

Topic: Prosecution Under Article 20 (2)

Name of the case: Maqbool Hussain v. State of Bombay, AIR 1953 SC 325

Bench: Chief Justice M Patanjali Sastri, Justice BK Mukherjea, Justice Sudhi Ranjan Das, Justice Ghulam Hassan, Justice NH Bhagwati

Fact of the Case: A person arrived at an Indian airport from abroad. He was found in possession of gold which was against the law at the time. Action was taken against him by the customs authorities and the gold was confiscated. Later, he was prosecuted before the criminal court under Foreign Exchange Regulation Act. The question was whether the plea of Autrefois acquit could be raised under Article 20(2).

Ratio: The Supreme Court held that the proceeding before the custom authority do not constitute prosecution of the appellant, and the penalty imposed on him did not constitute a punishment by the judicial tribunal. In the circumstances, the trial of the prisoner before the criminal court was not barred. The court observed that it is clear that in order that the protection of Article 20 (2) be evoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal not before the tribunal which entertains audit department or administrative enquiry.

The wording of Article 20 is "convicted", "commission of the act charged as an offence", "accused of any offence", and indicates that the proceeding there contemplated is in the order of nature of criminal proceedings before court of law or a judicial tribunal and the prosecution in this context would mean an initiation for starting of proceedings of a criminal nature before a court of law or a judicial tribunal in the cordons with the procedure prescribed in the statute which creates the offence and regulates the procedure.