

CALCUTTA HIGH COURT

Manick Chand Agarwalla

Vs.

State (Calcutta)

Criminal Revn. No. 891 of 1951

(Harries, C.J. and Guha, J.)

13.02.1952

JUDGMENT

Harries, C.J.

1. This is a petition for revision of an order of a Presidency Magistrate convicting the petitioner of an offence of attempting to bribe an 'official and sentencing him to six weeks' rigorous imprisonment and a fine of Rs. 200.
2. The petitioner had to file on the 3rd of each month with the Textiles Department of the Government of "West Bengal certain returns. It is alleged that the return which should have been filed on 3.3.1951 was not filed and that on 9.3.1951 the petitioner approached Atindranath Pramanik, a public servant employed in the Directorate of Textiles and offered him a sum of Rs. 10 if he would accept the return and antedate it.
3. The petitioner pleaded not guilty. It appears that the petitioner was also prosecuted for not having submitted the return by 3.3.1951. But he was found not guilty as the Court was satisfied that he had submitted the return.
4. When this case came for hearing the petitioner wanted to tender evidence to show that he had been acquitted on the charge of failing to make a return on or before 3.3.1951. But the learned Magistrate refused to accept the evidence purporting to follow a decision of mine in *Kunja Lal Chakravarty v. The King*¹, The learned Magistrate found the case proved and convicted the petitioner and sentenced him as I have indicated.
5. Mr. Ajit Kumar Dutt on behalf of the petitioner has contended that the evidence as to the acquittal of his client should have been admitted and once it was admitted it ended the case for the prosecution. He has urged that it was not open to the prosecution after this acquittal to

contend that the return had not been filed in time. Once it was conceded that the return was filed in time then the case for the prosecution becomes utterly impossible. The petitioner is charged with offering a public servant a bribe to accept a return which has already been filed and to antedate it to the date upon which it was filed.

6. Mr. Dutt relies upon a decision of their Lordships of the Privy Council in *Sambasivam*

¹54 Cal WN 186

*v. Public Prosecutor, Federation of Malaya*², In that case a person had been arrested and charged with two offences, namely, being in possession of ammunition and being in possession of firearms. He was tried upon the charge of being in possession of ammunition separately and acquitted. In his trial for being in possession of firearms it was sought to tender in evidence his acquittal on the charge of being in possession of ammunition. But the trial Court did not accept that acquittal as any evidence affecting the merits of the case. At p. 705, Lord Mac Dermott who delivered the opinion of the Board 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 step to challenge it at the second trial. and the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the firearms charge is plain, but it undoubtedly reduced in some degree the weight of the case against him for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other "

7. The case which I decided which the learned Magistrate purported to follow is a very different case. There was a finding in an earlier criminal case not inter partes in a matter wholly unconnected with the latter case and therefore there could be no question of *res judicata*. The case of Kunja Lal Chakravarty, (54 Cal WN 186), can have no application to the facts of this case and it appears to me that this case is covered by the decision of their Lordships of the Privy Council to which I have made reference. The two cases were between the same parties and both were concerned with failing to file a return. That in itself was made the basis of the charge upon which the petitioner was acquitted, whereas it is one of the fundamental facts that have to be established to convict him of the second charge, namely of attempting to bribe.

8. Before the prosecution could succeed in this case they would have to show that the petitioner had failed to file his return in time and that he had laid himself open to grave consequences.

Further, in order to avoid these consequences he had approached a public officer and attempted to bribe him to accept the return not filed in time and to antedate it. The very basis of the case is the fact that the return had not been filed. But clearly on the case for the prosecution it is not open to the prosecution to allege that it had not been filed and if they cannot allege that then quite obviously no prosecution for bribery could ever succeed. It is to be observed that in the Privy Council case the verdict of acquittal on the charge of being in possession of ammunition was by no means conclusive as pointed out by Lord Mac Dermott. But it appears to me that in the present case the order of acquittal based on a finding that the returns had been filed in time is all but conclusive, because if

²⁵⁴ Cal WN 695 (PC)

they were filed in time there can be no question whatsoever of bribery or asking an officer to antedate the return.

9. The evidence of acquittal should therefore have been accepted by the learned Magistrate and when it is accepted no evidence can be given that this return was not filed in time. Without such evidence the petitioner's conviction for bribery is utterly impossible and that being so this petition must be allowed. The conviction and sentence are set aside and the petitioner is acquitted. He need not surrender to his bail and his bail bond is discharged. If he has paid the fine or any part thereof it must be refunded. The rule is accordingly made absolute.

Guha, J.

10. I agree.

Rule made absolute.