

(2003) 02 CAL CK 0021
In the Calcutta High Court
Case No : C.R.R. No's. 182 and 183 of 2003

Sushil Kumar Bagla

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14A(2), 14AB, 14AC, 2
Penal Code, 1860 (IPC) — Section 405, 406, 409

Citation : (2003) 3 CALLT 470 : (2004) CriLJ 171 : (2003) 3 LLJ 510

Hon'ble Judges : Sujit Barman Roy, J

Bench : Single Bench

Advocate : Ajit Kr. Panja, Joymalya Bagchi, Niladri Bhattacharjee and Kaushik Sinha Roy, Ranjan Kr. Roy, for the Appellant;

Final Decision : Dismissed

Judgement

Sujit Barman Roy, J.—By this common order both these petitions u/s 482 of the Code of Criminal Procedure filed by the same petitioner are being disposed as identical questions of facts and law have been raised.

2. In these two petitions petitioner has prayed for quashing the FIRs in Birpara P.S. Case No. 4/2002 under Sections 406/409 I.P.C. and Birpara P.S. Case No. 55/2002 under Sections 406/409 I.P.C. and all investigation in connection therewith.

3. It is alleged that Hanuman Tea Co. Ltd. is the owner of the Ramjhora Tea Estate situated at Birpara of Alipurduar in the State of West Bengal. Petitioner was a Director of the said Hanuman Tea Co. Ltd. However, petitioner claims to have resigned from the Directorship of the said company on or about July 18, 2002. He further claims that at no material point of time petitioner was owner or occupier of the said Tea Estate nor had he any control over the affairs of the same.

4. Complainant being an Enforcement Officer appointed under the provision of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said E.P.F. & M.P. Act) lodged a complaint before police alleging, inter alia, that the said Tea Estate having P.P. Code W.B./964 is an establishment under the said E.P.F. & M.P. Act. It was detected by him that the employers, namely, petitioner and some others as named therein deducted a sum of Rs. 13,03,815/- from the salaries/wages of the employees of the said Tea Estate for the period from May, 2001 to November, 2001 and yet did not deposit the same with the statutory fund. This omission amounted to offences under Sections 406/409 I.P.C. On the basis of this complaint FIR being Birpara P.S. Case No. 4/2002 was registered on January 17, 2002 under Sections 406/409 I.P.C. and, accordingly, police investigation was started.

5. Likewise, said complainant lodged another complaint with police against the employers, namely, petitioner and some other accused persons, named, therein. Similar allegations were made in the said complaint. It was, inter alia, alleged therein that the employers deducted a sum of Rs. 6,26,860/- from the wages/salaries of employees of the said Tea Estate for the period from December, 2001 to March, 2002 and yet same was not deposited with the statutory fund. This failure on the part of the employers amounted to offences under Sections 406/409 I.P.C. Accordingly an FIR being Birpara P.S. Case No. 55/2002 was registered on August 26, 2002 under Sections 406/409 I.P.C. and usual police investigation was started.

6. Now, the petitioner has prayed for quashing the two complaints/FIRs and police investigation in connection therewith on various grounds.

7. I have heard Mr. A.K. Panja, learned counsel for the petitioner. None was available for the opposite party.

8. Mr. Panja, learned counsel for the petitioner first contended that neither of the two complaints disclose any fact that the petitioner dishonestly misappropriated or converted to his own use the money in question or dishonestly disposed of the money. According to him as both the complaints are silent about this post essential ingredient of the offence of criminal breach of trust, same do not disclose any offence at all and hence both the complaints must be quashed. To buttress his aforesaid contention, Mr. Panja relied upon a decision of this Court in Putul Chandra Dasgupta v. State of West Bengal 2002 (1) CHN 630. He drew my pointed attention to the observations of this Court in paragraph 6 of the said decision which is quoted below:

"In the present case from the copy of the charge-sheet, I find that it recorded the simple fact that the accused persons noted in column No. 2 deducted the employees' share of contribution from the wages/salary of the employees of Victoria Jute Company Ltd. for the period from July, 1986 to December, 1986 but the same was not transferred. From such charge-sheet, it is not clear how the prosecuting authority could satisfy itself that the accused/ petitioner committed

an offence punishable under Sections 406/409 of the Indian Penal Code. So far as the offence punishable u/s 406 is concerned, it provides punishment for criminal breach of trust and to establish the same it must be proved that the accused has dishonestly misappropriated or disposed of the property in violation of his duty. As to the proof of criminal misappropriation in cases money has been misappropriated, it will often be in the following manner:

Either the offender has wilfully made false entries in his books or else he has denied or wilfully omitted to acknowledge the receipt of money but in the instant case the whole, allegation is that the accused being responsible for day to day business of the company failed to deposit the amount realised towards employees' contribution in the Provident Fund with the authority concerned. It is doubtful whether such allegation per se can give rise to an offence punishable u/s 406 IPC as the same is not sufficient to establish misappropriation. For the said reason prosecution cannot also be launched u/s 409 IPC."

9. Mr. Panja also relied upon observations of the Apex Court in paragraph 108 of its decision in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, :In this paragraph Apex Court reiterated already well settled principles and guidelines as to when an FIR or complaint can be quashed. Relying on these two decisions, Mr. Panja contended that as both the FIRs, are silent on the aforesaid essential ingredients of the offences u/s 406/409 I.P.C., same should be quashed. It is undoubtedly true that if an FIR or complaint does not disclose an essential ingredient of the alleged offence, same must be quashed and investigation cannot be allowed to be continued.

10. But I am unable to accept the contention of Mr. Panja that the two complaints do not disclose prima facie case for the alleged offences. I am also unable to accept the observations of this Court in paragraph 6 of *Putul Chandra Dasgupta's* case without taking into consideration a series of earlier decisions of this Court as well as the Supreme Court. Latin expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when the Court has acted in ignorance of previous decision of its own or of the Apex Court. It also appears that while making above-quoted observations in paragraph 6 of *Putul Chandra Dasgupta's* case, this Court did not take into consideration effect of explanation-I to Section 405 I.P.C. It has been held by the Supreme Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, that as regards judgments of the Supreme Court allegedly rendered, in ignorance of a relevant constitutional provision or other statutory provision on the subject covered by them, the Supreme Court may not be said to declare the law on these subjects if the relevant provisions were not really present to its mind.

11. Now explanation-I to Section 405 provides that "a person, being an employer who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law of the time being in force, shall be deemed to have been entrusted with

the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid". Once it is found that employer deducted amounts from wages of the employees for contribution to Provident Fund and retaining the same without depositing it with the fund, an automatic presumption is available against the employer that he dishonestly used the amount of the said contribution in Violation of a direction of law. Same view was expressed by the Supreme Court in Harihar Prasad Dubey Vs. Tulsi Das Mundhra and Others, :While expressing the said view Supreme Court quoted with approval following observation of Madhya Pradesh High Court in Akharbhai Nazarali Vs. Md. Hussain Bhai, :

" the mere fact of telling the employees that it is their contribution to the Provident Fund Scheme and then making deduction or recovery and retaining it, constitutes the offence of criminal breach of trust."

12. Even before that in Jaikrishnadas Manohardas Desai and Another Vs. The State of Bombay, , Supreme Court held that to establish a charge of criminal breach of trust, prosecution is not obliged to prove precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

13. In Krishan Kumar Vs. The Union of India, : Apex Court held that it is not necessary or possible in every case, to prove in what precise manner the accused person dealt with or misappropriated the goods of his master. The question is one of intention and not a matter of direct proof. In case of a servant charged with misappropriating the goods of his master the ingredients of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account to an accidental loss then the facts being within the servant's knowledge, it is for/him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. If under the law it is not necessary or possible for the prosecution to prove the manner in which the goods have been misappropriated then failure of the prosecution to prove facts it set out to prove the manner of misappropriation or conversion would be of little consequence.

14. It may be mentioned in this connection that both the aforesaid decisions in Krishna Kumar (supra) and Harihar Prasad Dubey (supra) were rendered by the Supreme Court long before explanation-I was inserted in Section 405 I.P.C. by

amendment in 1973. This explanation-I merely recognises the law already decided by the Apex Court. Decision of this Court in Putul Chandra Dasgupta's case clearly appears to be a judgment per incuriam as it was rendered without considering aforesaid three decisions of the Apex Court and explanation-I to Section 405 I.P.C.

15. Next contention of Mr. Panja is that petitioner is not the employer of the employees from whose wages/salaries, their contributions towards Provident Fund were deducted. It is the company, namely, Hanuman Tea Co. Ltd. which is the principal employer. Petitioner is merely a Director of the said company. In view of explanations I and II of Section 405 I.P.C. petitioner cannot be proceeded against in this case. Only the company, being the employer, is liable to be proceeded against in this regard it may be observed here that an FIR cannot be quashed merely on the ground that the petitioner has been wrongly shown as an offender in the FIR. If the FIR discloses a prima facie case of cognizable offence, it cannot be quashed merely on the ground that someone has been wrongly arrayed as an accused or that in law no such case is maintainable against a particular accused or that in law no such case is maintainable against some other accused. In such a case only remedy available to an accused is to pray for discharge after charge sheet is filed against him. That apart, Section 14A of the said EPF & MP Act, inter alia, provides that "If the person committing an offence under this Act, the Scheme or the Pension Scheme or the Insurance Scheme is a company, every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly." Sub-section (2) of Section 14A further provides that; "Notwithstanding anything contained in Sub-section (1), where an offence under the Act or the Scheme or the pension scheme or the insurance scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director or Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly." Therefore, Director of a company can very well figure as an accused in an FIR for such offences. Of course ultimately if no material is found against the Director in course of investigation about his involvement, he may not be charge-sheeted. That apart a company cannot act on its own. It always acts through human agency. A company being a juristic person is incapable of having a particular state of mind, namely, the mens rea u/s 405 I.P.C. Essential ingredient of the offence u/s 405 is a particular state of mind, namely, dishonest misappropriation or conversion or use or disposal of the property in question. A company, being a juristic person, is incapable of having such state of mind and hence the company cannot be proceeded against for the offences under Sections 406 and 409 I.P.C. where particular mens rea is an essential ingredient. Therefore, it is only the natural

persons through whom the company committed the offences in question are liable to be proceeded against for offences under Sections 406 and 409. It may be pertinent to mention here that mens rea like dishonest misappropriation or conversion or use or disposal of the property in question is not an ingredient for the offences contemplated under the provisions of EPF & MP Act and hence, for offences under the said Act a company can be proceeded against though it cannot be proceeded against for the offences under the Indian Penal Code. Therefore, contention of Mr. Panja that petitioner being a Director only cannot be proceeded against and it is the company only which can be proceeded against for the offences under Sections 406/409 sounds like an absurd proposition and the same is untenable in law. Accordingly same is rejected.

16. However, Mr. Panja referred to a decision of the Apex Court in Employees State Insurance Corporation Vs. S.K. Aggarwal and Others, : In the said decision it was held that in view of the definition of "principal employer" as provided u/s 2(17) read with Section 40 of the Employees' State Insurance Act and explanation II to Section 405 I.P.C., it is the company alone which can be proceeded against for offences under Sections 406/409 and not its Director. But EPF & MP Act does not contain any such provision as Section 2(17) and Section 40 of Employees' State Insurance Act. However, Section 2(e) of EPF & MP Act defines the term "Employer" which provides that "employer" means-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a Manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a Manager, Managing Director or Managing Agent, such Managers, Managing Director or Managing Agent.

17. As the EPF & MP Act does not contain any such provision similar to Sections 2(17) and 40 of the Employees' State Insurance Act, there is no justification to apply the decision of the Apex Court reported in Employees' State Insurance Corporation v. S.K. Agarwal (supra). That apart this decision does not answer the question as to how a juristic person like a company can be prosecuted in respect of an offence under the Penal Code where mens rea or particular state of mind is an essential ingredient of such an offence. Otherwise, many decisions of the Apex Court on this point will be rendered devoid of any application. One can understand that in respect of offences where mens rea or particular state of mind is not an essential ingredient like those under the provisions of Employees' State Insurance Act or EPF & MP Act, it may be possible to prosecute a company. A company being not a natural person cannot have a mind and hence it can not have any particular state of mind or mens rea. For all offences under the Penal Code, mens rea is always invariably an essential ingredient and hence for such

offences none except natural persons can be prosecuted. That a juristic person like a company cannot have mind is an undeniable fact of natural science and, therefore, on the strength of (sic) aforesaid decision of the Apex Court reported in Employees' State Insurance Corporation v. S.K. Agarwal (supra), I cannot be asked to deny this basic proposition of natural science.

18. As already pointed out that the Apex Court observed in Punjab Land Development and Reclamation Corporation Ltd. case (supra) that as regards judgments of the Supreme Court rendered in ignorance of a relevant constitutional provision or other statutory provision on the subject, covered by them, the Supreme Court may not be said to declare the law on these subjects if the relevant provisions were not really present to its mind. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. An order delivered without reference to relevant provision of the Act and without any citation of relevant authority is per incuriam. See Municipal Corporation of Delhi Vs. Gurnam Kaur, :.

19. It appears to me that without applying its mind to certain statutory provisions and some decisions of the Apex Court and without considering the effects thereof on the legal position in this regard, aforesaid decision of the Supreme Court in the case of S.K. Agarwal (supra) was rendered.

20. Section 2 of the Penal Code declares as to who is punishable for commission of offences under Penal Code within India. It says "Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provision thereof, of which, he shall be guilty within India."

21. Therefore, in view of Section 2, as quoted above, none except those persons contemplated thereunder shall be punishable for commission of offences under the Penal Code within India. Therefore, question is whether a company is a "person" within the meaning of Section 2 so as to render itself punishable for commission of offences under the Penal Code within India? It is contended by Mr. Panja that in view of Section 11, a company can also be punished for offences under the Penal Code. Section 11 provides that the word "person" includes any Company or Association or body of persons, whether incorporated or not. For reasons already stated hereinabove and for further reasons stated hereunder, I am unable to accept such submission of Mr. Panja.

22. It needs to be noted carefully that though the legislature has used the word "person" in the beginning of Section 2, it has deliberately used the pronoun "he" while providing who can be punished under the Penal Code. This pronoun "he" surely refers to the word "person" occurring in the beginning of Section 2. Question, therefore, is when the pronoun "he" refers to the word "person" in Section 2, can it also include juristic person like Company etc. ?

23. Now, again Section 8 I.P.C. provides us with the meaning of the pronoun "he". It provides that "The pronoun "he" and its derivatives are used of any person, whether male or female". Therefore under the Penal Code, the pronoun

"he" or its derivatives like "his" or "him" can mean only natural person, male or female. It cannot mean an artificial or juristic person like company etc. because of its neuter gender. Had it been the intention of the legislature to include artificial person like a company within the word "person", it would have used the words "such person" instead of using the pronoun "he" in Section 2. Therefore legislature has designedly used the pronoun "he" instead of "such person" in Section 2 to signify that word "person" as used in the beginning of Section 2 shall mean only natural person and not an artificial person. It is, accordingly, needless to repeat here that none except natural person is capable of committing offences under the Indian Penal Code. The pronoun "he" or its derivatives have been frequently used in various offences while referring to the persons committing such offences. Legislature never used the word "it" in the Penal Code for referring to the persons committing offences thereunder. Section 405 contains definition of the offence of criminal breach of trust. In the definition or the explanations thereto legislature has repeatedly used the pronoun "he" and its derivatives like "him", "his" and "whose" in order to refer to the person committing such offence. Something can be said about other penal offences and definitions under the Penal Code. Nowhere in the Penal Code the words "it" or "which" have been used to refer to the author of the crimes, In my view legislature has deliberately omitted these words in such circumstances so as to avoid confusion in this regard. An artificial person like company etc. can neither be male nor female. Therefore, the pronoun "he" or its derivatives can only mean natural person.

24. The Supreme Court in its decision in *Kalpanath Rai v. State* AIR 1998 SC 201 : 1997 (8) SCC 733, held that *mem rea* is an essential ingredient for the offence u/s 3(4) of Terrorist and Disruptive Activities (Prevention) Act, 1987 and hence an artificial person like company is incapable of committing such an offence and accordingly, set aside conviction and sentence of a company thereunder.

25. Further contention of Mr. Panja is that said E.P.F & M.P. Act is a special law dealing with a special subject like Employees' Provident Fund. Section 14 of the said Act defines certain offences which make the failure to deposit the amounts so deducted from wages/salaries of employees as their contribution towards Provident Fund punishable. This is a special law and hence, it must prevail over general law like Section 406/409 I.P.C. in matters like Employees' Provident Fund. Mr. Panja also reminded me about the maxim "*generalia specialibus non derogant*" and hence, an offender can be proceeded against only under this special law and not under the provisions of Penal Code so far as non-payment of the amounts in question into the fund is concerned. But the two FIRs were registered u/s 406/409 I.P.C. without complying with requirements of Sections 14AB and 14AC of the said Act. Alleged conduct of the petitioner in the matter of alleged default in depositing the amounts with the fund may amount to an offence u/s 14 of the said E.P.F. & M.P. Act, therefore, offenders of such offences may be proceeded against for such an offence by following the special procedure

laid down in this behalf in Sections 14AC and 14AB thereof and certainly not under general law like Sections 406/409 I.P.C.

26. Section 14AB provides that notwithstanding anything contained in the Code of Criminal Procedure, an offence relating to default in payment of contribution by the employer punishable under the said Act shall be cognizable. But offences under Sections 406 and 409 I.P.C. are also cognizable and hence, there is absolutely no difference between the special law and general law so far as cognizability of the offences is concerned.

27. Now, Section 14AC of EPF & MP Act provides that "no Court shall take cognizance of any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme except on a report in writing of the facts constituting such offence made with previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed u/s 13."

28. Now, Mr. Panja contends that no sanction was obtained as required by or u/s 14AC before lodging the FIR and hence, both the FIRs as well as investigation in connection therewith being bad in law must be quashed. I am sorry to observe here that this argument is also not tenable in law and must be rejected in view of the following reasons.

29. It is true that no cognizance can be taken in respect of offences under the said EPF & MP Act, the scheme etc. except on a report in writing of the facts constituting such offences by an Inspector with previous sanction from the authorities mentioned therein. But the cases registered against the petitioner and others are in respect of offences under Sections 406/409 I.P.C. and not in respect of any offence under the said Act. Therefore, there was no obligation to comply with requirements of Section 14AC for registering any FIR under Sections 406/409 I.P.C., nor will there be any such obligation in future for taking cognizance on the basis of a charge-sheet, if at all filed. Furthermore, both the cases are still under police investigation. Stage for taking cognizance has not yet been reached and hence the question of complying with requirements of Section 14AC cannot arise now.

30. Now Section 26 of the General Clauses Act, 1897 provides that 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 these enactments, but shall not be punished twice for the same offence. It is evident from this provision that the respondents have option to prosecute the petitioner and others under either the special law or the general law or under both the enactments. However, care must be taken that the offender is not punished twice for the same offences of which ingredients are the same.

31. In T.S. Baliah Vs. T.S. Rengachari, , the Supreme Court held that the question for determination was whether accused could be prosecuted both u/s

177 I.P.C. and Section 52 of the Income Tax Act, 1922. It was contended on behalf of the accused that in view of Section 26 of the General Clauses Act, accused could be prosecuted either u/s 177 I.P.C. or u/s 52 of the Income Tax Act, 1922 and not for both offences at the same time. While rejecting this contention, the Supreme Court held that a plain reading of Section 26 of the General Clauses Act shows that there is no bar to the trial or conviction of the offender under both the enactments, but there is only a bar to the punishment of the offender twice for the same offence. In other words, Section provides that where an act or omission constitutes an offence under two or more enactments, the offender may be prosecuted and convicted under either or both the enactments but shall not be liable to punishment twice for the same offence.

32. Exactly same view was reiterated by the Supreme Court in *Municipal Corporation of Delhi Vs. Shiv Shanker*, : In this decision Supreme Court observed that Section 26 avoids implied repeal of general enactments by special enactments, at the same time protects the offender against a double penalty. In the context of facts of that case Supreme Court held that provisions of Prevention of Food Adulteration Act and Fruit Products Order made under Essential Commodities Act seem to be supplementary and cumulative in their operation and they can stand together. Parliament did not intend by enacting the Essential Commodities Act or the Fruit Control Order to impliedly repeal the provisions of the Food Adulteration Act and the Rules in respect of vinegar. Both the statutes can function with full vigour side by side in their own parallel channels. Even if they happen to some extent overlap, Section 26 of the General Clauses Act fully protects guilty parties against double jeopardy or double penalty. Effect of these authorities is that in view of Section 26 of the General Clauses Act, the maxim "generalalia specialibus non-derogant" cannot be invoked in such circumstances.

33. This Court while giving its decision in *Putul Chandra Dasgupta's* case (supra), did not consider the effect of Section 26 of the General Clauses Act or the aforesaid binding authorities of the Apex Court and hence this decision is also a decision per incuriam and hence there is absolutely no need to refer this case to a larger Bench, as suggested by Mr. Panja.

34. It may further be carefully noted that in offences u/s 14 of the E.P.F. & M.P. Act mens rea is not a necessary ingredient. But mens rea is an indispensable ingredient for offences under Sections 406/409 I.P.C. as defined in Section 405. Therefore, offences under Sections 406 and 409 I.P.C are quite distinct and different from these u/s 14 of the E.P.F. & M.P. Act. In circumstances when ingredients are not identical, an offender can be punished for the offences under both enactments and such convictions and sentences for all these offences under different or the same enactment will not suffer from the vice of double jeopardy or punishment. Observations of the Apex Court in paragraph 7 of its decision in *The State of Madhya Pradesh Vs. Veereshwar Rao Agnihotry*, , are noteworthy. Theory of double jeopardy or punishment within the meaning of Section 26 of the

General Clauses Act or Article 20(2) of the Constitution of India has no application if the various offences in question are distinct and different and the ingredients are quite different. In this respect, I am supported by a catena of decisions of the Apex Court apart from these of this Court as well as other High Courts i. e., The State of Bombay Vs. S.L. Apte and Another, ; Manipur Administration Vs. Thokchom, Bira Singh, ; Emperor Vs. Joti Prasad Gupta ; Aravinda Mohan Sinha Vs. Prohlad Chandra Samanta, etc.

35. Therefore, in view of the series of aforesaid binding authorities it can be safely said that neither theory of double jeopardy or punishment nor the maxim *generalia specialibus non-derogant* has any manner of application in the instant case.

36. Furthermore, no cognizance can be taken for the offences under E.P.F. & M.P. except with sanction from competent authorities u/s 14AC. But for the offences under Sections 406/409 I.P.C., no sanction is required. Therefore, prosecution has option not to proceed against the offenders for offences under E.P.F. & M.P. Act for which sanction is required. It may opt for easier course under the Penal Code where no sanction is required. In Amarendra Nath Roy Vs. The State, , this Court expressed the same view. Similar was the view of this Court in Badri Prosad Vs. State, . Therefore, if an act or omission amounts to offences under two enactments and under one of such enactments sanction is required for prosecution of the offender, it is option of the prosecution to prosecute him under either of the enactments. Court cannot insist that the prosecution must be under the enactment which requires sanction. See State Vs. Gulab Singh, and Waman Sambhaji Duka Vs. Narhari Sambhajirao Phatale, .

37. In view of the aforesaid authorities and Section 26 of the General Clauses Act, I am constrained to hold that the decision of this Court in the case of PutuI Chandra Dasgupta is a decision *per incuriam* and hence, it has no such binding effect upon me. Equally, I am not obliged to refer this case to a larger Bench, as suggested by Mr. Panja.

38. In the result I have no hesitation to hold that petitioner has failed to make out any case for quashing the FIR or to interfere with the investigation and, accordingly, this petition is dismissed.