

(2013) 07 DEL CK 0532
In the Delhi High Court
Case No : LPA 215 of 2013

S.M. Dongarwar

APPELLANT

Vs

PEC Limited (A Govt. of India Enterprise)

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Insurance Act, 1938 — Section 105

Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338, 409

Citation : (2013) 07 DEL CK 0532

Hon'ble Judges : Badar Durrez Ahmed, Acting C.J.;Vibhu Bakhru, J

Bench : Division Bench

Advocate : C. Mukund, Mr. Avneesh Garg and Ms. Ekta Bhasin, for the Appellant; M.M. Sud, for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.—The appellant has preferred the present appeal challenging the common judgment and order dated 19.03.2013 passed in W.P. (C) Nos. 7615/2008 and 540/2012. The appellant at all material times was an employee of the Project and Equipments Corporation of India Ltd., the respondent herein. The respondent is a Government Company and is engaged in, inter-alia, facilitating import and export of gold. The appellant joined the respondent company on 18.05.1998 as a Deputy Marketing Manager-I. He was initially posted at New Delhi and was subsequently, transferred to the respondent's branch office at Bangalore on 17.07.1998.

2. The appellant was promoted to the post of Marketing Manager at Bangalore on 01.08.2003 and continued to function in this capacity till his transfer to the Hyderabad office of the respondent on 04.04.2005. After the transfer of the appellant to Hyderabad, he was served with a show cause notice dated 20.06.2005 wherein certain allegations were made against the appellant with respect to transactions with one M/s. Paresh Exports Pvt. Ltd., Bangalore which

were conducted by the appellant during his tenure at Bangalore. The appellant replied to the show cause notice by a letter dated 10.07.2005 wherein he admitted to allegations and explained the same as being inadvertent bonafide mistakes. The appellant however, refuted the allegation that there was any deliberate act of omission or commission on his part. The respondent thereafter, issued a charge-sheet against the appellant by way of a memorandum dated 24.08.2005. The statement of charges are relevant for the purposes of considering the challenge in the present appeal and are quoted below:-

STATEMENT OF ARTICLES OF CHARGES AGAINST SHRI S.M. DONGARWAR, MARKETING MANAGER

Article of Charge-I

While functioning as Marketing Manager at PEC Bangalore, Shri S.M. Dongarwar delivered gold of 900 TT bars on 19th/20 the March, 2003 and 1000 TT bars on 3rd/4th April, 2003 to M/s. Paresh Exports Pvt. Limited, Bangalore without realizing the price of Gold.

Article of Charge-II

Shri S.M. Dongarwar did not present following cheques to the bank for encashment

Article of Charge-III

Shri S.M. Dongarwar as head of sub-branch was authorized to operate PEC locker in IDBI Bank, Bangalore where gold is stored. He was required to open the bank locker whenever delivery of gold was to be given to a PEC Associate. But he opened locker on various dates without any corresponding delivery of gold record in stock register.

Article of Charge-IV

Shri S.M. Dongarwar did not keep proper records of FDRs received from M/s. Paresh Exports Pvt. Ltd., Bangalore against which Gold was delivered.

3. Although, the appellant accepted the charges made in the charge-sheet dated 24.08.2005, he attempted to explain the same as having occurred due to inadvertence and further requested that his mistakes be condoned.

4. The respondent issued another notice dated 10.03.2006 calling upon the appellant to show cause as to why a penalty should not be imposed upon the appellant. The appellant once again requested the respondent to take a lenient approach. The respondent imposed a penalty upon the appellant by reducing his grade and demoting the appellant to the designation of a Deputy Marketing Manager by its letter dated 03/04.04.2006.

5. The respondent issued another memorandum and charge-sheet dated 14.07.2006 which the appellant contested as being vague and false. This charge-sheet related to certain dealings between the respondent and M/s. Paresh

Exports Pvt. Ltd. during the period 2003-2005 which were transacted by the appellant on behalf of the respondent. The respondent alleged that the conduct of the appellant was negligent and had resulted in the loss to the respondent. The charge-sheet dated 14.07.2006 reads as under:-

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGES AGAINST SHRI S.M. DONGARWAR, DY. MARKETING MANAGER

ARTICLE OF CHARGE-I

Shri Dongarwar, the then Marketing Manager, PEC, Bangalore was responsible for making delivery order of gold to the associate, M/s. Paresh Exports after completing all the procedural formalities. Shri Dongarwar failed to exercise due care and caution in making deliveries of the gold to the associate with the result that a substantial debit accumulated against the associate, M/s. Paresh Exports. Shri Dongarwar was raising invoices in respect of gold on his own without asking for instructions from head office. These invoices were not marked provisional even by him nor they contained any stipulation with regard to additional debits, if any, accruing on account of rupee dollar rate fixation.

ARTICLE OF CHARGE-II

During 2003-04 and 2004-05 there were communications from H.O. to branch office, Bangalore communicating the delivery order rates in respect of the L/Cs. These rates were advised from time to time depending upon the gold rate and the Rupee Dollar rate. Shri Dongarwar failed to follow these rates while making delivery of the gold to M/s. Paresh Exports, Bangalore. For instance, some of the specific cases where delivery order rates issued from Head Office were not followed by him are as follows:-

ARTICLE OF CHARGE-III

As per procedure for import of gold the associate was required to fix dollar rate to determine the rupee liability for the import. Shri Dongarwar should have thus enquired the dollar rate fixated by the associate from PEC head office and incorporated the same in setting the accounts with the associate. However, Shri Dongarwar failed to enquire the rupee dollar rate from head office while raising invoices on M/s. Paresh Exports which resulted into huge debits against the associate.

ARTICLE OF CHARGE-IV

The F.D. Rs. issued by M/s. Paresh Exports, Bangalore, at the time of maturity were sent by head office to PEC, Bangalore for encashment. However, Shri Dongarwar failed to monitor that there were no matching receipts in PEC's account equivalent to the maturity amounts of the FDRs and he did not report this to head office.

Shri Dongarwar thus failed to maintain devotion to duty, acted in a manner prejudicial to the interest of the Corporation and exhibited negligence in the

performance of duty violating Rule 4(1) sub rule (ii) and Rule 5 sub rule (5) & sub rule (9) of PEC Employees Conduct, Discipline & Appeal Rules.

6. The appellant asked for copies of the documents which were relied upon by the respondent for framing the charge leveled against the appellant. The respondent also sought details of various transactions and certain clarifications from the appellant and certain correspondence in this regard was exchanged between the parties. The respondent company also appointed an inquiry officer by its order dated 23.01.2007 to conduct an inquiry in relation to the charges made against the appellant. While the inquiry was pending, the respondent company issued an order dated 09.05.2007 placing the appellant under suspension. The suspension of the appellant was revoked on 12.7.2007 and again imposed by a letter dated 19.7.2007.

7. The respondent also filed FIR dated 13.07.2007 with Police Station Cuban Park, Bangalore pursuant to which the appellant was arrested by Karnataka police and remained in judicial custody for three months.

8. The appellant preferred a writ petition bearing W.P. (C) No. 7615/2008 before this Court, inter-alia, challenging the charge-sheet dated 14.07.2006, the suspension order dated 19.05.2007 and non-payment of his dues. In response to the writ petition, the respondent filed reply dated 24.02.2009, inter-alia, asserting that the Board of Directors of the respondent had taken a decision to revise the charge-sheet dated 14.07.2006 due to discovery of certain new facts.

9. While the writ petition No. W.P. (C) 7615/2008 was pending consideration, this Court passed an order permitting the appellant to make a representation in respect of his suspension and the respondent was directed to consider such representation of the appellant. The respondent revoked the suspension of the appellant by its order dated 10.02.2010 on the representation made by the appellant and the appellant rejoined his duties with the respondent company.

10. Whilst, the writ petition No. 7615/2008 was pending consideration by this Court, the respondent issued another memorandum dated 20.06.2011 declaring that the Disciplinary Authority decided to withdraw the charge-sheet dated 14.07.2006 and had decided to issue fresh charge-sheet under Rule 27 of the ECDA Rules, 1975. The memorandum, further, enclosed a fresh charge-sheet dated 20.06.2011. The statement of charges issued on 20.06.2011 is as under:-

STATEMENT OF ARTICLES OF CHARGES AGAINST SHRI S.M. DONGARWAR, DY. MARKETING MANAGER

ARTICLE OF CHARGE-I

Shri S.M. Donganvar, the then Branch Manager of Bangalore Branch Office of PEC Ltd. did not keep proper records and did not carefully track the realization of the proceeds of the sixteen Fixed Deposit Receipts (FDRs) and thus did not maintain devotion to duty, acted in a manner prejudicial to the interests of PEC and functioned dishonestly and fraudulently. As a result, PEC Ltd. has suffered a huge

loss of Rs. 11,22,29,402/- Crores (Rupees eleven crores twenty two lakhs twenty nine thousand four hundred and two only) in the import of gold business with one of the PEC Ltd.'s Associate M/s. Paresh Exports Pvt. Ltd., Residency Road, Bangalore.

ARTICLE OF CHARGE-II

The eight (8) Nos. FDRs issued in the name of PEC Ltd. by Federal Bank Ltd., Residency Road, Bangalore bearing No. 098885, 098906, 098907, 098942, 098951, 098918 and 099011 totalling to a principal amount of Rs. 8,10,00,000/- (Rupees eight crores ten lakhs only) submitted by M/s. Paresh Exports Pvt. Ltd. to PEC Ltd. against L/C No. 9363-N/04 were sent back by Head Office, PEC to Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd., on 28.1.2005 for submission to Federal Bank for realization of the proceeds of these FDRs. The said Shri S.M. Dongarwar did not keep track of the realization of the proceeds of these FDRs from Federal Bank to PEC. With the result, the said Mr. S.M. Dongarwar allowed Mohd. Parvez of M/s. Paresh Exports Pvt. Ltd. and the Federal Bank to misappropriate an amount of Rs. 5 crores out of the proceeds of these FDRs with the intention to cheat PEC, by issuing three fresh FDRs bearing No. 011932, 011933 and 011935 of Rs. 2 crores, Rs. 2 crores and Rs. 1 crore respectively totaling to Rs. 5 crores all dated 31.1.2005 of Federal Bank Ltd. favouring PEC Ltd. and remitted only Rs. 3,17,58,287/- by way of Demand Drafts out of the proceeds amounting to Rs. 8,17,58,287/- of the said FDRs on 31.1.2005.

ARTICLE OF CHARGE-III

Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd. in collusion with Mohd. Parvez of M/s. Paresh Exports Pvt. Ltd. vide his letter dated 31.1.2005 misrepresented the facts to PEC, Head Office that he has received the original FDRs No. 099132, 099133 and 099135 with maturity value of Rs. 2,02,65,417/-, Rs. 2,02,65,417/- and Rs. 1,01,39,028/- respectively from M/s. Paresh Exports Pvt. Ltd. in collusion with the said Shri S.M. Dongarwar took delivery of additional gold worth Rs. 5 crores from PEC Ltd. against these FDRs which were issued in favour of PEC Ltd. by Federal Bank Ltd. Residency Road, Bangalore towards realization of the proceeds of the eight FDRs as stated under Article of Charge-II hereinabove and cheated PEC of a sum of Rs. 5 crores (Rupees five crores only).

ARTICLE OF CHARGE-IV

Shri S.M. Dongarwar, while working as Branch Manager of Bangalore Branch office of PEC Ltd. issued two discharge letters one in respect of Fixed Deposit Receipts (FDRs) bearing Nos. 099011 and 099012 dated 13.12.2004 for Rs. 4 crores (Rupees four crores only) to the Manager, Federal Bank Ltd. Bangalore stating that we have received FDR amounting to Rs. 4 crores and that "we hereby state that we don't have any claim on the above such FDR in any manner"

AND another in respect of Fixed Deposit Receipt (FDR) No. 99132 dated 31.1.2005 for Rs. 2 crores (Rupees two crores only) to the Manager, Federal Bank Ltd., Bangalore stating that we have received FDR amounting to Rs. 4 crores and that "we hereby state that we don't have any claim on the above such FDR in any matter"

Subsequently, the said Shri Dongarwar in his own handwriting noted down following on the face of the copy of the said respective discharge letter

Seen this document carefully, I confirmed that I had signed this letter and given to M/s. Paresh Export Pvt. Ltd. (Mr. Parvez) undated and without filling the above details about FDR's;

As a result, the proceeds of the aforesaid FDRs were credited in the Current Bank Account with Federal Bank Ltd. of M/s. Paresh Exports Pvt. Ltd. Hence, the said Mr. S.M. Dongarwar in collusion with Mohd. Parvez, allowed M/s. Paresh Exports Pvt. Ltd. to cheat PEC Ltd. of the proceeds of the said FDRs, amounting to Rs. 6,00,96,000/- (Rupees six crores ninety six thousand only).

ARTICLE OF CHARGE-V

Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd., did not keep track of realization of the proceeds of the Fixed Deposit Receipts (i) No. 672301 (CC-7775) for Rs. 1 crore having maturity date as 26.3.2005, (ii) No. 67230 (CC-7776) for Rs. 1 crore having maturity date as 26.3.2005 and (iii) No. 672307 (CC-7787) for Rs. 2 crores having maturity date as 30.3.2005 issued by Federal Bank Ltd., Residency Road, Bangalore in the name of PEC Limited and committed fraud with PEC Ltd. in collusion with Mr. K. Rajendran, the then Executive Assistant, PEC, Mohd. Parvez of M/s. Paresh Exports Pvt. Ltd. and the officials of the Federal Bank Ltd., Residency Road, Bangalore. Mr. S.M. Dongarwar thus caused PEC to a loss of Rs. 21,33,402/- and allowed undue and illegal benefit to M/s. Paresh Exports Pvt. Ltd. of the said amount due to PEC to wards interest on these FDRs which has been credited to the Bank account of M/s. Paresh Exports Pvt. Ltd. with Federal Bank Ltd., Residency Road, Bangalore Shri S.M. Dongarwar also got obtained a loan of Rs. 4 crores from Federal Bank Ltd. against these three FDRs to M/s. Paresh Exports Pvt. Ltd. by opening Loan account No. AAD-1497 in the name of PEC Ltd.

By the above acts, Shri S.M. Dongarwar, DMM-1 failed to maintain absolute integrity, devotion to duty, do nothing which is unbecoming of a public servant, acted in a manner prejudicial to the interests of the Corporation, exhibited negligence in the performance of duty and commissioned acts which amount to fraud and dishonesty in connection with the business, a criminal offence involving moral turpitude, an abetment to an act which amounts to misconduct thus violating Rules 4(1)(i), (ii), (iii) Rule 5(1), Rule 5(5), Rule 5(9), Rule 5(17) & Rule 5(30) of PEC Employees's (Conduct, Discipline & Appeal) Rules, 1975.

11. The appellant challenged the charge-sheet issued on 20.6.2011 by preferring

a writ petition being W.P. (C) 540/2012. As the charge-sheet dated 14.7.2006 which was the subject matter of the writ petition W.P. (C) 7615/2008 was withdrawn by the respondent and a fresh charge-sheet was issued on 20.6.2011, the learned Single Judge disposed off the W.P. (C) 7615/2008 as being infructuous. The learned Single Judge also found that the charge-sheet dated 20.6.2011 was different from the charge-sheet dated 24.08.2005 and for the reasons stated in the judgment dated 19.03.2013 impugned before us, dismissed the petition.

12. The only contention urged on behalf of the appellant before us is that the third charge-sheet issued on 20.6.2011 cannot be proceeded with as it would amount to proceeding against the appellant in respect of the same subject matter on which the first charge-sheet dated 24.08.2005 was based. It is contended on behalf of the appellant that this would violate the rule of "double jeopardy" as appellant has already been held guilty with respect to the charges framed in the first charge-sheet and the appellant has also suffered the punitive action of demotion imposed by the respondent in respect of the said charges.

13. We have heard the counsel for the petitioner.

14. The rule of "double jeopardy" proscribes a person from being tried in respect of the same charges for which he has been tried earlier and acquitted or convicted. A person accused of an offence is entitled to enter peremptory plea of "autrefois acquit" or "autrefois convict" (autrefois means "previously" in french). Thereby pleading that the accused has already been acquitted or convicted of the same offence for which he is now been tried and thus cannot be proceeded against for the second time. This rule of "double jeopardy" is embodied in Article 20(2) of the Constitution of India which reads as under:-

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

15. A similar rule is also found in the Fifth Amendment of the American Constitution which reads as follows:

nor shall any person be subject, for the same offence, to be twice jeopardy of life or limb.

16. In the case of *Albrecht v. United States*:, (1927) 273 U.S. 1, 71 Law Ed 505 , Justice Brandeis delivered the unanimous opinion of the U.S. Supreme Court as under:-

There is a claim of violation of the Fifth Amendment by the imposition of double punishment. This contention rests upon the following facts. Of the nine counts in the information, four charged illegal possession of liquor, four illegal sale, and one maintaining a common nuisance. The contention is that there was double punishment because the liquor which the defendants were convicted for having sold is the same that they were convicted for having possessed. But possessing and selling are distinct offenses. One may obviously possess without selling, and

one may sell and cause to be delivered a thing of which he has never had possession, or one may have possession and later sell, as appears to have been done in this case. The fact that the person sells the liquor which he possessed does not render the possession and the sale necessarily a single offense. There is nothing in the Constitution which prevents Congress from punishing separately each step leading to the consummation of a transaction which it has power to prohibit, and punishing also the completed transaction. The precise question does not appear to have been discussed in either this or a lower federal court in connection with the National Prohibition Act, but the general principle is well established.

It is apparent from the above that the rule of double jeopardy is founded identity of offences and not the commonality of facts.

17. A Constitution Bench of the Supreme Court in the case of *Maqbool Hussain Vs. The State of Bombay*, explained the fundamental right guaranteed under Article 20(2) of the Constitution of India as under:-

7. The fundamental right which is guaranteed in article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy". The roots of that principle are to be found in the well established rule of the common law of England "that where a person has been convicted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence." Per Charles J. in *Reg. v. Miles* 24 Q.B.D. 423. To the same effect is the ancient maxim "Nemo bis debet punire pro uno delicto", that is to say that no one ought to be twice punished for one offence or as it is sometimes written "pro eadem causa", that is, for the same cause.

8. This is the principle on which the party pursued has available to him the plea of "autrefois convict" or "autrefois acquit". "The plea of "autrefois convict" or "autrefois acquit" avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned.....The question for the jury on the issue is whether the defendant has previously been in jeopardy in respect of the charge on which he is arraigned, for the rule of law is that a person must not be put in peril twice for the same offence. 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, not that the facts relied on by the Crown 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." (Vide Halsbury's Laws of England, Hailsham Edition, Vol. 9, pages 152 and 153, paragraph 212).

18. It can be understood from the above that the essential conditions for invoking the rule of "double jeopardy" is that the offence for which a person is accused must be the same offence for which he has been tried earlier and acquitted or convicted as the case may be. The Supreme Court in the case of *The*

State of Bombay Vs. S.L. Apte and Another, considered the case of an accused who, on the same set of facts, had been tried for an offence u/s 105 of the Insurance Act and also brought to trial for offence u/s 409 of the IPC. Considering the question of applicability of the rule of "double jeopardy", the Court held that the essential condition of rule of "double jeopardy" is that the second prosecution must be for the same offence for which the person has been tried earlier. The Court further held that:-

if, therefore, the offences were distinct there is no question of the rule as to "double jeopardy" as embodied in Article 20(2) of the Constitution being applicable.

19. It is also relevant to refer to the decision of the Supreme Court in the case of State of Haryana Vs. Balwant Singh, . The respondent in that case was a bus driver employed by Haryana Roadways and was involved in an accident caused by his rash and negligent driving. In the said accident one person died and certain others suffered injuries. A claim petition was filed before the Motor Accidents Claim Tribunal which resulted in a loss of Rs. 1,12,950/- to the Transport Department of the State of Haryana. A charge-sheet was issued under Rule 7 of Haryana Civil Services (Punishment & Appeal), Rules, 1987 and after holding an inquiry a punishment was imposed on the respondent reducing his pay to the minimum of the salary payable to a time scale driver for a period of four years. On account of causing the same accident, a criminal case was also registered for offences under Sections 279, 337, 338 and 304-A IPC and the respondent was convicted by the Court after trial in a criminal case. Based on this conviction, an order dated 17.09.1992 was passed by the employer/Haryana Roadways terminating the services of the respondent. The respondent challenged the termination order dated 17.09.1992 as being barred by the rule of "double jeopardy" in view of the Article 20(2) of the Constitution of India. The respondent filed an appeal before the Commissioner and Secretary, Haryana Roadways against the termination order on the ground that he could not be tried twice for the same offence. The respondent also filed a suit alleging that he was not afforded adequate opportunity to meet the allegations and that the order terminating his services was passed only on the basis of conviction by the Sessions judge. After trial the suit was dismissed and the appeal preferred by the respondent against such dismissal was also rejected. The respondent preferred a second appeal before the High Court of Punjab and Haryana. The High Court accepted the plea of the respondent that he could not be punished twice for the same offence and set aside the decrees passed by the courts below. On an appeal preferred by the State of Haryana, the Supreme Court set aside the decision of the High Court and held as under:-

4. From the facts that are not in dispute, it is abundantly clear that the order dated 12.3.1990 was passed against the respondent reducing the pay to the minimum of time scale of Driver for a period of four years on account of his causing loss and bringing bad name to the Department in the light of the order

passed by the Motors Accidents Claims Tribunal, that too after holding enquiry under the Rules after giving him opportunity. The second order dated 17.9.1992 was passed on the basis of the conviction and sentence passed against him by the competent criminal court for the offence u/s 304-A IPC which was permissible under the Rules. These being the facts, there was no question of prosecuting and punishing the respondent for the same offence twice. The High Court was not right in equating departmental enquiries on different grounds to a prosecution in criminal case. The High Court also has failed to see that the two orders passed against the respondent were on different grounds and were on different cause of actions.

(Emphasis supplied)

20. A perusal of the charge-sheet issued on 24.08.2005 and the statement of articles of charges issued on 20.06.2011 disclose that the acts of omission and commission as alleged in the two charge sheets are different. The Article of Charge-I of the charge-sheet dated 24.08.2005 relates to the allegation that the appellant had delivered 900 TT bars on 19/20.03.2003 and 1000 TT bars on 3/4.04.2003 without realising the price of these bars. The non-realisation of price of these 1900 TT bars is not a subject matter of the charges leveled in the statement of articles of charges issued on 20.06.2011. This was also confirmed by the counsel appearing for the respondent before the learned Single Judge and the same has been recorded in the order dated 19.03.2013 passed by the learned Single Judge. This statement made on behalf of the respondent has not been controverted or challenged by the appellant before us.

21. The Article of Charge-II in the charge-sheet dated 24.08.2005 relates to non-presenting of three cheques aggregating a sum of Rs. 13 crores. A bare perusal of the statement of articles of charges issued on 20.06.2011 indicates that these cheques are also not subject matter of the charges leveled against the appellant. The Article of Charge-III of the charge sheet dated 24.0.2005 contains an allegation that the appellant had operated the locker of the respondent on various dates without any corresponding delivery of gold recorded in the stock register. This too is not a subject matter of the charge-sheet issued on 20.06.2011.

22. It is alleged in the article of Charge-IV that the appellant did not keep proper records of the FDRs received from M/s. Paresh Exports Pvt. Ltd. Although the charge-sheet issued on 20.06.2011 levels certain allegations regarding certain fixed deposit receipts, the same are in relation to the specific FDRs and the nature of the charges is entirely different.

23. A plain reading of the two charge-sheets also indicates that the gravamen of accusation/offences alleged by the respondent in the charge-sheet dated 24.08.2005 and the statement of charges issued on 20.06.2011 are completely different. Whereas the allegations in the charge-sheet dated 24.08.2005 relate to irregularities in keeping of records, operation of locker of the respondent and non-

realisation of certain cheques and consideration for the certain gold bars delivered to M/s. Paresh Exports Pvt. Ltd., the charges leveled in the charge-sheet issued on 20.06.2011 are of fraudulent conduct, misappropriation and collusion of appellant with M/s. Paresh Exports Pvt. Ltd. resulting in a loss to the respondent company. Thus, it is apparent that the causes of action for the two charge-sheets are different.

24. The learned Single Judge has also compared the statement of articles of charges issued on 20.06.2011 and the charge-sheet dated 24.08.2005 and has found that the articles of charges are entirely distinct. We find no infirmity in this finding and are in agreement with the same.

25. The learned counsel for the appellant has further urged that the charge-sheet dated 24.08.2005 and the statement of charges issued on 20.06.2011 are based on the same preliminary inquiries conducted internally by the respondent. It is further contended that it is mandatory that a preliminary enquiry be conducted before any charge can be framed by the respondent. It is contended that the documents relied upon by the respondent and listed in Annexure III to the memorandum issued on 20.06.2011 (albeit wrongly dated as 20.06.2012) does not indicate that any fresh preliminary inquiry has been conducted by the respondent before framing the charge-sheet and this would indicate that the basis of the charge-sheet issued on 20.06.2011 is the same as that of the charge-sheet dated 24.08.2005. The learned counsel for the respondent has drawn our attention to the memorandum dated 20.06.2011 which indicates that action of the Disciplinary Authority to withdraw the earlier charge-sheet dated 14.07.2006 and issue fresh articles of charges was based on certain investigations made by the Karnataka Police. It is thus contended that, it was not necessary to conduct another preliminary inquiry for the purposes of framing the charges as issued on 20.07.2011. Be that as it may, we are not required to examine the question whether it was mandatory to have a fresh preliminary enquiry for issuance of charges on 20.06.2011 and in our view, the same is not relevant for the purposes of considering the applicability of the rule of the double jeopardy, as held by the Supreme Court in the case of *Maqbool Hussain v. State of Bombay* (supra). The similarity of facts relied upon in the two trials is not relevant for consideration whether the second proceedings fall foul of the rule of "double jeopardy". The test to be applied is whether the former offence and the later offence have the same ingredients i.e. the facts constituting the first offence are sufficient to justify a conviction with regard to the later. Applying the said principle in the present case we do not find that this test is satisfied. It may be that the actions of the appellant, during the tenure of his posting in Bangalore, which are relied upon by the respondent in respect of both the charge-sheets are common in some respect, however, the set of facts that are required to prove charges leveled in the first charge-sheet cannot be stated to be the same that would be required to be proved in order to make good articles of charges issued on 20.06.2011. More importantly the charges made in the two charge-sheets are different. Thus, in our view the plea of double jeopardy is not available to the

appellant in the facts of the present case.

26. The learned counsel for the appellant has relied upon the decision of the Supreme Court in the case of Canara Bank and Others Vs. Swapan Kumar Pani and Another, in support of his contention that the second charge-sheet would not be permissible. In that case charge-sheet was issued to an employee of a bank (petitioner therein) wherein a charge was made that the employee (respondent therein) had removed special bearer bonds worth Rs. 2 lakhs from the bank's safe custody. The respondent employee was exonerated from this charge. Subsequently, an order was passed wherein the charges were leveled against the respondent that out of the 20 bearer bonds, 5 bearer bonds have been disposed of for a sum of Rs. 59,500/-. The Supreme Court examined the charges and held that they were in two parts, the first being a charge regarding removal of 20 special bearer bonds and the second part being disposal of 5 out of 20 special bearer bonds for a sum of Rs. 59,500/-. The Court held that since the respondent had been exonerated of the first part of the charge thus inquiry into the second part would not be possible as the same was contingent upon the respondent having removed 20 special bearer bonds in the first place. The Court held that the charge of disposal of 5 bearer bonds would arise only if the first part of the charge of removal of bearer bonds was proved. Since in the first inquiry the respondent had been exonerated of the first part of the charge, the bank could not be permitted to reopen the same. In the present case, the appellant has not been exonerated of the charges made in the first charge sheet dated 24.08.2005. On the contrary, the charges leveled against the appellant in the charge-sheet dated 24.08.2005 has been accepted by the appellant. The facts which are necessary to prove the charges as leveled in the statement of charges issued on 20.06.2011 would not entail reopening of the conclusion with regard to any of the charges leveled in the first charge-sheet dated 24.08.2005. Thus in our view, the ratio of the decision of the Supreme Court would not be applicable in the facts of the present case.

27. We find that there is no justification to burke the inquiry initiated by the respondent, however, we must clarify that we have not expressed any opinion with regard to the merits of the charges leveled as well as the validity of the charge-sheet issued on 20.06.2011 and it would be open for the appellant to urge all contentions before the Inquiry Officer. The Inquiry Officer shall conduct the proceedings uninfluenced by any observation made by us or by the learned Single Judge.

28. We find no infirmity in the order dated 19.03.2013 passed by the learned Single Judge and accordingly, dismiss the present appeal. However, we set aside the cost of Rs. 15,000/- imposed by the learned Single Judge on the appellant. The parties are left to bear their own costs.