Hussain v. State (Govt. of NCT of Delhi)23, held that:

> 41. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b).

Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked.

(Emphasis supplied)

18. While relying upon the decision of the Constitution Bench in Ukha Kolhe (supra), this court discussed the scope of Section 386 of Cr.P.C in Ajay Kumar Ghoshal v. State of Bihar,24 to the effect that:

> "10. Section 386 CrPC deals with the powers of the appellate court. As per Section 386(b) CrPC in an appeal from a conviction, the appellate court may : (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same.
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> (2012) 9 SCC 408 (2017) 12 SCC 699
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> 11. Though the word "retrial" is used under Section 386(b)(i) CrPC, the powers conferred by this clause is to be exercised only in exceptional cases, where the

> appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the court refused to hear certain witnesses who were supposed to be heard.
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> 12. "De novo" trial means a "new trial" ordered by an appellate court in exceptional cases when the original trial failed to make a determination in a manner dictated by law. The trial is conducted afresh by the court as if there had not been a trial in first instance.

Undoubtedly, the appellate court has power to direct the lower court to hold "de novo" trial. But the question is when such power should be exercised..." (Emphasis supplied)

19. This court in Nasib Singh v. State of Punjab,25 formulated the principles emerging from several decisions on retrial given by this Court:

> 33. The principles that emerge from the decisions of this Court on retrial can be formulated as under:
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> 33.1. The appellate court may direct a retrial only in "exceptional" circumstances to avert a miscarriage of justice. 33.2. Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed. 33.3. A determination of whether a "shoddy" investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence.
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> 33.4. It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the appellate court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process. 33.5. If a matter is directed for retrial, the evidence and record of the previous trial is completely wiped out.
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> 33.6. The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice:
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> (2022) 2 SCC 89
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> (a) The trial court has proceeded with the trial in the absence of jurisdiction;

(b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

(c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.

(Emphasis supplied)

20. In the present case, the High Court, after acquitting the appellant, directed the CBI to re-investigate after considering the relevant material and documents on record. A perusal of the judgment reveals that the learned division bench discussed the material on record in depth in arriving at the conclusion that "this is a case where there is no evidence at all." Considering that this was an appeal from a sentence of capital punishment, it was observed:

"15. It is not known on what basis, particularly there is an acute dearth of evidence, the trial court has gone to the extent of awarding death sentence..." It would be worthwhile to refer to the two succeeding paragraphs as well.

"16. The learned Additional Public Prosecutor would point out the observation made by the trial court, while giving conviction, stating that the sexual abuses against children are increasing; that the child marriage is also on the increase; that there is no protection for the children; that the child who innocently followed the accused, while not knowing fatefully unaware of, had been done to death; that the act of the accused is beastly, the accused is liable to be punished by hanging him to death, is totally illegal, unjust and unwarranted.

16.1 Whether these observations alone, without there being basic evidence connecting the crime and the accused, are sufficient to award a capital punishment?. Only if the evidence establishes the crime as against the accused, while considering the quantum of punishment, they may be relevant considerations. In any event, these factors cannot be consideration to record a finding of guilt as against the accused."

21. This Court has observed in Kailash Gour v. State of Assam26 that any benefit accruing from faulty investigation ought to be given to the accused. The necessary corollary thereof being that simply because the investigation was less than satisfactory, the accused should not be subjected to the same once more.

43. ... That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-à-vis cases in which it is not. The rules of evidence and the standards by which the

same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice.

(Emphasis supplied)

22. Having observed as extracted supra, the High Court held that the appellant deserved acquittal. Keeping in view the aforesaid authorities, the question then is, could the High Court have ordered the crime to be re-investigated?

23. Firstly, what must be acknowledged is that there exists a clear difference between retrial and reinvestigation. Retrial implies that the judicial process that starts after the investigation of the crime is complete shall be redone from the start, whereas the latter implies that the police and other investigating authorities are once again required to collect and examine evidence in order to present charges before a Court, so that the trial can commence on such freshly collected evidence.

(2012) 2 SCC 34

24. Section 386(b) of Cr.P.C, extracted supra, as also the judgments referred to in the earlier portion of this judgment, unanimously speak of retrial and not reinvestigation. Section 173(8) of the Cr.P.C provides for further investigation with the permission of the magistrate, but not reinvestigation. Such a concept, as it appears, is only invoked in extraneous circumstances. The mere observation that the investigating authorities may have taken a lackadaisical ethical approach does not warrant the accused being put through the wringer once more for the same offence.

25. Learned counsel for the respondent while supporting the contention that the High Court had the requisite power to order reinvestigation cited the judgment of this Court in Devendra Nath Singh (supra), wherein, relying on Vinay Tyagi v. Irshad Ali27 it has been observed that fresh, de novo and reinvestigation are synonymous expressions and the law applicable thereon would be the same. This observation, we find, was made in the context of Section 482 Cr.PC or Article 226 of the Constitution of India. In the present case, however, the direction for reinvestigation was given under Section 386 Cr.PC. Since the applicable power is different in the present case, Devendra Nath (supra) is distinguished on facts.

26. In that view of the matter, the direction of the High Court, transferring the investigation to CBI and directing them to reinvestigate the offence allegedly committed, was without the authority of law and, therefore, has to be set aside.

(2013) 5 SCC 762 We may notice certain authorities of this Court where observations have been made qua transfer of investigation to C.B.I., as follows:-

(a) State of W.B. v. Committee for Protection of Democratic Rights28:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any

order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations." (Emphasis Supplied)

(b) Mandakini Diwan and Anr. v. High Court of Chhattisgarh and Ors29:

"14. It is true that power to direct CBI to conduct investigation is to be exercised sparingly and such orders should not be passed in routine manner. In the present case, the aggrieved party has raised allegations of bias and undue influence on the police machinery of the State of Chhattisgarh. Coupled with the fact that the thorough, fair and independent investigation needs to be carried out to find out the truth about the whole incident and in particular about the ante mortem injuries. We are of the view that such a direction needs to be issued in the present case." (2010) 3 SCC 571 2024 SCC Online SC 2448

27. A perusal of the judgments above shows that the transfer to CBI, as already observed must take place in special circumstances, or else the agency, being with limited resources shall be overburdened and rendered ineffective. In directing as such, the High Court has not referred to any such special circumstance arising in the present case. On such further count, the transfer of the case to CBI is rendered questionable and therefore set aside.

28. Let us now move to the next issue. Apart from the fact that reinvestigation of the same offence or the same set of facts is impermissible, the appellant has also canvassed the point that the High Court's order goes against the well- established principle of criminal jurisprudence that a person cannot be punished for the same offence twice or the principle of double jeopardy. Before proceeding to the merits of such a claim in the present case, it would be aposite to examine the judicial pronouncements on this count.

29. The appellant submits that the principle of double jeopardy is not only recognized by the Constitution but also reiterated in several statutory enactments. They are: – The Constitution recognizes this principle in Article 20 which reads as under:-

"20. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself." Section 300 of Cr.P.C.:

"300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220. (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code.

Explanation. —The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section." Section 40 of the Evidence Act, 1872:

"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." Section 71 of IPC:

"71. Limit of punishment of offence made up of several offences.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such of his offences, unless it be so expressly provided.

[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]" Section 26 of the General Clauses Act, 1897:

"26. Provision as to offences punishable under two or more enactments.—Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

30. Now, turning to the judicial pronouncements, Article 20 of the Constitution of India:-

(a) Maqbool Hussain v. State of Bombay30:

"12. The Fifth Amendment of the American Constitution enunciated this principle in the manner following:

"... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself...." * * *

14. These were the materials which formed the background of the guarantee of fundamental right given in Article 20(2). It incorporated within its scope the plea of "autrefois convict" as known to the British jurisprudence or the plea of double jeopardy as known to the American (1953) 1 SCC 736 Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

15. The words "before a court of law or judicial tribunal" are not to be found in Article 20(2). But if regard be had to the whole background indicated above it is clear that in order that the protection of Article 20(2) be invoked by a citizen there must have

been a prosecution and punishment in respect of the same offence before a court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of Article 20 and the words used therein:"convicted", "commission of the act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure."

(b) S.A. Venkataraman v. Union of India31:

"6. The scope and meaning of the guarantee implied in Article 20(2) of the Constitution has been indicated with sufficient fullness in the pronouncement of this Court in Maqbool Hussain v. State of Bombay [Maqbool Hussain v. State of Bombay, (1953) 1 SCC 736 :

1953 SCR 730] . The roots of the principle, which this clause enacts, are to be found in the well-established rule of English Law which finds expression in the maxim "nemo debet bis vexari" — a man must not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of "autrefois acquit" or "autrefois convict". The corresponding provision in the Federal Constitution of the USA is contained in the Fifth Amendment, which provides inter alia:

"... nor shall any person be subjected for the same offence to be twice put in jeopardy of life and limb...." This principle has been recognised and adopted by the Indian Legislature and is embodied in the provisions of Section 26 of the General Clauses Act and Section 403 of the Criminal Procedure Code.

7. Although these were the materials which formed the background of the guarantee of the fundamental right given in Article 20(2) of the Constitution, the ambit and contents of the guarantee, as this Court (1954) 1 SCC 586 pointed out in the case referred to above, are much narrower than those of the common law rule in England or the doctrine of "double jeopardy" in the American Constitution. Article 20(2) of our Constitution, it is to be noted, does not contain the principle of "autrefois acquit" at all. It seems that our Constitution-makers did not think it necessary to raise one part of the common law rule to the level of a fundamental right and thus make it immune from legislative interference. This has been left to be regulated by the

> general law of the land. In order to enable a citizen to invoke the protection of clause (2) of Article 20 of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted and punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted.

The position is also different under the American Constitution. There the prohibition is not against a second punishment but against the peril in which a person may be placed by reason of a valid indictment being presented against him, before a competent court, followed by proper arraignment and plea and a lawful impanelling of the jury. It is not necessary to have a verdict at all [Willis on Constitutional Law, p.

528.]." Both the above cited judgments were recently followed in T.P. Gopalakrishnan v. State of Kerala32.

(c) State v. Nalini33:

> "236. The well-known maxim "nemo debet bis vexari pro eadem causa" (no person should be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Criminal Procedure Code is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts.
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> 237. Though Article 20(2) of the Constitution of India embodies a protection against a second trial after a conviction of the same offence, the ambit of the clause is narrower than the protection afforded by Section 300 of the Criminal Procedure Code. It was held by this Court in Manipur Admn.v. Thokchom Bira Singh [AIR 1965 SC 87 : (1965) 1 Cri LJ 120] that "if there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application". While the clause embodies the principle of autrefois convict Section 300 of the Criminal (2022) 14 SCC 323 (1999) 5 SCC 253 Procedure Code combines both autrefois convict and autrefois acquit.

..."

(d) Monica Bedi v. State of A.P.34:

> "22. Article 20(2) embodies a protection against a second trial and conviction for the same offence. The fundamental right guaranteed is the manifestation of a long struggle by the mankind for human rights. A similar guarantee is to be found in almost all civilised societies governed by rule of law. The well-known maxim nemo

> debet bis vexari pro una et eadem causa embodies the well-established common law rule that no one should be put on peril twice for the same offence. Blackstone referred to this universal maxim of the common law of England that no man is to be brought into jeopardy of his life more than once for the same offence.
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> 23. The fundamental right guaranteed under Article 20(2) has its roots in common law maxim nemo debet bis vexari — a man shall not be brought into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former conviction, or as it is technically expressed, take the plea of autrefois convict. This in essence is the common law principle. The corresponding provision in the American Constitution is enshrined in that part of the Fifth Amendment which declares that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. The principle has been recognised in the existing law in India and is enacted in Section 26 of the General Clauses Act, 1897 and Section 300 of the Criminal Procedure Code, 1973. This was the inspiration and background for incorporating sub-

clause (2) into Article 20 of the Constitution. But the ambit and content of the guaranteed fundamental right are much narrower than those of the common law in England or the doctrine of "double jeopardy" in the American Constitution." See also Sangeetaben Mahendrabhai Patel v. State of Gujarat.35

31. In our considered view, the position of law that the principle applies is unquestionable. The three conditions laid down in T.P. Gopalakrishnan (supra) are: Firstly, there must have been previous proceedings before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been (2011) 1 SCC 284 (2012) 7 SCC 621 prosecuted. The said prosecution must be valid and not null and void or abortive. Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts.

32. In the present facts, a previous proceeding did take place wherein the Trial Court convicted the appellant and sentenced him to death. There is no question as to the Court's competence or jurisdiction. The first condition is, therefore, met. The acquittal awarded by the High Court has to remain in force for the cardinal principle of criminal jurisprudence of innocent until proven guilty applies and cannot be displaced in except in circumstances otherwise provided by law. The second principle is also met. Regarding the third condition, had the order been for retrial, the court could have held that the condition remained unmet; however, since the direction was for reinvestigation and that too by a different investigation agency, it necessarily has to begin from zero. Hence, the second investigation, chargesheet and examination of witnesses would classify as meeting the third condition.

33. In view of the discussion as aforesaid, this Court is of the view that the right enshrined in Article 20(2) of the appellant stands violated.

34. Since this Court has come to the conclusion as above, there survives no need to examine the applicability of Section 300 of Cr.P.C and other provisions of law where the principle of double jeopardy stands enshrined.

35. Vision of the High Court, in our considered view was bad in law, and is therefore quashed and set aside. All proceedings subsequent to such direction, necessarily have to be held as such and therefore quashed and set aside as well. The appellant stands acquitted of all charges.

36. The question of law raised in this appeal, is answered in the above terms. The appeal is allowed as aforesaid. Pending application(s), if any, shall stand disposed of.

.....J. (C.T. RAVIKUMAR) .....J. (SANJAY KAROL) New Delhi;

19th December, 2024.