IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JULY, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

WRIT PETITION NO. 20806 OF 2023 (GM-RES)

BETWEEN:

Dr. Sabeel Ahmed @ Motu Doctor
S/o Maqbool Ahmed
Aged about 39 years
R/at No.1981, 26th Cross,
Banashankari, 2nd Stage,
Bengaluru-560070.

...Petitioner

(By Sri. Kiran S. Javali, Senior Advocate, for
Sri. Mohammed Tahir, Advocate)

AND:

National Investigating Agency
Ministry of Home Affairs
Government of India
Hyderabad Branch
Rep. by their Standing Counsel
Mr. P. Prasanna Kumar
Office at High Court Complex
Opp. to Vidhana Soudha,
Bengaluru-560001.

...Respondent

(By Sri. P. Prasanna Kumar, Spl. PP)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India read with section 482 of Cr.P.C.

praying to issue a writ of certiorari to quash the impugned order dated 19.08.2023 passed in Spl.C.No.378/2021 passed by the 49th Additional City Civil and Sessions Judge, [Special Court for trial of NIA cases], CCH-50 at Bengaluru at Annexure-A and etc.,

This Writ Petition coming on for *preliminary hearing* this day, ***SREENIVAS HARISH KUMAR J.,*** made the following:

ORDER

This writ petition is directed against the order dated 19.08.2023 passed by the Additional City Civil and Sessions Judge (Special Court for trial of NIA cases), Bengaluru, in Special Case No.378/2021. Accused No.21 filed an application under Section 300 of Cr.P.C. seeking his discharge from the case. Since the Special Court dismissed his application by the order challenged in this petition, he has filed this writ petition.

2. The facts may be briefly stated as below.

Based on the credible information, an FIR in Crime No.384/2012 for the offences punishable under Sections 153A, 121A, 120B, 121, 122, 379, 153B and 307 IPC, Sections 3 and 25 of Indian

Arms Act and Sections 10, 12, 13, 15, 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 was registered at Basaveshwara Nagar police station, Bengaluru, on 29.08.2012. Having regard to the gravity of the offences, investigation was handed over to the National Investigation Agency by order of the Government of India dated 16.11.2012. FIR was registered by the National Investigating Agency in RC 04/2012/NIA/HYD. Subsequently, another FIR was registered by NIA at Delhi against the petitioner and other accused persons. The petitioner herein and other accused faced trial in S.C.No.23 of 2016 at NIA Special Court, Delhi. The petitioner was acquitted of the offences charged against him by Delhi court. Therefore, he made an application before the Special Court at Bengaluru under Section 300 of Cr.P.C stating that he faced trial at Delhi court on certain facts and circumstances which are same in the case at Bengaluru, and in this view, he cannot

be tried again on the same set of facts and circumstances in view of Section 300 of Cr.P.C. This application having stood dismissed, the petitioner is before this court.

3. We have heard Sri Kiran S Javali, learned senior counsel for Sri Mohammed Tahir, learned counsel for the petitioner and Sri P.Prasanna Kumar, Special Public Prosecutor for the respondent/NIA.

4. Placing reliance on the judgment of the Supreme Court in ***Amritlal Ratilal Mehta and Another V. State of Gujarat [(1980) 1 SCC 121],*** Sri Kiran Javali argued that the petitioner faced trial for the offences under sections 17, 18, 18B and 20 of UAP Act, sections 467 and 471 of IPC and section 12(1)(b) of Indian Passport Act in the Sessions Court at Delhi and has been acquitted of those offences. He is now facing trial at Bengaluru in Special Case No.378/2021. The facts

in both the cases are identical and the witnesses are also same. The petitioner is accused No.21 in the case before the Bengaluru court. In view of the petitioner's acquittal by the Delhi court, if he is made to face trial at Bengaluru court, it is nothing but prosecuting him twice on the same set of facts which is not permitted according to section 300 of Cr.P.C and Article 20(2) of the Indian Constitution. Application under section 300 of Cr.P.C was made before the Special Court in Bengaluru and his application was dismissed giving reasons that two cases are not same and they relate to two different incidents. This finding of the Special Court is erroneous and therefore the said order is to be set aside and the petitioner needs to be discharged of the offences in connection with which he is facing trial.

5. Sri P.Prasanna Kumar on the other hand while arguing for sustenance of the impugned

order submitted that FIR was registered suo-motu by Basaveshwaranagar police for the offences punishable under sections 120B, 121, 121A, 122, 153A, 153B, 307 and 379 IPC, sections 3 and 25 of Arms Act and sections 10, 12, 13, 15, 16, 18 and 20 of UAP Act. The said FIR was registered on the accusations that certain persons were part of terrorist gang and being inspired by the activities and ideology of banned terrorist organization Lashqar-e-Taiba ('LeT' for short), they planned to kill Hindu leaders and government officials. Having regard to the gravity of the offences the Central Government handed over investigation to the National Investigation Agency. In this case petitioner is accused No.21 and he was actively participating in several meetings connected to the commission of the aforesaid crimes. He had remained absconding and was arrested on 29.08.2020 at Indira Gandhi International Airport, New Delhi. After he was brought to Bengaluru for

investigation purpose, it was revealed that he was involved in another crime of providing logistic support to LeT in the form of extending financial support and ensuring smooth organization of the functions of LeT. During investigation, NIA was able to recover Quick Pay card of National Commercial Bank, Jeddah, standing in the name of accused No.13-Mohammed Faisal who had remained absconding. Therefore another FIR was registered by NIA, Delhi, in connection with which he faced trial in S.C.23/2016 on the file of Special Court, Delhi.

6. Referring to Section 300 of Cr.P.C. Sri Prasanna Kumar argued that in order to apply this section, it is sine-qua-non that an accused must have been convicted or acquitted by a competent Court on a charge. And during the time acquittal or conviction is in force if the accused is again prosecuted for the same offence, section 300 of

Cr.P.C. applies. But here the petitioner was tried at Delhi court for the offences under sections 17, 18 and 20 of UAP Act on the allegations of raising funds for and conspiracy to a terrorist act being a member of terrorist gang or organization. The present case is for different offences founded on allegations that the petitioner took part in terrorist activities of targeted killings of important personalities of Hindu community, politicians, journalists and police officers in the jurisdiction of Bengaluru, Hubballi, Hyderabad and Nanded, and the offences invoked are under Sections 18, 38 and 39 of UAP Act. The two cases are distinct. Merely for the reason that some witnesses in two cases are same, there is no scope for applying section 300 of Cr.P.C. to discharge the petitioner. In fact the petitioner himself submitted before the Delhi court that the case pending against him in Bengaluru court was separate and distinct and for all these reasons, the writ petition is devoid of

merits. He relied on a decision of Patna High Court in ***Babu Lal Mahton v. King-Emperor [ILR (PATNA SERIES) 585]***.

7. In order to appreciate the rival contentions, it is necessary to analyze section 300 of Cr.P.C. which reads as below:

> ***"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."

8. Sub-section (1) states that if a person is once tried and convicted or acquitted by a court of competent jurisdiction, he cannot be made to face trial again for the same offence while the conviction or acquittal is in force, and he cannot be tried for any other offence on same facts based on which a different charge under Section 221(1) of Cr.P.C. could have been framed or he could have been convicted under Section 221 (2) of Cr.P.C.

9. For better analysis, Section 221 of Cr.P.C. is to be elucidated. Sub-section (1) of Section 221 of Cr.P.C. takes the meaning that, if the nature of single act or series of acts is such that it is doubtful as to which offence will constitute on proof of facts, the accused in that event may be charged with having committed all offences emanating from that act or series of acts or he may be charged with having committed all or any of such offences, and any number of charges may be tried at once or he may be charged alternatively for one of the said offences.

10. Sub-section (2) of Section 221 of Cr.P.C. is to be understood in the context of Sub-section (1). The scope of Sub-section (2) is that if an accused is charged with one offence or alternatively for more than one offence, and the evidence brought on record shows a different offence being committed, in that event he may be

convicted for an offence which the evidence proves although there is no charge for that offence. Illustrations (a) and (b) to Section 221 (1) and (2) Cr.P.C. give clear picture of these two sub-sections.

11. Obtaining picture on conjoint reading of Section 300 (1) and sub-sections (1) and (2) of Section 221 of Cr.P.C. is this. Firstly acquittal or conviction for an offence prohibits a trial again for the same offence.

12. Secondly, based on a set of facts, an accused is tried for an offence instead of charging and trying him for more than one offence together or alternatively. Acquittal or conviction of the accused for the offence charged against him bars trial again for the different charge which could have been framed together or alternatively. That means Section 300 (1) excludes applicability of Section 221 (1) in a situation like this.

13. Thirdly, if an accused is charged and tried for an offence, but evidence brought on record shows a different offence being committed for which there is no charge, then as per Section 221 (2) of Cr.P.C. accused can be convicted for that offence for which there is no charge. If for any reason he is not convicted in accordance with Section 221 (2) Cr.P.C. he cannot be tried again for that different offence.

14. Sub-sections (2) to (6) are exceptions to sub-section (1) of Section 300. Sub-section (2) provides for trying an accused for a distinct offence for which a separate charge might have been framed under Section 220 (1) of Cr.P.C. at the former trial, but to proceed under this sub-section consent of State Government is required.

15. Sub-section (3) states that if an accused is convicted of any offence constituted by any act and as a consequence of this act, and together

with it, an offence different from the offence for which he is convicted, is constituted, in that event accused may be afterwards tried for that different offence, but this is permissible only when the consequences had not happened or were not known to court at the time of convicting the accused.

16. Sub-section (4) is another exception to rule of *autrefois acquit or autrefois convict*, explanation to which is given in ***Babu Lal Mahton*** (supra) in the following manner.

> *"It will be noted in the first place that the sub-section involves in itself that part of the common law rule according to which an accused cannot rely upon the pleas of autrefois acquit or autrefois convict unless the previous acquittal or conviction was arrived at by a competent tribunal. But a series of acts may constitute more than one offence and the sub-section says that a person acquitted or convicted of an offence may nevertheless be subsequently tried for*

> *any other offence constituted by the same acts if the court by which he was first tried was not competent to try the offence with which he is subsequently charged. Therefore the common law rule has no application, if the first court was not competent to try him for the offence subsequently charged notwithstanding that the acts constituting the two offences are identical. In my opinion the words "competent to try the offence" mean that in order to obtain the advantage of the common law rule the accused on the second occasion must show that the former Court was in a position, had it so chosen, to try and acquit or convict the accused of the offence subsequently charged."*

17. Sub-section (5) also does not permit trial once again if a person is discharged under Section 258, and if trial is to be held, consent of court is required. Sub-section (6) states that Section 300 of Cr.P.C. does not affect Section 26 of the General Clauses Act, 1897 or Section 188 of Cr.P.C.

18. In the case on hand, Section 300 (1) of Cr.P.C. cannot be attracted at all. The petitioner may have been acquitted by Delhi Court, but that acquittal does not stop the trial by Bengaluru court. In fact the act giving rise to offences with which the petitioner was charged and tried by Delhi court are not same as acts constituting offences for which he is being tried by Bengaluru court. May be the acts have similarity, but they are not same. Some of the witnesses to both the trial may be same, again it is not a ground for invoking Section 300 of Cr.P.C. The Special Court in para 14 of its order has very well delineated the differences in allegations made in both the cases. It is to be noted here that a submission was made on behalf of the petitioner during trial in Delhi court that case pending in Bengaluru was altogether different.

19. The judgment of the Supreme Court in ***Amritlal*** (supra) is not helpful to the petitioner. The question of applicability of Section 300 Cr.P.C. did not arise there. The facts show that two accused persons therein were tried by the JMFC, Baroda for the offences under Sections 420 and 477A read with Section 34 of IPC on a set of facts. The JMFC convicted both the accused for the offence under Section 477A of IPC while acquitting them of offence under Section 420 of IPC. In the appeals, the Sessions Court acquitted them of the offence under Section 477A IPC also. The State preferred two appeals to the High Court, one against the judgment of JMFC acquitting the accused of the offence under Section 420 of IPC and the other against the judgment of Sessions court recording acquittal for the offence under Section 477A of IPC. In the High Court appeal against the judgment of the Sessions Court was dismissed, but the appeal against the judgment of

JMFC was allowed and two accused were convicted. Delving on the views expressed by the High court that ingredients of two offences were different and therefore there was no bar for a conviction under Section 420 of IPC in spite of acquittal for the offence under Section 477A of IPC, the Hon'ble Supreme Court held as below:

> *"4. The learned Judge of the High Court was of the view that the acquittal on the charge under s. 477-A was not a bar to a conviction under Section 420 as the ingredients of the two offences were different. According to the learned Judge, the gist of the offence under Section 477-A was that the false entries must have been made willfully and with intent to defraud whereas the essence of the offence under Section 420 was that the accused should have acted dishonestly. We are afraid that the learned Judge entirely misdirected himself. The question here is not whether the ingredients of the two offences are the same or substantially the same. That question would be relevant if the plea was one autrefois acquit or*

autrefois convict. The question is not even one of 'issue estoppel' properly so called as there were no separate trials. The question really is about the binding force and the conclusive nature, at later stage of a case, of a finding of fact finally determined at an earlier stage of the case. The question is not res-integra. In Bhagwat Ram v. State of Rajasthan and State of Rajasthan v. Tarachand Jain, it has been held by this Court, an earlier finding which had attained finality is binding in the subsequent proceedings in the case. The question about the binding force of a finding at an earlier stage would depend on the question as to what the allegations were, what facts were required to be proved and what findings were arrived at. The question thus is not whether the ingredients of the two offences are the same but whether the facts alleged and required to be proved in the particular case to establish the offences are basically the same."

(emphasis supplied)

20. Therefore ***Amritlal*** (supra) did not deal with applicability of Section 300 of Cr.P.C., and

referring to two earlier judgments in ***Bhagwat Ram v. State of Rajasthan*** and ***State of Rajasthan v. Tarachand Jain***, the Hon'ble Supreme Court held that binding force of a finding at an earlier stage would depend on allegations, facts required to be proved and the findings of the court.

21. Here, as has been rightly held by the Special Court, the two cases are factually different and separate. There is no error in the impugned order. Writ petition is therefore ***dismissed***.

Sd/-
JUDGE

Sd/-
JUDGE

KMV/CKL
List No.: 1 Sl No.: 21