The State Of Uttar Pradesh vs Aman Mittal on 4 September, 2019

Equivalent citations: AIRONLINE 2019 SC 1003, (2019) 109 ALLCRIC 176, (2019) 12 SCALE 41, (2019) 202 ALLINDCAS 37, (2019) 3 CRIMES 376, (2019) 4 CRILR(RAJ) 1049, (2019) 4 PAT LJR 244, (2019) 4 RECCRIR 253, (2019) 76 OCR 455, 2019 CRILR(SC MAH GUJ) 1049, (2020) 1 KER LT 260

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Bench: Hemant Gupta, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1328-1329 OF 2019
(ARISING OUT OF SLP (CRIMINAL) NOS. 9981-9982 OF 2017)

THE STATE OF UTTAR PRADESH .....APPELLANT(S)

VERSUS

AMAN MITTAL & ANR. .....RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS.1330-1331 OF 2019
(ARISING OUT OF SLP (CRIMINAL) NOS. 1912-1913 OF 2018)

CRIMINAL APPEAL NO. 1332 OF 2019
(ARISING OUT OF SLP (CRIMINAL) NO. 3321 OF 2018)

JUDGMENT

HEMANT GUPTA, J.

Crl. Appeal Nos. 1328-1329 of 2019 (@SLP (Criminal) Nos.9981-9982 of 2017) AND Crl. Appeal Nos. 1330-1331 of 2019 (@SLP (Criminal) Nos.1912-1913 of 2017)

1) Leave granted.

2) The order dated October 4, 2017 passed by the Lucknow Bench of the High Court of Judicature at Allahabad is the subject matter of challenge in these appeals.

3) An FIR No. 130 was lodged on April 28, 2017 with Police Station Cantt, Lucknow for the offences punishable under Sections 265, 267, 420, 34, 120-B of the Indian Penal Code, 1860 1 and Sections 3/7 of the Essential Commodities Act, 19552 in respect of short delivery of petrol and diesel by 200-220 ml. on each sale of 5 liters.

4) On April 27, 2017, the Special Task Force 3 of the State Police took up the investigation into the commission of offence viz. short delivery of petroleum products i.e. high-speed diesel and motor spirit at various retail outlets operating within the city of Lucknow. The STF with the aid of officers of the Department of Weight and Measures and the District Administration raided the premises of the retail outlets. The team found that 15 nozzles connected to four machines i.e. dispensing units with seals intact were operative and functional. The testing was carried out in the presence of Apar Nagar Magistrate, two Inspectors of Weights and Measures Department and the partners of the firm M/s. Shiv Narain & Sons and its Manager. As per the inspection memo recorded on April 27, 2017, out of 15 nozzles, 10 nozzles were used for sale of petrol and the remaining 5 nozzles were used for sale of diesel. 13 nozzles were involved in malpractice of short delivery. The team derived 5 liters of petrol and diesel respectively in the testing work standard measurement kept at the 1 IPC 2 Act, 1955 3 STF outlet but on calibration, it was found that the quantity of 200 ml.

was short. For such short delivery, the FIR, as mentioned above, was lodged.

5) In the FIR, it is alleged that some electronic chip was fixed inside the dispensing unit which was operated through a remote. Three remote controls bearing Nos. 2, 3 and 4 were recovered and two remote controls were recovered without any numbers. The inspection team also verified the storage of stocks available as on date in the underground tanks by using a dip rod. On verification of actual stock, the comparative record maintained by the dealer was found to be inconsistent rather the stock available was found to be excessive and was recorded accordingly. The dispensing machines were sealed by the inspection team and the sale was immediately stopped. The accused were arrested on April 28, 2017. Later, on June 1, 2017, the Investigating Officer along with seven persons including the City Magistrate visited the retail outlet and with the help of technicians hired from General Energy Management Systems Pvt. Ltd. opened the dispensing machines. The seals were found intact both at the initial stage of inspection i.e. on April 27, 2017 and on June 1, 2017. The electronic chips fixed inside the 24 dispensing units were taken into custody by the Investigating Officer. Such electronic chips recovered on June 1, 2017 are now with Forensic Science Laboratory, Lucknow for its forensic report. The Magistrate on an application made by the Investigating Officer allowed the judicial remand of accused vide order dated June 7, 2017 and also permitted the investigation under Sections 467, 468, 471 IPC and Sections 12/30 of the Legal Metrology Act, 20094.

6) It is on the basis of investigations carried out, the charge-sheet dated July 25, 2017 for the offences under Sections 265, 267, 420, 34, 120B IPC and Sections 3 and 7 of the Act, 1955, Sections 467, 468, 471 IPC and Sections 12/30 of the Weights and Measures Act, 1976 came to be filed before the competent court. The Magistrate did not take cognizance of offence under Sections 471 and 120B

of IPC for want of evidence but the Magistrate has taken cognizance of an offence under Section 30 of the Act.

7) It is thereafter two applications were filed under Sections 167(2) and 190(1) of the Code of Criminal Procedure, 1973 5 on July 26, 2017 on the ground that the prosecution has no material making out a case of offences mentioned in the chargesheet, therefore, the cognizance may not be taken. The learned Magistrate rejected both the applications on July 27, 2017. It is thereafter the petition was filed under Section 482 of the Code before the High Court, which was decided by an order impugned in the present appeal. The High Court has passed a detailed order examining the following questions of law: 4 Act 5 Code "(i) Whether in view of the promulgation of Legal Metrology Act, 2009, the offences relating to weights and measures particularly short delivery of petroleum products sold to the public at large through dispensing machines, are open to be registered and investigated by the police authorities in terms of the provisions of IPC and Code of Criminal Procedure or the provisions of IPC and Cr.P.C. for the said purpose would stand ousted/obliterated/eclipsed by virtue of Section 51 of Legal Metrology Act, 2009;

(ii) Whether the Legal Metrology Act and the Essential Commodities Act and the procedure envisaged thereunder has an overriding effect over the provisions of Code of Criminal Procedure insofar as the investigation/search and seizure in respect of the offences relating to weights and measures are concerned.

(iii) Whether the investigation held by the investigating officer assuming as if the same was permissible, has been held in consonance with the relevant law applicable as on the date or not and if not, its effect;

(iv) Whether the court below while taking cognizance of the offences has passed the orders in accordance with the well-settled principles of law and if not, its effect.

(v) Directions and directives necessary in the case."

8) It was held that the Code is applicable so long as a different procedure is not prescribed under the special law with respect to the cognizable or non-cognizable offences but application of the provisions of IPC has to be understood within the broader scope of special law in the light of exclusionary provision embodied therein. Thus, considering Sections 3 and 51 of the Act, the High Court held as under:

> "From a conjoint reading of this provision with the other provisions of the Act, the logical conclusion to serve the purpose of the Act, 2009 that can be deduced is that all other offences under the Legal Metrology Act, 2009 except the offence under Section 26 are non-cognizable and compoundable when committed for the first time; whereas the offence under Section 26 of the Act is a non- cognizable offence triable as per the procedure prescribed under the Code of Criminal Procedure and the other offences when committed second time as well. Thus, the procedure of investigation, inquiry and trial under the Cr.P.C. would accordingly apply inasmuch as, no

procedure in relation thereto is prescribed under the Special Act."

9) It was further held that Section 26 of the Act overrides the provisions of Sections 264 to 267 of IPC as Section 51 of the Act clearly excludes the application of IPC and Section 153 of the Code insofar as it relates with regard to weights and measures punishable under the special Act. The High Court held as under:

"The violation of any provision of the Special Act or Section 26 once noticed against any offender, as is the situation in the present case, it would not attract violation of Section 264 to 267 IPC at all and the prosecution is bound to be guided by the relevant provisions under the Special Act. The Special Act has replaced the entire Chapter by defining the offences of all descriptions and classified them in the nature of non-cognizable compoundable offences, as such, the procedure deserves to be applied accordingly as per the classification of offences against other laws in the first schedule of Cr.P.C. insofar as criminal prosecution is concerned."

10) The High Court ordered that the trial court has not taken cognizance of offence under Sections 34, 120B, 471 of IPC or 26 of the Act.

Therefore, there is no reason as to why the Court may not take into account such materials for the purposes of taking cognizance of the offences, in the light of the orders passed on July 7, 2017 and August 17, 2017. The High Court held that Sections 467, 468, 471, 120-B and 34 of IPC stand clearly attracted.

11) In respect of third question, the High Court directed the District Judge, Lucknow to ascertain the quantitative and qualitative figures of the residual stock lying in the underground tanks and allow the stock to be delivered to the oil company for custody after due calibration through the dispensing pumps installed. The High Court issued the following directions:

"(i) The Investigating Officer assigned the duty of investigation in case crime no. 130/2017 shall stand changed forthwith and the Superintendent of Police (City), North, Lucknow at present is hereby directed to take over the further investigation and cooperate with the District Judge, Lucknow to deliver the custody of petrol/diesel in the seized underground tanks to the respective oil company after due calibration of the same through the dispensing units. The District Judge/Investigating officer shall collect the samples for quality and quantity checks both in the calibrated containers to be provided by the department of Weights and Measures and oil company immediately on demand. The samples shall be collected as per the procedure of sample collection provided for quality/quantity check specified in the statutory Order, 2005;

(ii) The District Judge, Lucknow jointly with the investigating officer authorised hereinabove shall submit the calibration report of the residual stock to the court concerned not later than a period of 15 days from the date a copy of this order is

communicated to them by the Senior Registrar of this Court;

(iii) The investigating officer appointed hereinabove, in association with the District Judge, Lucknow, shall jointly forward the report of calibration of the stock in the respective tanks by duly comparing the figures mentioned in the seizure memo/F.I.R. and resultant excessive figures be mentioned in clear figures taking aid of the totaliser reading in each dispensing unit alongwith their photographic evidence at the time of start/finish;

(iv) For the purposes of sample reports, the District Judge/investigating officer are jointly authorised to requisition the quality check from any of the nearest defence laboratories notified in the statutory Order, 2005 and quantity check from any of the centres mentioned in para-22 of the counter affidavit sworn by the Chief Secretary, Government of U.P. The reports shall be called for expeditiously and may be requested to be supplied not later than a period of 6 weeks from the date of submission of the samples. The reports so obtained may be filed in the respective courts by the investigating officer after endorsement by the District Judge;

(v) The seized dispensing machines be released to the owner as soon as the residual stock in the underground tanks is handed over to the oil company concerned for which the oil company shall provide all the transport and custodial facility besides operational guidance to the investigating officer and learned District Judge, without asking for any remuneration;

(vi) The investigating officer shall submit the supplementary report in terms of the observations made in this judgement not later than a period of two months, by taking over all the materials and record from the previous investigating officer in the form in which discovery and seizure were made; and

(vii) The oil companies henceforth shall make use of collapsible pulsers essential in the dispensing machines in order to prevent malpractices. Thus, the State Government is directed to implement the installation of such a device in consultation with the oil companies within a planned time framework of not later than four months."

12) The State as well as one of the accused are in appeal before this Court. At the outset, learned counsel for the parties stated that the directions issued by the High Court cannot be sustained in law, therefore, they have no objection if such directions are set aside.

Such directions are liable to be set aside in view of the fact that the High Court, while exercising jurisdiction under Section 482 of the Code, cannot interfere in the manner of investigation, in terms of the Judgment of this Court in M. C. Abraham and Another v. State of Maharashtra and Others6 wherein it was held as under: -

> "13. This Court held in the case of J.A.C. Saldanha [(1980) 1 SCC 554: 1980 SCC (Cri) 272] that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal Procedure, its duty comes to an end. On cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court."
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> 13) Therefore, the directions issued including in respect of change of Investigating Officer and that the District Judge to be associated with

6 (2003) 2 SCC 649 various action, falling exclusively in the domain of the Investigating Agency are patently beyond the scope of the petition under Section 482 of the Code and are, therefore, liable to be set aside.

14) Learned counsel for the State vehemently argued that the Act does not exclude the offences under IPC. It is contended that the Act provides for the offences and penalties but reading of Sections 3 and 51 of the Act does not exclude the offences under the IPC. The Act will override only those offences which are inconsistent with the offences under IPC, except to the extent specified in the Act.

15) Learned counsel for the State relied upon an order passed by this Court in State of Maharashtra v. Sayyed Hassan7 wherein, while interpreting the provisions of Food and Safety Standards Act, 2006, it was held that the provisions of the said Act is not the only provision that can be resorted to, the prosecution can be lodged for the offences under IPC as well. Learned counsel for the State also relied upon an order passed by this Court in Sangeetaben Mahendrabhai Patel v. State of Gujarat & Anr. 8 wherein, for a dishonour of cheque, the prosecution for an offence under Section 420 IPC was found to be maintainable even after the prosecution under Section 138 of the Negotiable Instruments Act, 1881 9 is lodged. It was held that the mens rea i.e. fraudulent or dishonest intention at the time of 7 Criminal Appeal No. 1195 of 2018 decided on September 20, 2018 8 (2012) 7 SCC 621 9 NI Act issuance of cheque is not required to be proved in proceeding of an offence under Section 138 of the NI Act, whereas in the case under IPC, the issue of mens rea is relevant. It was held that the offences under Section 420 of IPC and Section 138 of NI Act are different, may on same facts.

16) On the other hand, Mr. Mukul Rohatgi, learned senior counsel for the accused argued that the Act is a complete Code providing for the standards of the weights and measures, the manner in which the same are required to be tested and also the offences for which the action can be taken. Since the Act is a special statute having overriding effect, therefore, the accused cannot be charged for the offences under IPC. Reliance is placed upon judgment of this Court in Sharat Babu Digumarti v. Government (NCT of Delhi)10 as also the Division Bench judgment of Bombay High Court in Gagan Harsh Sharma & Anr. v. The State of Maharashtra & Anr.11 whereby, considering the provisions of the Information Technology Act, 2000 12, it was held that the offence under IPC cannot be lodged. It is pointed out that special leave petitions filed against the said judgment were dismissed by this Court on December 7, 2018.

17) In this background, the arguments raised by learned counsel for the parties need to be examined but before we examine the arguments, 10 (2017) 2 SCC 18 11 Criminal Writ Petition No. 4361 of 2018 decided on October 26, 2018 12 IT Act certain provisions from the applicable statutes may be reproduced hereunder:

> "THE LEGAL METROLOGY ACT, 2009 2(g). "Legal Metrology" means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements;
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> 3. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.
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> 26. Whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard or increases or decreases or alters any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby, except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with fine which may extend to fifty thousand rupees and for the second and subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine or with both.
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> 30. Penalty for transactions in contravening of standard weight or measure. – Whoever-

(a) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or

(b) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or

(c) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or

(d) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for, shall be punished with fine which may extend to ten thousand rupees, and; for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.

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51. The provisions of the Indian Penal Code and section 153 of the Code of Criminal Procedure, 1973 in so far as such provisions relate to offences with regard to weight or measure, shall not apply to any offence which is punishable under this Act." "THE CODE OF CRIMINAL PROCEDURE, 1973

153. Inspection of weights and measures.-(1) Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction." "THE INDIAN PENAL CODE, 1860

265. Fraudulent use of false weight or measure.— Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

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267. Making or selling false weight or measure.—Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one

year, or with fine, or with both."

18) We do not find any merit in the argument of Mr. Mukul Rohatgi that the Act is a complete Code which contains the provisions of offences and penalties under the said Act, therefore, for any violation of the provisions of the Act, the prosecution can be lodged only under the Act and not for the offences even if disclosed under IPC.

19) In Sharat Babu Digumarti, an FIR was lodged for the offences under Sections 292 and 294 of IPC and Section 67 of IT Act. This Court struck down the offences under Sections 292 and 294 of IPC in view of the provisions of Section 67 of the IT Act.

20) The question examined was as to whether an activity emanating from electronic form which may be obscene would be punishable under Section 292 IPC or Section 67 of the IT Act or both or any other provision of the IT Act. This Court held that Section 292 IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated in view of special provision for a specific purpose. The IT Act has to be given effect to so as to make the protection effective and true to the legislative intent. The Court held as under:

> "31. Having noted the provisions, it has to be recapitulated that Section 67 clearly stipulates punishment for publishing, transmitting obscene materials in electronic form. The said provision read with Sections 67-A and 67-B is a complete code relating to the offences that are covered under the IT Act. Section 79, as has been interpreted, is an exemption provision conferring protection to the individuals. However, the said protection has been expanded in the dictum of Shreya Singhal [Shreya Singhal v. Union of India, (2015) 5 SCC 1 :
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> (2015) 2 SCC (Cri) 449] and we concur with the same.
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> 32. Section 81 of the IT Act also specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. All provisions will have their play and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply."

21) The Bombay High Court in Gagan Harsh Sharma has found that even a dishonest and fraudulent act falls within the scope of Section 66 of the IT Act and that the IT Act has been given overriding effect notwithstanding anything inconsistent therewith, therefore, an offender gets out of net of IPC. It was held that IPC is a general statute whereas IT Act is a special statute and, therefore, special

enactment would prevail. The Bombay High Court held as under:

> "11. Reading of the said judgment, makes is clear that the Hon'ble Apex Court had considered the effect of the overriding provisions contained in the Information Technology Act and has observed that all the provisions in the enactment are of significance particularly if the alleged offences pertains to electronic record. By observing that the Information Technology Act is a special enactment and it contain special provision, the Hon'ble Apex Court has also considered the effect of Section 79 contained in the Information Technology Act which is enacted for a specific purpose and has observed that the mandate behind Section 81 of the Information Technology Act needs to be understood in its proper perspective. It referred to the earlier precedents on the point where a special statute is pitted against a General enactment and thereafter has concluded by making reference Section 79 and 81 that once the special provisions are accorded overriding effect to cover a criminal Act, the offender gets out of the net of the Indian Penal Code and in the case in hand of Section 292.
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> 21. Keeping the aforesaid authoritative pronouncements in mind, if the scheme of the Information Technology Act will have to be examined and given effect too. The said Act which is a special enactment so as to give fillip to the growth of electronic based transactions, and to provide legal recognition for E-commerce and, to facilitate E-

Governance and to Ensure Security Practice and Procedures in the context of the use of Information Technology Worldwide. The said enactment contains a full fledge mechanism for penalising certain acts which are committed without permission of the owner or any other persons who is in charge of a computer, computer system, or computer network and those acts are enumerated in Section 43. The said enactment also makes certain acts punishable and Chapter-XI of the Information Technology Act 2000 enumerates such acts. The same acts which are enumerated in Section 43 of the enactment which would invite penalty and compensation for accessing or securing any information as contemplated in Section 43, would amount to an offence under Section 66 if any person, dishonestly, fraudulently commits such an act. The said Section has an explanation appended to it to the effect that the word "dishonestly" and "fraudulently" used in the said Section will be assigned the same meaning as under

> the Indian Penal Code. In such circumstances when the Information Technology Act, 2000 specifically provides a mechanism for dealing with an act covered in Section 43(a) and (j):— "Section 43(a) Accesses or secures access to such computer, computer system or computer network (or computer resource);
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> 43(j) Steel, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage." and if this is done with a fraudulent or dishonest intention, it becomes an offence under Section 66 of the Information Technology Act. Since, the

Information Technology Act deals with the use of means of electronic communication and has evolved a complete mechanism in itself to deal with the offences in the use of electronic transactions, and in the backdrop of the specific facts of the case in hand, Section 66 would be attracted and in view of the mechanism contained in the said section, the invocation of the provisions of the Indian Penal Code is highly unwarranted. This view has already been authored by their lordships in case of Sharat Babu Digumarti (Supra)."

22) It may be noticed that Bombay High Court considered the judgment of this Court in Sayyed Hassan wherein this Court has held that an offence under Section 188 of IPC is wider in scope and did not cover only breach of law but is attracted in cases where the act complained of causes or tends to cause danger to human life, health or safety as well. The Court held as under:

"24. The aforesaid judgment of the Hon'ble Apex Court is therefore clearly distinguishable on facts but even the said judgment of the Hon'ble Apex Court reiterates the settled position of law that where an act or an omission constitutes for an offence under two enactments the offender may be punished under either or both enactment but was not liable to be punished twice for the same offence. It is always possible that the same set of facts can constitute offence under two different laws but a person cannot be punished twice for the said act which would constitute an offence."

23) The special leave petition against the said order was dismissed without any reasoned order but with the order "The Special Leave Petitions are Dismissed".

24) Though, the Special Leave Petition against the order of the Bombay High Court was dismissed but in view of three Judge Bench judgment in Khoday Distilleries Ltd. & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.13, the dismissal of special leave petition does not amount to merger of the order of the High Court with the order passed in the Special Leave Petition. This Court held as under:

13 (2019) 4 SCC 376 "20. The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:

(i) Dismissal at the stage of special leave petition — without reasons — no res judicata, no merger. [Proposition based on judgments in Workmen v. Cochin Port Trust, (1978) 3 SCC 119; Western India Match Co.

Ltd. v. Industrial Tribunal, AIR 1958 Mad 398; Indian Oil Corpn. Ltd. v. State of Bihar, (1986) 4 SCC 146; Rup Diamonds v. Union of India, (1989) 2 SCC 356; Wilson v. Colchester Justices, (1985) 2 All ER 97 (HL); Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187; Yogendra Narayan Chowdhury v. Union of India, (1996) 7 SCC 1; V.M. Salgaocar & Bros. (P) Ltd. v.

CIT, (2000) 5 SCC 373; Sree Narayana Dharmasanghom Trust v. Swami Prakasananda, (1997) 6 SCC 78 and State of Maharashtra v. Prabhakar Bhikaji Ingle, (1996) 3 SCC

463.

(ii) Dismissal of the special leave petition by speaking or reasoned order — no merger, but rule of discipline and Article 141 attracted. [Penu Balakrishna Iyer v. Ariya M. Ramaswami Iyer, AIR 1965 SC 195; Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386; Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat, (1969) 2 SCC 74; Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774; Gopabandhu Biswal v. Krishna Chandra Mohanty, (1998) 4 SCC 447; Junior Telecom Officers Forum v. Union of India, 1993 Supp (4) SCC 693 and Supreme Court Employees' Welfare Assn. Case, (1989) 4 SCC 187.

(iii) Leave granted — dismissal without reasons — merger results. [Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372].” “26. From a cumulative reading of the various judgments, we sum up the legal position as under:

> 26.1. xx xx xx 26.2. We reiterate the conclusions relevant for these cases as under: (Kunhayammed case [Kunhayammed v. State of Kerala, (2000) 6 SCC 359], SCC p. 384) “(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.”
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> 25) The Bombay High Court in Gagan Harsh Sharma has found that even a dishonest and fraudulent act falls within the scope of Section 66 of IT Act. We are not called upon in the present appeals to examine whether an accused can be tried for an offence under IPC in view of Section 66 of IT Act. Such question can be raised and decided in an appropriate case.

26) In Sayyed Hassan, the Court held that Section 55 of Food and Safety Standards Act, 2006 being a specific provision made in the special enactment but still an offence under Section 188 of IPC is made out. The Court held as under:

> “8. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence [T.S. Baliah v. T.S.Rengachari – (1969) 3 SCR 65]. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law [State of Bihar v. Murad Ali Khan – (1988) 4 SCC 655]. The High Court

ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

"Provisions as to offences punishable under two or more enactments - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

27) However, the question as to whether the offences under Sections 188, 272, 273 and 328 IPC have been made out against the respondents in the facts of that case, the matter was remitted back to the High Court to examine the contentions of respective parties.

28) The Sharat Babu Digumarti is a judgment dealing with obscenity in the electronic form. This Court has held that IT Act is a special enactment. Since the offence has nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. Section 292 IPC makes sale of obscene books as an offence which cannot be made out in view of special provision made in the IT Act. The said judgment is, that an offence pertaining to electronic record falls within Section 67 of the IT Act, whereas, Section 292 IPC deals with an offence of obscenity in the printed format, therefore, two offences operate in different field.

29) In Sangeetaben Mahendrabhai Patel, a subsequent First Information Report under Sections 406, 420 read with 114 of IPC was challenged on the ground that the accused has been tried earlier for an offence under Section 138 of the NI Act and that accused cannot be charged for the offence of criminal breach of trust, cheating and abetment pertaining to the cheque for which proceedings were initiated under Section 138 of the NI Act. In the said case, the Court held that there may be overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the provisions of the NI Act.

The Court held as under:

"37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.

> 38. In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque.

Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.

39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."

30) This Court in Sangeetaben Mahendrabhai Patel has upheld the prosecution for an offence under Section 420 IPC even when the prosecution under Section 138 of NI Act was lodged earlier. This Court has held that for an offence under Section 420 IPC, mens rea is an essential ingredient for an offence under Section 138, the factum of dishonour of cheque alone discloses an offence. Similarly, in Sayyed Hassan, this Court has held that the provision of Food and Safety Standards Act, 2006 is not the only provision that can be resorted to for lodging a prosecution. The prosecution can be lodged for the offences under IPC as well.

31) Section 51 of the Act provides that the provisions of IPC and of Section 153 of the Code insofar as such provisions relate to offences with regard to weight and measures only shall not apply to any offence which is punishable under the Act. Section 153 of the Code permits an officer in charge of police station to enter any place for the purpose of inspecting or searching any weights or measures or instruments for weighing, used or kept therein. Section 153 of the Code has been made inapplicable under the Act as power of search and seizure is vested with the designated authorities under the Act. Therefore, the entire Code is inapplicable in respect of the prosecution under the Act that the police cannot enter any place for the purpose of inspecting or searching for any weights or measures.

32) The question required to be examined is whether all the offences under IPC are excluded in view of Section 3 of the Act or only the offences relating to the weights and measures as are contained in Chapter XIII IPC alone stand excluded in view of Section 51 of the Act.

33) It cannot be disputed that the Act is a special Act vis-à-vis IPC. In Macquarie Bank Limited v. Shilpi Cable Technologies Limited14, this Court adopted a doctrine of harmonious construction to hold that there was clear disharmony between the two parliamentary statutes which cannot be resolved by harmonious interpretation. This Court held as under:

"44. Similarly, in CTO v. Binani Cements Ltd. [CTO v. Binani Cements Ltd., (2014) 8 SCC 319] , the rule of construction of two parliamentary statutes being harmoniously construed was laid down as follows: (SCC pp. 332-33, para 35) "35. Generally, the principle has found vast application in cases of there being two statutes:

general or specific with the latter treating the common subject-matter more specifically or minutely than the former. Corpus Juris Secundum, 82 C.J.S. Statutes § 482 states that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject- matter cannot be reconciled, the special or specific 14 (2018) 2 SCC 674 statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (Edmond v. United States [Edmond v. United States, 1997 SCC OnLine US SC 45 : 137 L Ed 2d 917 : 520 US 651 (1997)], Warden v. Marrero [Warden v. Marrero, 1974 SCC OnLine US SC 136 : 41 L Ed 2d 383 : 417 US 653 (1974)]).” xx xx xx

47. Similarly, in R.S. Raghunath v. State of Karnataka [R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335 : 1992 SCC (L&S) 286] , the non obstante clause contained in Rule 3(2) of the Karnataka Civil Services (General Recruitment) Rules, 1977 was held not to override the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976. It was held: (SCC p. 348, para

13) “13. As already noted, there should be a clear inconsistency between the two enactments before giving an overriding effect to the non obstante clause but when the scope of the provisions of an earlier enactment is clear the same cannot be cut down by resort to non obstante clause. In the instant case, we have noticed that even the General Rules of which Rule 3(2) forms a part provide for promotion by selection. As a matter of fact Rules 1(3)(a), 3(1) and 4 also provide for the enforceability of the Special Rules. The very Rule 3 of the General Rules which provides for recruitment also provides for promotion by selection and further lays down that the methods of recruitment shall be as specified in the Special Rules, if any. In this background if we examine the General Rules it becomes clear that the object of these Rules only is to provide broadly for recruitment to services of all the departments and they are framed generally to cover situations that are not covered by the Special Rules of any particular department. In such a situation both the Rules including Rules 1(3)(a), 3(1) and 4 of the General Rules should be read together. If so read it becomes plain that there is no inconsistency and that amendment by inserting Rule 3(2) is only an amendment to the General Rules and it cannot be interpreted as to supersede the Special Rules. The amendment also must be read as being subject to Rules 1(3)(a), 3(1) and 4(2) of the General Rules themselves. The amendment cannot be read as abrogating all other Special Rules in respect of all departments. In a given case where there are no Special Rules then naturally the General Rules would be applicable. Just because there is a non obstante clause, in Rule 3(2) it cannot be interpreted that the said amendment to the General Rules though later in point of time would abrogate the special rule the scope of which is very clear and which co-exists particularly when

> no patent conflict or inconsistency can be spelt out. As already noted, Rules 1(3)(a), 3(1) and 4 of the General Rules themselves provide for promotion by selection and for enforceability of the Special Rules in that regard. Therefore, there is no patent conflict or inconsistency at all between the General and the Special Rules."
>
> 34) In the light of principles laid down, we find that Section 3 of the Act completely overrides the provisions of Chapter XIII of IPC in respect of the offences and penalties imposable for violations of the provisions of the Act, it being special Act. Therefore, if the offence is disclosed to be made out under the provisions of the Act, an accused cannot be charged for the same offence under Chapter XIII of IPC. Reading of Section 51 of the Act makes it clear that the provisions of IPC insofar as they relate to offences with regard to weight or measure, shall not apply to any offence which is punishable under the Act. Therefore, the provisions of IPC which relate to offences with regard to weight and measure as contained in Chapter XIII of IPC alone will not apply.

No person can be charged for an offence relating to weight or measure falling under Chapter XIII of IPC in view of the provisions of the Act.

35) The scheme of the Act is for the offences for use of weights and measures which are non-standard and for tampering with or altering any standards, secondary standards or working standards of any weight or measure. The Act does not foresee any offence relating to cheating as defined in Section 415 of IPC or the offences under Sections 467, 468 and 471 of IPC. Similarly, an act performed in furtherance of a common intention disclosing an offence under Section 34 is not covered by the provisions of the Act. An offence disclosing a criminal conspiracy to commit an offence which is punishable under Section 120-B IPC is also not an offence under the Act. Since such offences are not punishable under the provisions of the Act, therefore, the prosecution for such offences could be maintained since the trial of such offences is not inconsistent with any of the provisions of the Act. Similar is the provision in respect of the offences under Sections 467, 468, 471 IPC as such offences are not covered by the provisions of the Act.

36) Thus, we partly allow the present appeals with the following directions:

> (i) Directions given by the High Court, as mentioned in para 11 above, are hereby quashed.
>
> (ii) We uphold the order of the High Court that the offences under Sections 265 and 267 IPC are liable to be quashed.
>
> (iii) The directions of the High Court in proceedings under Section 482 of the Code against the interest of the accused in a petition filed by the accused are beyond the jurisdiction of the High Court and, thus, all such observations and directions are quashed.

(iv) The directions issued by the High Court that the erring officers/officials named in the supplementary report shall be subject to disciplinary action are again beyond the scope of the High Court in a petition under Section 482 of the Code seeking quashing of the charge-sheet and are, thus, quashed.

(v) It is open to the investigating agency to charge the accused for such offences or any other offence by way of a supplementary report or at a subsequent stage during trial as considered appropriate by the investigating agency.

(vi) In other words, the entire order of the High Court is set aside except the order which relates to the quashing of the charges under Sections 265 and 267 IPC but it shall be open to the investigating agency to take such steps as are required to complete the investigation in accordance with law.

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37) Leave granted.

38) The challenge in the present appeal is to an order passed by the High Court of Allahabad at Lucknow on November 24, 2017 whereby, petition under Section 482 of the Code for quashing of Crime No.0313, P.S. Hasanganj dated April 28, 2017 for the offences under Sections 265, 267, 420, 467, 468 and 34 IPC and Sections 3 and 7 of the Act, 1955 and Section 26/30 of the Act, filed by the appellant who is being prosecuted, was dismissed.

39) The present appeal was posted for final hearing along with Criminal Appeals arising out of SLP (Criminal) Nos. 9981-9982 of 2017 and 1912-1913 of 2018. In the aforesaid case, it has been held that the offence under Chapter XIII of IPC cannot be lodged in view of the provisions of the Act whereas the prosecution under other offences of IPC has been found to be maintainable.

40) In view of the said fact, the present appeal is partly allowed. The offences under Sections 265 and 267 IPC are quashed in view of the reasons recorded in the aforesaid appeals.

.....J. (L. NAGESWARA RAO) .....J. (HEMANT GUPTA) NEW DELHI;

SEPTEMBER 04, 2019.