

PETITIONER:
BHAGAT RAM

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT 31/01/1972

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
SHELAT, J.M.

CITATION:
1972 AIR 1502 1972 SCR (3) 503
1972 SCC (2) 466
CITATOR INFO :
R 1973 SC2131 (13)
R 1980 SC 301 (4)
RF 1981 SC 365 (2,3)
R 1988 SC1531 (189)

ACT:

Criminal Law-Practice and Procedure-Two accused charged with offenses for conspiracy and other offences-Acquitted by trial court Appeal heard by two Judges-Acquittal of one accused and the other of offenses of conspiracy etc. upheld-Difference of opinion with respect to offence under s. 161 I.P.C.-Reference to third Judge-Jurisdiction of third Judge to reopen entire matter.

HEADNOTE:

An Inspector of Police was charged with offenses under ss. 120B, 161, 218, 347 and 389 I.P.C. and also under s. 5(1) (a) read with s. 5(2) of the Prevention of Corruption Act. Another accused was charged along with him for offenses under ss. 120B and 165A, I.P.C. The trial court acquitted both the accused. In appeal to the High Court a Bench of two judges confirmed the acquittal of the second accused and the acquittal of the Inspector with respect to offenses under ss. 120B, 218, 349 and 389, I.P.C., but with respect to offenses under s. 161, I.P.C. and s. 5(1) (a) of the Prevention of Corruption Act, the two Judges differed and the matter was referred to a third Judge. The third Judge held that the Inspector was guilty of the offenses under s. 161 and also under ss. 120B, 218 and 347 I.P.C.

In appeal to this Court by the Inspector and by the State against the acquittal of the second accused,

HELD : (1) As regards the second accused there was nothing to justify an interference with his acquittal. [310 H]

(2) It was not permissible for the third Judge to reopen the matter and convict the Inspector for offenses under ss. 120B, 347 and 389 I.P.C., because it was not a case where the entire matter had been left open for the opinion of the third Judge. The difference of opinion between the two Judges was only with respect to the offenses under s. 161 I.P.C. and s. 5(1)(a) of the Prevention of Corruption Act and the third Judge could only go into that aspect of the matter. [309 B-D]

The Division Bench had upheld the acquittal of the Inspector of Police for offenses under ss. 120B, 347 and 389 and the State appeal in that respect had been dismissed by the Division Bench. That order, unless set aside in appeal to this Court, was binding and conclusive in all subsequent proceedings between the parties. The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. [309 F-H] Pritam Singh v. State of Punjab, 1956 S.C. A.I.R. 415, followed.

Further when the second accused was acquitted of the charge under s. 120B I.P.C. the basis of the charge against the Inspector for conspiracy 7-LS879-jp. Cl/72

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between him and the second accused disappeared. It was not the case, of the prosecution that he had conspired with some other person whose identity had not been established. [310 E-F]

In view of the acquittal of the second accused it is also not possible to maintain the conviction of the Inspector under s. 161 I.P.C. since it was not the prosecution case that he had made any demand directly for payment of illegal gratification. On the contrary, the prosecution case was that the Inspector had attempted to obtain such gratification through instrumentality of the second accused. [311 B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 36 of 1969 and 202 of 1970.

Appeal from the judgment and order dated January 17, 1969 of the Rajasthan High Court in D.B. Criminal Appeal No. 376 of 1965.

A. S. R. Chari and Sobhagmal Jain, for the appellant (in, Cr. A. No. 36 of 1969).

K. B. Mehta for the respondent (in Cr. A. No. 36 of 1969) (in Cr. A. No. 202 of 1970).

S. C. Gupta, Ramesh Chand, S. Bhandare and P. H. Parekh, for the respondent (in Cr. A. No. 202 of 1970).

The Judgment of the Court was delivered by Khanna, J. This judgment would dispose of criminal appeal No. 36 of 1969 Bhagat Ram v. State of Rajasthan and criminal appeal No. 262 of 1970 State of Rajasthan v. Ram Swaroop. Both the appeals have been filed on certificate granted by the Rajasthan High Court.

Bhagat Ram during the year 1962 was posted as circle inspector of police at Ganganagar. Ancestral village of Bhagat Ram is Mehna in Tehsil Moga, District Ferozepur. Ram Swaroop also belongs to that village. Both Bhagat Ram and Ram Swaroop were tried in the court of special judge, Ganganagar for offenses under section 120B IPC for conspiring to extort bribe of Rs. 2,000 from P W I Niranjana Dass of Moga. Charges were also framed against Bhagat Ram for offenses under sections 161, 218, 347 and 389 Indian Penal Code as also section 5 (1) (a) read with section 5 (2) of Prevention of Corruption Act. Additional charge under section 165A Indian Penal Code was framed against Ram Swaroop. Both Bhagat Ram and Ram Swaroop were acquitted by the special judge, Ganganagar in respect of all the charges. The State of Rajasthan filed an appeal against the acquittal of the

two accused. The appeal was heard by a Division Bench consisting of Tyagi and Lodha, T.T.

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The Division Bench dismissed the said appeal against the acquittal of Ram Swaroop. The appeal of the State against Bhagat Ram in so far as it related to his acquittal for offenses under sections 347, 218, 389 and 120B IPC was also dismissed. There was, however, a difference of opinion between the two learned judges on the point as to whether the acquittal of Bhagat Ram for offenses under section 161 IPC and 5(1) (a) of Prevention of Corruption Act should be maintained. According to Tyagi, J., the case against Bhagat Ram for the above mentioned two offenses had not been proved and the State appeal in that respect also was liable to be dismissed. As against that Lodha, J. took the view that Bhagat Ram was guilty of offenses under section 161 Indian Penal Code and section 5 (1) (a) of Prevention of Corruption Act. He accordingly passed an order for the conviction of Bhagat Ram for the above mentioned two offenses.

In view of the difference between the two judges regarding the acquittal of Bhagat Ram for offenses under section 161 IPC and 5 (1) (a) of Prevention of Corruption Act, the case was placed under section 429 of the Code of Criminal Procedure before Jagat Narayan, J. Jagat Narayan, J. came to the conclusion that the material on record showed that Ram Swaroop and Bhagat Ram had entered into an agreement to extort bribe, from Niranjani Dass and, as such, were guilty of an offence under section 120A punishable under section 120B of Indian Penal Code. The learned judge, however, felt that in view of the decision of the Division Bench, he could not set aside the acquittal of Ram Swaroop. As regards Bhagat Ram, the learned judge came to the conclusion that he could set aside the acquittal of Bhagat Ram for offenses under sections 120B, 218 and 347 IPC. Bhagat Ram was found guilty by Jagat Narayan, J. of the offenses under sections 120B, 161, 218 and 347 IPC. For the offence under section 161 IPC, Bhagat Ram was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5001- or in default to undergo rigorous imprisonment for a further period of three months. For the offenses under sections 218 and 347 IPC, Bhagat Ram was sentenced to undergo rigorous imprisonment for a period of one year on each count. These sentences were ordered to run concurrently with the sentence imposed under section 161 IPC. No sentence was awarded for the offence under section 120B IPC. Bhagat Ram has filed criminal appeal No. 36 of 1969 against his conviction and sentence, while the State of Rajasthan has filed appeal No. 202 of 1970 against the acquittal of Ram Swaroop.

The prosecution case is that a case under sections 408 and 420 IPC was registered on June 14, 1962 at police station Ganganagar on a report made by the general manager of Ganganagar

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Sugar Mills against Ramesh, an employee of the sugar mills. Bhagat Ram, who was circle inspector of Ganganagar, took over the investigation of the above case. Bhagat Ram during investigation came to know that Ramesh had sent the misappropriated amount to his brother Puran Chand at Ludhiana. Bhagat Ram also came to know that Puran Chand had entered into a transaction for the purchase of a truck from PW Niranjani Dass of Moga for a price of Rs. 22,000. Niranjani Dass received Rs. 7,000 from Puran Chand in that connection. As Puran Chand could not pay the balance of the purchase price, the bargain regarding the purchase of the

truck was cancelled and the amount received by Niranjana Dass was stated to have been returned to Puran Chand. It seems that Bhagat Ram took the stand that part of Rs. 7,000 had been kept by Niranjana Dass with himself. Bhagat Ram, therefore, summoned Niranjana Dass to police station Ganganagar. In obedience to the summons, Niranjana Dass went with his brother Manohar Lal PW to Ganganagar police station on July 27, 1962. Niranjana Dass and Manohar Lal could not meet Bhagat Ram on that day but met him on the following day. Bhagat Ram then behaved in an unduly rude and harsh manner to Niranjana Dass and kept him at the police station. Manohar Lal apprehending trouble, returned to Moga and took with him Ram Swaroop accused and some other persons. Manohar Lal and his companions reached Ganganagar on July 29, 1962. In the meanwhile, Bhagat Ram had gone to Hindumalkot. Accompanied by Niranjana Dass, Ram Swaroop and others, Manohar Lal went to Hindumalkot Dak bungalow where Bhagat Ram was staying. It is stated that Ram Swaroop went inside the room in which Bhagat Ram was present, while others stayed outside. After some time Ram Swaroop came out of the room and told Niranjana Dass and Manohar Lal not to feel worried. Niranjana Dass was asked to give a statement which was thereafter recorded by Bhagat Ram. Bhagat Ram then produced three documents relating to the agreement for the sale of truck and the receipt which Niranjana Dass had obtained from Puran Chand. for the refund of Rs. 7,000. Bhagat Ram then told Niranjana Dass to go back to Moga. It was also mentioned by Bhagat Ram that if the presence of Niranjana Dass was required for further investigation, he would be summoned again.

About 10 or 15 days after that, it is stated, Bhagat Ram went to Moga in a jeep and stayed at the house of Niranjana Dass and Manohar Lal for the night. While leaving Moga early next morning, Bhagat Ram told Niranjana Dass and Manohar Lal that they should have a talk with Ram Swaroop and act according to Ram Swaroop's instructions. After Bhagat Ram had left Moga, Ram Swaroop met Niranjana Dass and informed him that Bhagat Ram wanted Rs. 21,000 as bribe for having helped Niranjana Dass

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to get out of the trouble and that otherwise, Niranjana Dass would be again entangled in the case. Niranjana Dass then told Ram Swaroop that he would consult a lawyer and give a reply.

Ram Swaroop, according to the prosecution case, came to Niranjana Dass in the first week of October 1962 and showed letter P. 2 which had been sent by Bhagat Ram to Ram Swaroop from Alwar. In the course of that letter it was stated kindly kindness send that thing to Alwar. This is very important and please do not be careless and slack in the matter." Ram Swaroop told Niranjana Dass that the words "that thing" in the letter referred to Rs. 2,000 and demanded that amount from Niranjana Dass, so that it could be passed on to Bhagat Ram. Niranjana Dass expressed his inability to accede to this demand. The letter was, however, retained by Niranjana Dass. A few days thereafter Ram Swaroop again came to Niranjana Dass and showed him telegram P.3A dated October 19, 1962. The telegram had been addressed by Bhagat Ram to Ram Swaroop and it was stated therein that Ram Swaroop should ask Niranjana Dass to see Bhagat Ram and that otherwise, warrants of arrest would be issued against him. This telegram too was kept by Niranjana Dass, with himself.

On December 26, 1962, it is stated, Niranjana Dass came to know that warrants for his arrest had been received by the

Moga police in the above mentioned case registered at Ganganagar. Niranjani Dass then consulted a lawyer and sent complaint dated December 26, 1962 to the Inspector General of Police, Special Police Establishment. A case was thereafter registered on the basis of the above complaint by DSP Umaid Singh of AntiCorruption Department. After necessary investigation, Bhagat Ram and Ram Swaroop were sent up for trial.

In his statement under section 342 of the Code of Criminal Procedure, Ram Swaroop admitted that he knew Bhagat Ram and that he had gone to him on July 29, 1962 with Manohar Lal and Niranjani Dass at Hindumalkot. Ram Swaroop denied that Bhagat Ram had made any demand through him for illegal gratification. According to Ram Swaroop, Bhagat Ram had asked him to realise the embezzled amount from Niranjani Dass. The other allegations made against him were denied by Ram Swaroop. he, however, admitted having received letter P. 2 and telegram P. 3A from Bhagat Ram and having handed over those documents to Niranjani Dass. Ram Swaroop added that he had asked Niranjani Dass to pay the embezzled amount which was with him.

Bhagat Ram admitted that he had been entrusted with the investigation of the case against Ramesh and that he had called Niranjani Dass to Ganganagar in that connection. Bhagat Ram

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denied having maltreated Niranjani Dass or having kept him under unlawful detention. Bhagat Ram admitted that Niranjani Dass and Ram Swaroop had met him on July 29, 1962 at Hinamalkot but he denied having made any demand through Ram Swaroop for the payment of Rs. 2,000 as bribe. It was admitted by Bhagat Ram that he had gone to Moga but the demand for any illegal gratification from Niranjani Dass at Moga was denied by Bhagat Ram. Bhagat Ram admitted having sent letter P. 2 and telegram P. 3A to Ram Swaroop. As regards the words "that thing", Bhagat Ram stated that they referred to the embezzled amount which had been retained by Niranjani Dass.

The trial court, as stated earlier, acquitted both the accused, while the High Court maintained the acquittal of Ram Swaroop. As regards Bhagat Ram, there was a difference between the two judges. On the matter being referred to the third judge, Bhagat Ram was convicted and sentenced as above.

Arguments have been addressed in the two appeals by Mr. Mehta on behalf of the State of Rajasthan, Mr. Chari on behalf of Bhagat Ram and Mr. Gupta on behalf of Ram Swaroop. After hearing the learned counsel, we are of the opinion that the appeal filed by the State of Rajasthan merits dismissal, while that filed by Bhagat Ram should be allowed. It would appear from the resume of facts given above that both Bhagat Ram and Ram Swaroop were acquitted by the special judge. On appeal filed by the State of Rajasthan against the acquittal of the two accused, Tyagi and Lodha, JJ. maintained the order relating to the acquittal of Ram Swaroop. As regards Bhagat Ram, though there was a difference between the two judges regarding the correctness of his acquittal for offenses under section 5(1) (a) of Prevention of Corruption Act and section 161 of Indian Penal Code., they concurred with regard to the acquittal of Bhagat Ram in respect of the charges under sections 120B, 218, 347 and 389 IPC. The State appeal against the acquittal of Bhagat Ram was dismissed to that extent. The order which was made by the learned judges of the Division Bench reads as under :

"BY THE COURT

The result is that the appeal of the State against the order of acquittal of respondent Ram Swaroop is dismissed. The appeal of the State so far as it relates to the acquittal of respondent Bhagat Ram under sections 347, 218, 389 and 120B Indian Penal Code is also dismissed. In view of the difference of opinion about the acquittal of Bhagat Ram under section 161 Indian

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Penal Code and section 5 (1) (a) of the Prevention of Corruption Act, the matter may be laid before Hon'ble the Chief Justice for referring it to the third judge."

In view of the fact that the State appeal against the acquittal of Bhagat Ram for offenses under sections 120B, 218, 347 and 389 I P C had been dismissed by the Division Bench, it was, in our opinion, not permissible for the third judge to reopen the matter and convict Bhagat Ram for offenses under sections 347, 389 and 120B IPC. The matter had been referred under section 429 of the Code of Criminal Procedure to Jagat Narayan, J. because there was a difference of opinion between Tyagi, J. and Lodha, J. regarding the correctness of the acquittal of Bhagat Ram for offenses under section 161 IPC and section 5(1) (a) of Prevention of Corruption Act. Jagat Narayan, J. could go only into this aspect of the matter and arrive at his conclusion. The present was not a case wherein the entire matter relating to the acquittal or conviction of Bhagat Ram had been left open because of a difference of opinion between the two judges. Had that been the position, the whole case relating to Bhagat Ram could legitimately be considered by Jagat Narayan, J. and he could have formed his own view of the matter regarding the correctness of the order of acquittal made by the trial judge in respect of Bhagat Ram. On the contrary, as mentioned earlier, an express order had been made by the Division Bench upholding the 'acquittal of Bhagat Ram for offenses under sections 120B, 218, 347 and 389 IPC and the State appeal in that respect had been dismissed. The above decision of the Division Bench was binding upon Jagat Narayan, J. and he was in error in convicting Bhagat Ram for offenses under sections 120B, 218 and 347 IPC despite the order of the Division Bench. It was, in our opinion, not within the competence of the learned judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench whereby the order of acquittal of Bhagat Ram made by the trial judge in respect of the said three charges had been affirmed. The order of the Division Bench unless set aside in appeal to this Court, was binding and conclusive in all subsequent proceedings between the parties. The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. The plea of autrefois acquit as a bar to prosecution embodied in section 403 of the Code of Criminal Procedure is based upon the above wholesome principle.

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In the case of Sambasivam v. Public Prosecutor, Federal of Malaya(1), Lord MacDermott observed:

"The effect of a verdict of acquittal

pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim *res judicata pro veritate accipitur* is no less applicable, to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

"The above observations were quoted with approval by this Court in the case of *Pritam Singh v. State of Punjab*(2). We are, therefore, of the opinion that the judgment of Jagat Narayan, J. in so far as he has convicted Bhagat Ram for offenses under sections 120B, 218 and 347 IPC cannot be sustained.

The matter can also be looked at from another angle. 'The, charge under section 120B IPC related to , conspiracy between Bhagat Ram and Ram Swaroop for extorting Rs. 2,000 as illegal gratification from Niranjana Dass. When Ram Swaroop was acquitted of the charge under section 120B IPC, the basis of the charge against Bhagat Ram for conspiracy between him and Ram, Swaroop disappeared. It is not the case of the prosecution that Bhagat Ram had conspired with another person and even though the identity of the other person has not been established. Bhagat Ram would still be guilty for the offence under section 120B IPC. On the contrary, the case of the prosecution was that Bhagat Ram had conspired with Ram Swaroop to extort Rs. 2,000 as illegal gratification from Niranjana Dass. Once Ram Swaroop was acquitted in respect of the charge relating to conspiracy, the charge against Bhagat Ram for conspiracy must necessarily fall to the ground.

So far as the State appeal against the acquittal of Ram Swaroop is concerned, we find that there are concurrent findings of the trial court and the High Court that the evidence on record had failed to prove that he was guilty of offenses under sections 120B and 165A IPC. Nothing has, been brought to our notice at the

(1) [1950] A.C. 458.

(2) [1956] S.C.R. 415.

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hearing of the appeal as may justify interference with those concurrent findings by a fresh appraisal of that evidence. We are, therefore, of the view that the State appeal against the acquittal of Ram Swaroop is liable to be dismissed.

As regards the conviction of Bhagat Ram for the offence under section 161 IPC, we find that it is not the prosecution case that Bhagat Ram had made any demand directly to Niranjana Dass for payment of illegal gratification. On the contrary, the High Court found that Bhagat Ram had not demanded bribe directly from Niranjana Dass. The case set up by the prosecution is that Bhagat Ram attempted to obtain illegal gratification from Niranjana Dass through the instrumentality of Ram Swaroop. In view of the acquittal of Ram Swaroop, it is not possible to maintain the conviction of Bhagat Ram. The acquittal of Ram Swaroop

would necessarily lead to the conclusion that the prosecution allegation about Ram Swaroop having made a demand of illegal gratification from Niranjana Dass for Bhagat Ram has not been proved. The case, in the circumstances, against Bhagat Ram for asking for bribe through Ram Swaroop must consequently fail. It would indeed be incongruous and inconsistent to acquit Ram Swaroop, for offenses under sections 165A and 120B IPC and, at the same time, to convict Bhagat Ram for the offence under section 161 IPC for asking for bribe from Niranjana Dass through the instrumentality of Ram Swaroop.

We, therefore, accept the appeal of Bhagat Ram and set aside his conviction and acquit him. The appeal of the State of Rajasthan against the acquittal of Ram Swaroop is dismissed.

V.P.S.

Appeal allowed.

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