

(2017) 05 GUJ CK 0056
In the Gujarat High Court
Case No : 2919 of 2016

Raziuddin Nasir S/o Mohammad Nasiruddin

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[Constitution of India](#), [Article 227](#) - Power of superintendence over all courts by the High Court
[Indian Penal Code, 1860](#), [Section 468](#), [Section 471](#), [Section 302](#), [Section 435](#), [Section 307](#), [Section 326](#), [Section 465](#), [Section 427](#), [Section 124\(a\)](#), [Section 121\(a\)](#), [Section 153\(A\)\(1\)\(b\)](#), [Section 120\(B\)](#) - Forgery for purpose of cheating - Using as genuine a forged document - Punishment for murder - Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees - Attempt to murder - Voluntarily causing ievous hurt by dangerous weapons or means - Punishment for forgery - Mischief causing damage to the amount of fifty rupees - Assaulting President, Governor, etc. with intent to compel or restrain the exercise of any lawful power - Waging, or attempting to wage war, or abetting waging of war, against the Government of India - Wantonly giving provocation with intent to cause riot - Concealing design to commit offence punishable with imprisonment
[Arms Act, 1959](#), [Section 27](#), [Section 25\(1\)\(B\)\(A\)](#) - Punishment for using arms, etc - Punishment for certain offences
[Explosive Substances Act, 1908](#), [Section 3](#), [Section 6](#), [Section 5](#), [Section 7](#) - Punishment for causing explosion likely to endanger life or property - Punishment of abettors - Punishment for making or possessing explosives under suspicious circumstances - Restriction on trial of offences
[Unlawful Activities \(Prevention\) Act, 1967](#), [Section 39](#), [Section 19](#), [Section 40](#), [Section 20](#), [Section 16](#), [Section 10](#), [Section 13](#), [Section 18](#), [Section 38](#) - Offence relating to support given to a terrorist organisation - Punishment for harbouring etc.. - Offence of raising fund for a terrorist organisation - Punishment for being member of terrorist gang or organisation - Punishment for terrorist act - Penalty for being member of an unlawful association etc.. - Punishment for unlawful activities - Punishment for conspiracy, etc.. - Offence relating to membership of a terrorist organisation

[Information Technology Act, 2000](#), [Section 65](#), [Section 66](#) - Tampering with computer source documents - Hacking with computer system

Citation : (2017) 05 GUJ CK 0056

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Judgement

1. By this application under Article 227 of the Constitution of India, the applicant original accused No.19 calls in question the legality and validity of the order dated 10/02/2016 passed by the Designated Judge (Special Court), Ahmedabad, for conducting Speedy Trial of the Serial BombBlast Cases Ahmedabad (Gujarat) in below Exh.1 in the Criminal Misc. Application No.362 of 2016 filed in the Sessions Case No.38 of 2009.

2 The case of the writ applicant may be summarized as under:

2.1 The applicant herein was arrested in connection with the Serial Bomb blast that took place in the City of Ahmedabad on 26/07/2008. More than 100 people lost their lives in the said blast. At the end of the investigation, the chargesheet was filed against the accused persons including the applicant herein for the offences punishable under Sections 120(B), 121(A), 124(A), 153(A)(1)(b), 302, 307, 326, 435, 427, 465, 468, 471 of the IPC and Sections 3, 5, 6 & 7 of the Explosive Substance Act, 1908 and under Sections 10, 13, 16, 18, 19, 20, 38, 39, 40 of the Unlawful Activities (Prevention) Act, 1967 and under Section 25(1) (B)(A) and 27 of the Arms Act, 1959 and Sections 65 and 66 of the Information Technology Act, 2000 and under Sections 3 & 4 of the Damage to the Public Property Act, 1984.

2.2 The blast took place at 20 different places and in such circumstances, in all 20 FIRs were registered at the different Police Stations. The details of the FIRs registered at the different Police Stations are as under:

Sr.	No.	Police	Station	I-C.R.	No.		
236/2008	2		Maninagar	203/2008	3	Shahibuagh	Maninagar
204/2008	4		Maninagar	205/2008	5		Maninagar
206/2008	6		Odhav	338/2008	7		Odhav
339/2008	8		Naroda	400/2008	9		Naroda
401/2008	10		Ramol	321/2008	11		Ramol
322/2008	12		Isanpur	190/2008	13		Vatva
218/2008	14		Amraivadi	273/2008	15		Khadiya
71/2008	16i		Bapunagar	220/2008	17		Kalupur
123/2008	18		Danilimda	140/2008	19.		Sarkhej
181/2008	20		Kalol	200/2008			

2.3 It appears that all cases were ordered to be consolidated as one Sessions

Case and the same was numbered as the Sessions Case No.38 of 2009.

2.4 So far as the applicant is concerned, the allegations are that he had gone to Pakistan and had undergone training of terrorist activities. He was in contact with the accused no.12, namely Safdar Nagori and the accused no.13 viz. Hafiz Hussain. It is also alleged that he provided few VCD's relating to the terrorist activities to the absconding accused no.27 viz. Subhan @ Tauqir.

2.5 It appears that the Designated Judge framed the charges against the accused persons on 15/10/2010 vide Exh.122. The case of the prosecution is that a criminal conspiracy was hatched at the VillageWaghmore, State of Kerala between 09/12/2007 and 11/12/2007 and as a part of such conspiracy, the training camps of terrorist activities were organized at Halol, Pavagadh in the State of Gujarat. Such training was imparted to spread terrorism and wagewar against the Country. As a part of the conspiracy, bombs were planted at different places in Ahmedabad. The bombs exploded in the evening hours of 26/07/2008. About 56 persons died and 240 persons sustained severe injuries. The applicant herein was arrested in connection with the case on hand on 24/09/2008. While he was confined in Belgam District Jail, he was brought to Ahmedabad by way of a transfer warrant. It appears that the applicant was arrested in the State of Kerala by the Hubli Gokul Road Police Station, in connection with the offence punishable under Sections 120B, 121, 121A, 122, 124A, 153A, 153B, 379, 116, 465, 468, 471, 201 r/w.511 of the IPC and Sections 4 & 5 of the Explosive Substance Act. In the prosecution of the applicant herein at Hubli, Karnataka, the allegations were that in August, 2005, the applicant had visited Saudi Arabia and from there, he flew to Pakistan. He was in contact with LashkareToiyba, LET and ISI. He was given training for the terrorist activities at different places in Pakistan. He underwent training for the use of A.K.47, LMG, HMG, handling of Grenade, using of improvised explosive devices, preparation of explosives using Hydrogen peroxide and other substances and operation of wireless set.

2.6 The applicant was tried by the Additional District and Sessions Judge, Hubli, Karnataka, in the Sessions Case No.49 of 2008 and by judgment and order dated 30/04/2015, he came to be acquitted of all the charges. The acquittal by the Hubli Court was substantially on the ground that except the evidence of the Police Officers, there was no other evidence to connect the applicant with the alleged crime.

2.7 I may quote the relevant observations of the trial Court in this regard:

857. This is Court is not of the opinion that the evidence of Police Officers should not be believed at all but considering the over all circumstances, in my opinion, it is unsafe to convict the accused only on the evidence of Police Officers without there being any corroboration with regard to the accused being the banned SIMI activists and they had conspired to wage war against India etc and secured alleged explosives etc. It is pertinent to mentioned here only that all the I.O."s have obtained voluntary statements whenever the accused were in their custody.

As regards some of the accused, it is the case of the prosecution that they have given more than two voluntary statements and thus, it is piece meal and this creates suspicion in the minds of the Court and the evidence does not inspire confidence. Now a days photographers/ videographers are provided to all the Police Stations and when this is so, the I.O.'s should have utilized them while acting upon the seizure of the explosives etc. But none of the I.O.'s have adopted this procedure for the reasons best known to them. Apart from this, though voluntary statements are obtained, immediately the I.O.'s have not proceeded to the place wherein allegedly the accused had concealed explosives and the standard answer given is the I.O.'s wanted to reconfirm and reinterrogate etc., which is totally unprofessional. Though CDs and harddiscs have been seized, they have not been played and their contents are not reduced into writing as provided under Section 65(A) and (B) of the Indian Evidence Act and further no certification is made. Though the hard discs were sent to CFSL, Hyderabad, no report is placed in the Court. Though emails etc have been obtained at the instance of the accused, there is no further investigation in this regard. Number of mobile phones along with SIMS have been seized by the Police and call details are obtained but no further investigation is made. Though good number of books have been seized which were in Urdu and Arabic language, there is no translation produced in the Court. Even the I.O.'s have not taken pains to read the books which were in Kannada and English languages. According to them, they are the books pertaining to Zihad etc only on the say of the accused which is totally unfair and unprofessional. Failure to prove that the print material was instigating persons to follow an ideology or perform acts amounting to waging war against Government of India affects the theory put up by prosecution. There is no evidence that the accused were part of a movement aiming with attack on and violence against public or public property or alleged arms were collected by them with a view to destroy the public property.

860. The prosecution has failed to prove the conspiracy and intention to wage war against the Government of India through disruptive and subversive activities and spreading communal hatred and promoting enmity amongst different groups on grounds of religion, race etc. There is virtually no evidence in this regard to show that the accused individually or collectively, had done or carried out activities attracting the offence under Sections 120B, 121, 121A, 122, 124A, 153A of Indian Penal Code. Likewise the prosecution has failed to prove that the accused have committed the offences punishable under Sections 379, 116, 465, 468, 471, 201 and 511 of Indian Penal Code and Sections 3, 10 and 13 of Unlawful Activities (Prevention) Act, 1967 and under Sections 4 and 5 of Explosive Substances Act, 1908.

863. In view of my findings on the points No.1 to 4 as above, I proceed to pass the following:

O R D E R

Acting under Section 235(1) Cr.P.C., the accused No.1 to 10, 12 to 18 are

acquitted of the offences punishable under Sections 120B, 121, 121A, 122, 124A, 153A, 153B, 379, 116, 465, 468, 471, 201 and 511 of the Indian Penal Code and under Sections 3, 10, 13 of Unlawful Activities (Prevention) Act 1967 and under Sections 4 and 5 of the Explosive Substances Act 1908.

Bail bond of accused No.12 stands cancelled.

Since the charge sheet is split up against other accused, all the material objects and properties be preserved.

The jailors are directed to release the accused if they are not required in any other case/s provided they furnish bail bonds under Section 437A Cr.P.C. for an amount of Rs.1,00,000/each with two sureties for the likesum and after receiving the intimation from the Court in this regard.

Keep the original of this common judgment in S.C. No.49/2008 and the copy thereof in S.C. No.112/2009.

(Dictated to the Judgment Writer/Stenographer directly on the computer, printout corrected and initialed by me and then pronounced in the open Court on this the 30th day of April 2015) sd/(Gopalkrishna Kolli) IAdditional District & Sessions Judge, Dhrwad, Sitting at Hubli.

2.8 The case of the applicant herein is that he having been acquitted by the Sessions Court at Hubli of all the charges, his prosecution in the case on hand i.e. Sessions Case No.38 of 2009 amounts to double jeopardy and would be hit by Article 20(2) of the Constitution of India r/w. 300 of the Cr.P.C.

2.9 In such circumstances, he preferred an application before the trial Court, being the Criminal Misc. Application No.362 of 2016 with the following prayer:

9(A) To acquit the present applicant u/s.300 of the Code of Criminal Procedure or may be to stop or drop the proceedings against the applicant in respect of the Sessions Case No.38 of 2009 pending before this Hon''ble Court.

(B) To pass any other order as may be deemed just and proper in the facts and circumstances of the case.

2.10 The said application came to be rejected by the Designated Judge vide his impugned order, which reads as under:

1. Read the application Exh.:1 with documentary evidences at Mark: 3/1 to 3/6. Also perused record and proceedings of Bomb Blast Case ? Sessions Case No.38/2009. Heard.

2. The applicant accused no.19 (Raziuddin Nasir S/o. Mohammad Nasiruddin) of the present case has moved the application under Section 300 of Cr.P.C., in respect of the judgment of Hon''ble Hubli Court at Mark:3/6, accordingly.

3. Mr. M.M. Shaikh learned Advocate for the accused read the application alongwith documentary evidence at Mark:3/4 panchnama of Hon''ble Hubli Court,

Mark :3/1 page 11 column no.1 for the role of the accused, Exh.:1 para 5 read with Mark:3/4 chargesheet and charge at Exh.:122, Mark:3/5 page 12 (five emails) and Section 300 of Cr.P.C., 2010 in detailed and descriptive form. Finally prayed to allow the application as prayed for. Learned Advocate Mr. Shaikh placed the following citations:

(1) AIR 2011 SC Page 641 Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao & Anr.

(2) 2002 (2) GLH 587 Prempratapsingh Sisodiya & Anr., Vs. A.C. Patel, Superintendent of Customs, Valsad & Anr.;

(3) 2001 (1) GLH 729 State of Gujarat Vs. Khumansinh Hemaji Chauhan & Ors.

4. Percontra Mr. Mitesh Amin, learned Special P.P., for the State submitted before the Court that the application is moved with malafide intention and to delay the trial. He further submitted that the present application is premature as the trial at Ahmedabad Court is in process. Mr. Amin read page 432 para 732 with page 533 at para 857 of judgment of Hon''ble Hubli Court at Mark:3/6 and argued out that the Hon''ble Hubli Court has not framed the charge of murder Section 302 of IPC at trial but here in Ahmedabad case the accused is charged with Section 302 read with Section 120(B) of IPC. Moreover, the accused has not challenged the charge of this Court before higher forum, up till now. There is a prima facie case with involvement of accused in the case on hand. Moreover, different Email I.Ds ? passwords created for criminal conspiracy. So the application deserves to be dismissed with costs. At final stage of the hearing Mr. Amin learned Special PP argued out on law point of Section 300(3) of Cr.P.C., and finally prayed to dismiss the application.

5. Now considering the submissions of both the learned Advocates with above said documentary evidences especially judgment of Hon''ble Hubli Court at Mark:3/6, the Court feels that the accused here at Ahmedabad is charged with Section 120(B), 121(A), 124(A), 153(A) (1)(B), 302, 307, 326, 435, 427, 485, 468, 471 of IPC, Section 3, 5, 6, 7 of Explosive Substance Act, Section 10, 13, 16, 18, 19, 20, 23, 38, 39, 40 of Unlawful Activity Prevention Act, Section 25(1) (B)(A), Section 27 of Arms Act, Section 65, 66 of Information Technology Act and Section 3 & 4 of Damage to Public Property Act accordingly, under the charge at Exh.:122. If we go through the judgment of Hon''ble Hubli Court at Mark:3/6 there we see no charge of Section 302. Sohere at Ahmedabad Court the accused faces the trial of Section 302 of IPC read with Section 120(B) of IPC and other punsihable offences. One settled thing which is also on the record that the accused has not challenged the charge at Exh.:122 of this Court before the higher forum or has not moved any application for discharge. Moreover, if we go through page 533 at para 857 the Hon''ble Hubli Court has very rightly mentioned that in a given case the emails and other relevant materials were recorded to Police. But further investigation is not carried out and FSL reports were not placed or received by the Investigating Officer. On reading the

judgment of 600 pages of the Hon''ble Hubli Court, it transpires to the Court that if the Investigating Officer and prosecution had taken little care with interest honestly in investigation and evidences than the judgment would be different. So by this findings the accused cannot claim himself as totally innocent person to the case.

6. Moreover, if we compare the trials of two cities, in Hubli Court case the most important witness turned hostile wherein comparison to that here in Ahmedabad up till now 780 witnesses are examined and no witness has turned hostile plus still important witnesses are to be examined. So the appreciation differs about the evidences at this juncture. The Court further feels that it will not be legal, just and proper to opine anything about the case at Ahmedabad at this juncture. Here in a case at Ahmedabad Court on reading of emails and passwords that lead the Court to draw presumption of vital evidences for the present order. Here in a case on hand we also have to check the Consequents Act for the accused which is deemed to be important aspect of the trial. So comparing the judgment of Hon''ble Hubli Court at Mark:3/6 with the trial on hand against the accused, the Court is of the opinion that Section 300 of Cr.P.C., does not help the accused as reasons and discussions above mentioned. The Act and charge are not the same but distinct with facts and evidences. Therefore the ban imposed by the legal section also cannot be invoked. The accused has constituted distinct offence of different ingredients. The Bar of the provision is inapplicable. Offences for which the accused was tried at Hon''ble Hubli Court and for which he is now being tried at Ahmedabad are distinct separate and therefore Section 300(3) of Cr.P.C., comes into play for the order. Hence, the submission of learned Advocate Mr. M.M. Shaikh cannot be accepted. Hence, the application deserves to be dismissed.

7. In view of the said reasons and discussions the Court has gone through the citations placed by the accused. But on reading the Court feels that the citations are based on the issue of same facts under Section 300 of Cr.P.C. But here as per the said opinion the legal proposition is different. Hence, the citations are not helpful to the accused. Hence the following order is passed:

O R D E R

The present application Exh.:1 is hereby dismissed.

No order as to costs.

2.11 Being dissatisfied, the applicant has come up with this application invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

3 I take notice of the fact that the application being the Criminal Misc. Application No.362 of 2016 came to be filed by the applicant in the midst of the trial and that too, after the examination of about 780 witnesses.

4 Mr. MHM Shaikh, the learned counsel appearing for the applicant vehemently

submitted that the Sessions Court at Hubli having given a cleanchit to the applicant and having also disbelieved the conspiracy, the applicant could not have been arraigned as an accused in the serial bomb blast prosecution in the State of Gujarat. He further submits that at the time of the serial bomb blast in the city of Ahmedabad, the applicant was confined in Hubli jail. If the blast in the City of Ahmedabad were part and parcel of the conspiracy hatched in the State of Kerala and for which, the applicant came to be acquitted, then how could he be prosecuted for such blast in the City of Gujarat.

5 In such circumstances, Mr. Shaikh prays that there being merit in this application, the same be allowed and the applicant be discharged from the Sessions Case No.38 of 2009.

6 On the other hand, Mr. J.M. Panchal, the learned Special Public Prosecutor appearing for the State vehemently opposed this application and submitted that no error not to speak of any error of law could be said to have been committed by the trial Court in rejecting the application filed by the applicant herein and passing the impugned order. According to Mr. Panchal, thumping materials was collected by the Police of the State of Kerala to establish the conspiracy, etc. But the prosecution was unable to adduce such evidence in accordance with law and in such circumstances, the trial Court declined to rely upon such evidence for the purpose of determining the guilt of the accused persons. Mr. Panchal submitted that although the CDs and hard discs were recovered from the possession of the applicant herein, yet those could not be proved in accordance with the law under the Provisions of Section 65(A) and (B) of the Evidence Act. Although the hard discs were sent to the C.F.S.L., Hyderabad, yet no report was placed before the trial Court at Hubli.

7 According to Mr. Panchal, all the cogent materials have been produced before the trial Court in the Sessions Case No.38 of 2009 and the trial Court will be looking into such materials in accordance with law. Mr. Panchal submits that more than 800 witnesses have been examined so far by the trial Court. At this point of time, this Court may not exercise its supervisory jurisdiction under Article 227 of the Constitution of India to disturb the impugned order.

8 The law as regards the issue raised in this application is well explained by the Supreme Court in the case of Sangeeta Mahendrabhai Patel Vs. State of Gujarat and Anr. reported in AIR 2012 SC 2844. I may quote the relevant observations:

5. The sole issue raised in this appeal is regarding the scope and application of doctrine of double jeopardy. The rule against double jeopardy provides foundation for the pleas of autrefois acquit and autrefois convict. The manifestation of this rule is to be found contained in Section 300 Cr.P.C; Section 26 of the General Clauses Act; and Section 71 I.P.C.

Section 300(1) Cr.P.C. reads:

"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 subsection (1) of Section 221, or for which he might have been convicted under subsection(2) thereof."

Section 26 of the General Clauses Act, 1897 reads:

"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."

Section 71 of I.P.C. reads:

1 "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."

6. In *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325, the Constitution Bench of this Court dealt with the issue wherein the central issue arose in the context of the fact that a person who had arrived at an Indian airport from abroad on being searched was found in possession of gold in contravention of the relevant notification, prohibiting the import of gold. Action was taken against him by the customs authorities and the gold seized from his possession was confiscated. Later on, a prosecution was launched against him in the criminal court at Bombay charging him with having committed the offence under Section 8 of the Foreign Exchange Regulation Act, 1947 (hereinafter called 'FERA') read with the relevant notification. In the background of these facts, the plea of "autrefois acquit" was raised seeking protection under Article 20(2) of the Constitution of India, 1950 (hereinafter called the "Constitution"). This court held 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 twice punished 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.

7. The Constitution Bench of this Court in *S.A.Venkataraman v. Union of India &*

Anr., AIR 1954 SC 375, explained the scope of doctrine of double jeopardy, observing 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 attractive.

8. In *Om Prakash Gupta v. State of U.P.*, AIR 1957 SC 458; and *State of Madhya Pradesh v. Veereshwar Rao Agnihotri*, AIR 1957 SC 592, this Court has held that 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.

9. In *Leo Roy Frey v. Superintendent, District Jail, Amritsar & Anr.*, AIR 1958 SC 119, proceedings were taken against certain persons in the first instance before the Customs Authorities under Section 167(8) of the Sea Customs Act and heavy personal penalties were imposed on them. Thereafter, they were charged for an offence under Section 120B IPC. This Court held that an offence under Section 120B is not the same offence as that under the Sea Customs Act:

"The offence of a 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." (Emphasis added)

10. In *The State of Bombay v. S.L. Apte and Anr.* AIR 1961 SC 578, the Constitution Bench of this Court while dealing with the issue of double jeopardy under Article 20(2), held:

"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.

xx xx xx xx xx xx xx

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 added)

11. In *Roshan Lal & Ors. v. State of Punjab*, AIR 1965 SC 1413, the accused had caused disappearance of the evidence of two offences under sections 330 and 348 IPC and, therefore, he was alleged to have committed two separate offences under section 201 IPC. It was held that neither section 71 IPC nor section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted for two sets of offences under section 201 IPC, though it would be appropriate not to pass two separate sentences. A similar view has been reiterated by this Court in *Kharkan & Ors. v. State of U.P.*, AIR 1965 SC 83.

12. In *Bhagwan Swarup Lal Bishan Lal v. The State of Maharashtra*, AIR 1965 SC 682, while dealing with the issue, held:

"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 v. State of Bombay*, AIR 1957 SC 747. 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?

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." (Emphasis added)

13. In *The State of A.P. v. Kokkiligada Meeraiah & Anr.*, AIR 1970 SC 771, this Court while having regard to Section 403 Cr.P.C., 1898, held:

"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." (Emphasis added)

14. The Constitution Bench of this Court in *The Assistant Collector of the Customs, Bombay & Anr. v. L. R. Melwani & Anr.* AIR 1970 SC 962, repelled the contention of the respondents therein that their criminal prosecution for alleged smuggling was barred because proceedings were earlier instituted against them before Collector of Customs. It was observed that neither the adjudication before the Collector of Customs was a prosecution, nor the Collector of Customs was a Court. Therefore, neither the rule of *autrefois acquit* can be invoked, nor the issue estoppel rule was attracted. The issue estoppel rule is a facet of doctrine of *autrefois acquit*.

15. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppel or *res judicata* 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 acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, the rule relates only to the admissibility of evidence which is designed to upset a finding

of fact recorded by a competent court in a previous trial on a factual issue. (Vide: Pritam Singh & Anr. v. The State of Punjab, AIR 1956 SC 415; Manipur Administration, Manipur v. Thokchom Bira Singh, AIR 1965 SC 87; Workmen of the Gujarat Electricity Board, Baroda v. Gujarat Electricity Board, Baroda, AIR 1970 SC 87; and Bhanu Kumar Jain v. Archana Kumar & Anr., AIR 2005 SC 626).

16. In V.K. Agarwal v. Vasantraj Bhagwanji Bhatia & Ors., AIR 1988 SC 1106, wherein the accused were prosecuted under Customs Act, 1962 (hereinafter referred to as 'Customs Act') and subsequently under Gold (Control) Act, 1968, (hereinafter called as 'Gold (Control) Act') it was held that the ingredients of the two offences are different in scope and content. The facts constituting the offence under the Customs Act are different and are not sufficient to justify the conviction under the Gold (Control) Act. It was held that what was necessary is to analyse the ingredients of the two offences and not the allegations made in the two complaints.

17. In M/s. P.V. Mohammad Barmay Sons v. Director of Enforcement AIR 1993 SC 1188, it was held:

"The further contention that under the Sea Custom Act for the self same contravention, the penalty proceedings terminated in favour of the appellant, is of little avail to the appellant for the reasons that two Acts operate in different fields, one for contravention of FERA and the second for evasion of excise duty. The mere fact that the penalty proceedings for evasion of the excise duty had ended in favour of the appellant, does not take away the jurisdiction of the enforcement authorities under the Act to impose the penalty in question. The doctrine of double jeopardy has no application." (See also: State of Bihar v. Murad Ali Khan & Ors., AIR 1989 SC 1; Union of India etc. etc. v. K.V. Jankiraman etc. etc., AIR 1991 SC 2010; State of Tamil Nadu v. Thiru K.S. Murugesan & Ors., (1995) 3 SCC 273; and State of Punjab & Anr. v. Dalbir Singh & Ors., (2001) 9 SCC 212).

18. In A.A. Mulla & Ors. v. State of Maharashtra & Anr., AIR 1997 SC 1441, the appellants were charged under Section 409 IPC and Section 5 of the Prevention of Corruption Act, 1947 for making false panchnama disclosing recovery of 90 gold biscuits on 2191969 although according to the prosecution case the appellants had recovered 99 gold biscuits. The appellants were tried for the same and acquitted. The appellants were also tried for offence under Section 120B IPC, Sections 135 and 136 of the Customs Act, Section 85 of the Gold (Control) Act and Section 23(1A) of FERA and Section 5 of Import and Export (Control) Act, 1947. The appellants filed an application before the Judicial Magistrate contending that on the selfsame facts they could not be tried for the second time in view of Section 403 of the Code of Criminal Procedure, 1898 (corresponding to Section 300 Cr.P.C.). This Court held:

"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the respective parties, it

appears to us that the ingredients of the offences for which the appellants were charged in the first trial are entirely different. The second trial with which we are concerned in this appeal, envisages a different factsituation and the enquiry for finding out facts constituting offences under the Customs Act and the Gold (Control) Act in the second trial is of a different nature? Not only the ingredients of offences in the previous and the second trial are different, the factual foundation of the first trial and such foundation for the second trial is also not indented (sic). Accordingly, the second trial was not barred under Section 403 CrPC of 1898 as alleged by the appellants." (Emphasis added)

19. In *Union of India & Ors. v. Sunil Kumar Sarkar*, AIR 2001 SC 1092, this Court considered the argument that if the punishment had already been imposed for Court Martial proceedings, the proceedings under the Central Rules dealing with disciplinary aspect and misconduct cannot be held as it would amount to double jeopardy violating the provisions of Article 20(2) of the Constitution. The Court explained that the Court Martial proceedings deal with penal aspect of the misconduct while the proceedings under the Central Rules deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap at all and, therefore, there was no question of attracting the doctrine of double jeopardy. While deciding the said case, the court placed reliance upon its earlier judgment in *R. Viswan & Ors. v. Union of India & Ors.*, AIR 1983 SC 658.

20. In *Union of India & Anr. v. P.D. Yadav*, (2002) 1 SCC 405, this Court dealt with the issue of double jeopardy in a case where the pension of the official, who stood convicted by a CourtMartial, had been forfeited. The Court held:

"This principle is embodied in the wellknown maxim *nemo debet bis vexari si constat curiae quod sit pro una et eadem causa*, meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20(2) of the Indian Constitution, provisions are made relating to personal liberty of citizens and others?.. Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/ other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under Regulation 16 (a) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proven misconduct by the General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under Regulation 16(a) in relation to forfeiture of pension. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present cases."

21. In *State of Rajasthan v. Hat Singh & Ors.* AIR 2003 SC 791, this Court held that as the offence of glorification of Sati under Section 5 of the Rajasthan Sati

(Prevention) Act, 1987, is different from the offence of violation of prohibitory order issued under Section 6 thereof, the doctrine of double jeopardy was not attracted for the reason that even if prohibitory order is promulgated, a subsequent criminal act even if falls under Section 5 could not be covered under Section 6(3) of the said Act. Doctrine of double jeopardy is enshrined in Section 300 Cr.P.C. and Section 26 of the General Clauses Act. Both the provisions employ the expression "same offence".

22. Similar view has been reiterated by this Court in *State of Haryana v. Balwant Singh*, AIR 2003 SC 1253, observing that there may be cases of misappropriation, cheating, defamation etc. which may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc. Therefore, it is not always necessary that in every such case the provision of Article 20(2) of the Constitution may be attracted.

23. In *Hira Lal Hari Lal Bhagwati v. C.B.I.*, New Delhi, AIR 2003 SC 2545, this Court while considering the case for quashing the criminal prosecution for evading the customs duty, where the matter stood settled under the Kar Vivad Samadhan Scheme 1988, observed that once the tax matter was settled under the said Scheme, the offence stood compounded, and prosecution for evasion of duty, in such a circumstance, would amount to double jeopardy.

24. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of *autrefois acquit* or Section 300 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.

9 Having heard the learned counsel appearing for the parties and having considered the materials on record, I am of the view that I should not disturb the order passed by the trial Court at this point of time. The trial has proceeded to a considerable extent. Bynow, 780 witnesses have been examined so far. As observed by the trial Judge, none of the witnesses have turned hostile. The issue raised by the applicant can be looked into by the trial Court on conclusion of the recording of the evidence i.e. while appreciating the entire evidence on record. I find it extremely difficult to take the view that as the applicant was acquitted by the Sessions Court of Hubli, the prosecution in the State of Gujarat with regard to the serial bomb blast should also be dropped. I do not deem fit to exercise my supervisory jurisdiction under Article 227 of the Constitution of India and take a different view than the one taken by the trial Court.

10 In the result, this application fails and is hereby rejected.