

(2009) 05 DEL CK 0512
In the Delhi High Court
Case No : Criminal M.C. 2350 of 2000

Ravi Oberoi and Others

APPELLANT

Vs

Jindal Lease Finance Ltd. and Others

RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

Companies Act, 1956 — Section 433, 434, 439
Constitution of India, 1950 — Article 20, 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 188, 221(1), 221(2), 258, 300
General Clauses Act, 1897 — Section 26
Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 50(1), 56, 9(1)
Penal Code, 1860 (IPC) — Section 120B, 403, 406, 420, 429

Citation : (2009) 05 DEL CK 0512

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : C.M. Oberoi, for the Appellant; Mandeep S. Vинаик, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This judgment shall dispose of the petition u/s 482 of the Code of Criminal Procedure (Cr.P.C.) seeking issue of appropriate orders/directions for quashing of notice/summons dated 17.07.2000 issued by the Court of Metropolitan Magistrate, Patiala House, New Delhi summoning the petitioner Ravi Oberoi u/s 420/468/406 of the Indian Penal Code (IPC) in addition to other accused persons and for quashing of the criminal proceedings emanating therefrom on the basis of a complaint filed by respondent No. 1 on 09.10.1998 which has been described by the petitioner as the second complaint.

2. It is the case of the petitioners that the complaint dated 09.10.1998 (hereinafter referred to as the "second complaint") is based upon the same transaction and on the basis of same allegations which form the basis of earlier complaint filed by the respondent No. 1 against the petitioners and respondents No. 2 to 4 u/s 138 of the Negotiable Instruments Act (N.I. Act) read with

Sections 403/406/420 IPC read with Section 120B of the IPC. The said complaint was filed in November, 1996, of which cognizance has been taken by the Court of concerned Metropolitan Magistrate vide order dated 12.02.1997 summoning the petitioner and others. The said complaint is still pending.

3. It has been submitted that respondent No. 1/complainant in the second complaint suppressed the factum of filing of the earlier complaint as stated above. It is also stated that respondent No. 1 also filed a petition u/s 433/434/439 of the Companies Act against respondent No. 2 wherein winding up orders dated 18.08.1992 stands passed on the creditors/petitioners. It is submitted that cognizance of the second complaint has also been taken by the MM concerned who issued summons for the appearance of the petitioner and other accused persons on 17.07.2000 which is malafide and a gross abuse of the process of Court. The said complaint had been filed with ulterior motives for harassing and coercing the petitioners to succumb to unreasonable and unjustifiable demands of respondent No. 1 in respect of the loan advanced.

4. Notice of the petition was accepted by learned Counsel appearing for respondent No. 1. The other respondents also caused appearance through a learned advocate while the respondent No. 2 was served through official liquidator.

5. Respondent No. 1 has opposed the petition and has also filed his written submissions. According to him the petition is malafide and misconceived. It has been submitted that the petitioner has tried to invoke the rule of double jeopardy despite the fact that the two complaints are for different offences. It has been submitted that even though the cause of action of the two complaints arises from the same initial transaction, i.e., a loan of Rs. 1 crore but it is quite distinct and separate from each other and thus the arguments addressed on behalf of the petitioner that trial for the same offence at the two places is not applicable in this case. The respondents have given a chart disclosing the difference of allegations and the nature of offences which are sought to be proved in two different complaints.

6. As regards the previous complaint, it has been submitted that the said complaint is based upon dishonor of a cheque of Rs. 1 crore issued on behalf of respondent No. 2 to the complainant for which despite the service of notice payment was not made and therefore all the accused persons became liable to be prosecuted u/s 138 of the N.I. Act and were made as accused in the complaint which is pending in Tis Hazari as they are liable to be punished u/s 138 of the N.I. Act. It is also submitted that in terms of the agreement the funds, so raised, were to be used for specific purposes but the accused persons cheated the complainant and misappropriated the funds as such all of them were also liable to be punished u/s 420/406 of the IPC which are the offences for which the first complaint was filed.

7. Insofar as the second complaint is concerned, the allegations made in the

complaint discloses offences committed by the accused persons including the petitioner in having prepared the false and forged receipts on behalf of Maruti Udyog Ltd. and submitting the same to the complainant company. This fact has been confirmed by Maruti Udyog Limited that M/s Ganga Automobiles Ltd. has not made any bookings with the said company just a day before the filing of the first complaint. In this manner, it is apparent that obtaining loan which has not been repaid the accused persons prepared forged documents and used these documents intentionally to cheat the complainant and therefore they are liable to be punished under Sections 468 IPC.

8. It has been submitted that the filing of the second complaint subject matter of the present petition does not make out a case of double jeopardy as provided for u/s 300 of the Cr.P.C. which would apply only when three ingredients are satisfied:

- i) He has been tried by a competent Court.
- ii) Must have been acquitted or convicted.
- iii) Conviction or acquittal must be in force.

9. It is submitted that in the present case even the first complaint is still pending and as such there is no question of conviction or acquittal for the second time. It is, thus, submitted that both the complaints can go together. It is also submitted that the complaint once filed if withdrawn would bar filing of a second complaint and as such the present complaint cannot be withdrawn by the complainant.

10. Reference has been made to the judgment delivered in Hari Nath Poddar Vs. The State, wherein it has been held:

Separate prosecution for offences of cheating and dishonour of cheque in a prosecution u/s 138 of NI Act, the Mens-rea viz fraudulent or dishonest intention at the time of issuance of cheques need be proved, however, in the prosecution u/s 420 mens rea is an important ingredient to be established that the cheque was issued by the accused to discharge legally enforceable debt or other liability. This ingredient need be proved in prosecution for the cheques u/s 420. Therefore, the two offences covered by Section 420 act are different offences even though sometimes they may be overlapping and sometimes the accused persons may commit both the offences. The two offences cannot be construed as arising out of the same set of facts, therefore Section 300 is not a bar for separate prosecution for the punishment u/s 420 and 138 NI Act. The principle of double jeopardy does not apply

11. Moreover, counsel for respondent No. 2/complainant has also made a statement in this Court on 30.04.2009 to the following effect:

STATEMENT OF MR. MANDEEP S. VINAIK, ADVOCATE FOR RESPONDENT No. 2/
COMPLAINANT WITHOUT OATH.

Under instructions of my client, I submit that insofar as the complaint filed

against petitioners Ravi Oberoi and M/s W.E. Adventures Pvt. Ltd. is concerned, my client would confine the adjudication of this complaint qua the petitioners only for the offences of forgery which fact has come to know to my client only subsequent to filing of the first complaint and for which averments have been made in para 9 of the complaint. This will be without prejudice to the rights and contentions of my client on merits.

RO & AC.

Mool Chand Garg, J

April 30, 2009.

12. At this juncture, it would also be relevant to take note of some of the averments made in the complaint filed on 09.10.1998 which reads as under:

4. Sometime in the middle of the year 1995, the accused No. 1 to 5. Hatched a most reprehensive criminal conspiracy to cheat, defraud, and to wrongfully deprive the complainant of its funds. Accused No. 1 and 2 approached the complainant and made a request for a loan of Rs. One Crore only. The said persons stated that Board of Directors of accused No. 6 had already resolved to take a loan from the complainant of an amount of upto Rupees One Crore. The said accused stated that since accused No. 6 was in the business of selling and marketing Maruti Cars, it would offer the security of cars already booked with Maruti Udyog Limited. To put it more clearly, the complainant states that the accused No. 1 to 5 made the following representations and on the basis of which the complainant proceeded with the transaction. The representations made by the accused persons are as under:

A. The first and second accused are the persons in control of, and in charge of the affairs and business of accused No. 6 company. The accused Nos.3 and 5 are highly placed officials of the said accused NO.6. Accused NO.4, Ravi Oberoi was stated to be the authorized signatory of accused No. 7.

B. The accused No. 6 required funds which were to be invested in the purchase and booking of Maruti Cars only, and not for any other purpose.

C. Accused No. 7, acting through its division, by the name of 1st Maruti Leasing Inc., would guarantee the due repayment of the loan to be given to accused No. 6. The accused NO.7 promised that it would ensure compliance with all the terms of the arrangement in the event of any default by accused No. 6 and in the event of accused No. 6 committing any breach of the terms agreed upon.

D. That the accused No. 7 had booked a large number of Maruti Cars through the agency of accused No. 6, and that the said car bookings would be kept as security for the due repayment of the loan amount and all other amounts that became due and payable.

E. The accused 6 and 7 assured the complainant that as and when the cars bookings matured, the accused No. 7 company would be allowed to take delivery

or possession of the cars in question only with the express permission of the complainant.

F. The accused No. 6 would refund the amount of Rs. One Crore with interest, as found due, upon the delivery of the Vehicles in question.

G. In the event of default in the refund of the amount borrowed by the accused No. 6 the complainant (lender) would have first lien over the Maruti Vehicles in question.

The complainant being deceived by these assurances and promises, agreed to advance a sum of Rs. One Crore by way of loan on the terms and conditions agreed upon. The complainant is annexing copies of two agreements executed by and between the parties, in which the terms of the transaction were recorded. The true copies of the said agreements are annexed herewith, and are marked Annexure B & C respectively.

5. To complete the deception, and to give a veneer of respectability to the entire evil plan hatched by the accused person, the accused handed over the following documents to the complainant in support of its application for a loan:

A. Certified true copy of resolution passed by the Board of Directors of Ganga Automobiles Limited, authorising Accused No. 2 and 3 to take a loan from the complainant. A copy of this document is annexed herewith and is marked Annexure D.

B. Certified true copy of minutes of Extra Ordinary General Body meeting of Ganga Automobiles Limited. A copy of the same is annexed herewith and is marked Annexure E.

C. A letter dated 8 December 1995 certifying that the amount being borrowed by the accused No. 6 was within its authorized limits, and was within the borrowing powers of the said company. A copy of this letter is marked Annexure F.

D. Certificates issued by the bankers of accused No. 6 and 7 certifying the correctness and accuracy of the signatures of the accused persons. Copies of these certificates are annexed herewith, and are marked Annexure G collectively.

E. Letter dated 8 December, 1995, in terms of which the accused No. 6 acknowledged receipt of Rs. One Crore by way of loan, and affirmed that the said loan would be secured by the booking receipts of Maruti Cars in the name of a division of the accused No. 7. A copy of the said letter is annexed herewith, and is marked Annexure H.

F. Documents purporting to be booking receipts of Maruti Vehicles in the name of the accused No. 7, and said to have been booked through the accused No. 6. Copies of these receipts are annexed herewith, and are marked Annexure.

6. The complainant states that the effect of this action of the accused persons was that the complainant, believing that the loan to be given by it to accused No.

6 was secured by the bookings of motor vehicles, and believing that it had a lien and charge on the said motor vehicles, agreed to give a loan of a huge amount of Rs. One Crore to the accused No. 6.

7. The said loan was repayable in entirety on 7th March, 1996. As against a principal sum of Rs. 1,00,00,000/-, the accused No. 6 has only repaid an amount of Rs. 25,00,000/- towards part repayment of the Principal and a sum of Rs. 27,54,719/- towards part repayment of interest. At the present moment, an amount of Rs. 1,32,12,217/- is due and payable by both accused No. 6 and 7 to the complainant. This figure includes the interest liability that has been incurred by the two accused companies.

13. No doubt, the aforesaid allegations are also available in the first complaint which has been placed on record as Annexure 1 by the petitioner filed on 06.11.1996 which complaint was filed u/s 403/406/420 IPC read with 138 of the N.I. Act and u/s 120B of the IPC.

14. However, additional allegations have been made in the second complaint as incorporated in paragraph 8, 9 and 10 of the complaint which are also reproduced hereunder:

8. The complainant states that it got suspicious about the motives of the accused persons when the complainant began to encounter default in repayment of the amounts due. For example, when a cheque for an amount of Rs. One Crore, issued by Ganga Automobiles Limited, issued by the accused No. 6 was dishonoured, the complainant got suspicious. The complainant made strenuous efforts to get the accused persons to repay the amount paid by the complainant to the accused NO.6, but was unable to get the accused No. 6 or 7 to clear their liability. Not only did the accused persons not repay back the amount taken by them as loan, the said accused persons also did not deliver the Maruti Cars that had been charged to the complainant by way of security. This gave rise to various apprehensions on the part of the complainant ,about the intentions of the accused persons.

9. Thereafter, the complainant commenced making enquiries from Maruti Udyog Limited, about the bookings of Maruti Cars in the name of 1st Maruti Leasing Inc. Thereafter, the complainant company wrote to Maruti Udyog Limited, making enquiries about the vehicles booked by 1st Maruti Leasing Inc. through the agency of the accused No. 6. The complainant is annexing herewith, a copy of the said letter addressed by it to Maruti Udyog Limited and the same is marked Annexure J. to its consternation, the complainant got a reply from Maruti Udyog Limited informing the complainant that no bookings of Maruti Cars had been made by Ganga Automobiles in the name of 1st Maruti Leasing Inc. The letter issued by Maruti Udyog Limited to the complainant is annexed herewith and is marked Annexure K.

10. From the material on record, the following conclusions can be reached about the conduct of the accused persons:

A. The accused persons deceived, and misled the complainant into giving a long of a sum of Rs. One Crore to Ganga Automobiles Limited, on the basis of false promises of the said loan being secured by the bookings of cars with Maruti Udyog Limited.

B. The accused persons have cheated the complainant of its valuable funds by taking resort to deception.

C. The accused persons have forged and fabricated booking receipts of Maruti Cars to make illegal gain for themselves, and to cause wrongful loss to the complainant.

D. The accused persons were entrusted with dominion over funds, to be used for a specific purpose, and to be used exclusively for the booking of Maruti Cars. However, the accused persons have illegally managed to siphon off substantial portion of the said sum of money to their personal use. The accused persons, acting in concert, have misappropriated the funds so entrusted to them. As such, they are guilty of the offence of Criminal Breach of Trust.

E. The accused persons, by deceiving the complainant into believing in the security of the bookings of the cars, fraudulently induced the complainant into parting with its funds to the tune of Rs. One Crore. As such, the accused persons are guilty of cheating. The complainant states that if had not been for the deception so practiced by the accused, the complainant would never have given the loan in question to the accused No. 6.

F. The accused persons, acting in concert, have forged documents and used them for the purpose of cheating the complainant. As such, the accused are guilty of forgery for the purpose of cheating.

15. This shows that insofar as the allegations made from paragraph 8 onwards in the second complaint are concerned, they were not the allegations in the first complaint.

16. It would also be appropriate to take note of the summoning order passed in this Case which reads as under:

I have gone through the evidence of Mukesh Arora and have perused the complaint and the documents annexed with the complaint. Prima facie evidence on record discloses offence u/s 420/468/406 IPC. Prima facie case is made out for summoning all accused for offence u/s 420/468/406 IPC. All accused be summoned on filing of P.F. for 17.7.2000.

17. At this juncture it would be appropriate to take note of the statement made by Mukesh Arora who appeared as CW1. In his statement, the witness also stated:

To complete the deception and to cheat and defraud the complainant co. the accused No. 6,7 provided the complainant with letters purporting to be booking letters for Maruti Vehicles by means of which accused NO.7 was alleged to have

booked vehicles through accused No. 6. These letters were provided as security for the repayment of the loan availed of by the accused No. 6. The said booking receipt are placed on record and are Ex CW1/H-L

I state that contrary to its promises, accused No. 6 has defaulted in the repayment of the amounts due to the complainant. As on the date of filing the complaint, an amount of Rs. 1,321,21,227/- is due and payable by the accused No. 6 to the complainant. When the complainant made enquiries from Maruti Udyog, it wrote a letter to Maruti Udyog Ltd. letter making enquiries about the booking receipts deposited by accused No. 7 with the complainant. A copy of this letter is marked Ex CW1/M. The complainant received the reply from Maruti Udyog Ltd. in which Maruti Udyog Ltd. stated that no such bookings were ever done in the name of accused No. 7. It is obvious that the accused persons have forged and fabricated the booking receipts and have cheated the complainant. They may be punished in accordance with law. This letter is marked Exhibit as EXCW1/N.

18. I have also perused the summoning order of the first complainant which is available on the file of the trial Court. In the first complaint dated 12.002.1997 against the accused persons were summoned also u/s 138/142 of the N.I. Act on account of dishonour of the cheque for Rs. 1 crore. The offences of cheating, i.e., u/s 420 IPC have also been framed in that have been framed on the basis of the allegation made against the accused persons who stood as a guarantor on the false pretext that M/s Ganga Automobiles and to decide the availability of the loan to the first accused, i.e., M/s Ganga Automobiles Ltd. and who have gone to the extent of furnishing delivery receipt with the complainant only to conspire to get loan of Rs. 1 crore from the complainant on false pretext. However, the question of fabrication of documents was neither subject matter of the first complaint nor is a charge framed in respect of the first complaint. It is a matter of record that the first complaint is still at the stage of trial.

19. I have also gone through the written submission filed on behalf of the petitioner. Except for relying upon the judgments delivered in the case of Anil Bhargava and Ors. v. State and Anr. CrI. M.C. 3021/2004 decided on 22.01.2008 and G. Sagar Suri and Another Vs. State of U.P. and Others, and the case of Ayodhya Devi v. DDA and Anr. 2009 (I) AD 145 no specific averment has been made as to how the second complaint which is based upon allegations of fabrication of documents may not be allowed to continue.

20. Insofar as the judgment delivered in the case of Anil Bhargava (Supra) is concerned the proceedings were quashed only because it was categorically averred that the subsequent complaint was on the same set of facts on which the earlier two complaints were filed.

21. In the case of G. Sagar Suri and Ors. (Supra) the prosecution of the accused who was already facing a charge u/s 138 of the N.I. Act was sought to be prosecuted even u/s 406/420 IPC only because of the dishonour of the cheque

and it was in those circumstances the second complaint was not allowed to be continued.

22. Insofar as the judgment delivered in Ayodhya Devi's case which was filed subsequently the only point which was raised by the petitioner is that wherever there is suppression, concealment and misstatement of material facts then writ petition filed without disclosing all the facts was dismissed which is not the case in hand. However, the said judgment is also of no help to petitioner because the factum of fabrication of documents came to the notice of the complainant only a day before the filing of the first complaint.

23. In the second complaint, in addition to the facts which are subject matter of the first complaint and which were necessary to be incorporated to bring all the facts on record, the complainant also stated the additional facts about the forgery of documents which fact had come to their notice from the reply from Maruti Udyog Limited annexed with the petition as Annexure K. (which is the letter written by Maruti Udyog Limited to the complainant on 05.11.1996) it is therefore possible that this letter might have come to the notice of the complainant subsequent to the filing of the first complaint.

24. Now coming to the plea of Double Jeopardy, it is pre-mature because in this case, the petitioner has not yet been convicted in either of the cases. The plea of double jeopardy can be only be invoked when a person is convicted for the same offence twice. For the aforesaid purpose, I may make a reference of Section 300 Cr.P.C. and Article 20 Sub-clause(2) of the Constitution of India, 1950 which provides as under:

300. 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 subsection (2) thereof.

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

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

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and

tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged u/s 258 shall not be tried again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate.

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

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

Article 20 (Constitution of India, 1950). Protection in respect of conviction for offences.

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

25. At this stage, it may be relevant to take note of the provisions of section 482 Cr.P.C. cannot be invoked. In this regard I may In this regard I take note of the pronouncement of the Apex Court in another judgment in the case of State of Bihar Vs. Murad Ali Khan and Others, where the Apex Court held:

15. It is trite to say that jurisdiction u/s 482 Cr.P.C, which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.

26. In the aforesaid judgment the issue of double jeopardy has also been examined & it has been observed:

24. We are unable to accept the contention of Shri R.F. Nariman that the specific allegation in the present case concerns the specific act of killing of an elephant, and that such an offence, at all events, falls within the overlapping areas between of Section 429 IPC on the one hand and Section 9(1) read with Section 50(1) of the Act on the other and therefore constitutes the same offence. Apart

from the fact that this argument does not serve to support the order of the High Court in the present case, this argument is, even on its theoretical possibilities, more attractive than sound. The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Act, 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.

25. The proviso to Section 56 has also a familiar ring and is a facet of the fundamental and salutary principles that permeate penology and reflected in analogous provisions of Section 26 of General Clauses Act, 1897; Section 71 IPC; Section 300 CrPC 1973, and constitutionally guaranteed under Article 20(2) of the Constitution.

This extract is taken State of Bihar Vs. Murad Ali Khan and Others,

Section 26 of the General Clauses Act, 1897 provides:

26. 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.

26. Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:

"The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offences for double jeopardy purposes only if "each provision requires proof of an additional fact which the other does not". Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately.

27. The expression "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in Double Jeopardy (Oxford 1969) says at p. 108:

The trouble with this approach is that it is vague and hazy and conceals the

thought processes of the court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are 'substantially the same' may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible....

28. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred.

In *Leo Roy Frey v. Superintendent, District Jail*, the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said: (SCR p. 827) 'The offence of conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.'

27. Thus in the present case it is apparent that the offences for which the petitioner is being prosecuted is an offence which is not the subject matter of the first complaint and is an offence for which earlier no allegations were made by the petitioner and is independent offence, i.e., u/s 468 of the IPC and therefore it is not a question of punishing the petitioner with a second offence or for a second time.

28. Even otherwise taking into consideration the conspectus of facts of this case it is apparent that the accused persons have apparently cheated the complainant for obtaining a loan of Rs. 1 crore with no intention to repay the same and also on the basis of false security and on the basis of forged documents as alleged by the complainant there is no reason for this Court to invoke its inherent powers in the present case in favour of the complainant as sought for by the petitioners. However, as the respondent/complainant has already made a statement that they would only be prosecuting the petitioner for the offence of forgery which it is stated came to their notice only subsequent to the filing of the first complaint, the second complaint would be restricted by the petitioner only to that extent. The respondent/complainant shall file an amended complaint by restricting it to Section 468 IPC only.

29. With these observations the petition filed by the petitioner is dismissed but with a direction to respondent/complainant to amend the complaint and file it in the trial Court where the parties would appear on 01.06.2009 before the concerned MM, Patiala House, New Delhi.

30. A copy of the order be sent to the MM concerned, Patiala House, New Delhi for information and compliance.

31. TCR be sent back.