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Neutral Citation No. - 2024:AHC:75413

Court No. - 79
Case :- APPLICATION U/S 482 No. - 8390 of 2024

Applicant :- Rafique Ansari
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Nitin Sharma
Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1. Heard Mr. Nitin Sharma, learned counsel for the applicant and Mr. Deepak Mishra, learned Additional Government Advocate assisted by Ms. Priyanka Singh, learned Brief Holder for the State.

2. This application under Section 482 Cr.P.C. has been preferred by the applicant with a prayer to quash the proceeding of Criminal Case No. 3548 of 2009 (State Vs. Rafique Ansari) arising out of Case Crime No. 293 of 1995, under Sections 147, 436, 427 I.P.C., Police Station Nauchandi, District Meerut, pending in the court of Additional Chief Judicial Magistrate, MP/MLA, Meerut.

3. Brief facts of the case which are required to the be stated are that in this case F.I.R. was lodged on 12.09.1995 against 35-40 unknown persons for the offence under Sections 147, 436, 427 I.P.C. registered at Case Crime No. 293 of 1995, Police Station Nauchandi, District Meerut in which after culmination of investigation first charge-sheet No. 191 dated 24.10.1995 was submitted against 22 accused persons and thereafter another supplementary charge-sheet No. 191-AA dated 22.06.1996 was submitted against the present applicant-

Rafique Ansari on which the concerned court below took cognizance on 20.08.1997, but on non-appearance of the applicant, non-bailable warrant was issued on 18.12.1997 and thereafter despite repeated non-bailable warrant and process under Section 82 Cr.P.C., the applicant did not appear before the trial court.

4. Main substratum of argument of learned counsel for the applicant is that 22 accused persons who have been made accused in the charge-sheet dated 24.10.1995 have been acquitted after facing trial vide judgment and order dated 15.05.1997, therefore, the entire proceeding of aforesaid Criminal Case No. 3548 of 2009 against the present applicant, who is Member of Legislative Assembly, is also liable to be quashed.

5. Per contra, learned Additional Government Advocate for the State vehemently opposed the prayer of the applicant by contending that the relief as sought for by the applicant by means of this application is liable to be rejected.

6. After having heard the argument of learned counsel of the parties, this Court is of the view that every case turns on its own facts and evidence as may be adduced and acquittal of co-accused in a trial emanating from same case crime does not necessarily entail acquittal of the other co-accused, who are yet to be put on trial. In a trial of co-accused, the prosecution is not called upon nor it is expected to adduce evidence against absconding co-accused or such co accused who did not face trial.

7. Before delving into this issue, it would also be useful to set out sections 40, 41, 42 and 43 of The Indian Evidence Act,

1872, which are under the heading "Judgments of Courts of justice when relevant", which reads as under:-

Section 40 :- Previous judgments relevant to bar a second suit or trial.--The existence of any judgment, order or decree which by law prevents any Courts 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 41 :- Relevancy of certain judgments in probate, etc., jurisdiction.--A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof--

that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, 3[order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, 3[order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, 3[order or decree] declares that it had been or should be his property.

(3)Ins. by Act 18 of 1872, sec. 3.

Section 42 :- Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.--Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Section 43 :- Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.--Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

8. The Apex Court in the case of **Rajan Rai Vs. State of Bihar (2006) 1 SCC 191** has also considered the provisions of Section 40, 41, 42 and 43 of the Indian Evidence Act and held that judgment of acquittal of co-accused rendered in earlier trial arising out of same transaction was wholly irrelevant in the case of the accused, who was tried separately. The relevant paragraph nos. 8 and 10 of the said judgment are reproduced herein-below:-

"8. Coming to the first submission very strenuously canvassed by Shri Mishra, it would be necessary to refer to the provisions of Sections 40 to 44 of the Indian Evidence Act, 1872 [in short `the Evidence Act'] which are under the heading `Judgments of Courts of justice when relevant', and in the aforesaid Sections the circumstances under which previous judgments are relevant in civil and criminal cases have been enumerated. Section 40 states the circumstances in which a previous judgment may be relevant to bar a

second suit or trial and has no application to the present case for the obvious reasons that no judgment order or decree is said to be in existence in this case which could in law be said to prevent the Sessions Court from holding the trial. Section 41 deals with the relevancy of certain judgments in probate, matrimonial, admiralty or insolvency jurisdiction and is equally inapplicable. Section 42 refers to the relevancy and effect of judgments, orders or decrees other than those mentioned in Section 41 in so far as they relate to matters of a public nature, and is again inapplicable to the present case. Then comes Section 43 which clearly lays down that judgments, order or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Evidence Act. As it has not been shown that the judgment of acquittal rendered by the High Court in appeals arising out of earlier sessions trial could be said to be relevant under the other provisions of the Evidence Act, it was clearly "irrelevant" and could not have been taken into consideration by the High Court while passing the impugned judgment. The remaining Section 44 deals with fraud or collusion in obtaining a judgment, or incompetency of a court which delivered it, and can possibly have no application in the present case. It would thus appear that the High Court was quite justified in ignoring the judgment of acquittal rendered by it which was clearly irrelevant.

10. A three Judges' Bench of this Court had occasion to consider the same very question in the case of Karan Singh vs. The State of Madhya Pradesh, AIR 1965 SC 1037, in which there were in all 8 accused persons out of whom accused Ram Hans absconded, as such trial of seven accused persons, including accused Karan Singh, who was appellant before this Court, proceeded and the trial court although acquitted other six accused persons, convicted the

seventh accused, i.e., Karan Singh under Section 302 read with Section 149 IPC. Against his conviction, Karan Singh preferred an appeal before the High Court. During the pendency of his appeal, accused Ram Hans was apprehended and put on trial and upon its conclusion, the trial court recorded order of his acquittal, which attained finality, no appeal having been preferred against the same. Thereafter, when the appeal of accused Karan Singh was taken up for hearing, it was submitted that in view of the judgment of acquittal rendered in the trial of accused Ram Hans, the conviction of accused Karan Singh under Section 302 read with Section 149 IPC could not be sustained, more so when other six accused persons, who were tried with Karan Singh, were acquitted by the trial court and the judgment of acquittal attained finality. Repelling the contention, the High Court after considering the evidence adduced came to the conclusion that murder was committed by Ram Hans in furtherance of the common intention of both himself and accused Karan Singh and, accordingly, altered the conviction of Karan Singh from Section 302/149 to one under Section 302/34 IPC. Against the said judgment, when an appeal by special leave was preferred before this Court, it was contended that in view of the verdict of acquittal of accused Ram Hans, it was not permissible in law for the High Court to uphold conviction of accused Karan Singh. This Court, repelling the contention, held that decision in each case had to turn on the evidence led in it. Case of accused Ram Hans depended upon evidence led there while the case of accused Karan Singh, who had appealed before this Court, had to be decided only on the basis of evidence led during the course of his trial and the evidence led in the case of Ram Hans and the decision there arrived at would be wholly irrelevant in considering merits of the case of Karan Singh, who was appellant before this Court. This Court observed at page 1038 thus:-

"As the High Court pointed out, that observation has no application to the present case as here the acquittal of Ramhans was not in any proceeding to which the appellant was a party. Clearly, the decision in each case has to turn on the evidence led in it; Ramhans's case depended on the evidence led there while the appellant's case had to be decided only on the evidence led in it. The evidence led in Ramhans's case and the decision there arrived at on that evidence would be wholly irrelevant in considering the merits of the appellant's case."

In that case, after laying down the law, the Court further considered as to whether the High Court was justified in converting the conviction of accused Karan Singh from Section 302/149 to one under Section 302 read with section 34 IPC after recording a finding that the murder was committed by Ram Hans in furtherance of common intention of both himself and accused Karan Singh. This Court was of the view that in spite of the fact that accused Ram Hans was acquitted by the trial court and his acquittal attained finality, it was open to the High Court, as an appellate court, while considering appeal of accused Karan Singh, to consider evidence recorded in the trial of Karan Singh only for a limited purpose to find out as to whether Karan Singh could have shared common intention with accused Ram Hans to commit murder of the deceased, though the same could not have otherwise affected the acquittal of Ram Hans. In view of the foregoing discussion, we are clearly of the view that the judgment of acquittal rendered in the trial of other four accused persons is wholly irrelevant in the appeal arising out of trial of appellant Rajan Rai as the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein. Case of the four acquitted accused persons was decided on the basis of evidence led there while case of

> the present appellant has to be decided only on the basis of evidence adduced during the course of his trial."

9. The Apex Court in another matter of **Yanob Sheikh @ Gagu Vs. State of West Bengal (2013) 6 SCC 428** has also considered the issue that what would be effect of judgment of acquittal of one accused on the other co-accused. The relevant paragraph nos. 24, 25 and 26 of the said judgment are reproduced herein-below:-

> "24. In the present case, we are concerned with the merit or otherwise of the above reasoning leading to the acquittal of the accused Najrul. We are primarily concerned with the effect of this acquittal upon the case of the Appellant-accused. The Trial Court in its judgment clearly stated that there was direct and circumstantial evidence against the accused implicating him with the commission of the crime. Finding the Appellant guilty of the offence, the Trial Court punished him accordingly. Where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused. It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other."
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> "25. In the case of **Dalbir Singh v. State of Haryana (2008) 11 SCC 425**, this Court held as under:
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> 13. Coming to the applicability of the principle of falsus in uno, falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained.

However, where large number of other persons are accused, the court has to carefully screen the evidence:

51. ... It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'.(See Nisar Ali v. State of U.P.) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab.) The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects

the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. and Ugar Ahir v. State of Bihar.) An attempt has to be made to in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. and Balaka Singh v. State of Punjab.) As observed by this Court in State of Rajasthan v. Kalki normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so."

"26. The cumulative effect of the above discussion is that the acquittal of a co-accused perse is not sufficient to result in acquittal of the other accused. The Court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal. The Court must examine the entire

> prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case."

10. In view of above discussion, it is clear that the judgment of acquittal of co-accused in a criminal trial is not admissible under sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be deduced as a relevant document while considering the prayer to quash the proceedings against remaining co-accused under section 482 Cr.P.C. The judgment of acquittal will be admissible only to show as to who were the parties in the proceedings or factum of acquittal. As such securing of acquittal by co-accused cannot be considered as relevant circumstances and ground for exercising power under section 482 Cr.P.C., to quash the proceedings as against those accused who has not faced the trial. The judgment not inter parties cannot justify the invocation of the doctrine of issue stopple under the Law.

11. In **A.T. Mydeen and another Vs. The Assistant Commissioner, Custom Department 2021 SCC OnLine SC 1017,** Anti Smuggling Wing of the Customs departments at Tuticorin, raided a warehouse situated at Tuticorin town on 10.3.1998. In the raid, large quantities of cardboard boxes containing sandalwood billet/sticks and Mangalore tiles, which were kept for export from Tuticorin to Singapore were recovered. After completing the inquiry, the Assistant Commissioner of Customs filed criminal complaint against five accused namely A. Dhanapal, A.T. Mydeen, Janarthanan, N. Ramesh and Rahman Sait for the offence punishable under

Sections 132, 132(1)(a)(ii) and 135A of the Customs Act. It was registered as Calendar Case No. 2 of 2003. The sixth accused K.M.A. Alexander, who was absconding and later on arrested, as such separate complaint was filed against him, which was registered as Calender Case No. 4 of 2004. In both the cases prosecution examined seven witnesses and filed 13 documents as exhibits duly proved. The trial court on 23.5.2008 delivered two separate judgments in both the cases acquitting all the accused. Aggrieved by the order of acquittal, the Customs Department filed two separate appeals before the High Court. The High Court by common judgment dated 19.10.2019 recorded conviction of all six accused. The submission of the learned counsel for the appellants before the Hon'ble Supreme Court was that the High Court proceeded to pass one common judgement in both the appeals arising out of two separate trials and two separate judgements, but considered the evidence of only one case and that too without disclosing of which case so as to record conviction of all the six accused in both the appeals.

12. Hon'ble Supreme Court while setting aside the judgement of the High Court in **A.T. Mydeen (Supra)** held as under:

> "40. The essence of the above synthesis is that evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence."
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> "42. In the present controversy, two different criminal appeals were being heard and decided against two different judgments based upon evidence recorded in separate trials, though for the commission of the same offence. As such, the High Court

> fell into an error while passed a common judgement, based on evidence recorded in only one trial against two sets of accused persons having been subjected to separate trials. The High Court ought to have distinctly considered and dealt with the evidence of both the trials and then to decide the culpability of the accused persons."

13. Perusal of the aforesaid order goes to show that that evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been or to be tried separately.

14. It is also well settled that power of quashing the criminal proceedings at the pre-trial stage should be exercised very sparingly and with circumspection and that too in the exceptional and rare case. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. As such the inherent powers of the High Court cannot normally be invoked, unless such materials are of an unimpeachable nature, which can be translated into legal evidence in the course of trial.

15. Further, I find that it is not in dispute that it is an old matter of the year 1995 and charge sheet was submitted against the applicant in the year 1996 and despite issuance of non-bailable warrants, other coercive process since 18.12.1997, the applicant, who is public representative of the District Meerut did not appear before the trial court. Perusal of the order sheet of the trial court shows that non-bailable warrants were issued on 17.10.1997, 18.12.1997, 06.3.1998, 22.5.1998, 21.9.1998, 21.12.1998, 16.4.1999, 23.8.1999, 12.11.1999, 29.01.2000, 27.4.2000, 15.7.2000, 18.11.2000 and on

06.2.2001, 30.3.2001. 26.5.2001, 23.7.2001, 23.10.2001, 19.2.2002, 29.5.2002, 13.8.2002, 22.10.2002, 03.2.2003, 28.4.2003, 28.7.2003, 05.11.2003, 16.4.2004, 16.7.2004, 22.11.2004, 04.1.2005, 21.2.2005, 01.8.2005, 07.11.2005, 14.3.2006, 18.5.2006, 22.8.2006, 18.11.2006, 20.12.2006, 24.3.2007, 26.6.2007, 04.8.2007, 01.10.2007, 02.1.2008, 07.2.2008, 21.4.2008, 12.5.2008, 30.5.2008, 22.6.2008, 24.7.2008, 01.10.2008, 15.12.2008, 03.3.2009, 23.4.2009, 10.7.2009, 28.10.2009, 02.12.2009, 08.3.2010, 08.5.2010, 18.7.2010, 07.10.2010, 28.12.2010, 17.3.2011, 16.6.2011, 20.9.2011, 14.12.2011, 12.3.2012, 31.5.2012, 28.8.2012, 22.11.2012, 22.12.2012, 30.1.2013, 02.3.2013, 04.4.2013, 06.5.2013, 06.6.2013, 15.7.2013, 04.9.2013, 24.10.2013, 07.11.2013, 09.12.2013, 21.1.2014, 04.2.2014, 15.2.2014, 18.2.2014, 26.2.2014, 07.4.2014, 14.4.2014, , 20.9.2014, 04.10.2014, 15.10.2014, 14.11.2014, 09.12.2014, 13.1.2015, 07.2.2015, 08.3.2015, 04.4.2015, 30.4.2015, 29.5.2015, 30.7.2015, 18.9.2015 and 06.11.2015 non-bailable warrants and process under Sections 82 and 83 Cr.P.C. were also issued. Thereafter, on non-appearance of the accused-applicant again non-bailable warrants along with process were issued on 12.4.2022, 25.5.2022, 15.6.2022, 29.6.2022, 14.7.2022, 11.8.2022, 12.9.2022, 17.10.2022, 02.12.2022, 27.1.2022, 18.3.2023, 28.4.2023, 13.6.2023, 01.8.2023, 11.9.2023, 04.10.2023, 09.11.2023, 18.12.2023, 31.1.2024, 08.2.2024 and 23.2.2024.

16- I also find that that co-accused had been acquitted on 15.5.1997, but thereafter also the applicant did not seek any legal remedy and the instant application has been preferred by him after about 26 years, 2 months and 23 days on 10.3.2024.

The issue involved in the matter has already been settled by this Court in the cases referred to above.

17. Under the peculiar facts of the case, this court can not shut its eyes and became as silent spectator. This Court is of the opinion that for the enforcement of law there should not be selective treatment among the public. In the present case it is not in dispute that at present applicant-Rafique Ansari is sitting MLA of District Meerut and in the instant case on 17.10.1997 first time the non- bailable warrant had been issued against him which was continued up to 06.11.2015. Thereafter since 12.4.2022, non-bailable warrants and process under Section 82 Cr.P.C. have continuously being issued against him, but till date despite having knowledge of this case he did not appear before the trial Court. The non execution of non-bailable warrant against the sitting MLA and allowing him to participate in assembly session sets a perilous and egregious precedent, that undermines the integrity of the State machinery and judicial system while eroding public trust in elected representatives. By allowing individuals facing serious criminal charges to evade legal accountability, we risk perpetuating a culture of impunity and disrespect for rule of law. The case underscores the urgent need for reforms to ensure swift and impartial justice, regardless of one's political status. Failure to address such issue not only compromises the principles of democracy but also jeopardizes the fabric of the society, perpetuating a cycle of corruption and lawlessness. It is imperative that elected officials uphold the highest standards of ethical conduct and accountability, lest they betray the very essence of their mandate to serve the public good.

18. As a fallout and consequences of aforesaid discussion, I

have no hesitation in holding that even on the acquittal of co-accused, the charge sheet and criminal proceeding pursuant thereto against the remaining co-accused cannot be quashed under section 482 Cr.P.C.

19. The application sans merit and is, accordingly, dismissed.

20. Registrar (Compliance) is directed to send copy of this order forthwith to:-

(a) -the Principal Secretary, U.P. Legislative Assembly, U.P. for being placed this order before the Speaker of the state assembly for information.

(b) -the Director General of Police, State of U.P., Lucknow who shall ensure the service of non-bailable warrant already issued by the Trial Court against the applicant-Rafique Ansari, if the same has not yet been served and compliance affidavit shall be filed on the next date.

21. List this case on 22.7.2024 only for limited purpose of filing compliance affidavit.

Order Date :- 29.4.2024
Kashifa