

Reserved on :-01.07.2025

Delivered on:- 23.07.2025

Neutral Citation No. - 2025:AHC:121173

Court No. - 82

Case :- APPLICATION U/S 528 BNSS No. - 15658 of 2025

Applicant :- Mohammad Abdullah Azam Khan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Imran Ullah, Mohammad Khalid

Counsel for Opposite Party :- G.A., Samarpan Jain, Sharad Sharma

Hon'ble Sameer Jain, J.

1. Heard Sri Imran Ullah, learned counsel for the applicant; Sri Saurabh Kumar, Advocate holding brief of Sri Sharad Sharma learned counsel for the opposite party no. 2 and Sri Manish Goel, learned AAG assisted by Sri J.K. Upadhyay, learned AGA for the State-respondent.

2. By way of the instant application, applicant made following prayer:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may very graciously be pleased to quash the entire proceeding of case No. 313 of 2022 arising out of Crime No. 594 of 2019 (State Vs. Mohammad Abdullah Azam Khan) Police Station Civil Lines, District Rampur, under Sections 420, 467, 468, 471, IPC, pending before learned ACJM Ist (Special Judge MP/MLA), Rampur, pending after the proceeding of section 313 Cr.P.C. (Annexure No. 16) wherein the applicant has taken the specific plea of double jeopardy.

It is further prayed that during the pendency of the present application further proceeding case No. 313 of 2022 arising out of crime No. 594 of 2019 (State Vs. Mohammad Abdullah Azam Khan), Police Station Civil Lines, Under sections 420, 467, 468, 471 IPC, pending before learned ACJM Ist (Special Judge MP/MLA), Rampur, may remain stayed, otherwise the applicant shall suffer an irreparable loss and injury.”

3. Learned AAG appeared on behalf of the State and counsel for the opposite party no. 2 do not propose to file any counter affidavit and submitted that the instant application may be disposed of finally without calling counter affidavit. Learned counsel for the applicant also submitted that he is having no objection if the instant

application be disposed of. Therefore, with the consent of the parties the instant application is being finally disposed of without calling counter or rejoinder affidavit.

Brief facts of the case:-

4. FIR of the present case was lodged against applicant on 30.7.2019 under sections 471, 468, 467, 420 IPC at P.S. Civil Lines District Rampur at case crime No. 0594 of 2019 and according to the FIR applicant by using forged and fake documents obtained his passport and he is using his passport. It is further mentioned in the FIR that date of birth of applicant in his educational records including in high school certificate is 1.1.1993 while in his passport the same has been mentioned as 30.9.1990 and therefore, applicant committed offences under section 420, 467, 468, 471 IPC and 12(1A) Passport Act.

5. After registration of the FIR investigation was conducted and after investigation charge sheet has been filed against the applicant on 6.11.2019 under sections 420, 467, 468, 471 IPC and 12(1A) Passport Act thereafter on 9.9.2021 charges were framed against the applicant under sections 420, 467, 468, 471 IPC.

6. Record further suggests that trial of the case is pending and during trial after the prosecution evidence when statement of the applicant was recorded under section 313 Cr.P.C. then he in his statement stated that as with regard to obtaining fake birth certificate he has already been convicted in another case, therefore, trial of the instant case is hit by the doctrine of double jeopardy and thereafter the instant application has been filed before this Court for quashing the entire proceeding of the trial on the ground that it is hit by doctrine of double jeopardy.

Argument advanced on behalf of the applicant-

7. Learned counsel for the applicant submitted that the instant application is being pressed on the sole ground of the principle of double jeopardy. He further submits, applicant is facing trial of the instant case on the charges that he on the basis of fake and forged documents obtained the passport and he was using his passport but the passport of the applicant was issued on the basis of his birth certificate. He further submits, as per the prosecution the birth

certificate of the applicant was also issued on the basis of fake documents and in this regard another FIR was lodged against the applicant on 3.1.2019 at PS Ganj, District Rampur at case crime no. 4 of 2019 under sections 471, 468, 467, 420, 193 IPC and in that case applicant has already been convicted by the trial court vide judgement and order dated 18.10.2023. He further submitted that from perusal of the facts of the present case and judgement & conviction order dated 18.10.2023 passed in the case relates to FIR No. 4 of 2019 it reflects, facts of both the cases are similar and therefore, considering the provision of Article 20(2) of the Constitution of India and Section 300 of Cr.P.C. applicant neither can be prosecuted nor convicted in the present case and therefore, proceeding pending against the applicant in the present case is liable to be quashed.

8. He further submitted that as per section 300 Cr.P.C. 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 is not 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.

9. He further submitted that as the facts of the earlier case in which applicant has been convicted are similar to the facts of the present case, therefore, in view of section 300 Cr.P.C. applicant neither can be tried nor can be convicted in the present case.

10. He further submitted that however Article 20(2) of the Constitution of India also says that no person shall be prosecuted and convicted for the same offence but provisions of section 300 Cr.P.C. are more elaborated and exhaustive as it also says a person cannot be even tried on the same facts.

11. He further submitted that from the conviction order dated 18.10.2023 passed in case relates to FIR No. 4 of 2019 it reflects while convicting applicant for obtaining birth certificate on the basis of fake and fabricated documents trial court also observed that applicant also used the same for obtaining passport and applicant is facing trial of the present case for obtaining passport on the basis of fake and fabricated documents and therefore, facts of both the cases

are same and by virtue of section 300 Cr.P.C. trial of the present case should not be continued any further as it is hit by doctrine of double jeopardy enshrined under section 300 Cr.P.C. and as well as under Article 20(2) of Constitution of India.

12. He placed reliance on following judgements:-

- (i). T.P. Gopalakrishnan Vs. State of Kerala reported in (2022) 14 SCC 323.
- (ii). P. Manikandan Vs. CBI reported in 2024 SCC OnLine SC 3808.
- (iii). Ram Autar Singh Yadav Vs. State of U.P., Civil Appeal No. 13806 of 2024 vide order dated 14.12.2024.
- (iv). Kolla Veera Rahav Rao Vs. Gorantla Venkateswara Rao reported in (2011) 2 SCC 703.
- (v). Prem Chandra Singh Vs. State of U.P. reported in (2020) 3 SCC 54.

13. Learned counsel for the applicant submitted that therefore, considering the above facts and circumstances of the case proceeding pending against the applicant in the present case before the court concerned is liable to be quashed.

Argument advanced on behalf of State and opposite party no. 2:-

14. Per contra, learned AAG appeared on behalf of the State and learned counsel for the opposite party no. 2 submitted that instant application moved by the applicant is frivolous and cannot be even entertained as it is not maintainable. They further submitted that earlier applicant has challenged the order dated 19.3.2024 passed by the trial court in the present case to summon the certain documents in an Application u/s 482 Cr.P.C. No. 13166 of 2024 and from the order passed by this Court dated 13.2.2025 it reflects that even counsel for the applicant shown his willingness for early disposal of the trial and this Court while allowing the above application of the applicant also directed the trial court to proceed the trial expeditiously without granting any unnecessary adjournment to either of the parties and at that time applicant did not raise the plea of double jeopardy but after two months when trial of the case is at its last leg, he filed the instant application. They further submitted that admittedly at the time of filing the application under section 482 Cr.P.C. No. 13166 of 2024 statement of the applicant had already been recorded under section 313 Cr.P.C. and by that time applicant

had also been convicted in case relating to his false and fabricated birth certificate.

15. They further submitted that therefore, from the above facts, it appears, intention of the applicant is only to linger on the proceeding of the present case pending against him and therefore, on this ground alone the instant application filed by the applicant is liable to be dismissed. They placed reliance on following authorities:-

(i). Bhisham Lal Verma Vs. State of U.P. and another reported in 2023 SCC Online SC-1399.

(ii). Ravindra Shukla and another Vs. State of U.P. and another reported in 2024 SCC Online Alld.-4839.

(iii). Prof. Vipin Saxena Vs. CBI/ALB, Lucknow reported in 2024 SCC Online Alld-1909.

(iv). Dr. Faisal Khan and another Vs. State of U.P. and others reported in 2024 SCC Online Alld-362.

16. Learned AAG and learned counsel for the opposite party no. 2 further submitted that even as far as merit of the present case is concerned, as applicant was convicted in case relates to FIR No. 4 of 2019 for obtaining birth certificate on the basis of false and fabricated documents and in the instant case he is facing trial for obtaining passport on the basis of fake and fabricated documents, therefore, both the offences are distinctive and it cannot be said that both the offences are either same offences or based on same facts and therefore, doctrine of double jeopardy is not applicable in the present matter.

17. They further submitted that if after obtaining a document on the basis of forged and fake documents, a person uses the same for obtaining passport and other documents at subsequent stage then he can very well be tried for subsequent offences committed by him by using the fake documents and such subsequent offences can not be said to be same offence and it also cannot be said that they based on same facts.

18. They further submitted that as applicant firstly obtained birth certificate on the basis of forged documents and thereafter he used his forged birth certificate for obtaining passport therefore, he can be tried separately for obtaining the birth certificate on the basis of

forged document and for obtaining passport on the basis of forged document and it cannot be said that as in the case relates to obtaining birth certificate he has already been convicted, therefore, he cannot be tried for offence relating to passport which he committed subsequently i.e. present case.

19. They placed reliance in this regard on following judgements:-

1. Monica Bedi Vs. State of Andhra Pradesh reported in 2011(1) SCC 284.
2. Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another reported in 2012(1) SCC 621.
3. T.P. Gopalakrishnan Vs. State of Kerala reported in 2022 (14) SCC 323.

20. They further submitted therefore, instant application filed by the applicant is devoid of merit and it should be dismissed.

Analysis:-

21. The only question before this Court in the instant application is that whether doctrine of double jeopardy is applicable in the present matter or not. The rule of double jeopardy has been imbibed in Article 20(2) of Constitution of India and section 300 Cr.P.C. Therefore, it is necessary to consider Article 22(2) Constitution of India and Section 300 Cr.P.C.

22. As per Article 20(2) Constitution of India:- “No person shall be prosecuted and punished for the same offence more than once.”

23. Section 300 Cr.P.C. runs as following:-

“(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 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."

24. From Article 20(2) of Constitution of India, it is apparent that a person cannot be prosecuted and convicted for the same offence twice.

25. In case at hand, applicant is facing trial for obtaining passport on the basis of fake and forged documents and for using the same at the different stages but from the conviction order passed in the case relates to FIR No. 4 of 2019 it reflects, in that case, he was prosecuted and convicted for offence of obtaining birth certificate on the basis of forged documents and for using the same. In view of this Court, it can not be said that both offences committed by applicant were same offences as both the offences i.e. offence of present case and case relates to FIR No. 04 of 2019, prima facie, appears to be different and distinctive offences. Therefore, in view of this Court no benefit can be extended to the applicant in view of Article 20(2) of Constitution of India.

26. Further, however, provisions of Section 300 Cr.P.C. is more exhaustive and it says a person cannot be tried and convicted or acquitted twice for the same offence nor on the same facts. Therefore, in view of Section 300 Cr.P.C. if a person has been either convicted or acquitted then he cannot be even tried again on the same facts.

27. Therefore, it has to be seen whether facts of the present case and facts of the case in which applicant has already been convicted i.e. case relates to Case Crime No. 04 of 2019 are the same or not.

28. From perusal of the facts of the present case, it reflects, as per allegation applicant obtained passport on the basis of fake and fabricated documents and thereafter he used his passport too and from perusal of the judgment and order dated 18.10.2023, relating to Case Crime No. 04 of 2019, it reflects, applicant has been convicted in that case as he obtained birth certificate illegally by playing fraud on the basis of forged documents and thereafter he also used his birth certificate. Considering the above facts, in considered view of this Court, the facts of both the cases i.e. present case and case relates to Case Crime No. 04 of 2019 cannot be said to be based on the same facts.

29. After considering the entire facts of the present case and facts of the case relates to Case Crime No. 04 of 2019, it reflects, offences of both the cases are not only distinctive offences but their facts are also different.

30. Further, this Court also finds merit in the argument advanced by learned AAG as well as learned counsel for opposite party no.2 that if after obtaining a document on the basis of forged document a person uses the same at different stages then he commits different offences and it cannot be said that all the offences which he committed subsequently are either same offences or based on same facts. In view of this Court he can be prosecuted separately for such offences.

31. Further, however learned counsel for applicant placed reliance on some judgements but the judgments on which reliance was placed by learned counsel for applicant also do not help the applicant as from these judgements it could not be reflected that even if an accused committed different and distinctive offences based on different facts then also he can not be tried separately for those offences.

32. Therefore, from the facts and circumstances discussed above, in my considered view, it can not be held that trial of the present case is hit by doctrine of double jeopardy.

33. Further, at the last but not the least, it appears, applicant filed the instant application very belatedly at advance stage of trial. From the record, it reflects, applicant has been convicted in the case relates to Case Crime No. 04 of 2019 on 18.10.2023 but he filed instant application on 24.04.2025 i.e. after one and half years.

34. Further, record also shows that applicant earlier also knocked the door of this Court by way of filing an Application U/S 482 Cr.P.C. No. 13166 of 2024 arising out of the same case crime number challenging the order dated 19.03.2024 passed by trial court for summoning certain records and on 13.02.2025 his application was allowed with the direction to the trial court to proceed with the trial expeditiously without any unnecessary adjournment. From the order dated 13.02.2025 passed by this Court, it also reflects, counsel for applicant also agreed for expeditious disposal of the trial and at that time applicant did not raise the question of double jeopardy but after two months at the fag end of trial, he filed the instant application.

35. Considering above facts, the argument advanced by learned AAG and learned counsel for opposite party no. 2 that instant application has been filed only with intention to linger on the proceedings of the trial can not be completely brushed aside.

36. The Apex Court in the case of **Bhisham Lal Verma Vs. State of U.P. and another 2023 SCC OnLine SC 1399** on which reliance was placed by learned AAG in paragraph-11 observed as:-

“..... Though it is clear that there can be no blanket rule that a second petition under section 482 Cr.P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under section 482 Cr.P.C, though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under section 482 Cr.P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under section 482 Cr.P.C., irrespective of when the cause therefore arose. Such abuse of process cannot be permitted.”

(Emphasis supplied)

37. Considering the facts of the present case and observation made by the Apex Court in the case of ***Bhisham Lal Verma (supra)*** even the instant application filed by the applicant should not be considered at such belated stage after the statement of the accused/applicant recorded under Section 313 Cr.P.C. specially considering the fact that earlier also he filed an application u/s 482 Cr.P.C. and at that time he did not raise the plea of doctrine of double jeopardy which was available even at that time.

38. Therefore, considering the facts and circumstances of the case discussed above, in my considered view, the instant application is devoid of merits and is liable to be dismissed and is accordingly **dismissed**.

39. Trial court is directed to proceed with the trial in accordance with law pursuant to the earlier order dated 13.02.2025 passed by this Court in Application U/S 482 Cr.P.C. No. 13166 of 2024.

Order Date :-23.07.2025

Ankita/AK Pandey