

(2015) 09 MP CK 0071

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No. 5411 of 2014

Laxmikant and Others

APPELLANT

Vs

Bureau of Indian Standard Act

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 33, 35
Constitution of India, 1950 — Article 20, 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 204, 221, 300, 403, 482
Foreign Exchange Regulation Act, 1973 — Section 51, 56
General Clauses Act, 1897 — Section 26
Negotiable Instruments Act, 1881 (NI) — Section 18
Penal Code, 1860 (IPC) — Section 120-B, 409, 420, 71
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 4(3), 4(5), 5(2)

Citation : (2015) 09 MP CK 0071

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : R.K. Sharma, for the Appellant; V.D. Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J—The singular question involved in this petition filed under Section 482 of the Code of Criminal Procedure (CrPC) is whether the petitioner, who is already convicted in Special Trial No. 5/1996 (under the Prevention of Corruption Act) can be subjected to another trial under Bureau of Indian Standards Act, 1986, based on same factual foundation?

2. Draped in brevity, the facts of the case are that the petitioners and Vishwanath Sonthaliya were partners of M/s. Shree Tin Manufacturing Company whereas co-accused Ashok Goyal was Manager of aforesaid company. Admittedly, Vishwanath Sonthaliya and Ashok Goyal have expired. Present petitioners and Vishwanath Sonthaliya were admittedly accused in Special Case No. 5/1996. It was alleged against the petitioners that they knowingly supplied non ISI tins by

projecting it to be ISI mark tins. Thus, the offences under Sections 120-B and 420 IPC, read with sections 13(1)(d)/13(2) of Prevention of Corruption Act, 1988 (for brevity, the "PC Act") were alleged against the petitioners. The Special Court by judgment dated 26.5.2006 found that the charges under section 120-B/420 IPC are proved against the petitioners. Accordingly, they were directed to undergo sentence of three years (RI) with fine of Rs. 2000/-. Against this judgment, an appeal is preferred before this Court, in which sentence has been suspended.

3. Shri R.K. Sharma, learned counsel for the petitioners submits that on the same set of facts, the respondent-Bureau of Indian Standard filed a complaint in the court of Judicial Magistrate First Class, Morena, which is registered as Criminal Case No. 1392/2006. In the said complaint, it is alleged that M/s. Shree Tin Manufacturing Company is running business of bottling of milk and they have executed a contract with Gwalior Dugdha Sangh. As per the contract, the said company supplied tins to M/s. Gwalior Cooperative Milk Product Union Ltd. On the said tins, ISI mark was printed. It is alleged that said company has not been authorised by any licence by the respondent for providing ISI mark on the tins/product. In the complaint, it is mentioned that the present petitioners have committed offence under Sections 33 and 35 of Bureau of Indian Standards Act, 1986. The court below took cognizance of above case and issued process under section 204 CrPC against the petitioners and other persons. Co-accused Vishwanath Sonthaliya at relevant time filed an application under section 300 CrPC before the trial court on the ground that for same allegations, a charge sheet had been filed by Special Police Establishment, Lokayukta, which is registered as Special Trial No. 5/1996. Since in the said trial, they have already been convicted, no cognizance can be taken in the present case, which is based on same allegations and grounded upon same facts. It is urged that the trial court dismissed the application of co-accused Vishwanath Sonthaliya, who, then preferred Criminal Revision No. 16/2007 before Sessions Court. The said court dismissed the revision on 22.10.2008 (Annexure P/3). Against the said revisional order, Vishwanath Sonthaliya filed a petition under section 482 CrPC, but during pendency of petition Vishwanath Sonthaliya expired on 17.11.2013. Hence, his petition rendered infructuous and was withdrawn on 18.2.2014. After that, the petitioners had to file present petition assailing the subsequent proceedings founded upon the same facts.

4. Shri R.K. Sharma, learned counsel for the petitioners, contended that factual basis for both the cases is exactly same. Hence, as per section 300 CrPC and as per the protections given in Article 20 of the Constitution, the petitioners cannot be put to another trial. This will amount to double jeopardy. He also relied on Section 26 of General Clauses Act, to contend that the petitioners, who have already been prosecuted and punished earlier, cannot be subjected to another trial. In support of his submissions, he relied on Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao and Another, AIR 2011 SC 641 : (2010) 1 BC 669 : (2011) 112 CLT 79 : (2011) CriLJ 1094 : (2011) 1 Crimes 266 : (2011) 2 CTC

459 : (2011) 1 RCR(Civil) 901 : (2011) 1 RCR(Criminal) 803 : (2011) 2 SCALE 148 : (2011) 2 SCC 703 : (2011) 1 SCC(Cri) 882 : (2011) 106 SCL 233 : (2011) 2 SCR 364 : (2011) AIRSCW 788 : (2011) 1 Supreme 636 . Apart from this, he contended that if second trial is impermissible, it can be challenged at any point of time. Reliance is placed on 2015 (1) MPLJ (Cri.) 374 (Ashish v. State of M.P.); Rakesh Gupta Vs. State of M.P.(2015) 2 MPHT 453 and 2014 (1) MPLJ (Cri) 282 (Ravikant v. State of M.P.). Shri Sharma also relied on Sections 4(3) and 5(6) of PC Act in support of his contention that the petitioners could have been charged at the same trial, i.e., first trial. Subsequent trial on same set of facts is not permissible. Sub-section (6) aforesaid is relied upon to contend that the Special Judge while trying an offence punishable under the PC Act had all powers and functions exercisable by a District Judge.

5. Prayer is opposed by Shri V.D. Sharma, learned counsel for the respondent. He submits that the offences in both the cases aforesaid are different. Section 300 CrPC, Article 20 of the Constitution and Section 26 of General Clauses Act cannot be interpreted in the manner suggested by the petitioners. He relied on State of Rajasthan Vs. Hat Singh and Others, AIR 2003 SC 791 : (2003) CriLJ 884 : (2003) 1 JT 77 : (2003) 1 SCALE 43 : (2003) 2 SCC 152 : (2003) 1 SCR 38 : (2003) 1 UJ 407 : (2003) AIRSCW 208 : (2003) AIRSCW 217 : (2003) 1 Supreme 215 ; V.K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhagwanji Bhatia and Others, AIR 1988 SC 648 : (1988) 64 CompCas 664 : (1988) CriLJ 1106 : (1988) 2 Crimes 6 : (1988) 16 ECC 164 : (1988) 35 ELT 26 : (1988) 2 JT 39 : (1988) 1 SCALE 648 : (1988) 3 SCC 467 : (1988) 3 SCR 450 : (1988) 2 UJ 115 and Jitendra Panchal Vs. Intelligence Officer, NCB and Another, AIR 2009 SC 1938 : (2009) 2 JT 267 : (2009) 2 SCALE 202 : (2009) 3 SCC 57 : (2009) 1 SCR 842 : (2009) 2 UJ 562 : (2009) AIRSCW 1559 : (2009) 1 Supreme 777 .

6. No other point is pressed by learned counsel for the parties.

7. I have heard the parties at length and perused the record.

8. Before dealing with rival contentions, it is apt to quote the provisions relied upon by the parties:--

"Sec. 300 of CrPC.--Person once convicted or acquitted not to be tried for same offence.- (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 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.

Sec.26 of General Clauses Act.--Provision as to offences punishable under two or more enactments.--Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and

punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Art. 20 of the Constitution.--Protection in respect of conviction for offences--

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

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

(3) No person accused of any offence shall be compelled to be a witness against himself."

In addition, Section 71 of IPC reads as under:--

"71. Limit of punishment of offence made up of several offences--Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences."

9. It is seen that the question involved in this case is no more *res integra*. The Apex Court considered this question in catena of judgments. In *Maqbool Hussain Vs. The State of Bombay*, AIR 1953 SC 325 : (1983) 3 ECR 1598 : (1983) 13 ELT 1284 : (1953) 4 SCR 730 , the Constitution Bench of Supreme Court observed that the fundamental right which is guaranteed under Article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy" i.e. a person must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim *nemo debet bis punire pro uno delicto*, that is to say, that no one ought to be punished twice for one offence. The plea of *autrefois convict* or *autrefois acquit* avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned. 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. A plea of *autrefois acquit* is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter.

10. The Constitution Bench of Apex Court in *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, AIR 1954 SC 375 : (1954) CriLJ 993 : (1954) 1 SCR 1150 observed that in order to attract the provisions of Article 20(2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted" and "punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must coexist in order that the operation of the clause may be attracted.

11. In *Om Prakash Gupta Vs. State of U.P.*, AIR 1957 SC 458 : (1957) CriLJ 575 : (1958) 2 LLJ 645 and *The State of Madhya Pradesh Vs. Veereshwar Rao Agnihotry*, AIR 1957 SC 592 : (1957) CriLJ 892 : (1957) 1 SCR 686, the Apex Court has held that the prosecution and conviction or acquittal under Section 409 IPC do not debar trial of the accused on a charge under Section 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content.

12. In *The State of Bombay Vs. S.L. Apte and Another*, AIR 1961 SC 578 : (1961) CriLJ 725 : (1961) 3 SCR 107 the Constitution Bench of Supreme Court while dealing with the issue of double jeopardy under Article 20(2) of the Constitution, held as under:--

"13. To operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence". The crucial requirement therefore for attracting the article is that the offences are the same i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out...."

About applicability of section 26 of General Clauses Act, it was held as under in the same judgment:--

"16. The next point to be considered is as regards the scope of Section 26 of the General Clauses Act. Though Section 26 in its opening words refers to "the act or omission constituting an offence under two or more enactments", the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to "shall not be liable to be punished twice for the same offence". If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked."

(Emphasis Supplied)

13. In *Sardar Sardul Singh Caveeshar Vs. State of Maharashtra*, (1965) CriLJ 608(1) : (1964) 2 SCR 378, while dealing with the issue, the Apex Court held as under:--

"11. ...The previous case in which this accused was convicted was in regard to a

conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter and that case was finally disposed of by this Court in *Sardul Singh Caveeshar Vs. The State of Bombay*, AIR 1957 SC 747 : (1957) CriLJ 1325 : (1958) 1 SCR 161 . Therein it was found that Caveeshar was a party to the conspiracy and also a party to the fraudulent transactions entered into by the Jupiter in his favour. The present case relates to a different conspiracy altogether. The conspiracy in question was to lift the funds of the Empire, though its object was to cover up the fraud committed in respect of the Jupiter. Therefore, it may be that the defalcations made in Jupiter may afford a motive for the new conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, some of the facts proved to establish the Jupiter conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in itself would be sufficient to make the two conspiracies the one and the same offence....

12. ...The two conspiracies are distinct offences. It cannot even be said that some of the ingredients of both the conspiracies are the same. The facts constituting the Jupiter conspiracy are not the ingredients of the offence of the Empire conspiracy, but only afford a motive for the latter offence. Motive is not an ingredient of an offence. The proof of motive helps a court in coming to a correct conclusion when there is no direct evidence. Where there is direct evidence for implicating an accused in an offence, the absence of proof of motive is not material. The ingredients of both the offences are totally different and they do not form the same offence within the meaning of Article 20(2) of the Constitution and, therefore, that article has no relevance to the present case."

14. In *State of Andhra Pradesh Vs. Kokkiliagada Meerayya and Another*, AIR 1970 SC 771 : (1969) 1 SCC 161 the Apex Court while having regard to Section 403 CrPC, 1898, held:--

"6. The following important rules emerge from the terms of Section 403 of the Code of Criminal Procedure:

(1) An order of conviction or acquittal in respect of any offence constituted by any act against or in favour of a person does not prohibit a trial for any other offence constituted by the same act which he may have committed, if the court trying the first offence was incompetent to try that other offence.

(2) If in the course of a transaction several offences are committed for which separate charges could have been made, but if a person is tried in respect of some of those charges, and not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.

(3) If a person is convicted of any offence constituted by any act, and that act together with the consequences which resulted therefrom constituted a different offence, he may again be tried for that different offence arising out of the consequences, if the consequences had not happened or were not known to the

court to have happened, at the time when he was convicted.

(4) A person who has once been tried by a court of competent jurisdiction for an offence and has been either convicted or acquitted shall not be tried for the same offence or for any other offence arising out of the same facts, for which a different charge from the one made against him might have been made or for which he might have been convicted under the Code of Criminal Procedure."

15. The Apex Court has taken stock of its previous judgments in *Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and Another*, AIR 2012 SC 2844 : (2012) CriLJ 2432 : (2012) 2 Crimes 203 : (2012) 4 SCALE 549 : (2012) 7 SCC 621 : (2012) AIRSCW 2664 : (2012) AIRSCW 4243 : (2012) 3 Supreme 185 . In the said judgment, the Apex Court after considering *Radheshyam Kejriwal Vs. State of West Bengal and Another*, (2011) 102 CLA 283 : (2011) 163 CompCas 509 : (2011) CriLJ 1747 : (2011) 266 ELT 294 : (2011) 335 ITR 58 : (2011) 333 ITR 58 : (2011) 2 JCC 943 : (2011) 2 JT 443 : (2011) 2 RCR(Criminal) 756 : (2011) 2 SCALE 540 : (2011) 3 SCC 581 : (2011) 2 SCC(Cri) 721 : (2011) 108 SCL 406 : (2011) 4 SCR 889 : (2011) 2 UJ 1009 : (2011) 40 VST 11 : (2011) AIRSCW 1479 ; *Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao and Another*, AIR 2011 SC 641 : (2010) 1 BC 669 : (2011) 112 CLT 79 : (2011) CriLJ 1094 : (2011) 1 Crimes 266 : (2011) 2 CTC 459 : (2011) 1 RCR(Civil) 901 : (2011) 1 RCR(Criminal) 803 : (2011) 2 SCALE 148 : (2011) 2 SCC 703 : (2011) 1 SCC(Cri) 882 : (2011) 106 SCL 233 : (2011) 2 SCR 364 : (2011) AIRSCW 788 : (2011) 1 Supreme 636 , on which reliance is placed by Shri R.K. Sharma; Criminal Miscellaneous Application No. 7807 of 2006, order dated 18-8-2011 (Guj), (*Sangeetaben Mahendrabhai Patel v. State of Gujarat*); *Bhanu Kumar Jain Vs. Archana Kumar and Another*, AIR 2005 SC 626 : (2005) 1 CTC 368 : (2005) 1 JT 220 : (2005) 140 PLR 549 : (2004) 10 SCALE 610 : (2005) 1 SCC 787 ; *Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*, AIR 2003 SC 2545 : (2003) CriLJ 3041 : (2003) 3 CTC 356 : (2003) 182 CTR 1 : (2003) 87 ECC 473 : (2003) 155 ELT 433 : (2003) 262 ITR 466 : (2003) 4 JT 381 : (2003) 4 SCALE 471 : (2003) 5 SCC 257 : (2003) 3 SCR 1118 : (2003) AIRSCW 2735 : (2003) 4 Supreme 274 ; *State of Haryana Vs. Balwant Singh*, AIR 2003 SC 1253 : (2003) 2 LLJ 527 : (2003) 2 SCALE 599 : (2003) 3 SCC 362 : (2003) SCC(L&S) 279 : (2003) 2 SCR 557 : (2003) 2 UJ 943 : (2003) AIRSCW 1645 : (2003) 2 Supreme 609 ; *State of Rajasthan Vs. Hat Singh and Others*, AIR 2003 SC 791 : (2003) CriLJ 884 : (2003) 1 JT 77 : (2003) 1 SCALE 43 : (2003) 2 SCC 152 : (2003) 1 SCR 38 : (2003) 1 UJ 407 : (2003) AIRSCW 208 : (2003) AIRSCW 217 : (2003) 1 Supreme 215 ; *Union of India and Another Vs. P.D. Yadav*, (2001) 9 AD 30 : (2001) 91 FLR 961 : (2001) 8 JT 617 : (2001) LabIC 4014 : (2001) 7 SCALE 270 : (2002) 1 SCC 405 : (2001) 4 SCT 1002 : (2002) 1 SLJ 299 *State of Punjab and Another Vs. Dalbir Singh and Others*, (2000) 10 JT 456 : (2001) 1 LLJ 46 : (2001) 9 SCC 212 ; *Union of India and Others Vs. Sunil Kumar Sarkar*, AIR 2001 SC 1092 : (2001) 2 SCALE 286 : (2001) 3 SCC 414 : (2001) SCC(L&S) 600 : (2001) 2 UJ 976 : (2001) AIRSCW 957 : (2001) 2 Supreme 199 ; *G. Sagar Suri and Another Vs. State of U.P. and Others*, AIR 2000 SC 754 : (2000) 100

CompCas 613 : (2000) CriLJ 824 : (2000) 2 CTC 107 : (2000) 1 JT 360 : (2000) 1 SCALE 271 : (2000) 2 SCC 636 : (2000) 1 SCR 417 : (2000) AIRSCW 296 : (2000) 1 Supreme 322 ; A.A. Mulla and others Vs. State of Maharashtra and another, (1996) 7 AD 737 : AIR 1997 SC 1441 : (1997) CriLJ 353 : (1996) 4 Crimes 125 : (1996) 9 JT 551 : (1996) 7 SCALE 840 : (1996) 11 SCC 606 : (1997) AIRSCW 63 : (1996) 7 Supreme 697 ; State of T.N. Vs. Thiru K.S. Murugesan and Others, (1995) 71 FLR 319 : (1995) 4 JT 307 : (1995) LabIC 1753 : (1996) 3 LLJ 333 : (1995) 2 SCALE 310 : (1995) 3 SCC 273 : (1995) 2 SCR 386 : (1995) 3 SLJ 237 ; M/s. P.V. Mohammad Barmay Sons Vs. Director of Enforcement, AIR 1993 SC 1188 : AIR 1992 SC 1188 : (1993) 76 CompCas 27 : (1993) CriLJ 197 : (1992) 42 ECR 625 : (1992) 61 ELT 337 : (1992) 4 JT 565 : (1992) 2 SCALE 227 : (1993) 2 SCC 724 Supp : (1992) 3 SCR 960 ; Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 ; State of Bihar Vs. Murad Ali Khan and Others, AIR 1989 SC 1 : (1989) CriLJ 1005 : (1988) 3 Crimes 822 : (1998) 4 JT 124 : (1988) 2 SCALE 933 : (1988) 4 SCC 655 : (1988) 3 SCR 455 Supp ; V.K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhagwanji Bhatia and Others, AIR 1988 SC 648 : (1988) 64 CompCas 664 : (1988) CriLJ 1106 : (1988) 2 Crimes 6 : (1988) 16 ECC 164 : (1988) 35 ELT 26 : (1988) 2 JT 39 : (1988) 1 SCALE 648 : (1988) 3 SCC 467 : (1988) 3 SCR 450 : (1988) 2 UJ 115 ; R. Viswan and Others Vs. Union of India (UOI) and Others, AIR 1983 SC 658 : (1983) 2 Crimes 392 : (1983) 2 LLJ 157 : (1983) 1 SCALE 497 : (1983) 3 SCC 401 : (1983) 3 SCR 60 ; Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, AIR 1970 SC 962 : (1970) CriLJ 885 : (1969) 2 SCR 438 ; Workmen of Gujarat Electricity Board, Baroda Vs. The Gujarat Electricity Board, Baroda, AIR 1970 SC 87 : (1969) 18 FLR 308 : (1969) 2 LLJ 791 : (1969) 1 SCC 266 : (1969) 3 SCR 174 ; State of Andhra Pradesh Vs. Kokkiliagada Meerayya and Another, AIR 1970 SC 771 : (1969) 1 SCC 161 ; Roshan Lal and Others Vs. State of Punjab, AIR 1965 SC 1413 : (1965) CriLJ 426 : (1965) 2 SCR 316 ; Sardar Sardul Singh Caveeshar Vs. State of Maharashtra, (1965) CriLJ 608(1) : (1964) 2 SCR 378 ; Manipur Administration Vs. Thokchom, Bira Singh, AIR 1965 SC 87 : (1964) 7 SCR 123 ; Kharkan and Others Vs. The State of Uttar Pradesh, AIR 1965 SC 83 : (1964) 4 SCR 673 ; The State of Bombay Vs. S.L. Apte and Another, AIR 1961 SC 578 : (1961) CriLJ 725 : (1961) 3 SCR 107 ; Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another, AIR 1958 SC 119 : (1958) CriLJ 260 : (1983) ECR 1674 : (1983) 13 ELT 1302 : (1958) 1 SCR 822 ; Sardul Singh Caveeshar Vs. The State of Bombay, AIR 1957 SC 747 : (1957) CriLJ 1325 : (1958) 1 SCR 161 ; The State of Madhya Pradesh Vs. Veereshwar Rao Agnihotry, AIR 1957 SC 592 : (1957) CriLJ 892 : (1957) 1 SCR 686 ; Om Prakash Gupta Vs. State of U.P., AIR 1957 SC 458 : (1957) CriLJ 575 : (1958) 2 LLJ 645 , opined that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr.P.C. or Section 71 IPC or Section 26 of 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 identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as 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.

16. In view of aforesaid judgments of Supreme Court, it is clear that the litmus test to ascertain whether two offences are the same is not the factual foundation or identity of allegations but the identity of the ingredient of offence. The Apex Court in Sangeetaben Mahendrabhai Patel (supra) considered another judgment reported in Radheshyam Kejriwal Vs. State of West Bengal and Another, (2011) 102 CLA 283 : (2011) 163 CompCas 509 : (2011) CriLJ 1747 : (2011) 266 ELT 294 : (2011) 335 ITR 58 : (2011) 333 ITR 58 : (2011) 2 JCC 943 : (2011) 2 JT 443 : (2011) 2 RCR(Criminal) 756 : (2011) 2 SCALE 540 : (2011) 3 SCC 581 : (2011) 2 SCC(Cri) 721 : (2011) 108 SCL 406 : (2011) 4 SCR 889 : (2011) 2 UJ 1009 : (2011) 40 VST 11 : (2011) AIRSCW 1479 , wherein the Apex Court while dealing with the proceedings under the provision of the Foreign Exchange Regulation Act, 1973, quashed the proceedings under Section 56 of the said Act because adjudication under Section 51 stood finalised. The Apex Court opined that the ratio of aforesaid judgment is not applicable in this case because the proceedings under Section 18 of Negotiable Instruments Act are still subjudice as the appeal is pending and the matter has not attained finality.

17. In view of principles laid down by Supreme Court, it is clear that merely because factual foundation of both the trial is same, the principle of double jeopardy is not attracted. The offences in both the matters are different. The ingredients of offences are also different. Apart from this, as contended by Shri R.K. Sharma, the judgment dated 26.5.2006 passed by Special Case No. 5/1996 is still under challenge before this Court. Thus, I am unable to hold that Section 300 CrPC, Article 20 of Constitution and Section 26 of General Clauses Act are of any assistance to the petitioners in the peculiar facts of this case. The impugned trial pursuant to complaint under Section 33 of Bureau of Indian Standards Act, 1986 cannot be said to be hit by principle of double jeopardy. The offences and ingredients of both the trials in the present case are different.

18. So far reliance on Section 4(5) and 5(6) of PC Act is concerned, the said provisions deal with the procedure and powers of Special Judge. The said Sections are of no help to the petitioner in the present matter. The judgment of this Court in Ravikant (supra) is on a different point. In the said judgment, it was held that the petition under section 482 CrPC can be entertained at any stage. No restriction is imposed on exercise of inherent power of this Court and such power can be exercised in advance stage of trial. Since this Court has dealt with the matter on merits, the requirement of judgment pales into insignificance.

19. For the reasons mentioned herein above, I find no ground to interfere in this petition. Petition sans substance and is hereby dismissed. No cost.