**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1062 OF 2014

Dinesh s/o. Balkishan Agrawal,
Age: 37 Years, Occu. Business,
R/o. Opp. M.G.Government Madhyamik
Vidyalaya, Sendhwa, Dist. Badwani
[Madhya Pradesh State] .. **PETITIONER**

VERSUS

The State of Maharashtra
[Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad] .. **RESPONDENT**

....

Mr.D.S.Bharuka, Advocate for Petitioner

Mr.D.V.Tele, Additional Public Prosecutor, for Respondent - State.

Mr.S.S.Patil, Advocate for Assist to P.P.

....

**CORAM: S.S.SHINDE &
N.W.SAMBRE, JJ.**
Reserved on : 17th December, 2014
Pronounced on : 29th January, 2015

ORDER: [Per S.S.Shinde, J.]

1] Heard.

2] It is the case of the petitioner that, the petitioner is permanent resident of Shendra, District

Badwani [Madhya Pradesh] and carrying on business in the name and styled as '*Dinesh Traders'*. He is income-tax payer and submitting income tax return for his business. The petitioner is not a registered dealer under the provisions of Maharashtra Value Added Tax Act, 2002 and not dealing in sale of cotton or cotton bales in Maharashtra State. It is further submitted that, in view of above the petitioner has not supplied any cotton bales during the period 2010 to 2013 to Jawahar Shetkari Sahakari Soot-Girni, Dhule.

3] It is further the case of the petitioner that, complaint was lodged by one Vishwasrao Chintaman Thakre, Office Superintenent of Jawahar Sahakari Shetkari Soot Girni, Dhule at Dhule Police Station against the petitioner and 8 others alleging that, different firms including M/s. Parag Enterprises and others have sold cotton bales to the said Soot Girni during period 2010 to 2013 and by issue of sale bills, VAT was collected from the said Soot Girni, but same was not deposited with Sales Tax Commissioner, Dhule and thereby the petitioner and others have deceived the Soot Girni and Maharashtra Government. On the basis of complaint, crime No.85/2014 was registered for the offences punishable under Section 406, 420, 408 read with Section 34 of Indian Penal Code.

4] It is submitted that, Anticipatory Bail Application of petitioner was rejected by the learned Sessions Judge, Dhule, on 07.04.2014. Interim anticipatory bail was granted by the High Court, but the application for anticipatory bail came to be rejected subsequently. As per the conditions imposed while granting interim bail, the petitioner attended the Dhule Police Station from time to time and Police made interrogation. Since then, the matter is still pending before the Dhule Police Station and investigation is going on.

It is submitted that, in a complaint filed by Vishwasrao Thakare at Police Station, Dhule in Crime No. 85/2014, all the details of sale of cotton bales by the different firms to Soot Girni during the period 2010-11, 2012-13 and 2013-14 are on record. In the said complaint, name of M/s. Parag Enterprises, Navapur and amount of VAT to the tune of Rs.1,17,18,165/- was not deposited by the said firm is mentioned. It is also mentioned that, Sattyam Cottex, Navapur and amount to the tune of Rs.

2,64,769/- have been not deposited by said Firm. It is also mentioned that, M/s. Vishnu Cotton, Navapur has not deposited Rs.15,93,029/- of VAT. The complaint at Dhule Police Station was in details in respect of all firms of Navapur and all other places, and the allegations against the petitioner are also made in the complaint of Dhule Police Station.

5] It is further alleged that, on 21.06.2014, Shri Vinayak Dagdu Pendharkar, Sales Tax Inspector, Nandurbar at the instance and in collusion with the Officer of Soot Girni, Dhule managed to file a complaint at Navapur Police Station in respect of sale of Cotton Bales to Soot Girni, Dhule, by different firms. During the period 2010 to 2013 by not depositing the VAT amount, collected from Jawahar Sahakari Shetkari Soot Girni, Dhule, and thereby deceiving the said Soot Girni and Maharashtra Government, Crime has been registered at the instance of Sales Tax Inspector, is in respect of same fact and incident about non depositing of VAT amount, which was collected from office Superintendent of Jawahar Sahakari Shetkari Soot Girni, Dhule. No new fact or material or any incident was subject matter of complaint before Navapur Police Station. By registration of second FIR, the police of Navapur Police Station also falsely trying to involve the petitioner and others for their harassment.

6] Being aggrieved by the registration of two First Information Report in respect of same incident and facts, the petitioner is approached to this Court with prayer to quash and set aside the First Information Report in Crime No.69/2014 of Navapur Police Station.

7] The learned counsel appearing for the petitioner submits that, second complaint was not maintainable in view of the registration of Crime No. 85/2014 with the Dhule Police Station for the same subject matter. It is submitted that, two First Information Reports for same subject matter would be against the principle of double jeopardy. In support of the contention that the crime No.69/2014 was not maintainable, the learned counsel appearing for the petitioner pressed into service exposition of the Hon'ble Supreme Court in the case of ***T.T.Antony Vs. State of Kerala***[1] and the Judgment of the Bombay High Court in the case of ***Shivraj s/o. Kundlik***

1. 2001 Cri.L.J.3329

Ubale & others Vs. The State of Maharashtra[2].

8] The learned Additional Public Prosecutor invited our attention to the averments in the affidavit in reply filed by Vijay Laxman Kasar working as Assistant Police Inspector, Navapur Police Station, District Nandurbar and submits that, the complainants in Crime bearing No. 85/2014 registered at Dhule Taluka Police Station and the Crime bearing No.69/2014 registered at Navapur Police Station, District Nandurbar, are different as well as the spot of offences are different. Therefore, he submits that, Petition is devoid of merits, hence, same may be dismissed.

9] The learned counsel appearing for the original complainant in Crime bearing No.85/2014 registered at Dhule Taluka Police Station invited our attention to the affidavit in reply filed on behalf of the complainant and submits that, the petitioner is in fact owner of various trading company; however to escape from tax liability its proprietor is shown in different names. All the transaction with the said company is made by Shri Dinesh Balkishan Agrawal and he stated so at a time of sale transaction of

2. 2014 ALL MR [Cri] 3799

cotton bales. It is further submitted that, complainant Sootgirni paid the total amount of Rs.3,67,12,095/- [Three Crore Sixty-seven Lakhs Twelve Thousands Ninety Five only] as VAT to the traders for the purpose of cotton bales. It is further submitted that, as per Maharashtra Value Added Tax Act, 2002, cotton bales seller has to take VAT [TIN] number [registration certificate] for selling of cotton bales from Sales Tax Department and it is incumbent upon the trader to pay the said VAT amount to the Sales Tax Department. The trader has to give the said VAT number so as to enable the purchaser get the return / exemption of said VAT amount.

10] It is further submitted that, the Transporters of cotton bales stated on affidavit before the Executive Magistrate, Dhule that Shri Dinesh Agrawal has prepared false and bogus [bilti] transport receipts, and in fact he used to send the cotton bales from the Mansa Cotton Jinning, factory Sendhwa and used to show that, it is sent from different places like Chirage Enterprises Nagpur, Chopada, Bharat Enterprises Akola, Shirpur, and Nawapur in the name of different trading companies. It is further submitted that Parag Enterprise, Sattyam Cottex, Vishnu

Cottex, Navapur are firms on paper only and on the said address firms are not working. After the complaint lodged by the complainant bearing C.R.No. 85 of 2014 the Sales Tax Department came to know that the said firm are on paper only and actually the petitioner No.1 and others have made transaction by providing false address and VAT number on the said address, therefore, Sales Tax Department made complaint against the accused herein at Navapur Police Station for offence punishable under Section 406, 408, 420, 467 of Indian Penal Code and Section 74 of Maharashtra Value Added Tax 2002 for non-payment of VAT amount of Rs.1,17,18,165/- to the Government. The Sales Tax Department is Competent Authority under the act to take action against fraud and mischief committed by original petitioner.

11] It is further submitted that, similar offence is registered against the accused at Panahala Police Station, Dist. Kolhapur on 08.06.2014 wherein the VAT amount of Rs.73,22,773/- was not paid thereby refund could not be claimed by the Nagreeka Exports Ltd., Panahala. In the said complaint, accused are Dinesh Agrawal, Arpit Garg, Arun Garg and others. It is further submitted that, another complaint is made by Nav Maharashtra Sahakari Sootgirni to Hatkangale Police Station, District Kolhapur, against the Parag Enterprises owned by Dinesh Agrawal, and Vishnu Cotton Company, wherein VAT amount of Rs.6,20,709/- and Rs.2,34,575/- is not paid. It is further submitted that, prayer for anticipatory bail of the petitioner was rejected by the High Court and even by the Hon'ble Supreme Court. It is submitted that, offences are registered against the petitioner No.1 arising out of separate cause of action accused committed fraud, criminal breach of trust, forgery against two separate institution though the amount involved is the same. It is submitted that, the accused has committed offence intentionally with due preparation with common intention to misappropriate the amount of 4% VAT. It is further submitted that to operate as 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. arising out of one and the same transaction. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. The two conspiracies are distinct offences. It cannot even be said that, some of the ingredients of both the conspiracies are the same. The facts constituting the Jupiter conspiracy are not the ingredients of the offence of the Empire conspiracy, but only afford a motive for the latter offence. Motive is not an ingredient of an offence. The proof of motive helps a Court in coming to a correct conclusion when there is no direct evidence. Where there is direct evidence for implicating an accused in an offence, the absence of proof of motive is not material. The ingredients of both the offences are totally different and they do not form the same offence within the meaning of Article 20 (2) of the Constitution.

12] It is further submitted that, there is direct evidence against the accused and incriminating material against the accused as he was involved in offence as key person. It is further submitted that, huge amount is involved in the offence, and accused fraudulently and dishonestly made transaction with intention to grab the amount of VAT. The said amount is yet to be recovered from accused, in fact, it is loss to the Government Exchequers as well as to Sootgirni. It is further submitted that, there was intention of cheating and conspiracy was hatched between the accused, which amounts to criminal breach of trust.

13] We have given due consideration to the submissions of the learned counsel appearing for the petitioner, the learned APP for the respondent – State and the learned counsel appearing for the original complainant in Crime No.85/2014 registered with Dhule Police Station, Dhule and also perused the pleadings in the Petition, annexure thereto, reply filed by the Respondent – State and also the reply – written notes of argument filed by the original complainant in Crime No. 85/2014. At this juncture, it would be apt to reproduce herein below para 4, 6, 7 and 9 from the affidavit filed by Shri Vijay Laxman Kasar presently working as Assistant Police Inspector, Navapur Police Station, District Nandurbar, which reads thus:

> *"4. The deponent submits that, the petitioner in this petition is not a registered dealer under the provisions of Maharashtra Value Added Tax Act, 2002. The deponent submits that, a complaint was lodged against the present petitioner and others by one Vishwasrao Chintaman Thakre, Office Superintendent of Jawahar Sahakari Shetkari*

Soot Girni, Dhule at Dhule Police Station alleging therein that, different firms including M/s. Parag Enterprises and others have sold cotton bales to the said Soot Girni during the period 2010 to 2013 and by issue of sale bills, VAT was collected from the said Soot Girni, but the same was not deposited with the Sales Tax Commissioner, Dhule and thereby the petitioner and others have deceived the Soot Girni and Government of Maharashtra by Rs.3,67,12,095/-. On the basis of said complaint, Cr.No.85/2014 was registered for the offences u/sec.406, 420, 408 r.w.34 of IPC.

6. The deponent submits that, on 21.6.2014 the complainant namely Vinayak Dagdu Pendharkar, Sales Tax Inspector, Nandurbar had filed a complaint at Navapur Police Station in respect of sale of cotton bales to Soot Girni, Dhule by different firms during the period 2010 to 2013 and not deposited the VAT amount collected from Jawahar Sahakari Shetkari Soot Girni, Dhule and thereby deceiving the said Soot Girni and Government of Maharashtra to the tune of Rs. 1,44,99,729/-. Hence, on the basis of complaint, Cr.No.69/2014 at Navapur Police Station for the offence u/sec.406, 408, 420, 465, 467, 471, 120-B r.w., 34 of IPC and u/sec. 74 of the Income Tax Act 2002 about non depositing the VAT amount which was collected from office Superintendent of

Jawahar Sahakari Shetkari Soot Girni, Dhule.

7. The deponent submits that, the Crime No.69/2014 registered at Navapur Police Station in which it was transpired that, the petitioner has formed 3 firms at different names namely M/s. Parag Enterprises, Navapur, M/s. Sattyam Cotex, Navapur, and M/s. Vishnu Cotton Co. Navapur and thereby the petitioner deceived VAT amount by the above firms to the tune of Rs.1,44,99,729/-. The deponent submits that, the deponent has recorded the statements of 4 witnesses. The deponent has also recorded the statements of shop holders who have leased their shops in accordance with the directions of the present petitioner.

9. The deponent submits that, the complainants in Crime bearing No. 85/2014 registered at Dhule Taluka Police Station and the Crime bearing No. 69/2014 registered at Navapur Police Station, Dist. Nandurbar are different as well the spot of offences are different. Moreover, the petitioner has collected the VAT amount of Rs.1,44,99,729/- from Department, thereby caused loss to the State exchequer. I further submit that, the petitioner and his relatives executed fake lease deed in the name of 3 different firms. I further submit that, the lease deed was executed in the name of Sattyam Cotex at Navapur between Jitendra Shamsing Girase r/

Navapur and Karansing Chavan r/o Indor, but actually transactions are carried by the present petitioner and other accused. I further submit that, the same thing is happened in Parag Enterprises, Navapur and Vishnu Cotton Co.Navapur. I further submit that, during the investigation, I have recorded statements of 4 witnesses wherein they have stated in details that, actually the present petitioner and other accused were carrying the business by paying some amount to the witnesses / firm owners.

14] It is abundantly clear from reading the averments in the affidavit in reply that, both *FIR prima facie* disclosed distinct offences and those needs investigation.

15] The affidavit in reply filed by the original complainant in Crime No.85/2014 also demonstrates that, separate offence is disclosed against the petitioner under the provisions of Indian Penal Code.

16] Upon careful perusal of the contents of Crime No.85/2014 registered with Dhule Taluka Police Station, Dhule, it appears that, in spite of collecting the amount towards VAT from the complainant, the petitioner did not deposit the said amount with the Government Authorities. As per the allegations in the complaint, same amount has been misappropriated by the petitioner, therefore, that itself, would constitute an offence. The petitioner did file Criminal Writ Petition for quashing of Crime No.85 of 2014 registered with Dhule Police Station, however, same came to be dismissed as withdrawn on 12th August, 2014.

17] Upon careful perusal of the contents of Crime No.69/2014 registered with Navapur Police Station, District Nandurbar, offence under Section 74 of the Income Tax Act, 2002 and also under the Maharashtra Value Added Tax Act, 2002 apart from the offence under Indian Penal Code are disclosed. It is also relevant to mention that, various offences are registered against the present petitioner apart from the Crime No.85/2014 and Crime No.69/2014. Upon careful perusal of the contents of Crime No.69/2014, it appears that, the petitioner has collected the VAT amount of Rs.1,44,99,729/-. However, same has not been deposited with the State Exchequer. There are also allegations that, the petitioner and his relatives executed fake lease deed in the name of three different firms. Therefore, upon careful perusal of the contents of Crime

No.85/2014 registered at Dhule Taluka Police Station and the Crime No.69/2014 registered at Navapur Police Station, District Nandurbar, *prima facie* it appears that, distinct offences are disclosed at different places, and therefore, both needs investigation, and therefore, the prayer of the petitioner to quash the Crime No.69/2014 registered with Navapur Police Station, District Nandurbar, deserves no consideration. The question of double jeopardy at the stage of investigation would not arise. Even at the later stage, if it transpires that, the alleged offences are arising out of same transaction but under different acts, the provisions of Section 220 of the Criminal Procedure Code can be invoked so as to have one trial, and therefore, in our opinion at this stage apprehension expressed by the petitioner of double jeopardy is misplaced.

18] Therefore, taking overall view of the matter, in our opinion there is no substance in the Petition, and hence same stands rejected.

Sd/- Sd/-
[N.W.SAMBRE, J.] **[S.S.SHINDE, J.]**

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