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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 279 OF 2023

Rakesh Chandra Sahu *Petitioner(s)*
Mr. J. Bhuyan, Advocate

-versus-

State of Odisha *Opposite Party(s)*
Mr. B. K. Ragada, AGA

CORAM: JUSTICE SIBO SANKAR MISHRA

ORDER
31.01.2024

Order No.

04.

1. Heard learned counsel for the Petitioner and learned counsel for the State.
2. The Petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of the entire criminal proceedings initiated against him and the cognizance order dated 26.12.2022 passed by the learned Special Judge, Phulbani in C.T. Case No.38 of 2022 on the ground that the other co-accused persons namely Rajesh Chandra Sahoo @ Liton, Arjun Behera and Debaraj Pradhan

@ Dadhia have been acquitted by the learned trial Court after facing trial vide judgment dated 14.08.2023.

3. The gravamen of allegation against the Petitioner is that he is the owner of the offended vehicle. However, there is no material placed on record or any allegation made against him regarding his presence in the spot where the contraband was apprehended from the other accused persons. The Petitioner has brought to the notice of this Court the judgment of the learned Special Court Phulbani dated 14.08.2023 in C.T. Case No.38 of 2022 & 38(A) of 2022. The paragraph Nos.12 and 13 of the said judgment is relevant for the purpose of disposal of this petition which is reproduced below:-

“12. From the analysis of the evidences adduced by the prosecution, in its entirety, do not inspire confidence about the allegations of search and seizure of ganja by the police especially when the independent witnesses have completely denied the factum of seizure, the brass seal has never been produced before the Court, the chemical examination report has not been brought to the record and that there are serious discrepancies in the evidences adduced by the prosecution and the same are not cogent and trustworthy to hold the accused persons guilty of the offence punishable under section 20(b)(ii)(C)/29 of the N.D.P.S. Act.

13. To sum up, I find that the prosecution has failed to prove its case and prove the charges leveled against the accused persons. Resultantly, the accused persons are found

not guilty for the offence punishable under section 20(b)(ii)(C)/29 of the N.D.P.S. Act and are hereby acquitted under section 235(1) Cr.P.C. The accused person namely Rajesh Chandra Sahu @ Liton be set at liberty forthwith, if his detention is not required in any other cases. The accused persons namely Arjuna Behera and Debraj Pradhan be discharged from their bonds for bail and the same be cancelled and they are set at liberty forthwith, subject to restrictions/limitations-imposed U/s. 437(A) of Cr.P.C.”

4. Perusal of the judgment indicates that the prosecution has not even filed the chemical analysis report in the present case and none of the independent witnesses have supported the prosecution. Therefore, the trial Court recorded an acquittal order in favour of the co-accused persons those who were apprehended from the spot. The allegation against the Petitioner is that he is the owner of the offending vehicle. He was not in the spot from where the contrabands were seized.

5. Mr. Ragada, learned Additional Government Advocate for the State has opposed the prayer made by the Petitioner. However, he could not controvert the fact that no chemical analysis report is placed on record and none of the independent witnesses have supported the prosecution while the other main co-accused persons were subjected to trial.

6. Taking into consideration the aforementioned facts and circumstances of the case, I am of the opinion that putting the Petitioner to trial on the strength of the evidence available on record would be a futile exercise. Therefore, to meet the ends of justice, it would be appropriate that the entire prosecution against the Petitioner is quashed. Benefit would be to rely upon two separate judgments of different High Courts which are dealt with the similar circumstances. The Allahabad High Court in the case of *Anant Mishra @ Amit Mishra @ Surya Prakash Mishra vs. State of U.P. and another* while dealing with the similar situation interfered under Section 482 Cr.P.C. and quashed the entire proceeding. The relevant part of the judgment reads as under:-

“After going through the judgments relied by learned counsel for the applicant, it is very much clear that Court has held that considering the testimony of witnesses, if one accused is acquitted, no criminal proceeding can be sustained against co-accused of the same set of witnesses and in the present case too, there is no separate witness and on the basis of testimony of same prosecution witnesses, main accused was acquitted by the court below, Whenever there is no prospect of the case ending in conviction, valuable time of court should not be wasted for holding trial only for the purpose of completing the procedure to pronounce the conclusion on future date. Therefore, criminal proceeding cannot be permitted to continue against the applicant.”

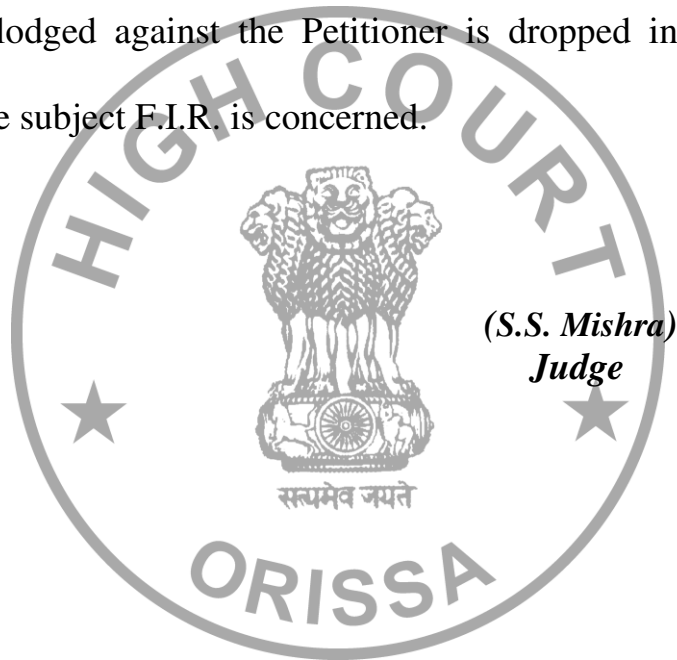
Similarly, the Allahabad High Court in another judgment in the case of *Diwan Singh vs. the State* reported in *AIR 1966 ALL 19* have also taken the similar view. The relevant part of the said judgment reads as under:-

“5. The judgment of the learned Sessions Judge in Criminal Appeal No.262 of 1963 setting aside the conviction and sentence of Manoliar was not challenged by the State by filing an appeal and, as such, has become final. It is no doubt true that the learned Sessions Judge acquitted Manohar on a technical ground because, in his opinion, “the prosecution suffers from a patent infirmity creating reasonable doubt regarding the identity of the alleged fire arms.” He did not disbelieve the evidence of the prosecution on facts. The reasoning given by the learned Sessions Judge in acquitting Manohar is not very appealing but the fact remains that Manohar who was arrested along with the applicant on the same charge and against whom the same evidence has been produced by the prosecution, has been acquitted, while the appeal of the applicant against his conviction was dismissed by the learned 1st Additional Sessions Judge of Etawah. In view of the acquittal of Manohar on the same facts and on the same evidence which has become absolute, it is not possible to maintain the conviction of the applicant.

6. If two persons are prosecuted, though separately, under the same charge for offences having been committed in the same transaction and on the basis of the same evidence, and if one of them is acquitted for whatever may be the reason and the other is convicted, then it will create an anomalous position in law and is likely to shake the confidence of the people in the administration of justice. Justice is not only to be

done but also seem to be done. Therefore, I am clearly of opinion that as has been held in the case of Pritam Singh v. State of Punjab. (S) AIR 1956 SC 415, the principle of stare decisis will apply in the present case and the applicant's conviction cannot be sustained.”

7. Accordingly, the petition is allowed and the cognizance order dated 26.12.2022 passed by the learned Special Judge, Phulbani in C.T. Case No.38 of 2022 is quashed and the entire prosecution lodged against the Petitioner is dropped in the case relating to the subject F.I.R. is concerned.



Swarna