Reserved On: 01.10.2024 vs State Of Himachal Pradesh on 25 October, 2024

2024:HHC:10307 IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MMO No. 1309 of 2023 Reserved on: 01.10.2024 Date of Decision: 25.10.2024.

Kulwant Singh ...Peti

Versus

State of Himachal Pradesh ...Resp

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Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes.

For the Petitioner : Mr. Aditya Thakur, Advocate. For the Respondent : Mr. Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge The petitioner has filed the present petition for quashing the proceedings pending against him before learned Additional Chief Judicial Magistrate Kasauli in case No.151/2 of 2020 titled State of H.P. versus Kulwant Singh.

2. Briefly stated, the facts giving rise to the present petition are that the police received an intimation on 18.09.2020 that one person had entered the house in the village, who was Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2024:HHC:10307 caught by local people. The people informed the police and the police reached the spot. The victim made a statement that a stranger used to peep through the windows and doors of the houses in the village. He had cut the salwar of the victim's sister some days before the incident. He had also attempted to enter the house of another person. However, the inmates woke up and the stranger ran away taking the advantage of darkness. On the intervening night of the 17th and 18th of September, 2020 at about 1:15 am, the victim heard the noise of something falling. She did not pay any attention to it believing that it was the cat. However, she found that someone was pulling her salwar. She woke up. The person concealed himself beneath the bed. The victim shouted. The stranger crawled towards the other room. The villagers caught that person. The police registered the FIR and conducted the investigation. The police recovered a blade with which the salwar was cut. A bent Iron rod was also recovered. The police arrested the petitioner on the spot. The police filed two charge sheets against the petitioner: one for involving the victim's minor sister for committing the offences punishable under sections 452, 354, 354(B), 376 read with Section 511 of IPC and Sections 8 and 18 of the Protection of Children from Sexual Offences Act (in short 2024:HHC:10307 'POCSO Act') and the other involving the victim for committing the offences punishable under Sections 452, 354 and 354B of IPC.

3. The charge sheet filed against the petitioner for the offence involving the POCSO Act resulted in his conviction vide judgment dated 18.08.2022.

4. Being aggrieved from filing the two charge sheets, the petitioner has filed the present petition asserting that the Police have not registered two FIRs, but only one FIR. The police filed two charge sheets: one before the Court of learned Additional CJM, Kasauli and another before the Court of learned Special Judge Solan. The petitioner has been convicted by the learned Special Judge, POCSO for the commission of offences punishable under Section 354, 354B, 452 of IPC and Section 8 of the POCSO Act. The petitioner will have to face the trial in the case pending before the learned ACJM Kasauli for the same incident. The evidence in the two charge sheets is identical. The continuation of the criminal case against the petitioner before learned ACJM would amount to double jeopardy. The findings recorded by the learned Special Judge would prejudice the learned ACJM. The petitioner could have been tried for the offence against the victim by the learned Special 2024:HHC:10307 Judge in view of Section 28 of the POCSO Act. The learned ACJM should have committed the case to the learned Sessions Judge and the continuation of the proceedings before learned Magistrates are not justified. There is a possibility of contradictory findings.

Therefore, it was prayed that the present petition be allowed and the proceedings pending before learned ACJM be quashed.

5. The petition is opposed by filing a reply making preliminary submissions regarding lack of maintainability and locus standi, and the petitioner having not come to the court with clean hands. The contents of the petition were denied on merits.

However, it was admitted that only one FIR was registered, which resulted in the filing of two charge sheets before two different Courts. Two different offences were committed by the petitioner:

> one with the minor and the other with the victim. Therefore, separate charge sheets were required to be filed. There is no infirmity in the procedure adopted by the prosecution. It was prayed that the present petition be dismissed.

6. I have heard Mr. Aditya Thakur, learned counsel for the petitioner and Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

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7. Mr Aditya Thakur, learned counsel for the petitioner submitted that one FIR cannot result in the filing of the two charge sheets. The petitioner has already been tried regarding the incident by learned Special Judge POCSO and his trial by learned ACJM amounts to double jeopardy. There is a possibility of conflicting findings. Both the charge sheets should have been filed before the learned Special Judge who was competent to try them as per Section 28 of the POCSO Act. Therefore, he prayed that the present petition be allowed and the charge sheet filed before the learned ACJM be quashed.

8. Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State submitted that charge sheets pertain to two different offences: one against the victim and the other against the minor sister of the victim. The petitioner is to be tried separately for these two offences. Therefore, he prayed that the present petition be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The law regarding the exercise of jurisdiction under Section 482 of Cr.P.C. was considered by the Hon'ble Supreme 2024:HHC:10307 Court in A.M. Mohan v. State, 2024 SCC OnLine SC 339, wherein it was observed: -

> "9. The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of Indian Oil Corporation v. NEPC India Limited (2006) 6 SCC 736: 2006 INSC 452 after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:
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> "12. The principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few--Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194: 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164: 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259: 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269: 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168: 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122: 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:
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> (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

2024:HHC:10307 For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the offence.

(v.) A given set of facts may make out: (a) purely a civil wrong; (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground 2024:HHC:10307 to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

11. Similar is the judgment in Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643, wherein it was held: -

"12. We may gainfully refer to the following observations of this Court in the case of State of Haryana v. Bhajan Lal1992 Supp (1) SCC 335: 1990 INSC 363:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

2024:HHC:10307 (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or 2024:HHC:10307 genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

12. The present petition has to be considered as per the parameters laid down by the Hon'ble Supreme Court.

13. Mr. Aditya Thakur, learned counsel for the petitioner submitted that as two FIRs cannot be registered regarding the same incident, therefore, it is not permissible to file two charge sheets against one person. He relied upon the judgment in T.T. Antony v. State of Kerala, (2001) 6 SCC 181 in support of his submission. He further submitted that cross cases are to be tried by the same Court, therefore, the two cases should have been tried by the Special Court (POCSO). He relied upon the judgment of the Hon'ble Supreme Court in Sudhir v. State of M.P., (2001) 2 SCC

688. He submitted that the finding of facts recorded by the learned Special Judge is binding and he relied upon the judgment of the Hon'ble Supreme Court in Amritlal Ratilal Mehta v. State of Gujarat, (1980) 1 SCC 121.

14. Before adverting to the judgments, it is necessary to recapitulate the principle of ratio decidendi. It was laid down by the Hon'ble Supreme Court in Secunderabad Club v. CIT, (2023) 457 2024:HHC:10307 ITR 263: 2023 SCC OnLine SC 1004, that a decision is an authority for what it decides and not for everything, which seems to logically flow from it.

> "13. It is a settled position of law that only the ratio decidendi of a judgment is binding as a precedent. In B. Shama Rao v. Union Territory of Pondicherry, AIR 1967 SC 1480, it has been observed that a decision is binding not because of its conclusion but with regard to its ratio and the principle laid down therein. In this context, reference could also be made to Quinn v. Leathem [1901] AC 495 (HL), wherein it was observed that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found. In other words, a case is only an authority for what it actually decides.
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> 14. Reliance could also be placed on the dissenting judgment of A. P. Sen, J. in Dalbir Singh v. State of Punjab (1979) 3 SCC 745, wherein his Lordship observed that a decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less "law declared" within the meaning of article 141 of the Constitution so as to bind all courts within the territory of India. According to the well- settled theory of precedents, every decision contains three basic ingredients:
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> (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct or perceptible facts;
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> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
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> (iii) judgment based on the combined effect of (i) and (ii) above.

2024:HHC:10307 For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision. This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason, it is important to analyse a decision and isolate from it the ratio decidendi.

15. In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes [1959] AC 743, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. A judgment is not binding (except directly on the parties to the lis themselves), nor are the findings of fact. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case.

16. The legal principles guiding the decision in a case is the basis for a binding precedent for a subsequent case, apart from being a decision which binds the parties to the case. Thus, the principle underlying the decision would be binding as a precedent for a subsequent case. Therefore, while applying a decision to a later case, the court dealing with it has to carefully ascertain the principle laid down in the previous decision. A decision in a case takes its flavour from the facts of the case and the question of law involved and decided. However, a decision which is not express and is neither founded on any reason nor proceeds on a consideration of the issue cannot be deemed to be law declared, so as to have a binding effect as is contemplated under article 141, vide State of Uttar Pradesh v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139. Article 141 of the Constitution 2024:HHC:10307 states that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. All courts in India, therefore, are bound to follow the decisions of the Supreme Court. This principle is an aspect of judicial discipline.

17. If a decision is on the basis of reasons stated in the decision or judgment, only the ratio decidendi is binding. The ratio or the basis of reasons and principles underlying a decision is distinct from the ultimate relief granted or manner of disposal adopted in a given case. It is the ratio decidendi which forms a precedent and not the final order in the judgment, vide Sanjay Singh v. Uttar Pradesh Public Service Commission (2007) 3 SCC 720. Therefore, the decision applicable only to the facts of the case cannot be treated as a binding precedent.

18. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to individuals as to the consequences of transactions forming part of daily affairs. Thus, what is binding in terms of Article 141 of the Constitution is the ratio of the judgment and as already noted, the ratio decidendi of a judgment is the reason assigned in support of the conclusion. The reasoning of a judgment can be discerned only upon reading of a judgment in its entirety and the same has to be culled out thereafter. The ratio of the case has to be deduced from the facts involved in the case and the particular provision(s) of law which the court has applied or interpreted and the decision has to be read in the context of the particular statutory provisions involved in the matter. Thus, an order made merely to dispose of the case cannot have the value or effect of a binding precedent.

19. What is binding, therefore, is the principle underlying a decision which must be discerned in the context of the question(s) involved in that case from which the decision takes its colour. In a subsequent case, a decision cannot be relied upon in support of a proposition that it did not decide.

2024:HHC:10307 Therefore, the context or the question, while considering which, a judgment has been rendered assumes significance.

20. As against the ratio decidendi of a judgment, an obiter dictum is an observation by a court on a legal question which may not be necessary for the decision pronounced by the court. However, the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the court in a case. Although the obiter dictum of the Supreme Court is binding on all courts, it has only persuasive authority as far as the Supreme Court itself is concerned.

21. In the context of understanding a judgment, it is well settled that the words used in a judgment are not to be interpreted as those of a statute. This is because the words used in a judgment should be rendered and understood contextually and are not intended to be taken literally. Further, a decision is not an authority for what can be read into it by implication or by assigning an assumed intention of the judges and inferring from it a proposition of law which the judges have not specifically or expressly laid down in the pronouncement. In other words, the decision is an authority for what it specifically decides and not what can logically be deduced therefrom.

22. Further, the precedential value of an order of the Supreme Court which is not preceded by a detailed judgment would be lacking inasmuch as an issue would not have been categorically dealt with. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from the various observations made therein.

23. Another important principle to be borne in mind is that a declaration of the law by the Supreme Court can be said to have been made only when it is contained in a speaking order, either expressly or by necessary implication and not by dismissal in limine. In the words of Mukherji, C. J., in Delhi Transport Corporation v. D. T. C. Mazdoor Congress, AIR 1991 SC 101, the expression "declared" is wider than the 2024:HHC:10307 words "found or made". The latter expression involves the process, while the former expresses the result."

15. Thus, the judgment can be read only in the context of the facts of that case and not what could have been decided by the Court on the hypothetical facts. The present case does not involve the registration of two FIRs; hence, the judgment in T.T. Anthony (supra) does not apply to the present case. Similarly, the present case does not involve the cross cases; hence, the judgment in Sudhir (supra) does not apply to the present case.

16. In Amritlal Ratilal Mehta (supra), the Hon'ble Supreme Court was concerned with the findings recorded at one stage of the proceedings and not in different cases; hence, this judgment will not assist the petitioner.

17. Section 218 of the Code of Criminal Procedure provides that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. Thus, the normal Rule as per Section 218 of Cr.P.C. is that an accused has to be tried separately for every offence which has been committed by him. There are exceptions that the

offences of the same kind within one year may be charged together and if one series of the acts form the same transaction, these can also be 2024:HHC:10307 charged together. In the present case, the offence involving the victim and her minor sister were two distinct offences, which were committed on two different dates and these are to be tried together as per the Section 218 of the Cr.P.C.

18. Section 219 of the Code of Criminal Procedure empowers the Court to conduct the trial of three offences of the same kind but this is an option as is apparent from the word 'may'.

Further, even if the offences involving the victim and her sister were of the same kind, they were to be tried by two different Courts: one by the Special Judge and the other by learned ACJM.

Therefore, if the prosecution had decided to file the separate charge sheets before two different Courts, it cannot be said that they had violated the spirit of Section 218 of Cr.P.C.

19. It was submitted that the findings recorded by the learned Special Judge, POCSO would be binding upon learned ACJM. This submission cannot be accepted. Section 43 of the Indian Evidence Act provides that the judgments, which do not fall within the purview of Sections 40, 41 and 42 are inadmissible. The judgment of the learned Special Judge does not fall within the purview of Section 40 to 42 of the Indian Evidence Act as it does 2024:HHC:10307 not bar the second trial, it was not given by matrimonial, admiralty or insolvency Court and is not related to the matter of public nature relevant to the inquiry. Therefore, the judgment passed by learned Special Judge, Solan cannot be proved before learned ACJM and the apprehension that learned ACJM would be influenced by the observations made by learned Special Judge, POCSO is without any basis.

20. It was submitted that there are identical sets of witnesses, and there is a possibility of recording the contradictory finding by two different Courts. This submission is not acceptable.

Two different Courts are dealing with two different crimes, one committed against the victim's sister on a different day and the other committed against the victim. Even if it is held by learned ACJM that the petitioner had not committed the crime against the victim, it will not dilute the effect of the crime against the victim's sister because it is logically possible that two different persons can commit a crime on two different dates against two different persons and there is nothing contradictory in it. Therefore, the submission that the possibility of recording the contradictory findings cannot be ruled out is not acceptable.

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21. It was submitted that the trial before the learned ACJM amounts to double jeopardy and violated Section 300 of Cr.P.C. This submission cannot be accepted. The trial conducted by learned Special Judge, POCSO related to the crime against the victim's sister committed on an earlier date, whereas the trial before learned ACJM is regarding the offence committed against the victim on a subsequent date. These are two distinct offences and it cannot be said that the trial of one offence will have any impact on the second. It was laid down by the Hon'ble Supreme Court in State of Jharkhand v. Lalu Prasad Yadav, (2017) 8 SCC 1: (2017) 3 SCC (Cri) 569: 2017 SCC OnLine SC 551 that when different

amounts were misappropriated from different treasuries by producing different vouchers the offences were different and Section 300 of CrPC will not apply to such offences. It was observed at page 29:

> "40. In the instant case, offences are not the same offence. There can be different trials for the same offence if tried under two different enactments altogether and comprised of two different offences under different Acts/statutes without violation of the provisions of Article 20(2) or Section 300 CrPC. This Court has decided the issue in various cases:
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> 40.1. In Kharkan v. State of U.P. [Kharkan v. State of U.P., (1964) 4 SCR 673: AIR 1965 SC 83: (1965) 1 Cri LJ 116] this Court has laid down thus: (AIR p. 86, para 10) "10. ... Even if the two incidents could be viewed as connected so as to form parts of one transaction it is 2024:HHC:10307 obvious that the offences were distinct and required different charges. The assault on Tikam in fulfilment of the common object of the unlawful assembly was over when the unlawful assembly proceeded to the house of Tikam to loot it. The new common object to beat Puran was formed at a time when the common object in respect of Tikam had been fully worked out and even if the two incidents could be taken to be connected by unity of time and place (which they were not), the offences were distinct and required separate charges. The learned Sessions Judge was right in breaking up the single charge framed by the Magistrate and ordering separate trials. In this view, the prior acquittal cannot create a bar in respect of the conviction herein reached."

40.2. In Maqbool Hussain v. State of Bombay [Maqbool Hussain v. State of Bombay, 1953 SCR 730 : (1953) 1 SCC 736:

> AIR 1953 SC 325: 1953 Cri LJ 1432] this Court has laid down thus:
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> "The appellant had smuggled gold into India and was booked under Section 167(8) of the Sea Customs Act, 1878 and subsequently when no one came to claim the gold, he was charged under Section 8 of FERA. He challenged this as a violation of Article 20(2). The Court analysed the scope of Article 20(2) and held that the "prosecution"

must be before a court of law or judicial tribunal. The plea of double jeopardy was discarded as it was held that the Customs Authorities were not a judicial tribunal or court. For double jeopardy, the test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials."

40.3. In State of Bombay v. S.L. Apte [State of Bombay v. S.L. Apte, (1961) 3 SCR 107: AIR 1961 SC 578 : (1961) 1 Cri LJ 725] a Constitution Bench of this Court has laid down as to the issue regarding conviction under Section 409 IPC and Section 105 of the Insurance Act. The submission of double 2024:HHC:10307 jeopardy was repelled with respect to offences under Section 11 IPC and Section

105 of the Insurance Act. It was held that the offences under both the Acts are distinct due to their ingredients. So as to constitute double jeopardy two offences should be identical.

40.4. In T.S. Baliah v. ITO [T.S. Baliah v. ITO, (1969) 3 SCR 65:

> AIR 1969 SC 701], the appellant was sought to be prosecuted under Section 177 IPC and Section 52 of the Income Tax Act, 1922 for furnishing wrong information in his tax returns. On consideration of Section 26 of the General Clauses Act, this Court held that the provision did not provide a bar on trial and conviction for the same offence under more than one enactment in case the ingredients of offences are distinct. It only barred double punishment and not a double conviction. 40.5. In Collector of Customs v. Vasantraj Bhagwanji Bhatia [Collector of Customs v. Vasantraj Bhagwanji Bhatia, (1988) 3 SCC 467: 1988 SCC (Cri) 679] the question arose whether acquittal of an accused charged with having committed the offence punishable under Section 111 read with Section 135 of the Customs Act, 1969 created a legal bar to the accused, subsequently being prosecuted under Section 85 of the Gold (Control) Act, 1968. It was held that the ingredients of the offence under each of the enactments were quite different. The Court applied the test developed in Maqbool Hussain [Maqbool Hussain v. State of Bombay, 1953 SCR 730: (1953) 1 SCC 736: AIR 1953 SC 325: 1953 Cri LJ 1432] and held the two offences to be different in scope and contents of their ingredients. The Court also relied upon S.L. Apte [State of Bombay v. S.L. Apte, (1961) 3 SCR 107: AIR 1961 SC 578: (1961) 1 Cri LJ 725] decision and observed that what is necessary is to analyse the ingredients of the two offences and not the allegations made in two complaints. No doubt about it that there can be separate offences but the ingredients would remain the same under penal provision but that would also not make out a case of violating the provisions of Article 20(2) of the Constitution and Section 300 CrPC.

2024:HHC:10307 40.6. In case ingredients of the offences to be tried separately arise out of the same offence, there can be separate trials under two enactments, if the ingredients constituting two offences are different under different Acts, there is no bar for separate trials. In State of Bihar v. Murad Ali Khan [State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655:

> 1989 SCC (Cri) 27] it was held: (SCC pp. 665, 667 & 668, paras 24, 28 & 31) The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Wild Life (Protection) Act, 1972, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also. Further held that, if there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. The same set of facts can constitute offences under two different laws. An act or omission can amount to and constitute an offence under IPC and at the same time constitute an offence under any other law.

40.7. In State of Rajasthan v. Hat Singh [State of Rajasthan v. Hat Singh, (2003) 2 SCC 152: 2003 SCC (Cri) 451] this Court was dealing with vires of the Rajasthan Sati (Prevention) Act, 1987. It was urged that Sections 5 and 6 of the new Sati Act were overlapping. It was held that with regard to Article 20(2) that subsequent trial or a prosecution and punishment are not barred if the ingredients of two offences are distinct. There can be separate offences from the same set of facts and hence no double jeopardy. 40.8. In Monica Bedi v. State of A.P. [Monica Bedi v. State of A.P., (2011) 1 SCC 284: (2011) 1 SCC (Cri) 22] this Court considered the meaning of the expression "same offence"

employed in Article 20(2) and observed that second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. This Court has observed thus: (SCC pp. 293 & 295, paras 26 & 29) 2024:HHC:10307 "26. What is the meaning of the expression used in Article 20(2) "for the same offence"?

What is prohibited under Article 20(2) is, that the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

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29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence."

40.9. In Sangeetaben Mahendrabhai Patel v. State of Gujarat [Sangeetaben Mahendrabhai Patel v. State of Gujarat, (2012) 7 SCC 621: (2012) 4 SCC (Civ) 305: (2013) 3 SCC (Cri) 445], with respect to double jeopardy, this Court has laid down thus: (SCC pp. 633-34, para 33) "33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 CrPC or Section 71 IPC or Section 26 of the General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. The motive for committing an offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge." 40.10. In State of Rajasthan v. Bhagwan Das Agrawal [State of Rajasthan v. Bhagwan Das Agrawal, (2013) 16 SCC 574: (2014) 6 SCC (Cri) 319] there were 3 FIRs registered with respect to illegal supply of explosives. The charge was under the 2024:HHC:10307 Explosives Act. This Court held that the nature and manner of the offences committed by the accused persons were not identical but were different, and as such FIRs were not relating to the same offence as different acts happened in different places. As such the

provisions contained in Section 186, CrPC would not apply.

40.11. In State (NCT of Delhi) v. Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] this Court considered the maxim nemo debet bis vexari pro una et eadem causa i.e. no man shall be put in jeopardy twice for one and the same offence. In case the ingredients are different there can be separate trial for the same offence also. This Court has laid down thus: (SCC pp. 805-06, para 52) "52. It is a well-known principle that the rule against double jeopardy is based on a maxim nemo debet bis vexari pro una et eadem causa, which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once. However, it is also settled that a subsequent trial or a prosecution and punishment have no bar if the ingredients of the two offences are distinct."

22. Thus, there is no violation of Section 300 CrPC in the present case.

23. It was submitted that the arrest of the petitioner from the house would be the subject matter in both the petitions. This is not correct because the arrest of the petitioner would only be relevant regarding the commission of a crime against the victim and not regarding the commission of a crime against the victim's 2024:HHC:10307 sister. After all, the offence against her was complete before the arrest of the petitioner.

24. Therefore, there are no reasons to quash the proceedings pending before learned ACJM; hence, the present petition fails and the same is dismissed.

25. The observations made hereinbefore shall remain confined to the disposal of the main petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla) Judge 25th October, 2024 (Saurav Pathania)