Indrajit Sengupta And Another vs State Of Odisha And Others .... Opposite ... on 7 April, 2022

Author: R.K. Pattanaik

Bench: R.K.Pattanaik

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2240 of 2009

Indrajit Sengupta and another .... Petitioners
Mr. S. K. Dalai, Advocate

-Versus-

State of Odisha and others .... Opposite Parties
Mrs. S. Patnaik, AGA

CORAM:
JUSTICE R.K.PATTANAIK

DATE OF JUDGMENT: 07.04.2022

R.K. Pattanaik, J
1.

The petitioners have filed the instant application under Section 482 Cr.P.C. challenging the correctness of the impugned order of cognizance dated 25th April, 2008 passed in G.R. Case No.130 of 2007 arising out of Purighat P.S. Case No.21 of 2007 pending in the file of learned S.D.J.M.(Sadar), Cuttack on various grounds inter alia contending that such a prosecution is in violation of Article 20 of the Constitution of India, 1950 and also Section 300 Cr.P.C. as they could not have been prosecuted once again for the self-same incident which amounts to double jeopardy.

2. A prosecution was launched after a written report was lodged at Purighat P.S. registered under Section(s) 342 and 323 read with 34 I.P.C. with the allegation that OP No.2's son, namely, OP No.3, who was working in the house of the petitioners was ill- treated and assaulted. For the alleged occurrence, as contended by the petitioners, the District Labour Officer (in short 'DLO') as well as IIC, Purighat P.S. took up the matter and in that respect, a // 2 // complaint was filed by the DLO before the court below under Section 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1986 (in short 'the Act') and also a written report lodged by OP No.2 which ultimately led to the submission of chargesheet under Section(s) 342 and 323 read with 34 I.P.C. and thereafter, the cognizance was taken of said offences. It is pleaded that pursuant to the complaint filed by the DLO, order of cognizance for an offence under Section 14 of the Act, 1986 was passed and the petitioners were put to trial and later on convicted and sentenced. As against the above facts, the petitioners

further pleaded that once having been convicted for an offence under Section 14 of the Act, 1986, for the same incident and set of facts, another prosecution under Section(s) 342 and 323 read with 34 I.P.C. cannot be maintained.

3. Heard learned counsel for the petitioners and learned Additional Government Advocate for OP No.1.

4. As it appears from the record, the petitioners have been convicted in 2.C.C. No.84 of 2007 by a judgment dated 23rd May, 2009 of the learned S.D.J.M. (Sadar), Cuttack directing both of them to undergo S.I. for a period of six months with a fine of Rs.10,000/- each and in default to undergo S.I. for a period of one month and being aggrieved of the conviction, Criminal Appeal No.28 of 2009 was filed before the Sessions Court. It is further made to appear that the petitioners in CRLMC No.1827 of 2007 challenged the F.I.R. before this Court which was disposed of by an order 21st February, 2008 declining to interfere with the observation that the petitioners may not even be chargesheeted on completion of investigation. After submission of charge sheet and // 3 // passing of the impugned order dated 25th April, 2008 under Annexure-5, the petitioners once again approached this Court in CRLMC No.1187 of 2008 which was, however, stated to have been withdrawn and disposed of on 7th July, 2009. The petitioners have questioned the legality of the impugned order i.e. Annexure-5 on the ground that the offences punishable under Section(s) 342 and 323 I.P.C. have not been made out while considering the F.I.R. and other materials including the charge sheet i.e. Annexure-4. It is also contended that when the petitioners have already been convicted by a judgment dated 23rd May, 2009 by the learned S.D.J.M.(Sadar), Cuttack in 2 C.C. No.84 of 2007 (Annexure-3), again they cannot be prosecuted which violates the law envisaged in Section 300 Cr.P.C.

5. In so far as the conviction of the petitioners is concerned, it is in respect of an offence punishable under Section 14 of the Act, 1986 and the issue was whether they employed OP No.3 in labour work in their house in contravention of the provisions of Section 3 thereof and in that respect, the learned S.D.J.M. (Sadar), Cuttack reached at a conclusion that the alleged offence was made out. In other words, the engagement of OP No.3 aged about 13 years as a caretaker in the house of the petitioners was established by considering the evidence produced before the court concerned.

6. Learned counsel for the petitioners contends that since Article 20 of the Constitution of India, 1950 envisages that no person shall be prosecuted and punished for the same offence more than once which is a constitutional right guaranteed with a protection against double jeopardy and in view of Section 300 Cr.P.C., a person once convicted or acquitted, not to be tried for // 4 // the same offence, the learned court below after having failed to take cognizance of the above law, erred in passing the impugned order of cognizance dated 25th April, 2008.

7. In the instant case, there is no denial to the fact that the petitioners were proceeded in a complaint filed by the DLO before the court of learned S.D.J.M. (Sadar), Cuttack which finally ended in conviction in 2 CC No.84 of 2007 for an offence punishable under Section 14 of the Act, 1986. It is claimed that the prosecution under Sections 342 and 323 read with 34 IPC amounts to double jeopardy on the ground that for the same incident the petitioners have already been tried and

convicted. The learned counsel for the petitioners referred to Section 300 Cr.P.C. and its essential ingredients besides placing reliance on Article 20(2) of the Constitution of India, 1950.

8. The rule of double jeopardy is based on the principle that once a person convicted or acquitted cannot be subjected to a criminal prosecution for the same offence. The terms 'autrefois acquit' and 'autrefois convict' mean previously acquitted and previously convicted respectively which have been accepted as doctrines that govern the field of criminal trials. In fact, Article 20 of the Constitution of India, 1950 protects in respect of conviction of offences. Article 20(2) contains the rule against double jeopardy which enumerates that no person shall be convicted for the same offence more than once which has in fact been borrowed from the 5th Amendment of the US Constitution. Likewise, the Cr.P.C. inculcates the principle of autrefois convict as well as autrefois acquit which has a wider reach under the criminal jurisprudence, // 5 // whereas, Article 20 of the Constitution of India, 1950 outlines general rule against double jeopardy.

9. In Thomas Dana Vrs. State of Punjab reported in AIR 1959 SC 375, it has been held by the Supreme Court that to claim protection against double jeopardy as envisaged in Article 20(2) of the Constitution of India, 1950, it is necessary to show that there was a previous conviction and that the prosecution led to punishment and the accused is being punished for the same offence again. In the decision (supra), it was made clear that for the same offence, person having been convicted cannot be prosecuted again for that offence which would amount to double jeopardy. In the case of Institute of Chartered Accountants Vrs. Vimal Surana reported decided in SLP Criminal Nos.3411-3412 of 2009 dated 1st December, 2010, the Supreme Court held that a person can be convicted for the same action under different Acts as apply to the offences wherein prosecution under Sections 419 and 420 IPC was challenged on the ground that the accused had also been subjected to criminal action under Sections 24 and 26 of the Chartered Accountants Act. Similarly, in another case of the Supreme Court in State of Maharashtra Vrs. Sayyed Hassan Subhan reported in (2019) 18 SCC 145, it was held and observed that complaints under the Foods Safety and Standards Act, 2006 and Sections 188 and 272 IPC to be maintainable so long as the ingredients of the offences stood satisfied.

10. The expression 'same offence' appearing in Section 300 Cr.P.C. read with Article 20(2) of the Constitution of India means that the offence for which the accused has been tried and the // 6 // offence for which he is again being tried must be identical. The subsequent trial is bared only if the ingredients of the two offences are identical and not when they are different even though may have resulted from the commission or omission arising out of the same set of facts. In the instant case, the petitioners were subjected to criminal prosecution for an offence under Section 14 of the Act, 1986 and convicted thereunder for having engaged O.P.No.3 by then aged about 13 years in labour work and for having contravened Section 3 of the said Act for employing a child. The offence under the Act, 1986 is quite different and distinct from the IPC offences. It is not that the offences under the Special Act and IPC to be identical for which the petitioners can claim immunity against the criminal prosecution in G.R. Case No.130 of 2007. The issue which was before the court below in the other case for determination was whether the petitioners had employed O.P.No.3, a child below 14 years of age in their house as a domestic worker or servant in contravention of Section 3 of the Act, 1986 which is made punishable under Section 14 of the said Act and finally, convicted them for

having violated the labour law. In so far the proceeding in G.R. Case No.130 of 2007 is concerned, it is altogether an independent action and for offences which are dissimilar to the offence under Act, 1986. In view of the aforesaid discussion and being conscious of the settled position of law, the Court is of the considered view that the principle of double jeopardy does not apply to the present case and therefore, the learned court below did not commit any wrong or legal error in taking cognizance of the offences punishable under Sections 323 and 342 read with 34 IPC.

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11. Accordingly, it is ordered.

12. In the result, application under Section 482 Cr.P.C. stands dismissed.

(R.K.Pattanaik) Judge TUDU