

Reserved on :-01.07.2025

Delivered on:- 23.07.2025

Neutral Citation No. - 2025:AHC:121172

Court No. - 82

Case :- APPLICATION U/S 528 BNSS No. - 15662 of 2025

Applicant :- Mohammad Abdullah Azam Khan And Another

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

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

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to quash the entire proceeding of Special Case No. 57 of 2020 arising out of Crime No. 980 of 2019, Police Station Civil Lines, under Sections 420, 467, 468, 471, 120B pending before the learned Additional Sessions Judge, Rampur pending after the proceeding of Section 313 Cr.P.C. (Annexure No.24) 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. 57 of 2020 arising out of crime No. 980 of 2019, Police Station Civil Lines, Under sections 420, 467, 468, 471, 120B pending before the learned Additional Sessions Judge, 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 instant application may be disposed of finally without calling counter affidavit. Learned counsel for the applicants also submitted that he is having no objection if the instant application be disposed off. Therefore, with the consent of the parties the instant application is being finally disposed off without calling counter or rejoinder affidavit.

Brief facts of the case:-

4. FIR of the present case was lodged against applicants on 06.12.2019 under sections 120B, 471, 468, 467, 420 IPC at Case Crime No. 980 of 2019 and according to the FIR income tax department issued Pan Card to applicant no.1 vide Pan Card No. BFOPK6164K in which his date of birth was 01.01.1993 which was his correct date of birth as per his high school certificate. It is further mentioned in the FIR that above Pan card of applicant no.1 has been connected with his S.B.I. Bank Account No. 34341386006 but when on 24.1.2017 applicant no.1 filed nomination for election of M.L.A. as candidate of Samajvadi Party for contesting election then he after making forgery in his Pan card number mentioned in his S.B.I. pass-book submitted its copy alongwith his nomination form. As per FIR by making forgery applicant no.1 shown his Pan card number as DWAPK7513R which was actually DFOPK6164K. It is further mentioned in the FIR that bank account of applicant no.1 was not connected with Pan card number DWAPK7513R.

5. It is further mentioned in the FIR that applicant no.1 along with his father Mohd. Azam Khan i.e. applicant no.2 hatched conspiracy and obtained Pan card No. DWAPK7313R on the basis of forged documents by showing his date of birth as 19.03.1990 with intention to get benefit in filing nomination form for contesting election and therefore, he committed offence under Sections 420, 467, 468, 471, 120B IPC.

6. After registration of the FIR investigation was conducted and after investigation charge sheet was filed against the applicants and it appears during trial when after the prosecution evidence statements of the applicants were recorded u/s 313 Cr.P.C. then in their statements they stated that as for obtaining fake birth certificate they have already been convicted in another case, therefore, trial of the present case is hit by doctrine of double jeopardy and thereafter instant application has been filed on the ground that trial of the present matter is hit by doctrine of double jeopardy.

Argument advanced on behalf of the applicant-

7. Learned counsel for the applicants submitted that the instant application is being pressed on the sole ground of the principle of

double jeopardy. He further submits, applicants are facing trial of the instant case for the charges that applicant no.1 on the basis of fake and forged documents including his birth certificates obtained the Pan card and he also used his fake Pan card in filing the nomination form for contesting election of M.L.A. as candidate of Samajvadi Party and applicant No. 2 also hatched conspiracy alongwith him but with regard to birth certificate issued to applicant no. 1 another FIR was lodged against the applicants 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 applicants have 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 provisions of Article 20(2) of the Constitution of India and Section 300 of Cr.P.C. applicants neither can be prosecuted nor convicted in the present case and therefore, proceeding pending against the applicants in the present case is bad and 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 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 applicants have been convicted are similar to the facts of the present case, therefore, in view of section 300 Cr.P.C. applicants 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 even be tried on the same facts twice.

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 applicants for obtaining birth certificate on the basis

of fake and fabricated documents trial court also held that the same was also used for obtaining pan card and as applicants are facing trial of the present case for obtaining pan card on the basis of fake and fabricated documents including birth certificate of applicant no. 1 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 applicants submitted that therefore, considering the above facts and circumstances of the case proceeding pending against the applicants in the present case pending before the court concerned is bad and 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. They further submitted that instant application has been filed in the month of April, 2025 after the statements of the applicants recorded under section 313 Cr.P.C. while applicants were convicted in case relates to FIR No. 4 of 2019 relating to false and fabricated birth certificate on 18.10.2023, therefore, they knocked the door of this Court quite belatedly at the fag end of trial and earlier they did not knocked the door of this Court and this fact shows that they any how wanted to linger on the proceedings and therefore, on the sole ground of laches instant application is liable to be dismissed.

15. 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 applicants were 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 they are facing trial for obtaining pan card 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.

16. They further submitted that if after obtaining a document on the basis of forged and fake documents, a person uses the same for obtaining pan card and other documents at subsequent stages then he can very well be tried for every subsequent offences committed by him by using the fake documents and such subsequent offences can not be said to be either same offences or offences based on same set of facts.

17. They further submitted that as applicants firstly obtained birth certificate on the basis of forged documents and thereafter the same was used for obtaining Pan card and applicant no. 1 also used his fake Pan card in filing the nomination form for contesting election of M.L.A., therefore, they can be tried separately for obtaining the birth certificate on the basis of forged document and for obtaining Pan card by using such forged document and it cannot be said that as in the case relates to obtaining birth certificate they have been convicted, therefore, they cannot be tried for offence relating to Pan card which they committed subsequently i.e. present case.

18. 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.

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

Analysis:-

20. 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 20(2) Constitution of India and Section 300 Cr.P.C.

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

22. 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.”

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

24. In case at hand, applicants are facing trial for the charges that they obtained Pan card on the basis of fake and forged documents

including forged birth certificate and the same was used in filing the nomination form for contesting election of M.L.A. but from the conviction order passed in the case relates to FIR No. 4 of 2019 it reflects, in that case, they were prosecuted and convicted for offence of obtaining birth certificate on the basis of forged documents and its subsequent use. In view of this Court, it can not be said that both offences i.e. offence of present case and offence relates to previous case were same offences as both the offences are separate and distinctive. Therefore, in view of this Court no benefit can be extended to the applicant in view of Article 20(2) of Constitution of India.

25. Further, however, provisions of Section 300 Cr.P.C.(section 337 BNSS) 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 even on the same facts.

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

27. From perusal of the facts of the present case, it reflects, as per allegation applicants obtained Pan card on the basis of fake and fabricated documents including birth certificate and thereafter the same was used in filing the nomination form for contesting election of M.L.A. and from perusal of the judgment and order dated 18.10.2023, relating to Case Crime No. 04 of 2019, it reflects, applicants have been convicted in that case as they obtained birth certificate illegally by playing fraud on the basis of forged documents and thereafter the same was used. 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. 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.

28. This Court 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 are the same offences and facts of all the offences are same. In view of this Court he can be prosecuted separately for all the offences.

29. Further, however, learned counsel for applicants placed reliance on number of authorities but the judgments on which reliance was placed by learned counsel for applicants do not help the applicants 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.

30. 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.

31. Further, at the last but not the least, it appears, applicants filed the instant application very belatedly at advance stage of trial. From the record, it reflects, applicants have been convicted in the case relates to Case Crime No. 04 of 2019 on 18.10.2023 but they filed instant application on 24.04.2025 i.e. after one and half years, even after recording their statements u/s 313 Cr.P.C. at the fag end of trial, therefore, there are laches of more than one and half year on the part of applicants in filing the instant application. Further, applicants did not provide any reasonable cause for such laches, therefore, instant application has been filed beyond reasonable time. However, there is no limitation is prescribed for filing an application under section 528 BNSS but law is settled that even if legislature did not provide any limitation in filing of any application then also such application must be filed within reasonable time and if the same has been filed very belatedly beyond the reasonable time without any reasonable cause then such application should not be entertained and on the sole ground of laches the same may be dismissed (See: ***Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane & others (2013) 10 SCC 627***). Therefore, on this ground also instant application is liable to be dismissed.

32. 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.**

Order Date :-23.07.2025

Ankita/AK Pandey