A T.P. GOPALAKRISHNAN

v.

STATE OF KERALA

(Criminal Appeal Nos.187-188 of 2017)

B DECEMBER 08, 2022

[B. R. GAVAI AND B. V. NAGARATHNA, JJ.]

Constitution of India: Art.20(2) – Protection against double jeopardy – Code of Criminal Procedure – s.300 – 'Same offence' meaning of – Appellant-accused worked as Agricultural officer for the period 31.05.1991 to 31.05.1994 – Accusations against him was that he committed criminal breach of trust and misappropriated certain amount in his official position as a public servant, by not remitting the same to the sub-treasury – Accusations related to time period from 27.04.1992 to 25.08.1992 and 01.03.1993 to 12.04.1994 – Trial Court convicted the appellant for offences u/ss.13(2) r/w 13(1)(c) of the PC Act and s.409 IPC – High Court upheld the conviction – Appellant contended inter alia *that present cases are barred u/s.300 CrPC as he was already prosecuted in previous three cases pertaining to the same allegations wherein he was convicted in two cases and acquitted in one case – On appeal, held: There are three conditions for application of Art. 20(2) – Firstly, previous proceedings before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted, the prosecution must be valid and not null or abortive – Secondly, conviction or acquittal in the previous proceedings must be in force at the time of the second proceedings in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceedings – Thirdly, the subsequent proceeding must be a fresh proceeding, where he is for the second time, sought to be prosecuted and punished for the same offence and same set of facts – 'Same offence' means where the offences are not distinct and the ingredients of the offences are identical – Embargo of double jeopardy u/Art.20 does not apply where there are two distinct offences made up of different ingredients though offences may have some overlapping features – The charges in the present case are for relevant period from 27.04.1992 to*

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25.08.1992 and 01.03.1993 to 12.04.1994 which time period is same as in the previous three cases, that is 28.02.1994 to 02.04.1994, 15.12.1992 to 31.03.1993 and 05.03.1994 to 08.03.1994 – Present cases pertain to same set of facts and are in respect of same period of misappropriation – The matter in the previous three cases and the present cases relate to same offences which are committed in the course of same transaction while holding the one and same post of Agriculture officer by the appellant – Charges in the previous three cases were framed after the audit and the prosecution would have been well aware of the misappropriation in respect of present cases – Since, appellant has already been prosecuted in the year 1999 in respect of previous three cases, the trial court as well as High Court was not right in convicting and sentencing the accused – Embargo of double jeopardy u/s. 300 applied to the facts of the case – Prevention of Corruption Act, 1988 – Penal Code, 1860.

Code of Criminal Procedure, 1973: s.300(2) – Subsequent prosecution for any distinct offence – Failure to take prior consent of State Government – Effect thereof – Held: When the charge of the second trial is for distinct offence, the trial is not barred – A person acquitted or convicted of any offence may be tried for a distinct offence for which a separate charge might have been framed with the prior consent of the State Government – In the instant case, even if the allegations are different from those in the previous cases, the prosecution having failed to obtain the prior consent of the State Government, the trial is unlawful.

Code of Criminal Procedure, 1973: Double jeopardy and double punishment – Difference between – Double punishment may arise when a person is convicted for two or more offences charged in one indictment – However, the question of double jeopardy arises only when a second trial is sought on subsequent indictment fowling a conviction or acquittal on an earlier indictment – Doctrine of double jeopardy is not a protection to the individual from peril of second sentence or punishment, nor to the service of sentence for one offence – It is a protection against double jeopardy for the same offence that is, against a second trial for the same offence

Constitution of India – Art. 21 – Right to life and Liberty – Scope of – Right to live includes within its ambit the right to live with dignity – Protection against the double jeopardy is also included

A *under the scope of Art. 21 – Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity – Double jeopardy.*

B *Doctrines/Principles: Doctrine of double jeopardy – Application thereof – Discussed – Maxim nemo deber bis vexari, si costest curiae quod sit pro una et eadem causa.*

Allowing the appeals, the Court

C **HELD: 1. Section 300 of the CrPC is based on the maxim *nemo deber bis vexari, si costest curiae quod sit pro una et eadem causa* which means that a person cannot be tried a second time for an offence which is involved in an offence with which he was previously charged. In order to bar the trial of any person already tried, it must be shown that: (i) He has been tried by a competent**
D **court for the same offence or one for which he might have been charged or convicted at a trial, on the same facts, (ii) He has been convicted or acquitted at the trial, and (iii) Such conviction or acquittal is in force. [Para 23][495-B-D]**

2. Article 20(2) of the Constitution of India incorporates
E **within its scope, the plea of autrefois convict, meaning, previously convicted as known to British jurisprudence, or the plea of double jeopardy known to the American Constitution. However, the said concepts are circumscribed in Article 20(2) which provides that there should be not only a prosecution but also punishment in the first instance in order to operate as a bar to a second**
F **prosecution and punishment for the same offence. On a plain reading the of sub clause (2) of Article 20, it is clear that the said provision bars a second prosecution only where the accused has been both prosecuted and punished for the same offence previously. [Para 26][495-G-H; 496-A-B]**

G **3. There are three conditions for the application of the clause. Firstly, there must have been previous proceeding before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive.**

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Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts. In other words, the clause has no application when the subsequent proceeding is a mere continuation of the previous proceeding, for example, where an appeal arises out of such acquittal or conviction. In order to sustain a plea of double jeopardy, it must be shown that all the aforesaid conditions of this clause are satisfied. [Para 27][496-C-F]

4. Section 300 of the CrPC and Article 20 of the Constitution of India use the term 'same offence'. Before dealing with the issue at hand, it is necessary to understand what the term 'same offence' means and includes. The term 'same offence' in simple language means, where the offences are not distinct and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India, has no application, though the offences may have some overlapping features. The crucial requirement of Article 20 is that the offences are the same and identical in all respects. [Para 28][496-F-H]

5. The concept of double jeopardy can also be understood in terms of Article 21 of the Constitution. Protection against double jeopardy is also included under the scope of Article 21 of the Constitution of India. Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity. Double jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril

of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence. [Paras 29 and 30][497-A-F]

6. The appellant was earlier charged for offences under Section 13(1)(c) read with Section 13(2) of the Act and Sections 409 and 477A of the IPC and was convicted in two cases and acquitted in one case. The present two cases arise out of the same set of facts and the same transaction as that in the previous three cases wherein the appellant was tried and convicted/ acquitted respectively. For an offence to be considered as the 'same offence' as the last offence, it is necessary to show that the offences are not distinct and the ingredients of the offences are identical. The previous charge as well as the present charge is for the same period of misappropriation. The matter of offences in all the previous three cases and the present case are the same and are said to be committed in the course of same transaction while holding the one and same post of Agricultural Officer by the appellant. [Para 37][500-B-D]

7. The Trial Court has erred in holding that the facts of previous case and misappropriation committed by the accused are not the same as the facts relevant to present case. The charges in the present case are for relevant period from 27.04.1992 to 25.08.1992 and 01.03.1993 to 12.04.1994 which time period is same as in the previous three cases, that is, 28.03.1994 to 02.04.1994, 15.12.1992 to 31.03.1993 and 05.03.1994 to 08.03.1994 respectively. Thus, it can be said that the present cases pertain to the same set of facts and are in respect of same offences, for the same period, committed in the same capacity as the previous three cases wherein the appellant herein was already prosecuted in the year 1999. The core allegation in all these five cases pertains to misappropriation by making false entries in the cash book. The allegation of the prosecution that two-thirds of the auction amount was not remitted to the treasury would be covered under the allegations of misappropriation of funds, that the appellant has already been prosecuted for in the year 1999. The appellant is right in contending that the charge in the first

three cases were framed on 17.08.1999 which is much after the audit and the prosecution would have been well aware of the misappropriation in respect of the present cases on 17.08.1999. [Para 38][500-E, G-H; 501-A-C]

8. The allegations/offences in the instant cases are the same as the allegations/offences in the previous three cases, therefore as per the mandate under Section 300(2) of the CrPC, the consent of the State Government is necessary. Even if it is assumed for the sake of argument that the allegations are different in present cases from those in the previous cases, the prosecution has failed to obtain the prior consent of the State Government necessary to prosecute the accused-appellant and therefore the trial in the instant case is unlawful. [Para 39][501-D-F]

S.A. Venkataraman v. Union of India **AIR 1954 SC 375 : [1954] SCR 1150;** *Maqbool Hussain v. State of Bombay* **AIR 1953 SC 325 : [1953] SCR 730;** *Maneka Gandhi v. Union of India* **1978 AIR 597 : [1978] 2 SCR 621;** *Vijayalakshmi v. Vasudevan* **(1994) 4 SCC 656;** *Thakur Ram v. State of Bihar* **AIR 1966 SC 911 : [1966] 2 SCR 740;** *State (N.C.T. of Delhi) v. Navjot Sandhu* **(2005) 11 SCC 600 : [2005] 2 Suppl. SCR 79 – relied on.**

Case Law Reference

(1994) 4 SCC 656	**relied on**	**Para 23**
[1966] 2 SCR 740	**relied on**	**Para 25**
[1954] SCR 1150	**relied on**	**Para 26**
[1953] SCR 730	**relied on**	**Para 26**
[2005] 2 Suppl. SCR 79	**relied on**	**Para 28**
[1978] 2 SCR 621	**relied on**	**Para 29**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 187-188 of 2017.

From the Judgment and Order dated 13.06.2016 of the High Court of Kerala at Ernakulam in Crl. A. Nos.947 and 948 of 2009.

A Adolf Mathew, Sanjay Jain, Advs. for the Appellant.

C. K. Sasi, Abdulla Naseeh V. T., Ms. Meena K. Poulose, Advs. for the Respondent.

The Judgment of the Court was delivered by

B **NAGARATHNA, J.**

1. These Criminal Appeals have been filed assailing the impugned judgment and order dated 13.06.2016 passed by the High Court of Kerala at Ernakulam in Criminal Appeal Nos. 947 and 948 of 2009 by which the judgment of conviction and order of sentence dated 27.04.2009 passed
C in C.C. No.24 and 25 of 2003 by the Court of the Enquiry Commissioner and Special Judge, Kozhikode ('Trial Court', for the sake of convenience) has been upheld by dismissing the aforesaid appeals and consequently confirming the conviction of the appellant herein.

2. For the sake of convenience, the parties shall be referred to as
D per their rank before the Trial Court.

3. The Trial Court *vide* its judgment and order dated 27.04.2009 in both the aforesaid cases convicted the appellant herein-accused for offences under Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 ('the Act', for short) and sentenced him to
E undergo rigorous imprisonment for two years and to pay a fine of Rupees Two Thousand and in default thereof, to undergo rigorous imprisonment for six months. The accused was further convicted for the offence under Section 409 of the Indian Penal Code, 1860 ('IPC' for short) and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rupees Two Thousand and in default thereof, to undergo rigorous
F imprisonment for six months. The sentences were directed to run concurrently.

4. The appellant herein was released on bail *vide* order of this Court dated 30.01.2017 subject to fulfilment of the conditions imposed by the Trial Court.

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Facts of the Case:

5. Succinctly stated, the case of the prosecution in C.C. No. 24 of 2003 is that while the accused was working as Agricultural Officer, State Seed Farm, Perambra, for the period 31.05.1991 to 31.05.1994, he
H abused his official position as a public servant and committed criminal

breach of trust and misappropriated an amount of Rs.20,035/-, during the period from 27.04.1992 to 25.08.1992, by not remitting the same to the Sub-Treasury, Perambra. The amount included Rs.17,449/-, being two-thirds of the proceeds received from the auction of 5510 coconuts harvested and auctioned on 28.05.1992 at the State Seed Farm, Perambra; Rs.2,098/- being two-thirds of the proceeds from the auction of 1049 kgs of half-filled grains auctioned on 28.05.1992; and Rs.488.80/- being the price of 104 coconuts harvested from the State Feed Farm, Permbra on 24.08.1992 and 25.08.1992 respectively.

6. The case of the prosecution in C.C. No.25 of 2003 is that while the accused was working as Agricultural Officer, State Seed Farm, Perambra, from 31.05.1991 to 31.05.1994, abused his official position as a public servant and committed criminal breach of trust and misappropriated an amount of Rs.58,671/- during the period from 01.03.1993 to 12.04.1994, being auction proceeds from the sale of 11,109 coconuts harvested from State Seed Farm, Perambra, auctioned on 23.07.1993; Rs. 12,290/- being the proceeds from the auction of 6,046 coconuts; Rs.11,844/- being the proceeds from the auction of 3,883 coconuts harvested from State Seed Farm, Perambra; Rs.654/- being the price of 160 coconuts harvested on 13.02.1992, 07.04.1993, 17.03.1994 and 12.04.1994, by not accounting for them and has thereby committed the aforesaid offences under Section 13(1)(c) read with Section 13(2) of the Act and Section 409 of the IPC.

7. It is prosecution's case that prior to registration of these two cases against the accused, three other cases, being C.C. No. 12 of 1999, C.C. No. 13 of 1999 and C.C. No. 14 of 1999 were registered against him. In May 1994, a surprise inspection was carried out in the State Seed Farm, Perambra and the inspection team found that the cash book was not properly maintained and that the Agricultural Officer received amounts from the Treasury. The inspection report was submitted to the Director of Agriculture. On the basis of the said report, an enquiry was conducted by the vigilance department and a criminal case was registered against the accused on 05.02.1996. On completion of investigation, the Vigilance and Anti-Corruption Bureau submitted three reports and C.C. No. 12 of 1999 (for offences committed for the period between 28.03.1994 and 02.04.1994); C.C. No. 13 of 1999 (for offences committed for the period from 15.12.1992 to 31.03.1993) and C.C. No. 14 of 1999 (for offences committed for the period from 05.03.1994 to 08.03.1994) were

registered against the accused under Section 13(1)(c) read with Section 13(2) of the Act and Sections 409 and 477A of IPC. The Accounts Officer conducted an audit in the State Seed Farm, pertaining to the period from 31.05.1991 to 31.05.1994 and gave a report. On the basis of the same, the two cases, out of which this appeal arises, were registered against the appellant herein. The FIR in respect of the present cases was registered on 03.12.2001. It is prosecution's case that it was in the re-audit, that these instances were unearthed and therefore the two cases, C.C. No.24/2003 and C.C. No.25/2003, were registered against the appellant herein.

8. Charges were framed against the accused for the said offences on 30.06.2007 and the same were read over and explained to the accused to which the accused pleaded 'not guilty' and claimed to be tried. The accused filed an application for joint trial, being CMP No. 1019 of 2008 which was allowed and therefore both the cases were tried together. The prosecution examined a total of 13 witnesses. Thereafter, statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC', for short) were recorded. The accused denied the allegations and submitted that he was innocent and had been falsely implicated.

9. It was the appellant's case before the Trial Court and the High Court that during the period in question, he had additional charge of some other farms and had to heavily depend on his subordinates at the office to conduct the affairs of the State Seed Farm, Perambra. The appellant contended that he did not misappropriate any amount from the farm and has not committed any offence as alleged by the prosecution.

Findings of the Trial Court:

10. The Trial Court *vide* judgment dated 27.04.2009, on considering the evidence of record convicted the accused for the offences under Sections 13(1)(c) read with Section 13 (2) of the Act and Section 409 of the IPC, holding that the accused misappropriated an amount of Rs.78,706/-, being two-thirds of the auction proceeds, without remitting it to the treasury during the period from 27.04.1992 to 25.08.1992 and from 01.03.1993 to 12.04.1994. The salient findings of the Trial Court can be epitomised as under:

i. That it could be seen from the Attendance Register (Ext. P22) that the accused was an Agricultural Officer at the

State Seed Farm, Perambra, during the period in question. The accused has also admitted the same in his statement under Section 313 of the CrPC.

ii. That perusal of documents such as posting order of the accused as Agricultural Officer (Ext.P2), copy of report of transfer of charge of the accused (Ext.P3) and file containing posting details of the accused (Ext.P4) would prove that the accused was working as an Agricultural Officer in the State Seed Farm from 31.05.1991 to 31.05.1994, beyond any reasonable doubt.

iii. That the accused was removed from service at the time of filing of the chargesheet, therefore there was no need for sanction under Section 19 of the Act.

iv. That the accused conducted auction of agricultural products of the State Seed Farm, Perambra and collected one-third of auction amount on the date of auction itself. Receipt for the said amount was issued to the successful bidder. After collecting the remaining two-thirds amount, the articles were to be delivered to the auction purchaser. On 28.05.1993, 5510 coconuts were harvested and auctioned. The two-thirds of the auction amount was Rs.17,449/. The accused did not remit the said amount after collecting the same from the auction purchaser.

v. That Rs.2,098/- being two-thirds of the proceeds from the auction of 1049 kgs of half-filled grains auctioned on the same date and Rs.488.80/- being the price of 104 coconuts harvested on 24.08.1992 and 25.08.1992 were also not remitted to the Sub- Treasury and the accused had misappropriated the said amounts for his own gain. Similarly, an amount of Rs.58,671/- was misappropriated by the accused from the auction proceeds of coconuts harvested from the State Seed Farm, Perambra from 01.03.1993 to 12.04.1994.

vi. That the charges levelled in the present two cases were for the period from 27.04.1992 to 25.08.1992 and from 01.03.1993 to 12.04.1994. In the previous case, the accused had misappropriated some amount to be paid to the

A Proprietor, Agricultural Marketing Corporation, Kozhikode; Kerala State Coir Marketing Corporation, Kozhikode, from the State Seed Farm, Perambra by falsifying and forging the records. That the accused also misappropriated some amounts to be paid to Kerala State Cooperative Marketing Federation, Kozhikode. The said amounts were neither accounted in the cash book, nor were they disbursed to the beneficiaries. However, in the present case, after conducting the auction of coconuts and half-filled grains, two-thirds of the auction proceeds collected from the successful bidders were not remitted to the treasury. Therefore, the period of misappropriation and the nature of the offences committed by the accused in the previous three cases and the present two cases were entirely different. The accused was thus convicted under Section 13(2) read with Section 13(1)(c) of the Act.

vii. That the accused was the custodian of the cash, cash chest, cash book and other documents as the Agricultural Officer, State Seed Farm, Perambra and during his tenure and capacity as a public servant, he misappropriated the aforesaid amount for his own gain. The accused was therefore held to have committed breach of trust in respect of the property and thus convicted under Section 409 of the IPC.

11. Being aggrieved by the judgment of conviction and sentence passed by the Trial Court, the appellant-accused preferred Criminal Appeal Nos. 947 and 948 of 2009 before the High Court, assailing the judgment of the Trial Court. The said appeals were dismissed by the common impugned judgment dated 13.06.2016 and the conviction was upheld. However, the High Court reduced the sentence of rigorous imprisonment for two years, to rigorous imprisonment of one year. The pertinent findings of the High Court can be noted as under:

i. That admittedly, the instances pointed out in these two cases were not included in the earlier three cases registered against the appellant. That it was during the audit for the period from 23.12.1997 to 27.12.1997 that these instances were unearthed and the present cases were registered.

ii. That it was an admitted fact that the records did not show that the amounts involved in the present two cases were remitted to the Sub-Treasury.

iii. That evidence of PW11 established that she assumed charge on 04.06.1994. While working as an Agricultural Officer at Krishi Bhavan, Kayanna, she had to assume additional charge as the Agricultural Officer, Seed Farm, Perambra. As per her statement, at the time when she assumed charge in the presence of the Joint Director of Agriculture and the Deputy Director of Agriculture, she had not taken possession of the documents or properties of the office at the Seed Farm at Perambra since no such documents were available at the office.

iv. That as per the statement of PW4 who assumed charge as an Agricultural Officer at the State Seed farm, Perambra for the period from 07.06.1994 to 24.04.1997, he did not receive any cash book for the period from 10.02.1992 to 11.03.1994. The appellant herein entrusted the cash book for the period from 12.03.1994 to 03.06.1994 and cash balance of Rs.2,763/- after PW4 took charge. That from the evidence of PW4, it was clear that he did not get the cash book at the time of taking charge and only after he assumed charge, the appellant entrusted to him the cash book and the cash balance. When there is no challenge with regard to the fact that the appellant had handed over the cash book for the period from 12.03.1994 to 03.06.1994, it goes without saying that he had never handed over the earlier cash book. No further proof was required.

v. That as a responsible gazetted officer, the appellant ought to have exercised more caution and therefore, could not wash his hands off by stating he was dependent on his subordinate staff, since he had additional charge of other farms also. He ought to have kept the cash book and maintained it properly and made timely entries. The appellant clearly removed the cash book and did not return the same for the period from 10.02.1992 to 11.03.1994.

12. Aggrieved by the judgment of conviction and sentence passed by the Courts below, the appellant has knocked on the doors of this Court by preferring the present appeals.

13. We have heard Sri Adolf Mathew, learned counsel for the appellant-accused and Sri C.K. Sasi, learned counsel for the respondent-State and perused the material on record.

Submissions of the parties:

14. Learned counsel for the appellant herein-accused at the outset submitted that the High Court was not right in confirming the judgment of conviction and sentence passed by the Trial Court and the impugned judgments suffer from legal as well as factual infirmities and the findings therein are perverse and are liable to be set-aside, and the appellant is liable to be acquitted. The submissions of the learned counsel for accused are summarised as under:

14.1 That the accused is a public servant. Section 197(1) of the CrPC requires sanction of the State Government before taking cognizance of offence against public servants such as the accused.

14.2 That the entire prosecution proceedings in the present cases are barred by Section 300(1) of the CrPC which incorporates the principle of double jeopardy. The accused was already prosecuted in the year 1999 for the charges of misappropriating public funds entrusted to him, when C.C. No.12 to 14/1999 were filed against him. The core allegation in all the five cases is one and the same i.e., making false entries in the cash book and misappropriating money.

14.3 That the charges in the first three cases were framed on 17.08.1999 which is much after the audit and on the said day, the prosecution was very well aware of the alleged misappropriation in respect of the present case. Therefore, the allegations/offences in the instant cases might have been framed at the previous trial and the accused could have been tried for the present allegations in the said cases itself.

14.4 That *vide* judgment and order dated 27.02.2001, the Trial Court acquitted the appellant from all the charges levelled against him in C.C. No.13/1999 i.e., acquitted of all the charges levelled against during the period from 15.12.1992 to 31.03.1993. However, the appellant herein was convicted of the charges in C.C. No.12 and 14 of 1999. The petitioner herein was dismissed from service on 02.05.2001. The FIR

in the present cases was filed on 03.12.2001 after the appellant herein was dismissed from the service and the judgment of the Trial Court was passed. The allegations/ offences in the present two cases could have been framed at the previous trial and the appellant herein could have been tried for the same along with the trial of the earlier three cases.

14.5 If the accused was to be tried again for the present offences, previous consent of the State Government is necessary as is mandated under sub-section (2) of Section 300 of the CrPC.

14.6 The charges framed in the present case pertain to several acts of misappropriation and falsification of accounts. The same were allegedly committed in the course of same transaction/same series of acts. For a series of acts to be regarded as the same transaction, they must be connected. That the different acts of misappropriation alleged against the accused are interlinked, connected with proximity of time and place and community of purpose and design.

14.7 During the period in question, the appellant herein held an additional charge of some other farms and therefore had to depend heavily on his subordinates at the office.

14.8 The conviction of the appellant herein under Section 409 of the IPC has no legal basis since the prosecution could not prove the most vital ingredient of the said offence, namely, entrustment of goods or dominion over property.

14.9 The conviction under Section 13(1)(c) of the Act is not made out since the prosecution failed to prove that the property was entrusted to him or was under his control, and that the same was fraudulently or dishonestly misappropriated by him.

15. *Per contra*, learned counsel appearing on behalf of the respondent-State supported the impugned judgment and order passed by the High Court and judgment of the Trial Court and contended that the Courts below have rightly perceived and assessed the evidence on record. The following submissions were also made:

15.1 That the accused, while working as an Agricultural Officer at the State Seed Farm, Perambra from 31.05.1991 to 31.05.1994, in the capacity of a public servant, misappropriated an amount of Rs.20,035/- during the period from 27.04.1992 to 25.08.1992 and an amount of Rs.58,671/- during the period from 01.03.1993 to 12.04.1994.

15.2 The appellant conducted auction of coconuts and half-filled grains and collected one-third of the auction amount from PW- 5 and PW-6 on the date of auction itself. After confirmation, two- thirds of the auction amount was also collected and the receipts were issued, but the said two-thirds amount was not remitted to the Sub-Treasury.

15.3 The Agricultural Officer is the custodian of the challan receipts, cash, cash books, etc. and during the said period when the funds were misappropriated, the appellant herein was the Agricultural Officer at the State Seed Farm, Perambra. The certified copy of the Attendance Register marked at Ext.P-22 proves the same.

16. Having heard learned counsel appearing for the respective parties, the following points would arise for our consideration:

(a) Whether the High Court was justified in confirming the judgment of conviction and sentence of Trial Court?

(b) Whether the judgment of the High Court calls for any interference or modification by this Court?

(c) What order?

Discussion:

17. The learned counsel for the appellant has contended that there is a bar to the prosecution in the two cases namely - since the appellant herein has already been prosecuted as well as punished for the same offences, in same set of facts. That prosecuting the appellant herein in the present two cases would amount to double jeopardy. In India, protection against double jeopardy is a fundamental right enshrined under Article 20(2) of the Constitution of India. Section 300 of the CrPC is also based on the said principle.

18. Before proceeding further, it is pertinent to understand the concept of double jeopardy. As per the Black's Law Dictionary, 9th

Edition, 'double jeopardy' is defined as "being prosecuted or sentenced twice, for substantially the same offence". A

19. The word 'jeopardy' is used to designate the danger of conviction and punishment which an accused in a criminal action incurs. 'Jeopardy' implies an exposure to a lawful conviction for an offence for which a person has already been acquitted or convicted. The terms 'double jeopardy', 'former jeopardy', 'jeopardy for life or limb', 'jeopardy for the same offence', 'twice put in jeopardy of punishment' and other similar expressions used in various Constitutions and statutes are to be construed substantially, to the same effect. In other words, double jeopardy is used to denote the protection to an accused, that he has had a fair trial for the same offence, wherein fair trial means trial according to law and established legal procedure. B C

20. Part III of the Constitution of India deals with Fundamental Rights. Articles 20 to 22 deal with personal liberty of citizens and others. Article 20(2) expressly provides that no person shall be prosecuted or punished for the same offence, more than once. The protection against double jeopardy is also supplemented by statutory provisions contained in Section 300 of the CrPC, Section 40 of the Indian Evidence Act, 1872, Section 71 of the IPC and Section 26 of the General Clauses Act, 1897. Article 20(2) of the Constitution of India reads as under: D

"**20. Protection in respect of conviction for offences**.— E

(1) xxx xxx xxx

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) xxx xxx xxx " F

21. It would also be useful to discuss on the import of Section 300 of the CrPC. The said provision has been extracted hereinunder for ready reference:

"Section 300 CrPC- Person once convicted or acquitted not to be tried for same offence. G

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same H

A offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

B (2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

C (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.
D

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
E

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.
F

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

G Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

22. Section 300 of the CrPC embodies the general rule which affirms the validity of the pleas of *autrefois acquit (previously acquitted)* and *autrefois convict (previously convicted)*. Sub-section
H

(1) of Section 300 lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section.

23. Section 300 of the CrPC is based on the maxim *nemo deber bis vexari, si costest curiae quod sit pro una et eadem causa* which means that a person cannot be tried a second time for an offence which is involved in an offence with which he was previously charged. As per the decision of this Court in ***Vijayalakshmi vs. Vasudevan (1994) 4 SCC 656*** in order to bar the trial of any person already tried, it must be shown that:

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

(ii) he has been convicted or acquitted at the trial, and

(iii) such conviction or acquittal is in force.

24. The whole basis for this provision is that the first trial should have been before court of competent jurisdiction. There must have been a trial of the accused, that is to say, that there should have been a hearing and determination or adjudication of the case on merits. Where the accused has not been tried and as such convicted or acquitted, Section 300(1) shall not be applicable.

25. Section 300 of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, *vide* ***Thakur Ram vs. State of Bihar AIR 1966 SC 911***.

Article 20 of the Constitution:

26. Under clause (2) of Article 20, no person shall be prosecuted and punished for the same offence more than once. Article 20(2) of the Constitution of India incorporates within its scope, the plea of *autrefois* convict, meaning, previously convicted as known to British jurisprudence, or the plea of double jeopardy known to the American Constitution. However, the said concepts are circumscribed in Article 20(2) which provides that there should be not only a prosecution but also punishment in the first instance in order to operate as a bar to a second prosecution

A and punishment for the same offence. On a plain reading the of sub clause (2) of Article 20, it is clear that the said provision bars a second prosecution only where the accused has been both ***prosecuted*** *and* ***punished*** for the same offence previously *vide* ***S.A. Venkataraman vs. Union of India AIR 1954 SC 375 ("S.A. Venkataraman").*** But this clause does not bar subsequent trial if the ingredients of the offences in the previous and subsequent trials are distinct. In ***Maqbool Hussain vs. State of Bombay AIR 1953 SC 325***, this Court has held that clause (2) is not applicable unless the person has been both prosecuted and punished.

C 27. There are three conditions for the application of the clause. *Firstly*, there must have been previous proceeding before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive. *Secondly*, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in D relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. *Thirdly*, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts. In other words, the clause has no application when the subsequent proceeding is a mere continuation of the previous E proceeding, for example, where an appeal arises out of such acquittal or conviction. In order to sustain a plea of double jeopardy, it must be shown that all the aforesaid conditions of this clause are satisfied, *vide* ***S.A. Venkataraman.***

F 28. What is to be noted here is that both these provisions, i.e., Section 300 of the CrPC and Article 20 of the Constitution of India use the term 'same offence'.

Before dealing with the issue at hand, it is necessary to understand what the term 'same offence' means and includes. The term 'same offence' in simple language means, where the offences are not distinct G and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India, has no application, though the offences may have some overlapping features. The crucial requirement of Article 20 is that the offences are the same and identical in all respects, H *vide* ***State (N.C.T. of Delhi) vs. Navjot Sandhu (2005) 11 SCC 600.***

29. The concept of double jeopardy can also be understood in terms of Article 21 of the Constitution of India which states that no person shall be deprived of his life or personal liberty except according to procedure established by law. 'Life' under Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider connotation; it includes the right to live with human dignity. In the celebrated judgment in the case of ***Maneka Gandhi vs. Union of India 1978 AIR 597***, this Court gave a new dimension to Article 21, wherein it stated that the right to live includes within its ambit the right to live with dignity. Under the umbrella of Article 21, various rights like right to free legal aid, right to speedy trial, right to fair trial, etc. have been included. Similarly, protection against double jeopardy is also included under the scope of Article 21 of the Constitution of India. Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity.

30. Double jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence.

31. Before this Court, the appellant has vehemently contended that he was employed as the Agricultural Officer, State Seed Farm, Perambra during the period from 31.05.1991 to 31.05.1994. He also held an additional charge of Agricultural Officer, Krishi Bhavan, Perambra for the period from 20.10.1993 to 27.10.1994. The appellant had to rely on his subordinate for performing various office works. The files including stock registers, etc. were handled by the subordinate staff. The cash was received by the Agricultural Assistant during the absence of Agricultural Officer. The appellant herein referred to the testimonies of PW-5 who was a resident of Ulliyeri engaged in coconut business, PW-11 who was the Agricultural Officer at Thayanna, PW-12 who was the

A Accounts Officer, Principal Agricultural Officer, Kozhikode and PW-13 who was the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Northern Range, Kozhikode.

32. It will be relevant to refer to the testimonies of these witnesses relied upon by the appellant herein. PW-5 was a resident of Ulliyeri and B engaged in coconut business for ten years. He stated that he had purchased coconuts from the Perambra Seed Farm many times during 1992-1993. He stated that the appellant who was the Agricultural Officer then, handed over to him, a carbon copy of the receipt for payment of Rs.8,724/- on 28.05.1992. That one-third amount was deposited on the date of auction and remaining two-thirds amount was paid later and the C coconuts were taken by him. This witness stated that he did not remember if the receipt for payment of two-thirds of the amount was given or not. In his cross-examination, the witness stated that he was examined after eight years from the date of incident and that there were other staff in the said office. That he could not exactly say as to whom he handed D over the amount and also that he did not insist on the receipts and does not remember if the receipts were given or not.

33. PW-11 was the Agricultural Officer at Thayanna from 21.12.1992 to 02.04.1996. He had additional charge as Agricultural Officer of State Deed Farm, Permabra. In his testimony, he stated that when he E took charge in the presence of Joint Director of Agriculture and Deputy Director, he did not take over the movable and immovable properties of the said office. That the documents were not taken over since there were no documents in the office and that he did not ask about the cash and the cash book. In his cross examination, this witness stated that when he assumed charge, it was the office staff who briefed him on the F matters in the said office. As per this witness, there were a lot of cash transactions in the Seed Farm and in the absence of the officers, the staff would handle the matters of cash. The Agricultural Officer would have field work too, and would also go out for periodical conferences.

34. PW-12 was the Accounts Officer of the Principal Agriculture G Office, from 24.01.1996 to 31.08.1998. In his testimony, he stated that during that period, he conducted re-audit of the Seed Farm from for the period from 01.04.1992 to 31.12.1994. The re-audit was done since there were objections that the details of the income of the farm were not checked in detail. The Agricultural Officer for the period from 01.04.1992 H to 03.06.1994 was T.P. Gopalakrishnan, the appellant herein; from

04.06.1994 to 06.06.1994 was Mini; and from 07.06.1994 was Vinod Kumar. Since there were irregularities in the previous audit, re-audit was done. In his cross-examination, PW-12 stated that he had not seen the departmental audit that was firstly conducted. During his audit period, the accused was under suspension. In his cross- examination, this witness stated that he did not know the reasons for non-availability of the cash book and other documents in the office.

35. PW-13 is the Deputy Superintendent of Vigilance and Anti-Corruption Bureau, Kozhikode who registered the FIR in the present case on 05.12.2001 and seized the documents. This witness carried out the investigation and laid the charges against the accused. The certified copies of the documents showing cases pending against the accused in the present case were also recovered. In his cross examination, PW-13 stated that he came to know of the previous three cases where the accused was named; he convicted in two cases and acquitted in one case, and he informed the higher authorities of the same.

36. On perusal of the testimonies of the aforementioned witnesses, what emerges is that there are vital discrepancies and inconsistencies in the testimonies of the prosecution witnesses. PW-5 in his testimony stated that he gave the amount to the appellant herein whereas in his cross-examination, he stated that he does not know to whom he handed over the money. As per the statement made by PW-11 in his cross examination, the staff of the Seed Farm used to handle the matters in absence of the officers therein. The testimony of this witness supports the case of the appellant herein since the appellant has also contended the same. PW-12 in his cross, examination has stated that he did not know the reasons as to why the cash book and other documents were not in office. PW-12 has no where stated that the same were in the custody of the appellant herein.

37. It is further the case of the appellant herein that the previous three cases, C.C. No.12, 13 and 14 of 1999 pertained to the period from 28.03.1994 to 02.04.1994, 15.12.1992 to 31.03.1993 and 05.03.1994 to 08.03.1994, respectively. Admittedly, the charge in C.C. No.24 of 2003 is for misappropriation of an amount of Rs.20,035/- during the period from 27.04.1992 to 25.08.1992; the charge in C.C. No.25 of 2003 is for an amount of Rs.58,671/-, allegedly misappropriated during the period from 01.03.1993 to 12.04.1994. It is appellant's case that he has already faced trial in the previous three cases and the present two cases pertain

A to the same period. Section 300 of the CrPC places a bar wherein, a person who has already been tried by a Court of competent jurisdiction for an offence arising out of the same facts, and has either been acquitted or convicted of such offence cannot be tried again for the same offence as well as on the same facts for any other offence as long as such
B acquittal or conviction remains in force. The appellant herein was earlier charged for offences under Section 13(1)(c) read with Section 13(2) of the Act and Sections 409 and 477A of the IPC and was convicted in two cases and acquitted in one case. The present two cases arise out of the same set of facts and the same transaction as that in the previous three cases wherein the appellant was tried and convicted/acquitted
C respectively. As already discussed above, for an offence to be considered as the 'same offence' as the last offence, it is necessary to show that the offences are not distinct and the ingredients of the offences are identical. The previous charge as well as the present charge is for the same period of misappropriation. The matter of offences in all the previous
D three cases and the present case are the same and are said to be committed in the course of same transaction while holding the one and same post of Agricultural Officer by the appellant.

38. The Trial Court has erred in holding that the facts of previous case and misappropriation committed by the accused are not the same
E as the facts relevant to present case. The Trial Court has held that in the present case, the allegation is that after conducting the auction of coconuts and half filled grains, two-thirds of the amount collected from the successful bidder was not remitted to the treasury, however, in the earlier cases, the allegations were that the accused misappropriated some
F amount to be paid to the proprietor of Agricultural Marketing Corporation, Kozhikode, Kerala State Coir marketing Corporation, Kozhikode from the State Seed Farm, Perambra by forging and falsifying records. It is the admitted case of the prosecution that the present cases were based on the re-audit conducted by PW-9- the Assistant Sub-Inspector, Vigilance and Anti-Corruption Bureau, Kozhikode. The re-audit was done for the
G period from 01.04.1992 to 31.12.1994. The charges in the present case are for relevant period from 27.04.1992 to 25.08.1992 and 01.03.1993 to 12.04.1994 which time period is same as in the previous three cases, that is, 28.03.1994 to 02.04.1994, 15.12.1992 to 31.03.1993 and 05.03.1994 to 08.03.1994 respectively. Thus, it can be said that the present cases
H pertain to the same set of facts and are in respect of same offences, for

the same period, committed in the same capacity as the previous three cases wherein the appellant herein was already prosecuted in the year 1999. The core allegation in all these five cases pertains to misappropriation by making false entries in the cash book. The allegation of the prosecution that two-thirds of the auction amount was not remitted to the treasury would be covered under the allegations of misappropriation of funds, that the appellant has already been prosecuted for in the year 1999. The appellant is right in contending that the charge in the first three cases were framed on 17.08.1999 which is much after the audit and the prosecution would have been well aware of the misappropriation in respect of the present cases on 17.08.1999.

39. The learned counsel for the appellant has also brought to the attention of this Court, sub-section (2) of Section 300 of the CrPC which states that a person acquitted or convicted of any offence may be tried thereafter, but with the consent of the State Government, for any distinct offence for which a separate charge might have been framed against him under sub-section (1) of Section 220 of the CrPC. It has already been observed hereinabove that the allegations/offences in the instant cases are the same as the allegations/offences in the previous three cases, therefore as per the mandate under Section 300(2) of the CrPC, the consent of the State Government is necessary. Even if it is assumed for the sake of argument that the allegations are different in present cases from those in the previous cases, the prosecution has failed to obtain the prior consent of the State Government necessary to prosecute the accused-appellant and therefore the trial in the instant case is unlawful.

40. It would not be wrong to say that the charges framed against the accused reveal that there were several acts of misappropriation and falsification of accounts however the same were committed in the same transaction as the one for which he was prosecuted in the year 1999. The series of acts alleged against him are so connected to one another.

41. Sub-section (2) of Section 300 of the CrPC states that when the charge of the second trial is for a distinct offence, the trial is not barred. This means that if a person is acquitted or convicted of any offence, he may be tried for a distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220 of the CrPC but the same is subject to a condition precedent being, that the consent of the State Government is sought before such a person could be tried.

A Applying the said provision to the present case, it is noted that earlier the petitioner was tried in C.C. No.12 of 1999, C.C. No. 13 of 1999 and C.C. No.14 of 1999 for the offences under Section 13(1)(c) read with Section 13(2) of the Act as well as under Sections 409 and 477A of the IPC. In C.C. No. 24 of 2003 and C.C. No. 25 of 2003, the B appellant is being tried once again for the offences under Section 13(1)(c) read with Section 13(2) of the Act and Section 409 of the IPC for the same period. There is no material on record to demonstrate that

C.C. No.24 of 2003 and C.C. No.25 of 2003 have been initiated pursuant to the consent of the State Government. It is also not brought C on record that the C.C. No.24 of 2003 and C.C. No.25 of 2003 is for any distinct offence for which a separate charge had been made against the appellant and the earlier trials.

(a) Having re-appreciated the evidence of the witnesses and on considering the contentions of the rival parties, we find D that the High Court was not justified in affirming the judgment of conviction and sentence passed by the Trial Court.

(b) In view of the aforesaid discussion, we find that the Trial Court as well as the High Court were not right in convicting E and sentencing the appellant herein and therefore, the impugned judgments are liable to be set aside.

42. In the circumstances, we find that the initiation of C.C. No.24 of 2003 and C.C. No. 25 of 2003 are not in accordance with law and hence, the said proceedings are quashed. Consequently, the judgment of F the Special Judge, Kozikhode in C.C. No.24 of 2003 and C.C. No.25 of 2003 and of the High Court of Kerala at Ernakulam in Criminal Appeal Nos.947 and 948 of 2009 are set aside.

The appeals are allowed in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

G No costs.

Devika Gujral Appeals allowed.
(Assisted by : Preetam Bharti, LCRA)