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ACQUITTAL



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INTRODUCTION

We live in a country that has many laws protecting the rights of their citizens, making sure that no criminal can slide away and no innocent has to suffer. It inculcates the feeling within a person that they can rely on our country's judicial system and live in peace with a satisfaction and belief that this system will protect them and ensure justice to one and all. If a crime is committed, it leads to a trial in the Court of the Magistrate. If the crime against the accused cannot be proved *prima facie*, the accused is discharged. However, if the case is proved against the accused, he is convicted and if the prosecution fails to prove charges against the accused, in that case, the accused is acquitted.

Section 232, Chapter XVIII of the Code of

Criminal Procedure, 1973 talks about Acquittal. According to Section 232 of the Cr.P.C., 1973¹, *"If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence the accused committed the offence, the Judge shall record an order of acquittal."*

But before we understand Acquittal in its deepest sense, we need to understand what conviction and discharge are in order to understand acquittal in a better way. Conviction has not been defined in the Code of Criminal Procedure, 1973 but it has been mentioned in various sections of this Act. According to Section 248 (2)², *"Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence on him according to the law."*

¹ The Code of Criminal Procedure, 1973, § 232, No. 2, Acts of Parliament, 1973 (India).

² The Code of Criminal Procedure, 1973, § 248(2), No. 2, Acts of Parliament, 1973 (India).

So, conviction, in its simplest sense means the when the charges that are framed against the accused are proved with the help of evidence, the accused is then convicted for that particular crime and is sentenced to punishment or fine accordingly. Once an accused is found guilty, the magistrate announces the conviction of the accused under Section 248(2). In case of a previous conviction³, Section 248 (3)⁴ says, “Where, in any case under this Chapter, a previous conviction is charged under the provisions of subsection 7 of section 211⁵ and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.”

It means that if the prosecution claims that the accused was previously convicted as well and the accused refuses to admit any such conviction claimed by the prosecution, then the Magistrate after

convicting him for the offence for which he has been presented before the court, will take evidence against the accused for the alleged previous conviction and record any findings made by the Magistrate and pronounce the judgement accordingly. In cases where there is no case *prima facie*, the accused is then discharged. The term “discharge” has been defined in section 227 of the Cr.P.C⁶. According to this Section, “If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

So, if the Judge after listening to the submissions of both the parties comes to a conclusion that there is no case *prima facie* enough to begin a trial or a proceeding, in that case, the accused is discharged. But in this case, if the

³ The Code of Criminal Procedure, 1973, § 236, No. 2, Acts of Parliament, 1973 (India).

⁴ The Code of Criminal Procedure, 1973, § 248(3), No. 2, Acts of Parliament, 1973 (India).

⁵ “If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to

prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.”

⁶ The Code of Criminal Procedure, 1973, § 227, No. 2, Acts of Parliament, 1973 (India).

prosecution is able to prove case *prima facie* and is able to satisfy the court, then the accused can be arrested again.

Often, people confuse the terms ‘Acquittal’ and ‘Discharge’ as same. Though these terms may look identical in their meaning, but they are very different in their true sense. Here are some of the key differences between ‘Acquittal’ and ‘Discharge’ explained along with the leading case law.

- I. In case of Acquittal, if a person has been acquitted by the court in a case, he cannot be arrested again for the same case. However, if a person has been discharged, he can be arrested and committed again for a further enquiry.
- II. In case of Acquittal, one may be acquitted as a result of the absence of the complainant or withdrawal or a compounding of offence. However, if a Magistrate proceeds with an offence which is not grave in nature, it can be said there was a discharge of a grave offence and the accused can be directed to be committed.
- III. In case of Acquittal, after the

complete investigation, when the innocence of the accused is established, then order of acquittal so given is said to be a judicial decision. However, when there is no *prima facie* evidence to justify further enquiry in relation to the charge, then the order so passed is the order of discharge and does not establish anything about the guilt of the accused.

- IV. In case of Acquittal, a second trial is barred if the facts or the offence is same as in the previous case, or even if the facts are same but the charge is for a different offence for which different charges from the one made against the accused might have been made under Section 221(1)⁷ of the Cr.P.C. However, the institution of fresh proceedings is not barred when a new or better evidence becomes available against the accused.

The difference between the two has also been highlighted in the case of *D’rose v. State*⁸. In this case, Justice Madigan set aside the order of a discharge passed by a Magistrate’s court and substituted it with the order of acquittal. The difference

⁷ “If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of

such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.”

⁸ *D’rose v. State*, FJHC 113.

between a “discharge order” and an “acquittal order” is that “an acquittal frees an accused from the “yoke” of those proceedings, but a withdrawal does not”. “Where a “discharge order” is sought it is open to the prosecution to re-launch a prosecution against an accused at their whim if the charge is withdrawn. While pronouncing the judgement, Justice Madigan said “the accused had been facing those charges for a little over three years when the prosecution elected not to proceed against him and for him to still be facing the possibility of the re- launching of proceedings would be a gross injustice and in contravention of his constitutional right to a fair and speedy resolution of the initial charges laid against him. In future, prosecution should be aware of such an injustice and be mindful of the order they are seeking from a judicial officer when charges are being withdrawn. In the end, there “must” be a balance between public interest, prosecutorial guidelines and the rights of an accused person.”

CASE LAWS ON ACQUITTAL

KANSHI RAM PANCHI v AMAR CHAND⁹

⁹ Kanshi Ram Panchi v. Amar Chand, Cr. Appeal No. 514 of 2009

FACTS: In this case, a criminal complaint was filed by one brother-in-law against the other. The houses of both the complainant and the respondent were adjacent to one another and there was a government land between their houses. According to the complainant, the Respondent was trying to encroach the government property and despite the Complainant’s attempts to stop the Respondent from doing so, the Respondent succeeded in his plan to encroach the land. When the Complainant failed to stop the Respondent from doing so, he filed a complaint against the Respondent in local Tehsildar’s office and a date was set up for the demarcation of the said property. But before the demarcation could happen, the Respondent began to build pillars on the property in question and when the Complainant tried to stop him, things turned ugly and there was a scuffle between the two and the Complainant suffered severe injuries as the Respondent pushed him and the Complainant fell off the stairs. So, a case was registered under section 323, 500, 504, 506 (1) of the Indian Penal Code. The court after listening to both the parties dismissed the appeal.

JUDGEMENT: The court while dismissing the appeal stated that the accused had already demolished the pillars when the scuffle came up during the cross examination and also it cannot be denied that there were multiple complaints filed by the accused as well which only leads to contradiction so in this case, the accused can be given a benefit of doubt and the judgment of acquittal given by the trial court was upheld by the High Court of Himachal Pradesh, Shimla.

MD. NAZIR V. STATE OF BIHAR AND ORS.¹⁰

FACTS: In this case, the petitioner filed a case under the following sections: 447, 341, 323, 327 and 504/34 of the Indian Penal Code, 1882 and the cognizance was taken under all sections. The facts of this stated that the accused had assaulted the petitioner and two others with a lathi and iron rod which resulted in a blow to the head of the petitioner. The accused was convicted under section 323 and 341 and was acquitted under section 447, 307 and 504/34. The petitioner did not find the acquittal under Section 307 justified as according to them, “it is not essential that bodily injury capable of causing death

should have been inflicted and it was sufficient if there was present an intent coupled with some overt act in execution thereof and further that merely because the injury inflicted on the victim was simple in nature it would not be correct to acquit under Section 307 of the Indian Penal Code.” It was submitted by the accused that there was only one minor injury on the head which was not sufficient to convict a person under Section 307 of the IPC. Also, no such weapon was used which could prove the intent to kill or no multiple injuries were inflicted which clearly indicated that it was not a premeditated assault.

JUDGEMENT: The High Court of Patna was of the view that the single blow that was simple in nature cannot be construed as an indicating factor of a premeditated mind that was trying to inflict the injury with the intent to kill the petitioner. Hence, “order impugned had discussed the evidence and had rightly convicted the opposite parties 2 to 4 only under Sections 323 and 341 of IPC.”

APPEAL IN CASES OF ACQUITTAL

Section 378 and 379 of the Code of Criminal Procedure talks about the

¹⁰ Md. Nazir V. State of Bihar And Ors., Cr. Revision No.401 of 2018

Appeal in the case of Ac- quittal. Section 378¹¹ tells us that the District magistrate can direct a public prosecutor to file an appeal to the Court of Session from an order of acquittal if the offence is non-bailable and cognizable. Similarly, even the state government can direct a public prosecutor to file an appeal to the High Court from an order of acquittal except the orders mentioned in clause 1 of this section. Also, this section says that if the order of acquittal is passed in an offence where the investigation was conducted by the “Delhi Special Police Establishment” which was established under “Delhi Police Establishment Act, 1946”, in that case, the central government can direct the public prosecutor to file an appeal in the Court of Session if the offence is cognizable and non-bailable and can also direct public prosecutor to file an appeal in High Court from an original or appellate order of acquittal of any court other than the High Court and this appeal would only be entertained by the special leave of Hon’ High Court. It is also mentioned in the clause 4 of this section that the complainant can also direct a public prosecutor to file an appeal to the High

Court from an order of acquittal and that this appeal would only be entertained by the special leave of the Hon’ble High Court. If the complainant filing an appeal is a public servant, he has 6 months to file such appeal and 60 days in other cases. Also, if the said appeal is not granted by the special leave of the Hon’ble High Court, then no appeal can be filed under clause 1 or 2 of this section. Section 379¹² of this Act states that if a person who was acquitted in the trial court or the court of session, is found guilty by the High Court and the order of acquittal is reversed by the High Court and he has been sentenced to death or life imprisonment or imprisonment for a period of 10 years or more, in the case, the accused has the right to appeal to the Supreme Court. To have a better insight into Section 378, we can probe into this leading case law of *State of Sikkim v. Karna Bahadur Rai*¹³

FACTS: In this case, the Complainant stated that the minor prosecutrix on whose behalf the complainant filed this complaint had been living with her since 4 months and the minor prosecutrix stated that when the complainant used to go to bed, the accused used to sexually assault the minor prosecutrix and when

¹¹ The Code of Criminal Procedure, 1973, § 378, No. 2, Acts of Parliament, 1973 (India).

¹² The Code of Criminal Procedure, 1973, § 379, No. 2, Acts of Parliament, 1973 (India).

¹³ *State of Sikkim v. Karna Bahadur Rai*, CrI. A. No. 07 of 2019.

she would try to scream for help, he would cover her mouth. According to the FIR of the minor the accused had been assaulting and raping her for a very long time. When the gynecologist conducted the medical examination of the minor prosecutrix, she was of the opinion that the clinical and cytopathological report do not suggest any recent forceful sexual intercourse and the hymen of a woman can rupture from other things as well apart from sexual intercourse. Also, the daughter of the accused said that the minor prosecutrix was a girl of immoral character after which the minor prosecutrix deposed that she was hurt and that is when she told the complainant about the assault.

JUDGEMENT: A Division Bench while upholding the Judgment of acquittal passed by Special Judge (POCSO), held that, “A delicate balance is required to be maintained between the judicial perception of the anguish of the victim and the presumption of innocence of the accused and an inequitable tilt either way may not render sound justice.”

“The POSCO Judge did not believe the sole testimony of the minor prosecutrix that she was sexually assaulted by the respondent. The bench stated that judgment of acquittal passed by the Special Judge is neither perverse nor

against the weight of the evidence on record. Special Judge had disbelieved the deposition of penetrative sexual assault made by the minor prosecutrix. Disbelief was fortified by the medical as well as forensic evidence. Thus, the negative result of both the medical and forensic evidence collected immediately after the alleged assault does not help the prosecution case further, more so, when she alleged forceful penetrative sexual assault. Defence has also been able to bring out certain facts about the altercations and fight between them immediately preceding the lodging of the FIR. All of the above leans towards the claim of innocence of the respondent.”

CONCLUSION

Our legal system has provided us with the laws that are meant to protect us but the above-mentioned case laws are a clear example of how we, for whose protection these laws have been made, are trying to misuse them in order to harm others and deprive them of their rights. But this is where the law, which we discussed above comes into force. In the cases mentioned above, where the minor prosecutrix was falsely trying to implicate an innocent man for a heinous crime of rape and sexual assault. Section 232 came to the rescue of

that innocent man who otherwise would have rotted in jail for years and years with no offence of his. The sole purpose of this provision is to ensure that no one is ever accused wrongly and does not let to suffer

for the crimes they did not commit. The laws are made to protect us, the citizens and to ensure that they should not be misused for personal vengeance and section 232 Cr.P.C. ensures the same.



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