

State Of R vs Bhagwan Das Agrawal & Ors on 17 December, 2013

Equivalent citations: 2014 AIR SCW 365, 2014 (2) AJR 541, 2014 CRI. L. J. 1006, AIR 2014 SC (CRIMINAL) 499, AIR 2014 SC (SUPP) 545, (2014) 1 RECCRIR 513, (2014) 57 OCR 336, (2014) 1 UC 369, (2013) 15 SCALE 343, 2013 (16) SCC 574, (2014) 1 MAD LJ(CRI) 236, (2014) 84 ALLCRIC 675, (2014) 2 ALLCRIR 1334, (2014) 1 DLT(CRL) 700, (2014) 1 CURCRIR 95, (2014) 2 KCCR 55, (2014) 1 RAJ LW 182, (2014) 134 ALLINDCAS 193 (SC), (2014) 1 KER LT 64, (2014) 2 ALD(CRL) 145

Author: M.Y. Eqbal

Bench: M.Y. Eqbal, Chandramauli Kr. Prasad

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2118 OF 2013
(Arising out of Special Leave Petition (Criminal) No.8402 of 2011)

State of RajasthanAppellant
versus
Bhagwan Das Agrawal & OthersRespondents
WITH
CRIMINAL APPEAL NO. 2119 OF 2013
(Arising out of Special Leave Petition (Criminal) No.2180 of 2012)

Girdhar & OthersAppellants
versus
State of Rajasthan & Another
....Respondents

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. Aggrieved by the judgment and order dated 15th July, 2011 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur, whereby the petition filed by respondent No. 1 herein (Bhagwan Das Agrawal) under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") seeking relief to hold that the proceedings based on the subsequent and third FIR registered in Dholpur (Rajasthan) as Crime No. 427/2010 under Section 5/9B, 9C of the Explosives Act, 1884, in view of the provisions of Section 186 of Cr.P.C., be discontinued, was allowed, the appellant-State of Rajasthan has preferred the special leave petition being No. 8402 of 2011.

3. The facts and circumstances giving rise to the present appeal are that in respect of alleged unauthorized and illegal supply of explosives by M/s. Rajasthan Explosives and Chemicals Ltd., Dholpur (for short, "RECL"), in which respondent No. 1 herein Bhagwan Das Agrawal was Managing Director, to M/s. Ganesh Explosives, Sagar during the period from 17.4.2010 to 29.6.2010 in contravention of the Explosives Act, a case at Police Station Baheria, District Sagar was registered on 13.7.2010 as FIR/Crime No. 161/2010. The police after due investigation filed charge-sheet on 18.11.2010 for offences punishable under Sections 420, 467, 468, 471, 120-B, 201 and 34 of the Indian Penal Code (for short, 'IPC') and Sections 9B, 9C of the Explosives Substances Act, 1884 and Sections 4 and 6 of the Explosive Substances Act, 1908 in the Court of concerned Judicial Magistrate, First Class, Sagar against 11 persons including four persons from RECL viz. respondent No. 1 herein (Managing Director), K. Edward Kelly (Director, Operations), Vinod Kumar Garg (Chief Manager, Marketing) and Rakesh Kumar Agrawal (Manager, Marketing). The array of accused persons, inter alia, included Devendra Singh Thakur, Jai Kishan Ashwani, Rajendra Choubey, Gopal Shakyawar, Shiv Charan Heda, Deepa Heda and Alakh Das Gupta. After filing of the charge-sheet, the Magistrate took cognizance of the offences. Similar charge-sheet under Sections 420, 467, 468, 471, 120-B, 201/34, IPC read with Sections 9B and 9C of the Explosives Substances Act, 1884 and Sections 4, 5 and 6 of the Explosive Substances Act, 1908 was filed after investigation into another FIR lodged at Police Station Chanderi, District Ashok Nagar as FIR/ Crime No. 310/2010 on 26.8.2010 for the supply of explosives during the period from 1.4.2010 to 30.6.2010 by RECL to another firm M/s. Sangam Explosives, Halanpur in Chanderi, District Ashok Nagar. This charge-sheet was filed in the Court of concerned Judicial Magistrate, First Class, Chanderi against 8 persons including four from RECL viz. respondent No. 1 herein (Managing Director), K. Edward Kelly (Director, Operations), Vinod Kumar Garg (Chief Manager, Marketing) and Rakesh Kumar Agrawal (Manager, Marketing). The array of accused persons, inter alia, included Rajendra Kumar Choubey, Anil Dhupad, Shiv Charan Heda and Jai Kishan Ashwani. In this case too, the Magistrate took cognizance of the offences on 25.11.2010. Subsequently on 5.9.2010, in respect of supplies made by RECL during the period from 1.4.2010 to 5.9.2010 to M/s. Ganesh Explosives, Sagar and to M/s. Sangam Explosives, Chanderi, third FIR on the report submitted by a Committee constituted to investigate into a news published in the newspaper regarding disappearance of trucks carrying explosives was lodged at Police Station Dholpur as FIR/Crime No. 427/2010 and the police after due investigation filed charge-sheet on 4.12.2010 against 16 persons for offences under Section 420, 465, 467, 468, 471, 120-B, IPC read with Sections 5, 9B and 9C of the Explosives Substances Act,

1884 and Sections 5 and 6 of the Explosive Substances Act, 1908 in the Court of Chief Judicial Magistrate, Dholpur, Rajasthan including the four office bearers of RECL viz. respondent No. 1 herein (Managing Director), K. Edward Kelly (Director, Operations), Vinod Kumar Garg (Chief Manager, Marketing) and Rakesh Kumar Agrawal (Manager, Marketing). The array of accused persons, inter alia included Shiv Charan Heda, Rajendra Kumar Choubey, Jai Kishan, Ashwani (also arrayed as accused in Sagar and Chanderi Courts) and Jagdish Soni, Uday Lal Kabra, Lalit Gangwani, Girdhar Bhai, Arvind, Sunil, Damji Bhai, Jitender Taank & Chimman Lal. The Magistrate took cognizance of the offences on 4.12.2010. It is thus clear that the charge-sheets were filed for the same offences against the officers (four in No.) of RECL as also the concerned persons of M/s. Ganesh Explosives and M/s. Sangam Explosives with the only difference that first FIR at Baheria was for supply made to M/s. Ganesh Explosives, second FIR at Chanderi for supply made to M/s. Sangam Explosives and the third FIR at Dholpur for supplies made both to M/s. Ganesh Explosives and M/s. Sangam Explosives. The final outcome was that for the same offences, cognizance came to be taken by the courts at Sagar, Chanderi and Dholpur.

4. As per FIR/Crime No. 161 of 2010, 60 trucks of explosive material outbound from RECL, Dholpur to M/s. Ganesh Explosives, P.S. Baheria (M.P.) actually reached (i) M/s. Ajay Explosive, Ahmadnagar (Maharashtra) (ii) M/s. B.M. Traders, Bywara (M.P.), and

(iii) M/s. B.M. Traders, Bhilwara (Rajasthan). FIR/Crime No. 310 of 2010 recorded that 103 trucks of explosive material outbound from RECL, Dholpur to M/s. Sangam Explosives at P.S. Chanderi (M.P.) actually reached (i) M/s. B.M. Traders, Bywara (M.P.) and (ii) M/s. Ajay Traders, Bhilwara (Rajasthan). As per FIR/Crime No. 427/2010, M/s. RECL, Dholpur sold explosive material illegally to (i) M/s. Ganesh Explosives, Sagar (M.P.) and (ii) M/s. Sangam Explosives, Ashok Nagar (M.P.) after the expiry of their licences. The same never reached the destinations and were diverted in their middle to Bhilwara (Raj.), Bywara (M.P.) etc. The explosives were also sold for terrorist activities which stood revealed from FIR No.130/2010 P.S. Karol Bagh, New Delhi.

5. It was alleged in the petition filed by respondent No. 1 herein before the High Court that RECL was incorporated as a private limited company in 1980; the factory of RECL at Dholpur, Rajasthan got commissioned in 1981 & since then regular production of explosives has been taking place there; and RECL was making regular supplies amongst other dealers to M/s. Ganesh Explosives as also to M/s. Sangam Explosives. It was alleged that what was investigated and charge-sheeted by the police of P.S. Baheria and P.S. Chanderi was put together and re-investigated by the P.S. Dholpur. It was further alleged that when cognizance of selfsame offence is taken by more than one court, then in such circumstances Section 186 Cr.P.C. comes into play in order to cap such situation and as the first court happened to be the Court of Judicial Magistrate, First Class, Sagar, M.P. to have initiated proceedings by taking cognizance of the offence upon submission of charge-sheet by the police of P.S. Baheria in FIR/Crime No. 161/2010, that court being the court in whose appellate criminal jurisdiction the proceedings first commenced was the court vested with the requisite jurisdiction under Section 186 Cr.P.C. to decide and make a declaration. It was alleged that the sum and substance of the allegations in the cases registered at P.S. Baheria, P.S. Chanderi and P.S. Dholpur happen to be identical, relating to the same occurrence/same transaction as also the same offence i.e. illegal supply of explosives contrary to the Explosives Rules by RECL to M/s. Ganesh Explosives

and M/s. Sangam Explosives. Accordingly, prayer was made to declare the criminal proceedings in the Court of Chief Judicial Magistrate, Dholpur being violative of Section 186(b) Cr.P.C. and to discontinue the same.

6. The High Court by the impugned order dated 15.7.2011 while allowing the petition filed by respondent No. 1 herein purportedly to give effect to the provision of Section 186(b) of Cr.P.C. has observed as under:

“On perusal of third FIR and charge sheet submitted in that respect, it is apparently clear that in contravention of the provisions of the Explosives Act, Rajasthan Explosives and Chemicals Ltd. (RECL in short) Dholpur supplied explosives to M/s. Ganesh Agency, Sagar and M/s. Sangam Agency, Chanderi. On perusal of both earlier FIRs, it is revealed that there are 11 accused persons facing trial in Sagar (M.P.) and 8 accused persons are facing trial in Ashok Nagar (M.P.) Court. In the charge sheet submitted on the basis of subsequent and third FIR, accused persons and alleged offences are the same.

xxx xxx xxx Admittedly, Rajasthan Court had taken cognizance of the offence, which was already a subject matter of the case already pending in the court of Sagar and also taken cognizance of the case which has already been pending in the court of Ashok Nagar (M.P.). The proceedings has first commenced in Sagar and in Chanderi respectively within the jurisdiction of the High Court of Madhya Pradesh, hence, subsequent proceedings initiated and registered in Dholpur Court stands discontinued and is liable to be discontinued.

Needless to write that this order will not be a bar to deal with the offences which are not the subject matter of the cases pending already in the courts of Madhya Pradesh.”

7. In the special leave petition, the appellant-State of Rajasthan has contended that in connivance with respondent No. 1 herein 103 trucks of explosives were delivered to the Magazines of M/s. Ajay Explosives which belongs to Shiv Charan Heda and 60 trucks of explosives to M/s. B.M. Traders which belongs to Deepa Heda, both relatives of Jai Kishan Ashwani. It is alleged that the magazines of M/s. Ganesh Explosives and M/s. Sangam Explosives are not operational since many years and with the forged documentation in the name of said firms the explosives were purchased by M/s. Ajay Explosives and M/s. B.M. Traders and the explosives were then sold to some unknown persons which are serious threat to the security of the nation and one such example is the registration of FIR in Crime No. 130/2010 P.S. Karol Bagh under Sections 4 and 5 of the Explosive Substances Act in which the accused Loknath Pant, a resident of Nepal was arrested and in whose custody 498 non-electronic detonator and 29.12 meter fuse wire were recovered and in the packing of the cartons it was revealed that the said explosives were from RECL, Dholpur. It is contended that the High Court has erred in law and fact by discontinuing the proceedings at Dholpur (Rajasthan) because cause of action arose within the jurisdiction of court at Dholpur and the territorial jurisdiction of a court regarding criminal offence is to be decided on the basis of place of occurrence of the incident and not on the basis of where complaint was filed. It is further alleged in the special leave petition that

even the Committee comprising Sub-Divisional Magistrate, Deputy Superintendent of Police and General Manager of District Industrial Centre in its report submitted to the Superintendent of Police, Dholpur has stated that the manufacturing licence of RECL was valid till 31.3.2010 and the said company sold the explosive material to M/s. Ganesh Explosives and M/s. Sangam Explosives from the month of April 2010 till June 2010 illegally when their licences too had expired and RECL has sold the material in excess to the stipulated quantity mentioned in the licence. It was found by the Committee that there was no receipt/proof with RECL whether the trucks reached the destinations or not and further RECL had violated the Explosive Rules. It is alleged that the payments in lieu of sold explosive materials were made through the Demand Drafts of ICICI Bank, Yes Bank, Axis Bank and Indusland Bank situated at Rajkot and the payment was being made through the agents of Ganga Enterprises, Sidhnath Enterprises, Govind Kripa Enterprises, Thakkar Enterprises, Bhagwati Enterprises and Jyoti Enterprises, Rajkot. These agents used to prepare the demand drafts in the name of RECL and give to one Jagdish Soni (an accused in FIR No.427/10 at Dholpur) who used to pass on the demand drafts to Shiv Charan Heda (an accused in all the FIRs). These six agents, who had been arrested on 22.12.2010 by Dholpur Police Station upon a supplementary charge-sheet being filed and have not been arrayed as accused in the proceedings pending in the courts at Sagar and Chanderi (Madhya Pradesh), have been impleaded as respondent Nos. 3 to 8 in the present proceedings. It is lastly alleged that the respondent could not have filed the second petition because he along with other office bearers of RECL has withdrawn the first petition seeking quashing of proceedings in Crime No. 161/2010 registered at P.S. Baheria on the ground that they were already facing trial in Crime No. 427/2010 registered by the Dholpur Police on the same set of charges and no liberty was granted by the High Court to file a fresh petition.

8. The respondents impleaded in SLP(Crl.) No. 8402 of 2011, have filed SLP (Crl.) No. 2180 of 2012 challenging the order dated 4.1.2012 passed by the High Court of Rajasthan, Bench at Jaipur whereby the habeas corpus petition filed by them was disposed of holding that the question of remand of the accused-petitioners in FIR No. 427/2010, Kotwali Dholpur by the court in the State of Rajasthan was in accordance with law or not and the detention of the accused-petitioners is illegal, are the questions which are to be adjudicated only after the issue of jurisdiction of courts in Rajasthan pending before the Apex Court in SLP(Crl.) No. 8402 of 2011 is decided. The said SLP(Crl.) No. 2180 of 2012 was directed to be put up along with SLP(Crl.) No. 8402 of 2011. Hence, both the special leave petitions are before us.

9. While issuing notice in SLP(Crl.) No.. 8402 of 2011, this Court on 25.11.2011 passed the following order:

“Mr. U.U. Lalit, learned senior counsel appearing for respondent no.1 on caveat stated that though the High Court has quashed the proceedings at the Dholpur Court in Rajasthan, the respondents have no objection if the proceedings are continued at Dholpur, but in that case the proceedings arising from the same set of facts in the two Courts in Madhra Pradesh, i.e. at Sagar and Chanderi may have to be quashed.

Issue notice to the non-appearing respondent on the limited question whether the proceedings should continue at Dholpur or at the two places (Sagar and Chanderi) in

Madhya Pradesh.”

10. The short question that falls for consideration in the instant case is as to whether the proceedings should continue at Dholpur or at the two places (Sagar and Chanderi) in Madhya Pradesh.

11. Section 186, Cr.P.C., which deals with the power of the High Court to decide, in case of doubt, the district where inquiry or trial shall take place, is extracted hereinbelow:-

“186. High Court to decide, in case of doubt, district where inquiry or trial shall take place.- Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided --

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued.”

12. From bare reading of the aforesaid provision it is manifest that the main object and intention of the Legislature in enacting the provision is to prevent the accused persons from being unnecessarily harassed for the same offences alleged to have been committed within the territorial jurisdiction of more than one courts. In order to avoid unnecessary harassment of the accused to appear and face trial in more than one courts, necessary direction is to be issued to discontinue the subsequent proceedings in other courts. The provision is based on the principle of convenience and expediency. However, the sine qua non for the application of this provision is that the cases instituted in different courts are in respect of the same offence arising out of the same occurrence and that the same transaction and that the parties are the same. In other words, the persons implicated as an accused in different cases must be the same. If these conditions are satisfied then subsequent proceeding has to be discontinued.

13. Chapter XXIV of the Code of Criminal Procedure deals with the provisions with regard to the enquiries and trials. Section 300 debars the Court from proceeding with the trial in respect of the same offence for which the accused has already been tried and convicted or acquitted. However, a person convicted for any offence may be afterwards tried if such act constituted a different offence from that of which he was convicted. This Court elaborately dealt with the provisions contained in Section 300 Cr.P.C. in the case of State of Bihar v. Murad Ali Khan, (1988) 4 SCC page 655. Some of the paragraphs are worth to be quoted hereinafter.

“26. Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple

punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by “same offence”. The principle in American law is stated thus:

“The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee. Distinct statutory provisions will be treated as involving separate offences for double jeopardy purposes only if ‘each provision requires proof of an additional fact which the other does not’ (Blockburger v. United States). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately.

27. The expression “the same offence”, “substantially the same offence” “in effect the same offence” or “practically the same”, have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of “same offence”. Friedland in Double Jeopardy (Oxford 1969) says at p.

108:

“The trouble with this approach is that it is vague and hazy and conceals the thought processes of the court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are ‘substantially the same’ may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible....”

28. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In *Leo Roy Frey v. Superintendent, District Jail*, the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said: (SCR p. 827) “The offence of conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.”

14. In the instant case, as noticed above, the nature and manner of offences committed by the accused persons are not identical but are different, for example, in respect of FIR Crime No.130 of 2010 the accused persons in connivance with respondent No.1 delivered 103 trucks of explosives to

the Magazines of M/s. Ajay Explosives which belonged to Shiv Charan Heda and 60 trucks of explosives to M/s. B.M. Traders which belonged to Deepa Heda. It was alleged that the Magazines of M/s. Ganesh Explosives and M/s. Sangam Explosives were not operational since many years and with the forged documentation in the name of the said firms the explosives were purchased by M/s. Ajay Explosives and M/s. B.M. Traders and subsequently those explosives were sold to some unknown persons. In respect of those FIRs, one accused, a resident of Nepal, was arrested and from whose custody 498 non electronic detonators were recovered. In respect of another FIR, during investigation, it has come on the record that those explosives were sold for terrorist activities.

15. Offence means any act or omission made punishable by law. The fountain head of all the three cases may be at Dholpur from where truck loaded with explosives moved to different destinations but from that it cannot be said that the acts and omissions which constitute the offence are the same. Same offence, in our opinion, would mean that acts and omissions which constitute the offence are one and the same. Except the allegation that the explosives were loaded at Dholpur, the mode and manner in which the offence was committed at different places are not the same. As such, in our opinion, the provision of Section 186 of the Code is not attracted in the facts of the present case. Hence, the High court erred in passing the impugned order.

16. In the facts and circumstances of the case, we are of the considered opinion that the impugned order passed by the High Court is to be set aside. Consequently, the appeal preferred by the State of Rajasthan is allowed and the appeal preferred by the accused stands disposed of.

.....J. (Chandramauli Kr. Prasad)J. (M.Y. Eqbal) New
Delhi, December 17, 2013.
