Double Jeopardy under Code of Criminal Procedure

1. Introduction

Section 403 embodies the ancient maxim nemo debts bis vexari pro eadem cause (no person should be twice disturbed for the same offence) and the common law principle of the well-known pleas of autre fols acquit (formerly acquitted) and autre fols convict (formerly convicted) which means that no one shall be punished or put in peril twice for the same matter. It is to be noted that section 403 Cr.P.C and Article 13 of the Constitution of Pakistan come into play only if one proceeding has concluded and the second has started. Section 403 contemplates of a situation where as person having once been tried by a Court of competent jurisdiction and acquitted by such court cannot be tried again for the same offence or for any other offence based on similar facts.

2. Relevant provisions

Section 403 of the Criminal Procedure, 1898

*Cross Reference*

  Article 13(a) of the Constitution of Pakistan, 1973

  Section 11 of the code of Civil Procedure, 1908

  Section 26 of the General Clauses Act, 1897

3. Meaning of Double Jeopardy

The term “Doubly Jeopardy” means “Trail for the same offence”.

4. Rule of Double Jeopardy u/s 403 Cr.P.C

Section 403 Cr.P.C contemplates a situation where a person has once been tried by a court of competent jurisdiction and acquitted or convicted by such. Cannot be tried again for the same offence or for any other offence based on similar facts.

5. Conditions

In order to bar the trial of any person already tried, it must be shown that

i. He has been tried by the competent court for the same offence, or one for which he might have been charged or convicted at that trial, on the same facts.

ii. He has been convicted or acquittal is in force.

iii. Such conviction or acquittal is in force.

The rule of English Law, requiring the accused to have been tried as weel as acquitted in order to bar further proceedings and embodied in this section, is inapplicable to statutory acquittals under section 494, 247 and 345.



6. Provisions of Law

Criminal Procedure code have provided following provisions in respect of double jeopardy:

a. Prohibition against Trial for Same offence

A person, who has been tried by a court of competent jurisdiction for an offence and has been convicted or acquitted of such offence, should not be liable to be tried again for the same offence especially when such conviction or acquittal remains in force.

b. Prohibition against trial on same facts for any other offence

A person, who has been tried by a court of competent jurisdiction for an offence, should not be liable to be tried again on the same facts for any other offence for which a charge might have been made under section No. 236 of Criminal procedure Code when such charge is different from that charge, which has been made against him or for which he might have been convicted under section No. 237 of Criminal Procedure Code.

c. Trial for any distinct offence

A person, who has been acquitted or convicted of any offence, can afterwards, be tried for any distinct offence for which a separate charge might have been made against him on former trial under subsection 1 of Section No. 235 of criminal procedure code.

d. Trial for different offence

If a person has been convicted of any offence and such offence has been constituted by any act and such act has caused those consequences which, together with such act, constituted a different offence from that of which was convicted, such person can be afterwards tried for such last-mentioned offence when the consequences have not happened or we not known to court to have happened at that time when he was convicted.

e. Trial for any other offence

When a person has been acquitted or convicted of any offence, which has been constituted by any acts, even then he, after such acquittal or conviction, can be subsequently charged with and tried for any other offence, which has been constituted by the same acts, which he may have committed if court, which first tried him, was not competent to try that offence with which he is subsequently charged.

Conclusion

To conclude that it is the golden principle of law that no one should be punished twice for the offence has already been punished or acquitted because this would lead to unnecessary interruptions or delay and needless litigation will continue for a long time. Section 403 is exhaustive on the subject of the effect of previous conviction or acquittals. The scope of section 403 is restricted to criminal proceedings and not to civil proceedings and departmental inquiries.