

GAHC010235372013



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/6933/2013**

DURGA PRASAD BORDOLOI  
S/O SRI DAMBARUDHAR SARMA BORDOLOI DIVISIONAL COMMANDANT  
HOME GUARDS, UNDER SUSPENSION, HILLS DIVISION, SILCHAR, R/O  
KALIABOR TINIALI P.O. KUWARITOL DIST. NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and 8 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HOME and  
POLITICAL ETC. DEPARTMENT, DISPUR GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME and POLITICAL ETC.  
DEPARTMENT  
DISPUR  
GUWAHATI-781006

3:THE DIRECTOR GENERAL OF POLICE  
ASSAM POLICE AND HEAD QUARER  
ULUBARI  
GUWAHATI- 781007.

4:THE DIRECTOR GENERAL

CIVIL DEFENCE AND GENERAL COMMANDANT  
HOME GUARDS  
ASSAM  
BELTOLA  
GUWAHATI- 781028  
KAMRUP M  
ASSAM.

5:THE JOINT SECRETARY TO THE GOVT. OF ASSAM

HOME B DEPARTMENT  
DISPUR  
GUWAHATI- 781006.

6:THE DEPUTY SECRETARY TO THE  
GOVT. OF ASSAM  
HOME B  
DEPARTMENT  
DISPUR  
GUWAHATI- 781006.

7:THE SUPERINTENDENT OF POLICE  
VIGILANCE AND ANTI CORRUPTION  
AND RUPNAAR  
GUWAHATI- 781032.

8:THE SUPERINTENDENT OF POLICE

TEZPUR  
P.O. and P.S. TEZPUR  
DIST. SONITPUR  
ASSAM

9:THE SENIOR STAFF OFFICER HG

OFFICE OF THE DIRECTOR GENERAL  
CIVIL DEFENCE AND GENERAL COMMANDANT  
HOME GUARDS  
ASSAM  
BELTOLA  
GUWAHATI- 781028  
KAMRUP  
ASSAM

**Advocate for the Petitioner : MS.R CHAKRABORTTY**

**Advocate for the Respondent :**

**BEFORE  
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Judgment & Order(Oral)**

**Date : 19.03.2024**

Heard Mr. P. K. Roychoudhury, learned counsel for the petitioner. Also heard Mr. C. S. Hazarika, learned Government Advocate appearing for the State respondents.

**2.** The petitioner, by way of instituting the present proceedings has raised a grievance with regard to the vigilance enquiry initiated in the matter by the Superintendent of Police, Vigilance and Anti-Corruption, Assam and the communications dated 30.08.2013, 23.08.2013 and 21.08.2013 issued to the petitioner in the above connection requiring him to submit his Assets and Liabilities Statement, Income and Expenditure Statement and Salary Statement since his joining his services i.e. w.e.f. 28.02.2012.

**3.** As projected in the writ petition, the petitioner was initially appointed as a District Commandant Home Guard, Tezpur, vide a notification dated 29.05.1992. Thereafter, the petitioner, vide notification dated 22.01.2010 was promoted and allowed to officiate in Class-I of the Home Guards services. Accordingly, the petitioner was contended to have been posted as 2<sup>nd</sup>-in-Command 1<sup>st</sup> AISF Bn. Amoni, Nagaon. While posted in the said capacity, the petitioner was also required to take over the additional charge of the post of District Commandant Home Guard, Sonitpur, Tezpur.

**4.** It was contended that while he was holding the additional charge of the post of District Commandant Home Guard, Sonitpur, w.e.f. 11.03.2010 to 11.11.2011, a recruitment process was under taken for recruiting 460 nos. of

Volunteers for different development works in the district of Sonitpur and after completion of the Rural Basic Home Guards training programme for the said recruits, the said recruits were sanctioned a pocket allowance @ Rs. 18/- per day for 42 days and transportation allowance @ Rs. 200/- per day per head. It is contended that the amounts as sanctioned to the said Volunteers were so recorded in the manner prescribed and the same was forwarded to the competent authority. The petitioner on account of the ailments suffered by him was under medical treatment and had also proceeded to Apollo Hospital, Chennai on 10.08.2010 for the purpose and was under treatment from the Doctors therein w.e.f. 11.08.2010. The petitioner, for the purpose of receiving the said treatment had also availed Casual Leave for the period of his absence.

**5.** It is contended by the petitioner that while he was under leave, one Paban Hazarika had filed a complaint against the petitioner before the learned Chief Judicial Magistrate, Tezpur on 01.11.2011 on the charge of having issued forged certificate to the complainant and for cheating the complainant in the name of imparting training as well as alleging deduction of wage payable to the trainees and misappropriation of money of the trainees. The learned Chief Judicial Magistrate, Tezpur, on receipt of the said complaint, directed the concerned Police Station to investigate the matter and submit a report thereon. Accordingly, Tezpur Police Station Case No. 1219/2011 came to be registered under Sections 120(B)/409/420/468/477 of the IPC. Subsequently, it is contended that Section 13(1) (a)(c)/(2) of the Prevention of Corruption Act, 1988 came to be added.

**6.** It is further contended that the petitioner had approached this Court

praying for grant of pre-arrest bail in the matter, however, the same being rejected, the petitioner had approached the Hon'ble Supreme Court by way of filing a Special Leave to Appeal (CRL) Case No. (S). 708/2012, praying for bail by allowing him to surrender. The Hon'ble Supreme Court, vide order dated 24.01.2012 allowed the prayer of the petitioner and consequently, by an order dated 02.02.2012, the learned Chief Judicial Magistrate, Tezpur was pleased to accept the bail bonds of the petitioner on his surrender in compliance with the directions passed by the Hon'ble Supreme Court of India.

**7.** It is submitted at the Bar that the criminal case as instituted against the petitioner is now pending trial before the Court of learned Special Judge, Guwahati in Special Case No. 04/2015.

**8.** Poised thus, on 02.08.2012, the Deputy Secretary to the Govt. of Assam, Political (Vigilance) Department directed the Superintendent of Police, Vigilance and Anticorruption, Assam to initiate a regular enquiry in the matter against the petitioner and submit a report to the department. The Superintendent of Police, Vigilance and Anticorruption, Assam on carrying out the preliminary enquiry into the matter submitted a report thereon on 04.07.2012, regarding the selection of Home Guards and issuance of false certificate by the petitioner herein. In terms of a direction passed in this connection by the Government of Assam to the Director General of Civil Defence and Commandant General, Home Guard, Assam vide communication dated 23.08.2013, requiring the later to serve a set of CBI Proforma-I to VI upon the petitioner herein with a direction to require the petitioner to fill up the said Proforma along with the details of his assets and

liabilities statement, income and expenditure statement, salary statement duly counter signed by the controlling officer since inception of service till 28.02.2012 and furnish the same directly to the Political (Vigilance Cell) Department at the earliest, the Director General of Civil Defence and Commandant General, Home Guard, Assam vide communication dated 30.08.2013, submitted the said Proforma to the petitioner and required him to filled up the same and submit it at the earliest. Thereafter, the same Profomas were again required to be served upon the petitioner by the Government of Assam in the Political (Vigilance Cell) Department, Dispur, vide communication dated 21.08.2013 and the same was directed to be submitted after the same was filled up by the petitioner to the Government and the same was stated to be so required in connection with the vigilance enquiry initiated in the matter by the Superintendent of Police, Vigilance and Anticorruption, Assam. The petitioner contends that basing on the same factual matrix a departmental proceeding was initiated against the petitioner and a penalty of stoppage of increment was so imposed upon him. The petitioner being aggrieved by the communications dated 30.08.2013, 23.08.2013 and 21.08.2013 has instituted the present proceedings before this Court.

**9.** It is to be noted herein that this Court vide order dated 29.11.2013, while issuing notice in the matter was pleased to direct that the said communications dated 30.08.2013, 23.08.2013 and 21.08.2013 shall not be acted upon till the returnable date. The said interim order was thereafter, continued with.

**10.** Mr. P. K. Roychoudhury, learned counsel for the petitioner has

submitted that a criminal petition being so instituted against the petitioner and the said proceeding also involving a charge under Section 13 (1) (a) (c)/ (2) of the Prevention of Corruption Act, 1988, prior to its amendment, and in the event the petitioner is required to comply with the requirements as made in the impugned communications dated 30.08.2013, 23.08.2013 and 21.08.2013, his stand in the criminal proceedings would stand compromised.

**11.** The learned counsel for the petitioner further submits that Article 20(3) of the Constitution of India mandates that no person accused of having committed an offence shall be compelled to be a witness against his own cause and in the event, the petitioner is required to disclose his assets and liabilities as per the impugned communications, the same would amount to the petitioner deposing in the said criminal case as witness against himself. The learned counsel for the petitioner by referring to provisions of Section 26 of the General Clauses Act, 1977, submits that the petitioner cannot be subjected to 'Double Jeopardy'. It is submitted that in the event a person is said to have committed an offence punishable under two or more enactments then such accused shall be liable to be prosecuted and punished under either or any of the said enactments and shall not be liable to be punished twice for the same offence. In this connection, the petitioner has relied upon the following decisions:-

- (1) 2006 (13) SCC 252
- (2) 1971 (1) SCC 442
- (3) 2993 (2) SCC 152
- (4) AIR 1965 SC 682
- (5) 2001 (8) SCC 289
- (6) 2016 (9) SCC 491
- (7) 1991 (4) SCC 406
- (8) 2019 (3) SCC 770

(9) 2016 (3) SCC 1183

**12.** Relying on the said decisions of the Hon'ble Supreme Court, it is contended on behalf of the petitioner that the term "prosecution" has been interpreted to mean institution of or commencement of a criminal proceeding and enquiry or investigation. Accordingly, it is contended that the impugned communications having the effect of initiating a investigation in the matter against the petitioner herein, the same would be required to be so interfered with by this Court by following the decisions of the Hon'ble Supreme Court in the matter.

**13.** Per contra, Mr. C. S. Hazarika, learned Government Advocate appearing for the State respondents has submitted that the impugned communications were so issued to the petitioner only requiring him to submit his assets and liabilities statement so as ascertain as to whether the petitioner was in possession of income and or, assets disproportionate to his known sources of income.

**14.** It is contended that a regular enquiry was initiated against the petitioner by the competent authorities vide a memorandum dated 02.08.2012 for his alleged corrupt practices and vide the impugned communications the Proforma involved was forwarded to the petitioner requiring him to furnish details of his assets and liabilities as a part of his vigilance enquiry. It is further contended that the said exercise as initiated in the matter was an independent exercise and had no connection with either the criminal proceedings instituted against the petitioner and/or the

departmental proceedings so instituted against him.

**15.** Mr. Hazarika, learned Government Advocate appearing for the State respondents by referring to the provisions of the Assam Civil Services (Conduct) Rules, 1965, more particularly, the provisions of Rule 11 thereof, has submitted that all government servants are mandatorily required to submit a return of their assets and liabilities in such form as may be prescribed by the government giving full particulars of the property inherited, owned or acquired by him or held by him on lease or mortgage, either in his own name, or in the name of any of his members of the family or in the name of any other person. Further, the government servant is required to disclose the shares, debentures and bank deposits either inherited by him or owned/acquired, or held by him. The above information is required to be furnished along with the debts and liabilities incurred by him directly or indirectly.

**16.** It is contended that the said Conduct Rules of 1965, being applicable to the petitioner herein, he is mandatorily, required under the provisions of the said Rules to provide the information now sought through the impugned communications in the matter. Accordingly, it is submitted that the furnishing of the said information by the petitioner being a requirement under the said Rules of 1965 also, it cannot be held that the same would be prejudicial to the interest of the petitioner herein.

**17.** I have heard the learned counsels appearing for the parties and also perused the materials available on record.

**18.** The primary contention of the petitioner herein, with regard to the challenge made by him to the impugned communications dated 30.08.2013, 23.08.2013 and 21.08.2013 is that in the event, the assets and liabilities statement as required by the petitioner to be so furnished vide the said impugned communications is furnished by him, the same would prejudicially effect him in the criminal case now under trial before the Court of learned Special Judge, Guwahati and accordingly, it was submitted that the said information being also connected with the charge leveled against the petitioner in the said criminal case, the disclosure of the said information by the petitioner would lead to the petitioner being subjected to dual proceedings and would also be in violation of the provisions of Article 20(3) of the Constitution of India.

**19.** In view of the rival submissions made in the matter, this Court is now required to consider the issue as to whether the regular vigilance enquiry as now instituted in the matter against the petitioner would be hit by the provisions of Article 20(3) of the Constitution of India.

**20.** In this connection, this Court would refer to the decision as relied upon by the learned counsel for the petitioner in the case of *Bhagwan Swarup Lal Vs. State of Maharashtra*, reported in *AIR 1965 SCC 682*.

**21.** The Hon'ble Supreme Court in the said decisions having examined the words "same offence" had concluded as follows:-

*"This Court again considered the scope of the words "same offence" in State*

*of Bombay v. S. L. Apte, (1963) 3 SCR 107 at p. 114: (AIR 1961 SC 578 at p. 581). There the respondents were both convicted and sentenced by the Magistrate under S. 409 of the Indian Penal Code and S. 105 of the Insurance Act. Dealing with the argument that the allegations of fact were the same, Rajagopala Ayyangar, J., rejecting the contention, observed on behalf of the Court:*

*"To operate as a bar the second prosecution and the consequential punishment there under, 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 fact 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."*

*This decision lays down that the test to ascertain whether two offences are the same is not the identity of the allegations but the identity of the ingredients of the offences. In view of the said decisions of this Court, the American decisions cited at the Bar do not call for consideration. As the question raised has already been decided by this Court, what remains is only the application of the principle laid down to the facts of the present case. We cannot, therefore, hold that the question raised involves a substantial question of law as to the interpretation of the Constitution within the meaning of Art. 145(3) of the Constitution.*

*12. In the present case, applying the test laid down by this Court the two conspiracies are not the same offence: the Jupiter conspiracy came to an end when its funds were misappropriated. The Empire conspiracy was hatched subsequently, though its object had an intimate connection with the Jupiter in that the fraud of the "Empire was conceived and executed to cover up the fraud of the Jupiter. 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 Art. 20 (2) of the Constitution and, therefore, that Article has no relevance to the present case."*

**22.** Against the petitioner, the criminal case as instituted also has a charge so leveled against him under Section 13 (1) (a) (c)/(2) of the Prevention of Corruption Act, 1988. The said provisions being relevant are extracted herein below:-

*"A public servant is said to have committed offence of criminal misconduct -*

*13 (a) If he habitually accepts and or obtain or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a move or reward such as is mentioned in Section 7 or;*

*(b).....*

*(c) if he dishonestly or voluntarily misappropriate or otherwise convert for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so, or*

*(2) any public servant who commits criminal misconduct shall be punishable with imprisonment for a term, which shall not be less than one year, but which may extend up to 7 years and shall also be liable of fine."*

**23.** Article 20(2) of the Constitution of India mandates that no person shall be prosecuted and punished for the same offence more than once. Article 20(3) of the Constitution of India further provides that no person accused of any offence shall be compelled to be a witness against himself. In the present case, the petitioner contended that there being an allegation under the provisions of the Prevention of Corruption Act, 1988 more particularly, the Section 13 (1) (a) (c)/(2) of the said Act and the same being with regard

to the acceptance by him of gratification other than legal remuneration and or, the acceptance or attempt to obtain for himself, or any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person who he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, his defence in the criminal trial would stand disclosed in the event the particulars as sought for vide the impugned communications is to be furnished by him.

**24.** In the criminal case instituted against the petitioner, it is the provisions under Section 13 (1) (a) (c)/(2) of the Prevention of Corruption Act, 1988 that has been alleged against the petitioner. However, there is no allegation against the petitioner pertaining to commission by him of an offence as enumerated under the provisions of Section 13 (1) (e) of the said Act of 1988 prior to its amendment. The provisions of Section 13 (1) (e) of the said Act of 1988, prior to its amendment being relevant is extracted herein below:-

“13 (1).....

*(e) if he or any person on his behalf, is in possession has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.”*

**25.** The provisions under Section 13(1) (e) mandates that any public servant or any person on his behalf is found to be in possession or has at any relevant point of time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income would be held to have committed a criminal misconduct, which would be punishable under the provisions of Section 13 (2) of the said Act of 1988.

**26.** The above allegation is not found to have been leveled against the petitioner in the criminal case and the allegations so leveled under the provisions of Section 13 (1) (a) (c)/(2) of the Prevention of Corruption Act, 1988, would relate to the allegations so leveled against him while he was so discharging his duties as the District Commandant Home Guard, Sonitpur, Tezpur. Accordingly, applying the ratio of the decision of the Hon'ble Supreme Court in the case of *Bhagwan Swarup Lal (supra)*, it cannot be said that the offences now pending against the petitioner before the Court of learned Special Judge, Guwahati, can be construed to be the "same offence" as that involved in the regular enquiry as instituted against the petitioner and accordingly, the particulars of his assets and liabilities as sought for vide the impugned communications in connection with the regular enquiry so instituted against the petitioner cannot be held to be hit by the provisions of Article 20(3) of the Constitution of India.

**27.** The said two proceedings are distinct and accordingly, the allegations of fact in the two proceedings even though may be substantially similar, the

bar under Article 20(2) of the Constitution cannot be invoked in the present case against the petitioner. It cannot be said that the ingredients of both the proceedings are totally the same and accordingly, they do not form the same offence within the meaning of Article 20(2) of the Constitution and therefore, the reliance placed by the learned counsel for the petitioner on said Article 20(2) of the Constitution of India, would not in the considered view of this Court, advance the case of the petitioner herein.

**28.** At this stage, it is relevant to take note of the decision of the Hon'ble Supreme Court in the case of *Monica Bedi Vs. State of Andhra Pradesh & Ors.*, reported in (2011) 1 SCC 284, pertaining to the question of the rule as to double jeopardy as embodied in Article 20(2) of the Constitution of India being applicable. The relevant conclusions of the Hon'ble Supreme Court in this connection are extracted herein below:-

### Double Jeopardy

21. *Now we shall take up the first contention of Shri Tulsi as to whether the appellant's guaranteed fundamental right under Article 20 (2) has been infringed? Article 20 (2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once.*

22. *Article 20 (2) embodies a protection against a second trial and conviction for the same offence. The fundamental right guaranteed is the manifestation of a long struggle by the mankind for human rights. A similar guarantee is to be found in almost all civilised societies governed by rule of law. The well known maxim 'nemo delset bis vexari pro eadem causa' embodies the well established common law rule that no one should be put on peril twice for the same offence. BLACKSTONE referred to this universal maxim of the common law of England that no man is to be brought into jeopardy of his life more than once for the same offence.*

23. *The fundamental right guaranteed under Article 20 (2) has its roots in common law maxim nemo debet bis vexari - a man shall not be brought into*

*danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former conviction, or as it is technically expressed, take the plea of autrefois convict. This in essence is the common law principle. The corresponding provision in the American Constitution is enshrined in that part of the Fifth Amendment which declares that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. The principle has been recognised in the existing law in India and is enacted in Section 26 of the General Clauses Act, 1897 and Section 300 of the Criminal Procedure Code, 1973. This was the inspiration and background for incorporating sub-clause (2) into Article 20 of the Constitution. But the ambit and content of the guaranteed fundamental right are much narrower than those of the common law in England or the doctrine of 'double jeopardy' in the American Constitution.*

24. *In Maqbool Hussain vs. The State of Bombay, this Court explained the scope of the right guaranteed under Article 20 (2) and as to what is incorporated in it as: (AIR p. 328, para 11)*

*"11....within its scope the plea of autrefois convict as known to the British jurisprudence or the plea of double jeopardy as it known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence."*

*That in order for the protection of Article 20 (2) to be invoked by a person there must have been a prosecution and as well as punishment in respect of the same offence before a court of law of competent jurisdiction or a tribunal, required by law to decide the matters in controversy judicially on evidence. That the proceedings contemplated therein are in the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or (1953) SCR 730 starting of the proceedings of a criminal nature in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.*

25. *This principle is reiterated in S.A. Venkataraman vs. The Union of India & Anr., wherein this Court observed that: (SCR p. 1154)*

*"5.....the words "prosecuted or punished" are not to be taken distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted."*

26. What is the meaning of expression used in Article 20 (2) "for the same offence"? What is prohibited under Article 20 (2) is, the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. In *Leo Roy Frey vs. Superintendent District Jail, Amritsar*, petitioners therein were found guilty under Section 167 (8) of the Sea Customs Act and the goods recovered from their possession were confiscated and heavy (1954) SCR 1150 (1958) SCR 822 personal penalties imposed on them by the authority. Complaints thereafter were lodged by the authorities before the Additional District Magistrate under Section 120B of the Indian Penal Code read with provisions of the Foreign Exchange Regulations Act, 1947 and the Sea Customs Act. The petitioners approached the Supreme Court for quashing of the proceedings pending against them in the court of Magistrate inter alia contending that in view of the provisions of Article 20 (2) of the Constitution they could not be prosecuted and punished twice over for the same offence and the proceedings pending before the Magistrate violated the protection afforded by Article 20 (2) of the Constitution. This Court rejected the contention and held that criminal conspiracy is an offence under Section 120B of the Indian Penal Code but not so under the Sea Customs Act, and the petitioners were not and could not be charged with it before the Collector of Customs. It is an offence separate from the crime which it may have for its object and is complete even before the crime is attempted or completed, and even when attempted or completed; it forms no ingredients of such crime. They are, therefore, quite separate offences. The Court relied on the view expressed by the United States, Supreme Court in *United States vs. Rabinowich*.

27. In the *State of Bombay vs. S.L. Apte*, this Court laid down the law stating that (AIR p. 583, para 15) if

“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.”

It was the case where the accused were sought to be punished for the offence under Section 105, Insurance Act, after their trial and conviction for the offence under Section 409, Penal Code, this Court held that they were not sought to be punished for the same offence twice but for two distinct offences constituted or made up of different ingredients and therefore the bar of Article 20 (2) of the Constitution or Section 26 of the General Clause Act, 1897, was not applicable. This Court made it clear that: (*S.L. Apte case*, AIR p. 583, para 16).

*"16.....the emphasis is not on the facts "alleged in the two complaints but rather on the (1915) 238US 78. (1961) 3 SCR 107 ingredients which constitute the two offences with which a person is charged."*

28. *The ratio of the case is apparent from the following: (S.L. Apte case, AIR p. 581, para 13)*

*"13..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 fact 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."*

*That the test to ascertain is whether two offences are the same and not the identity of the allegations but the identity of the ingredients of the offences.*

29. *It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20 (2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence.*

**29.** Applying the ratio of the decision of the Hon'ble Supreme Court in the case of *Bhagwan Swarup Lal (supra)* and *Monica Bedi (supra)* to the facts of the present case, this Court is of the considered view that the petitioner has not satisfied the conditions that are requisite to be so satisfied to enable him to claim the protection under Article 20(2) and Article 20(3) of the Constitution of India, the charges leveled against the petitioner as discussed herein above in the criminal case now pending Trial before the Court of Special Judge, Guwahati, and the presumptions as drawn against him in the regular vigilance enquiry so instituted against him by the vigilance department of the State do not constitute "same offence" and the same are

substantially different both in intent and purport. Accordingly, the plea of the petitioner of being subjected to double jeopardy does not merit acceptance by this Court. Further, as noticed herein above, there being no allegation against the petitioner pertaining to Section 13 (1) (e) (2) of the Prevention of Corruption Act, 1988, as it stood before its amendment, it cannot be said that the rights of the petitioner under Article 20 (3) of the Constitution of India, stood infringed in any manner in the institution of the regular vigilance enquiry in the matter, pertaining to a determination being made about his assets and liabilities and thereafter, to arrive at a conclusion whether the petitioner is guilty of having disproportionate assets.

**30.** The above conclusions having been reached, it is also to be noted that the plea of the petitioner in seeking protection from being required to submit return of his assets and liabilities in the present proceedings is further not acceptable in view of the clear prescription as contained in the provisions of Rule 11 of the Assam Civil Services (Conduct), Rules 1965, which mandates periodical submission of such returns by a government servant and accordingly, the petitioner having not submitted the said returns even under the provisions of the said Rules of 1965, the petitioner cannot now escape the requirement to submit his assets and liabilities statement as required of him vide the communications impugned in the present proceedings.

**31.** In view of the above conclusions reached the other decisions as relied upon by the learned counsel for the petitioner is not being alluded to.

**32.** In view of the above, this Court is of the considered view that the

petitioner has not made out a prima facie case requiring the interference of his Court in the matter and accordingly, the impugned communications dated 30.08.2013, 23.08.2013 and 21.08.2013 are not interfered with and the writ petitioner is directed to comply with the said requirement at the earliest.

**33.** Accordingly, the writ petition stands dismissed being devoid of merit; however, there would be no order as to costs.

**JUDGE**

**Comparing Assistant**