

Ganesh Prasad vs State Of Uttar Pradesh on 9 September, 1953

Equivalent citations: AIR1954ALL116

ORDER

Harish Chandra, J.

1. The only point raised in this revision is that the order of the court below directing a retrial of the applicant is illegal, inasmuch as it is against the provisions of Article 20(2), Constitution of India.

Article 20(2) provides that no person shall be prosecuted and punished for the same offence more than once. In this case, the applicant was prosecuted and convicted by a Magistrate of the First Class under Section 409, Penal Code, and sentenced to eighteen months' rigorous imprisonment. He appealed. The learned Sessions Judge found that the trial was illegal, inasmuch as the applicant had been charged with having committed offences during a period exceeding one year. He accordingly set aside the conviction and sentence and remanded the case to the Magistrate for retrial after reframing the charge in the light of the observations contained in the judgment. It is contended that the procedure involves a prosecution of the applicant more than once.

2. In my view, the retrial of the applicant cannot be regarded as a fresh prosecution. He was prosecuted before the Magistrate and convicted and sentenced. The appellate court found that the conviction was illegal, inasmuch as the charge had been improperly framed and has directed, after setting aside that conviction and sentence, a retrial of the applicant. It is a continuance of the Same prosecution.

Moreover, the prohibition is against a person being 'prosecuted' and sentenced' for the same offence more than once. In this case the sentence once passed has been set aside and the said Article of the Constitution can be no bar to a retrial of the applicant for the same offence. In my view the order passed by the court below does not err against the provisions of Article 20(2) of the Constitution and the contention has no force.

The application is accordingly rejected. The applicant is on bail. The applicant will remain on the bail which has already been granted to him pending completion of the proceedings in the Court, below. The order staying further proceedings is discharged. The record will be returned forthwith to the court below.