

Misc. Writ Petition No.80 of 2001

SMT. Champa Devi Petitioner

Versus

The Sessions Judge, Nainital
and others Respondents.

Hon'ble P.c. Verma, J.

This writ petition has been filed by the petitioner challenging the order dated 21.11.2000 passed by Sessions Judge, Nainital.

The learned counsel for the petitioner submitted that the petitioner was initially prosecuted under section 265 of the Municipalities Act and she was acquitted. It is further submitted by the learned counsel for the petitioner that the petitioner is not again being prosecuted under section 9 of the R.B.O. Act and she cannot be punished for the one and the same offence twice. The argument of the learned counsel is misconceived. It is clear from the perusal of the section 265 (c) of the Municipalities Act that who have exposed any articles for sale, whether upon a stall or both or in any manner, so as to cause obstruction in any street is liable to be punished under this section. The petitioner was acquitted under section 265 of the Municipalities Act for the reasons that no evidence was led by the Municipality regarding the charge leveled against the petitioner. The petitioner is not being prosecuted under section 9 of the R.B.O. Act 1958 as made applicable in 1982 in the area. Section - 9 says;

Section-9. Penalties-(1) Any person who undertakes or carries out the development of any site or erects (re-erects or makes any material change in) any building or makes or extends any excavation or lays out means of access to a road in contravention of (any regulation made under this Act) or without the permission referred to in Section 6 or in contravention of any condition subject to which such permission has been granted. (or in violation of any action taken under sub section (2) of Section 10 to stop the erection or re erection of any building or the execution of any work).

Admittedly the petitioner has not obtained any permission for erection of construction over the street for which a notice was issued to her and a prosecution started and the trial court punished and against this punishment order, an appeal was preferred before the Sessions Judge and the learned Sessions Judge has dismissed the appeal. Here on perusal of both these sections together. It is clear that prosecution under section 265 is for commission under section 9 of the R.B.O. Act is a different one. In the offence, under section 265 the petitioner was acquitted for want of evidence. The petitioner has been punished under section 9 of the R.B.O. Act, as the case of unauthorised construction has been proved against her.

For the reasons mentioned above, I find that the judgment of the learned Sessions Judge does not suffer from any infirmity and illegality, therefore, under Article 226 of the Constitution of India, no interference is called for.

The writ petition is accordingly dismissed.

R.P. Singh
28.2.2001

(P.C. Verma, J.)