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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 3554/2011
PRADEEP KUMAR @ PAPPU & ANR Petitioners
Through: Mr. Shivam Sharma and Mr. Raj
Kishore Choudhary, Advocates.

versus

STATE OF DELHI Respondent
Through: Mr. Manoj Ohri, APP for the State.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

% **ORDER**
24.10.2011

Crl. M.A. No. 12648/2011 & 12649/2011(Exemption)

Allowed, subject to all just exceptions.

Crl. M. C. No. 3554/2011 & Crl. M.A. No. 12649/2011 (Stay)

1. By this petition the Petitioners seeks quashing of the order dated 21st July, 2011 passed by the learned ACMM-I Rohini, Delhi framing notice under Section 251 Cr. P.C. upon the Petitioners for offences punishable under Sections 272/273/482/34 IPC in case FIR No. 391/1999 registered at PS Keshav Puram, Delhi.

2. Learned counsel for the Petitioner contends that the FIR was registered malafidely as earlier a case was registered against the Petitioners in which they were acquitted. The learned trial court directed registration of

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FIR against the police officer. The present FIR was registered to pressurize the Petitioners to settle the matter. Further the FIR was ante timed. There is no allegation against the Petitioners except that they were present at the spot. Moreover, Arun Kumar and Naveen Kumar have filed applications before the learned trial court and claimed that the goods belonged to them.

3. Briefly the prosecution case is that on 18th December, 1999 the Pradhan of Jhuggis in the Industrial Area, Lawrence Road informed that work of making adulterated oil was going on at Plot No. G-15, Industrial Area. On this SI Sultan Singh organized a raiding party with Constable Balbir as a decoy customer. On reaching the factory premises, Constable Balbir purchased twelve bottles of oil which resembled like mustard oil and on which the label of Krishna Oil Mill, Panipat, Haryana was found. On Constable Balbir giving a signal a raid was conducted and from the premises three sealed bottles of oil were taken out from the petti and after de-sealing them three samples were filled in different plastic bottles. Further yellow colour fragrant chemical used in palm oil was found in an aluminum pateela. One truck bearing No. MP 09 K 6666 was found outside the factory wherein from a tap tins were being filled and sealed by persons. Samples thereof were also taken and it was found that three partners, that is, the Petitioners

and Suresh Chand were present in the factory however, the fourth partner Jai Kishan was not found and it was stated that he has gone out.

4. Pursuant to investigation in the abovementioned FIR being registered a charge sheet was filed. Initially the Petitioners were discharged by the learned ACMM against which order a revision petition was filed by the State. In the revision petition, the learned Additional Sessions Judge set aside the order of the learned ACMM and directed framing of charges against the accused persons as per its order. The Petitioners filed a revision petition before this Court challenging the said order dated 23rd October, 2010 passed by the learned Additional Sessions Judge directing framing of charges. The said revision petition was withdrawn by the Petitioners with liberty to urge the grounds available to them in accordance with law before the learned Trial Court. However, the Petitioners have again come up in the present petition challenging the order of framing of notice. It may be noted that the order of the learned Additional Sessions Judge dated 28th October, 2010 was a well considered and reasoned order wherein it was held that the Petitioners were not being prosecuted for offences punishable under the special enactment but for offences punishable under IPC which the police officers were competent to investigate and file a charge sheet thereon.

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5. It is well-settled that even where an act is punishable under a special statute as well as under a general law the offender could be prosecuted under either or both, but could not be punished twice for the same act or omission constituting an offence, in view of Section 26 of the General Clauses Act, 1897, which 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.

6. Hon’ble Supreme Court in the *State of Bombay vs. S.L. Apte*, AIR 1961 SC 578 held that though Section 26 of the General Clauses Act 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. If the offences are not the same but are distinct or made up of different ingredients the ban imposed cannot be invoked. Thus, it is clear that to operate as a bar the second prosecution and the consequential punishment thereunder must be for the same offence that is an offence whose ingredients are the same.

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7. In my opinion the earlier petition having been withdrawn by the Petitioners with liberty to raise the issues raised during trial before the learned Trial Court the present petition seeking quashing of the framing of notice deserves to be dismissed.

8. Petition and application are dismissed.


MUKTA GUPTA, J.

OCTOBER 24, 2011

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