

(2002) 03 GUJ CK 0050

In the Gujarat High Court

Case No : Misc. Criminal Application No. 5765 of 1999

Prempratapsingh Sisodiya and Another

APPELLANT

Vs

A.C. Patel and Another

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Criminal Procedure Code, 1973 (CrPC) — Section 221(1), 300, 301(1), 482

Penal Code, 1860 (IPC) — Section 120B

Citation : (2002) 22 GLH 587 : (2002) 2 GLR 1411

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : B.K. Dave, for the Appellant; Anant S. Dave and Vipul Pancholi, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Heard learned Senior Counsel Mr. M. R. Barot with Mr. B. Kumar, learned Senior Counsel from Chennai with Mr. B. K. Dave, learned Counsel for the petitioner, learned Addl. Standing Counsel Mr. Anant S. Dave for Union of India complainant department and learned A.P.P. Mr. Pancholi for the State.

2. This petition is filed u/s 482 of Cr.P.C. read with Section 300 of Cr.P.C. whereby the petitioners-accused have prayed to quash and set aside the proceedings and trial of Special Criminal Case No. 70 of 1995 pending in the Court of learned Sessions Judge, Valsad at Navsari.

3. The petitioners have raised important question about the scope of exercise of inherent powers of this Court u/s 482 of Cr.P.C. and the application of Section 300 of Cr.P.C., which inter alia, bars second trial of the accused already prosecuted for the same or similar offences based on the same or similar evidence and resulted into acquittal of the accused which is in force and whether on the same and similar facts or evidence, accused could be permitted to be tried again. If such trial is permitted, whether such permission would violate the

Scheme of Section 300 of Cr.P.C.? It is further stated by the petitioners that effect of directions of the Apex Court specifically given protecting the interest of the accused, whether needs to be and how and in which manner should be implemented. The question of double jeopardy has also been raised by the petitioners. During the course of submissions, learned Senior Counsel Mr. Barot has also raised the question whether the proceedings pending in the Sessions District of Valsad at Navsari, if allowed, would result into abuse of process of law and would result into miscarriage of justice. For short, it is argued that looking to the facts and circumstances of the case available on record, the aforesaid criminal proceedings require to be quashed and set aside.

4.(i) To substantiate the prayer advanced by the petitioners and contentions raised, the petitioners have stated facts in detail in Para-2 of the petition. According to the petitioners, on 12-12-1994, 7 cylinders of material containing Mandrax tablets were seized from Patel Roadways, Tuticorin, Tamil Nadu. The present petitioners were arrested by the officers of Customs, Tuticorin, Tamil Nadu with regard to the Mandrax tablets seized. During the course of investigation and interrogation of the persons apprehended, Customs Tuticorin flashed an information to the Commissioner of Customs, Surat. The petitioners were questioned by the custom authorities, Tuticorin and after arrest, they were remanded to custody. After completion of investigation, charge-sheet was filed in the Court of learned Special Judge (N.D.P.S.) Madurai, Tamil Nadu and a Criminal Case bearing No. 113 of 1995 was registered, The petitioners were charge-sheeted and prosecuted for the offence of conspiracy punishable u/s 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the N.D.P.S. Act). Customs authorities had discovered certain Mandrax tablets and case was registered where the present petitioners were named as accused. Thereafter, at a subsequent stage, the petitioners were formally arrested for the said offence and were charge-sheeted.

(ii) Again, Special Court (N.D.P.S.) Madurai for the second charge-sheet, registered Criminal Case No. 325 of 1995. The said case was also registered for the offence of conspiracy, manufacturing of contraband goods under the N.D.P.S. Act and possession and transportation to India from one State to another and one of the charges included offence u/s 29 of N.D.P.S. Act.

(iii) On or about 26-3-1995, a third case was registered wherein petitioners and others were charge-sheeted for the offences punishable under the provisions of N.D.P.S. Act for manufacture at a factory Hari Om in Chikhli in the State of Gujarat. Both the petitioners along with others are charge-sheeted for manufacturing, possession, transport inter-State and also for the offence of conspiracy punishable u/s 29 of N.D.P.S. Act. This third case was registered as Criminal Case No. 417 of 1995 in the Court of learned Spl. Judge, Madurai. According to the petitioners, the prosecution specifically had placed reliance on a particular set of evidence i.e. "during the period June, 1994 to March, 1995 at Surat, Madras, Trichi, Tuticorin and at other places", the present petitioners along

with other five accused with known and unknown persons entered into criminal conspiracy to do illegal acts regarding psychotropic substances, which also included the charge of conspiracy punishable u/s 29 of the N.D.P.S. Act.

(iv) On or about 30-11-1994, customs authorities had searched a godown at Bangalore and recovered cylinders containing Mandrax tablets. In this connection, criminal complaint was filed in the appropriate Court for the offence punishable under Sections 8(C), 22 and 29 of N.D.P.S. Act. The charges were framed against the accused which included the same charge i.e. "both of you have conspired in the manufacture, transport and sell of Mandrax tablets, punishable u/s 29 of the Act".

(v) Both the petitioners were the accused in four different criminal cases and the present petition is in connection with fifth criminal case filed against the present petitioners and three others on the basis of the complaint filed in September, 1995 on the allegation that on 17-12-1994 when the customs authorities raided the factory namely M/s. Hari Om Engineers, Chikhli, Valsad Road, Gujarat, they have discovered certain quantity of Mandrax tablets. The said complaint is for the offences punishable under Sections 22, 23, 25A read with Sections 9A, 29A, 25, 29, 31, 31A & 67 of N.D.P.S. Act, along with the offences punishable u/s 120-B I.P.C. and Section 135A of Customs Act. Criminal Case Nos. 113 of 1995, 417 of 1995 and 325 of 1995 were filed before the Special District & Sessions Judge, N.D.P.S., Madurai. In two criminal cases, along with present petitioners, others were also arraigned as accused. Certified copies of the charge in three cases are tendered to this Court during the course of oral arguments. True xerox copies of charges framed by learned Sessions Judge, Madurai were already produced on the date of institution of the present application. In three criminal cases, learned Sessions Judge, Madurai has framed charge on 28-8-1995. Meanwhile, on the strength of the complaint(OR No. 5 of 1994) filed by the Asstt. Commissioner of Customs, Bangalore, Special Criminal Case No. 90 of 1996 was instituted in the Court of Sessions, at Bangalore. But was three cases were already pending before the Sessions Court at Madurai, complainant Asstt. Commissioner of Customs, Bangalore Mr. P. Rangaswami approached the Hon'ble Apex Court vide Transfer Petition (Criminal) No. 159 of 1997 and got Bangalore case transferred to the Court of Sessions, N.D.P.S., at Madurai vide order dated 23-3-1998 and directed the learned Special Judge (N.D.P.S.), Madurai to try the transferred Bangalore case along with Criminal Case No. 113 of 1995 titled as "K. S. Gnanashekar, Supdt. of Central Excise v. Prem Pratap Singh Sisodiya and Ors." Ultimately, learned Judge trying three cases against the accused persons including the present petitioners, registered Criminal Case No. 662 of 1998 and framed charges against both the petitioners accused on 27-10-1998. It is contended by the petitioners that after trial, the accused are acquitted. In all the four criminal cases, present petitioners-accused were charged for various offences including the charge of conspiracy or to do the act in furtherance of the said conspiracy. If it is seen chronologically, the present petitioners, along with other accused are charged in different criminal cases as under :-

(i) Criminal Case No. 113 of 1995. In this case, both the petitioners- accused were charged for the offences punishable under Sections 29, 8(c) read with Sections 22, 9 read with Section 25A of N.D.P.S. Act and u/s 135 of the Customs Act.

(ii) Criminal Case No. 417 of 1995. In this case, both the accused along with two others, were charged for the offences punishable under Sections 29, 8(c) read with Sections 22 & 29, 23 read with Sections 28, 29 read with Section 25 of N.D.P.S. Act;

(iii) Criminal Case No. 325 of 1995. In this case, both the accused along with two others, were charged for the offences punishable under Sections 29, 22, 8(c) read with Section 22 of N.D.P.S. Act and u/s 135 of the Customs Act.

(iv) Criminal Case No. 562 of 1998 (Bangalore Case). In this case, both the accused were charged for the offences punishable under Sections 29, 22, N.D.P.S. Act;

5. The charge of conspiracy to manufacture, possess, transport, sell inter-State and to export out of India is framed and the same is faced by the accused in full-fledged trial. Every act of possession, manufacture, transportation inter-State are all overt act pursuant to the alleged conspiracy. Hence, according to learned Senior Counsel Mr. Barot, they formed part of the same transaction. Hence, different or successive act cannot be considered. If arrest is made and complaint is filed, then subsequent complaint is not sustainable at law. The say of learned Senior Counsel, Mr. Barot is that this is more so when the person has been acquitted of the charge of conspiracy and also charge of manufacture of Mandrax tablets at Chikhli after the lawful trial. The act of manufacturing Mandrax tablets at Chikhli factory was the backbone of the trial conducted by the learned Sessions Judge (N.D.P.S.), Madurai. There cannot be trial at Valsad for the same cause. The same would be barred by the principles of "issue estoppel". Section 300(4) of Cr.P.C. bars even trial of a person acquitted and impleaded for the same offence or on the same facts for which different charges might have been framed. It is on record that for Valsad case, there was no arrest and after filing of the complaint, Prisoner Transfer Warrant was issued to the Jailor at Madurai to transfer the petitioners to face the trial at Valsad. According to Mr. Barot, in Valsad case, number of Sees, are appearing, but so far as the complaint of the offence punishable u/s 31 or 31A of N.D.P.S. Act is concerned, it cannot sustain against the petitioners as it can be applied only when the accused are tried for the second offence where the first charge has resulted into conviction. The petitioners are acquitted and it is not the case of the prosecution that they were earlier convicted in any other offence under the N.D.P.S. Act. Charge of Section 120-B I.P.C. is redundant because charge of conspiracy is an independent charge punishable u/s 29 of N.D.P.S. Act and the same is applied. Therefore, there cannot be two different charges of conspiracy. Section 120-B of I.P.C. is general provision for criminal conspiracy whereas Section 29 of N.D.P.S. Act is special and independent provision to deal with conspiracy qua narcotic and psychotropic

substances. So far as Section 27A of the N.D.P.S. Act is concerned applied in the case of the present petitioners, can be applied when a person indulges in financing activities specified in a particular sub-clause or who harbours any person engaged in any of the mentioned activities. There is no averment in the complaint that their status is of finance or a persons who have harboured a person indulged in me mentioned activities. On the contrary, the complaint filed at Valsad poses both these appellants-accused as main accused. Section 67 referred to in the complaint confers powers to call for certain information etc. It is not a penal provision. So, learned Senior Counsel Mr. Barot has submitted that the present petitioners have already faced the trial and have been acquitted of all the substantive charges/offences levelled against them in the instant compliant, and therefore, they cannot be forced to face the trial.

6. The present petitioners by filing Transfer Petition (Crl.) No. 173 of 1995, have attempted to get the Valsad case transferred to Madurai Court as the complaint was filed in connection with same transaction or at least on the same facts and material and on same or similar documents, but surprisingly, transfer petition filed by the petitioners was resisted by the complainant. On one hand, custom authorities at Bangalore prays for transfer of Bangalore case to Madurai Court and on the other hand, authorities of the same department have resisted the transfer of the case from Valsad to Madurai. Mr. Anant S. Dave, learned Central Govt. Standing Counsel has submitted that the Apex Court has found that the Valsad case is substantially different and pendency of the case at Valsad was not otherwise illegal, and therefore, the department had resisted transfer petition. Certified copy of the affidavit filed by the complainant Mr. A. C. Patef, Supdt. of Customs, Valsad is brought before this Court. Copy of the order of the Apex Court dated 22-4-1996 disposing of transfer application is also on record. Order of the Apex Court has been referred by the petitioners in the petition wherein the Apex Court has said that :

"we do not consider it appropriate to transfer any of the cases to another Court as prayed for in this Transfer Petition. However, if on conclusion of any of the trials, the Petitioners are likely to be prejudiced as a result of pendency of the remaining trials in some other Courts. The Petitioners would have liberty at that time to make a suitable prayer which may be appropriate in the then existing circumstances. We deem it fit to make these observations while dismissing this Transfer Petition, in view of the fact that the only penalty prescribed for the offence is the penalty of death. The Transfer Petition is disposed of in those terms."

If above order is carefully read and considered, the words "we deem it fit to make these observations while dismissing this Transfer Petition, in view of the fact that the only penalty prescribed for the offence is the penalty of death", are relevant so far as present petition is concerned. It is important to note that the Apex Court has also observed that the petitioners would have liberty to make a suitable prayer which may be appropriate in the then existing circumstances. As

the accused are acquitted by the trial Court, the question of imposition of death penalty does not arise. If Valsad case would have been transferred to Madurai and the trial would have resulted into conviction of the petitioners, even then, I am afraid that trial Court could have convicted the present petitioners for the offences punishable under Sections 31A of the N.D.P.S. Act. It is not necessary to quote Section 31A of the Act which deals with the death penalty for certain offences after previous conviction.

7. This petition has been moved as the petitioners were granted liberty to make suitable prayer at appropriate stage by the Apex Court. Even otherwise in each case where petitioner is able to show that his say is not a defence version only and the point raised touches the sustainability, the powers u/s 482 of Cr.P.C. can be invoked irrespective of the fact whether plea of issue estoppel u/s 300 of Cr.P.C. is available or not. It is averred that now is the time when the case pending in Valsad Court namely Special Criminal Case No. 70 of 1995 is likely to be taken up and the trial in the aforesaid circumstances and set of facts available on record, is not sustainable. On careful reading of the affidavit filed by the complainant Mr. A. C. Patel before the Hon''ble Apex Court, it transpires that the transfer was resisted mainly on the ground of hardship, inconvenience to the department as well as number of witnesses to be examined, expected huge expenses and other difficulties like language problem etc. I would like to quote sub-para (7) of Para 5 as well as Para-6 of the affidavit, which says that :-

"5(vii) With reference to Para (m), I say that there are 21 panchnamas drawn in the case file with Navsari Court, in addition to which 102 statements of different persons were also recorded and 78 witnesses are cited for examination in the Court and they are residing in District Valsad Gujarat State and in the surrounding areas. Moreover, 199 documents over and above test results etc. collected as evidences in this case also required to be produced and proved in the Hon''ble Court at Navsari. The hardship to be caused due to transfer of this case to Madurai to the above-referred witnesses, independent panchanama witnesses and the concerned persons and lot of Government officials, whose statements are recorded will be much more than to the Petitioners. Moreover, a number of officers who participated in this case may also be required to attend the Hon''ble Court at Madurai which will also lead to hardship to them and the Government will have to bear the huge expenses on this account. Again most of these documents are in Gujarati language. Many witnesses know only Gujarati language and they are illiterate. It will also be difficult for them to travel such a long distance. They will be afraid to go to unknown place for deposing against hardened criminals. The financial burden and hardship caused to Government officers and witnesses (around 78) would be much greater than the Petitioner. This may lead to miscarriage of justice, if many witnesses are not able* to go to Madurai and the department's case may be weakened due to non-appearance. It may take a lot of time (in years) by virtue of giving dates to the witnesses.

6. In view of the above averments and submissions, I submit that it would not be

in the interest of justice to transfer C.C. No. 70 of 1995 to the Special Judge, Madurai, Tamil Nadu as it is likely to stall the progress of the cases pending, before the S.L.P., which are otherwise at an advance stage. The other accused are likely to suffer hardship in case the transfer petition is allowed. I further say that majority of the prosecution witnesses are local people, who know Gujarati language and as such may be handicapped in giving evidence at a place where the Court language is Tamil. The prosecution is also likely to suffer huge financial losses in case the transfer is allowed.

It is, therefore, submitted that it would neither be in the interest of justice, nor expedient for expeditious trial to transfer the case as prayed for."

So, it would not be legal or proper to agree with the submission of Mr. Anant S. Dave, learned Central Government Standing Counsel that the transfer application was dismissed on merits and it was concluded positively that Valsad case is altogether a different case so far as present two petitioners are concerned. 8. The affidavit of resistance filed on behalf of respondent No. 1 is based on the contents of the affidavit filed by the department in the transfer petition preferred before the Apex Court by the petitioners and it is contended that the facts of the case at Valsad are totally different than the earlier case. The fact that 21 panchnamas were drawn in addition to 102 statements of different persons were recorded and 78 persons are cited as witnesses for the examination in the Court, would not be a matter of much relevance, though Para 8 of the affidavit mainly narrates this procedural aspect. On the contrary, during the course of oral submissions, it has been contended by Mr. Dave that the raiding officer who has also investigated Valsad case for which complaint at Valsad has been filed, was one of the witnesses in the criminal cases tried by Madurai Court. Not only that, his deposition has been recorded before the Sessions Court at Madurai. Mr. B. C. Patel was the officer concerned. When the transfer application was filed before the Hon'ble Apex Court, Mr. A. C. Patel was in the office of Superintendent of Customs, as successor. It would be relevant to quote some of the part of his examination-in-chief. Mr. B. C. Patel, in the month of September, 1995, was working as Superintendent of Customs (Preventive), Customs Task Force, Valsad. He has stated in his deposition before Madurai Court that :-

"..... The Asstt. Commissioner, Customs had told me that Central Excise Officers have seized Mandrax tablets at M/s. Hari Om Engineers, Chikhli and they required help of customs, and therefore, I proceeded to the factory along with my staff. Previously, the customs officers at Tuticorin informed about the seizure of Mandrax tablets at Tuticorin which were sent from Hari Om Engineers, to the Commissioner of Central Excise, Surat, who in turn sent his officers to factory premises at M/s. Hari Om Engineers at Chikhli. Then effected seizure of Mandrax tablets on 17-12-1994 and on 19-12-1994 the Central Excise Officers asked for the help of customs officers of Valsad and Surat."

He has further deposed that -

"Therefore, the whole investigation was handed over to me as Superintendent of Customs Task Force of Valsad (the learned Spl. P. P. has questioned : Who is Vijaya Sing? Witness says that : Vijaya Sing who is Prem Pratap Sing Sisodia. This question is strongly opposed by the learned Counsel for the Accused 1 and 2, objection overruled.) During the investigation, I collected information that the owners of the M/s. Hari Om Engineers, Chikhli, have despatched consigned two consignments of Chlorine Gas Cylinders containing Mandrax tablets each consignment of seven such cylinders during June, 1994 and July, 1994 through Sakti Cargo Movers of Surat. Thereafter, I proceeded to Sakti Cargo Movers on 19-1-1995 and interrogated and recorded the statement of Mr. Kanwal Kishore Arrora, Director of Sakti Cargo Movers Private Ltd. who deposed that one such consignment on 19-6-1994 and another on 2-7-1994, each contained seven cylinders i.e. 14 cylinders of chlorine gas were transported from his godown at Jeyanchi Singh Compound, Near Poonapatia Post, Magob, District : Surat to Madras in the name of consignor Padmini Agencies, consignee-self- and both the above consignments were sent through M/s. Batco Roadways, Madras."

He has further stated in his examination-in-chief that -- .

"My investigation discloses after recording those statement and connected materials I came to the conclusion that they are not deposing wholly the right answers (this question is opposed by the defence). I, therefore, closed the statement here and at Gujarat 1 contacted number of persons in whose contact both the accused, interrogated them and recorded statements which revealed that they had manufactured Mandrax tablets and cleared the same by using various fictitious names. (This question is also objected by the learned Counsel for the A-1 & A-2). On 12-5-1995 as requested by the D.R.I. Madras, the statements Exhs. 94 to 99 were sent to D.R.I. Madras for further action."

9. It is on record that Exh. 94 referred to by Mr. B. C. Patel before Madurai Court is nothing but the statement allegedly recorded by him under Sections 67 & 108 of the Customs Act of petitioner accused Mr. Anil Desai. Exhs. 95 to 97 are the further statements of very accused Anil Desai. Exhs. 98 & 99 are the statement and further statement of accused petitioner No. 1-Prempratapsingh Sisodia. These statements are also allegedly recorded under the provisions of Sections 67 & 108 of the Customs Act. Though, respondent side has placed reliance on some observations made by the learned Sessions Judge of Valsad at Navsari while dealing with Misc. Cri. Application No. 323 of 1999 for bail and xerox copy of the order passed below said bail application is also produced. Rejection of bail plea considering the gravity of the offence impliedly saying it to be a new or other case, would not be important or material. Such submission does not give any strength to the say of the respondents. Present prosecution is after termination of all previous cases qua same or similar transection. It is rightly argued by Mr. Barot that in this case, the approach and attitude of Gujarat Customs Authorities is biased and authorities intend to see that the petitioners are there to face fresh trial and remain in judicial custody for the very alleged wrong. The petitioners

have mainly referred the provisions of Section 300 of Cr.P.C. in general and Section 300(1) of Cr.P.C. in particular. I would like to quote the relevant provisions of Cr.P.C. :

"300(1). A person who has once been tried by the Court having competent jurisdiction for a offence and convicted or acquitted of such offence, shall while such conviction or acquittal remaining in force, not to 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;"

10. The facts leading to the present case, if considered, then it can be said that the provisions of Section 300 of Cr.P.C. are applicable to the facts of the present case. Apparently, the petitioners are the persons who have been tried by the Court of competent jurisdiction i.e. Court of Spl. Judge, N.D.P.S., Madurai. The petitioners-accused are acquitted and acquittal of the petitioners today is in force. In the decision reported in the case of Mahdev Gir v. Emperor 14 Cri.LJ 145, it has been held as under :-

"Whereas person has been tried or convicted of an offence, arising out of a particular set of facts, he cannot, while such conviction of acquittal remains in force, be again tried in respect of any offence based on the same facts, unless the case can be brought under the one or the other specific exception to the rule provided by the Section."

In the case of Manipur Administration Vs. Thokchom, Bira Singh, , the Apex Court has observed as under :-

"The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent Court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicala against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2). The rule is not the same as the plea of double jeopardy or autrefois acquit. The rule does not introduce any variation in the Code of Criminal Procedure either in investigation, enquiry or trial. It also does not prevent the trial of any offence as does autrefois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a Court of competent jurisdiction. The rule thus relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent Court at a previous trial.

Further, Section 403, Cr.P.C. does not preclude the applicability of this rule of issue estoppel. The rule being one which is in accord with sound principle and

supported by high authority and there being a decision of Supreme Court which has accepted it as a proper one to be adopted, there is no reason for discarding it."

11. In reference to the decision of the Apex Court in the case of Pritam Singh and Another Vs. The State of Punjab, , the Apex Court has enlarged the ambit of Section 300 Cr.P.C. in comparison with Article 20(2) of Constitution of India which provides for a bar on second prosecution and punishment for the same offence more than once. The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that, it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. This Court is informed that some of the documents which are relevant in the trial before the Valsad Court, were also part of the prosecution case before the Court of learned Spl. Judge, N.D.P.S., Madurai. The Supreme Court has dealt with legal position u/s 300 Cr.P.C. in the case of NEPC Micon Limited and Others Vs. Magma Leasing Limited, . The Apex Court has observed as under :-

"The well-known maxim "nemo debet bis vexari pro una et eadem causa" (no person ought to be twice vexed for the same offence) embodies the well-established common law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Criminal Procedure Code is that no man should be vexed with more than one trial for offence arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication. Whether it ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts."

12. It is rightly submitted by Mr. Barot that the principle of autrefois convict embodied in Article 20(2) of the Constitution of India, if compared to Section 300 of the Criminal Procedure Code combines both autrefois convict and autrefois acquit. Protective wings of Section 300 Cr.P.C., therefore, are wider. It would be proper at this stage to refer to the provisions of Section 221 of the Cr.P.C. which reads as under :-

"221. Where it is doubtful what offence has been committed ; (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offence, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with

it."

13. It is to be appreciated that for the offences for which petitioners have been tried either they only or with others are the same offences or the facts are such for which different charge from the one made against them might have been made under Sub-section (1) of Section 221 of Cr.P.C. When the charges of conspiracy and the charges including the charge of conspiracy and the charges include the charge of manufacture, possession, transport, export etc. etc. it ought to have been appreciated that the pending case in the Valsad is on the same facts and same evidence as ultimately when the charge of Section 29 of alleged which is equivalent to Section 120-B of the I.P.C. and as it is a good law to say that conspiracy is to be interred, and therefore, when conspiracy is alleged is every one of the aforesaid four trials and also in this present case in Valsad, the allegation amount to offence arising out of "same transaction".

14. The ratio propounded by the Apex Court in the case of State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, , positively helps the petitioners. The Apex Court has considered the meaning of word "same transaction". Observations of their Lordships read as under :-

"The question is whether for the purposes of Section 239(d), it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. u/s 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated under (sic) the words "same transaction" in Section 239. What has to be ascertained then is whether these words are also to be read in all the clauses of Section 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between a series of acts before they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to be undertaken a definition of that which the legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining expression. But, it is generally thought that where there is proximity of time or place of unity of purpose and design or continuity of action in respect of series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But, if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredients for those acts

to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in Clauses (a), (c)(six) and (d) of Section 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transactions of transactions. Therefore, even if the expression "same transaction" alone had been used in Section 235(1), it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in Clauses (a), (c) (six) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes."

15. Decision of this Court in the case of Dinkarray Ragnath Vs. The State, , this Court has also dealt with the meaning of words "same transaction". In Para 26 of the judgment, this Court has observed as under :-

"The expression "same transaction" used in Section 235 of the Code is difficult if not incapable of exact definition. The question whether the acts are so connected together as to form one transaction or not would depend on facts and circumstances of a particular case. It is not possible to lay down any comprehensive formula of universal application. The real and substantial test for determination of the question, is the continuity of action and purpose. u/s 235 of the Code, the first element to establish is a series of acts, which would necessarily imply the acts being connected together; but this would not be enough and it would have to be established further that the acts formed the same transaction. Mere sequence in time may establish the first element but not necessarily the other. But the expression "so connected together as to form the same transaction" must be given a reasonable and rational meaning and cannot be stretched into series of acts, which have no relation to each other. There must, therefore, be one continued thread of common purpose running through the acts to support a joinder of charge in respect thereof. However, mere difference in time or place between the commission of one offence and of another will not necessarily imply want of such continuity. They may yet be linked together to form the same transaction. In our view, this test has been complied with in the case before us. In that view, it cannot be said that there was either any infringement in the mode of trial or that there was any misjoinder of charges. Therefore, no question either of illegality of the trial or one of jurisdiction of the learned Special Judge can possibly arise."

It has been further held in the said decision that :-

"The real and substantial test for determination of the question whether certain acts form one transaction is the continuity of action and purpose. The expression "so connected together as to form the same transaction" must be given a reasonable and rational meaning and cannot be stretched into series of acts,

which have no relations to each other, There must, therefore, be one continued head of common purpose running through the acts to support a joinder of charges in respect thereof. Moreover, mere difference in time or place between the commission of one offence and of another will not necessarily imply want of such continuity. They may yet be linked together to form the same transaction."

There must, therefore, be a continued thread of common purpose running through the acts.

16. Decision in the case of Mohammad Safi Vs. The State of West Bengal, deals with the well-known principle of criminal jurisprudence that no one should be put in jeopardy twice for the same offence. Thus, once a person is acquitted or convicted for a major offence, he or she cannot be tried again by joining some minor offences left out while initiating earlier trial. Simultaneously, the principle of "autrefois acquit" is not confined to the cases falling within Sub-section (1) of Section 300 and that generally no accused should be vexed with more than one trial for the offences arising out of the same transactions/facts. In the case of Emperor v. C. E. Ring, reported in AIR 1929 Bom. 296, the Court was dealing with Section 120-B of I.P.C.. In reference to Section 239 of Cr.P.C., Bombay High Court has observed that " the expression "in the course of the same transaction" used in Section 239 must be understood as including both the immediate cause and effect of an act or event, and also its collection, or relevant circumstances, the other necessary antecedents of its occurrence, connected with it, at a reasonable distance of time, space, and cause and effect."

17. Decision in the case of State of Andhra Pradesh v. Cheemalapati Ganeswara Rao (supra), goes to the root of the matter, where the Apex Court has held that different clauses of Section 239 are not mutually exclusive but can be availed of cumulatively. The object of enacting Section 239 is to avoid multiplicity of trials and the only limitation which could properly be placed on the trial of several persons for the same kind of or different offences would be that which considerations of justice and fairness would require. Paras 26 & 27 of the said decision are important for the purpose of this judgment. I had already reproduced relevant part of Para 27 of the aforesaid in this judgment in Para 14 above. I have gone through the judgment of Madurai Court acquitting accused which is produced before this Court and have also carefully considered the findings recorded by the said Court.

18. Pendency of the appeal against the order of acquittal, if any, recorded by Madurai Court, in view of the above discussion, would not be relevant. My attention is also drawn to the decision of the Apex Court in the case of Arif U. Patel v. Assistant Director, Narcotic Control Bureau, South Zone, Madras-17, reported in 1996 ILW 30. The said petition was moved by the petitioner with a prayer to issue writ of Habeas Corpus calling for the records of the respondent connected with his arrest and detention and also to quash the same. It was also prayed in that petition that petitioner Arif Patel be set at liberty forthwith. The petitioner was arrested for the offence punishable under N.D.P.S. Act. He was

allegedly involved in illicit export of Hasish etc. to Israel etc, He was arrested by Narcotics Control Bureau, South Zone, Madras and was remanded to the custody in connection with the proceedings. It was alleged that he was exporting narcotic drugs and psychotropic substances namely Hasish and Mandrax tablets to foreign countries in contravention of the provisions of Sections 8, 23, 29 of N.D.P.S. Act and for the offences punishable under Sections 21 and 25 read with Section 29 of the said Act. Though, the case cited is of grant of bail by Special Court, it is important and relevant because it was specifically pleaded by the petitioner in the said case that his subsequent arrest after getting default bail for the alleged second export of Mandrax, tablets to South Africa, would not have been effected, and therefore, he should be enlarged on bail. He has taken up plea of unsustainability of the order. When the petitioner Arif Patel was granted default bail by the Special Court, respondent department filed petition for cancellation of bail before the High Court of Madras, but High Court dismissed the same. Respondent department thereafter filed Criminal Appeal before the Hon"ble Supreme Court which was also dismissed on 1-5-1995. On the date when order was pronounced in the criminal appeal, respondent sought imposition of additional conditions on the petitioner over and above the conditions on which, he was granted bail. Hon"ble Supreme Court directed respondent department to move the Special Court if it intends to impose additional condition. On 2-5-1995, respondent moved the Special Court to issue arrest warrant against the petitioner in connection with the proceedings for alleged illicit export of Mandrax tablets to Swaziland and arrested the petitioner on 2-5-1995. Thereafter, the petitioner was remitted to the judicial custody. The petitioner took a specific plea that these two offences were committed pursuant to the single conspiracy and they must be treated as a single transaction, and therefore, subsequent detention for the alleged illicit export of Mandrax tablets to Swaziland was illegal. Madras High Court had rejected the plea raised by the petitioner-accused Arif Patel. But the said decision was challenged before the Apex Court vide SLP (Criminal) No. 3727 of 1995. Xerox copy of the unreported decision of the Apex Court dated 16-1-1996 is produced before this Court during the course of oral submissions. While granting leave, Apex Court allowed the appeal and held as under :-

"As it appears to us that essentially such smuggling activities in furtherance of the conspiracy between the appellant and others during the said period of April, 1992 to March, 1994 was the subject-matter of earlier complaint in which the question of bail had already been considered in the manner, indicated hereinbefore, the subsequent complaint containing further details of one of such smuggling activities pursuant to the said conspiracy should not have been taken into consideration for the purpose of deciding the question of granting bail when such question had been finally decided by this Court. We, therefore, set aside the impugned order of remand and the impugned judgment of the High Court and direct that the appellant should be forthwith released on bail."

By allowing the appeal, the Apex Court has also observed that "the learned

Special Judge, on the basis of the said complaint which prima facie at that stage only disclosed further materials of the conspiracy relating to smuggling of psychotropic drugs (Mandrax) to South Africa regions, such activities formed the subject-matter of similar complaint."

19. The plea raised before this Court by the petitioners is the plea of sustainability of the proceedings, and therefore, prayer for quashing and setting aside the criminal case pending in Valsad Court by invoking inherent jurisdiction, shall have to be allowed. There is no justification to continue with the trial qua present petitioners at all. However, at the end of trial at Valsad, if learned Spl, Judge decided to confiscate any property of the petitioners under the scheme of N.D.P.S. Act, then for that purpose and procedure, the status of the present petitioners shall remain relevant and it will be open for the trial Court to decide such aspect after offering an opportunity of hearing to the petitioners irrespective of result of this petition.

20. In the result, this petition is allowed. Special Criminal Case No. 70 of 1995 pending in the Court of learned Sessions Judge, Valsad at Navsari and the proceedings initiated in connection with the said case, are hereby quashed and set aside qua the present petitioners only. It is clarified that trial - proceedings against other accused who were not tried by Madurai Court, shall continue. It is further clarified that if at the end of trial at Valsad, if learned Spl. Judge decided to confiscate any property of the petitioners under the scheme of N.D.P.S. Act, then for that purpose and procedure, the status of the present petitioners shall remain relevant and it will be open for the trial Court to decide such aspect after offering an opportunity of hearing to the petitioners irrespective of result of this petition.

21. Rule is made absolute accordingly. Yadi to the concerned Courts.

FURTHER ORDER

After above judgment came to be pronounced, learned Addl. Standing Counsel Mr. Anant S. Dave for Union of India has prayed that this judgment and order be placed under suspension for a period of 3 (three) weeks as respondent No. 1-complainant department may decide to approach the higher forum. The petitioners are on bait and so no formal order of suspension of judgment and order is required to be passed. Even otherwise, it would always be open for respondent No. 1 department to challenge the judgment and order, if department is aggrieved by the same. Hence, request made by Mr. Anant S. Dave for Union of India is not accepted.