

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.24848 of 2014**

Arising Out of PS.Case No. -456 Year- 2006 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

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1. **Satendra Singh @ Satyendra Singh**, son of Shri Shyamdeo Singh, resident of
Village- Siswan, P.S. & District- Nawadah

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajo Paswan, son of Late Rama Paswan, resident of Village- Siswan, P.S. &
District- Nawadah

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar-Advocate
For the Opposite Party/s : Mr. Rita Verma-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 01-09-2016

Petitioner/ accused is aggrieved by an order dated
16.06.2011 passed by the learned Additional Sessions Judge-1st,
Nawada in Complaint Case No.456 of 2006 leading to Special (H)
Case No.11 of 2008 whereby and whereunder petition filed under
Section 227 of the Cr.P.C. has been rejected.

2. Bereft of unnecessary details, Opposite Party No.2/
complainant, Rajo Paswan had filed Complaint Petition No.456 of
2006 against four named accused persons including the petitioner
along with 20-25 unknown persons for an occurrence allegedly
committed by them on 24.06.2006 at about 7.00p.m. and for that, the
complainant narrated that on the alleged date and time of occurrence,



while the complainant was at his house along with his family members, all the accused persons so named, unnamed armed variously made house trespass, abused and on an order of accused Krishmani Kumari, Satyendra Singh shot at complainant which he missed. Then thereafter, Satyendra Singh made second firing causing injury over buttock of Nilam Kumari, his daughter. Wife of complainant as well as witnesses rushed in her rescue whereupon Krishmani Kumari threw wife of complainant on the ground and assaulted her with fists and slaps. During said course, she also abused by calling her caste. They have ransacked the house, damaged the property. Then thereafter, the complainant took his daughter Nilam Kumari to Sadar Hospital, Nawada. During course of treatment, the police officials came, but they never enquired either from his or from his daughter. It has also been disclosed that neither the statement of complainant nor statement of daughter of complainant namely Nilam Kumari was recorded by the police.

3. The aforesaid complaint petition was transferred to the Court of Magistrate under Section 192(2) of the Cr.P.C. for holding an enquiry under Section 202 of the Cr.P.C. and during course thereof, witnesses were examined and then, the learned Magistrate took cognizance of an offence punishable under Sections 148, 452, 323, 427, 380 I.P.C. and Section 3(X) of the Scheduled Caste and



Scheduled Tribe (Prevention of Atrocities) Act as well as under Section 27 of the Arms Act. After appearance of the accused, the case was committed to the Court of Sessions where after appearance of the accused, a petition under Section 227 of the Cr.P.C. was filed on behalf of petitioner which, by the order impugned been rejected, hence this petition.

4. It has been submitted on behalf of petitioner that for the same occurrence at an earlier count, Nawada Town P.S. Case No.153 of 2006 was registered on the fard-beyan of one Mahendra Paswan one of the injured wherein injuries having been caused to Nilam Kumari had also been incorporated and further, after concluding investigation, chargesheet was submitted whereupon the case was committed bearing Special (H) Case No.21 of 2007 and after concluding the trial, vide judgment dated 23.04.2013, petitioner including others were convicted and sentenced, for that Cr. Appeal No.349 of 2013, 357 of 2013 (SJ) have been filed and the same had already been admitted vide order dated 10.05.2013, Annexure-5.

5. It has also been submitted that considering the aforesaid ground, prayer of one of the accused namely Krishmani Kumari Sinha had already been entertained vide Cr. Misc. No.37999 of 2011 and on account thereof, the prosecution against the aforesaid accused was quashed. The case of the petitioner stood on similar

twice for the same occurrence. For better appreciation, **Section 26 of the General Clauses Act** is quoted below:-

“26. 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.”

9. The third provision having applicable on this very score is **Section 300 of the Cr.P.C.** For better appreciation, the same is quoted below:-

“300. Person once convicted or acquitted not to be tried for same offence.

(1) *A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted*

under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with

which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 , (10 of 1897) or of section 188 of this Code. Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

10. In *Maqbool Hussain, Appellant v. State of Bombay* reported in *A.I.R. 1953 Sup. Court 325*, it has been held:-

“(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 Beg. v. Miles (1).

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).

(9) This principle found recognition in [section 26](#) of the General Clauses Act, 1897,-

"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,"

and also in [section 403 \(1\) of the Criminal Procedure Code](#), 1898,-

" A person who has been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under [section 236](#), or for which he might have been convicted under [section 237](#)."

(10) The Fifth Amendment of the American Constitution enunciated this principle in the manner following:-

"..... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself....."

Willis in his Constitutional Law, at page 528, observes that the phrase

"jeopardy of life or limb" indicates that the immunity is restricted to crimes of the highest grade, and this is the way Black stone states the rule : " Yet, by a gradual process of liberal construction the courts have extended the scope of the clause to make it applicable to all indictable offences, including misdemeanours."....." Under the United States rule, to be put in jeopardy there must be a valid indictment or information duly presented to a court of competent jurisdiction, there must be an arraignment and plea, and a lawful jury must be impanelled and sworn. It is not necessary to have a verdict. The protection is not against a second punishment but against

the peril in which he is placed by the jeopardy mentioned."

(11) These were the materials which formed the background of the guarantee of fundamental right given in [article 20\(2\)](#). It incorporated within its scope the plea of "autrefois convict" as known to the British jurisprudence or the plea of double jeopardy as 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.

(12) The 'words "before a court of law or judicial tribunal" are not to be found in [article 90\(2\)](#). But if regard be had to the whole background indicated above it is clear that in order that the protection of [article 20\(2\)](#) be invoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to



administer and not before a tribunal which entertains a departmental or civil administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of [article 20](#) and the words used therein: "convicted commission of the act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate, that the proceedings therein contemplated are of 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 starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure."

11. In **S.A. Venkataraman, Petitioner v. Union of India and another**, Respondents reported in **A.I.R. 1954 S.C. 375**, it has been held:-

"(4) The scope and meaning of the guarantee implied in [article 20\(2\)](#) of the Constitution has been indicated with sufficient fullness in the



pronouncement of this court in Maqbool Hussain Y. The State of Bombay(1). . The roots of the principle, which this clause enacts, are to be found in the well established rule of English law which finds expression in the maxim "Nemo debet bis vexari"-a man must not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of "autrefois acquit" or "autrefois convict".

The corresponding provision in the Federal Constitution of the U.S.A. is contained in the Fifth Amendment, which provides inter alia: "Nor shall any person be subjected for the same offence to be put twice in jeopardy of life and limb". This principle has been recognised and adopted by the Indian Legislature and is embodied in the provisions of [section 26](#) of the General Clauses Act and [section 403](#) of the Criminal Procedure Code.

(5) Although these were the materials which formed the background of the guarantee of the fundamental right given in [article 20\(2\)](#) of the



Constitution, the ambit and contents of the guarantee, as this court pointed out in the case referred to above, are much narrower than those of the common law rule in England or the doctrine of "double jeopardy" in the American Constitution. [Article, 20 \(2\)](#) of our Constitution, it is to be noted, does not contain the principle of "autrefois acquit" at all. It seems that our Constitution makers did not think it necessary to raise one part of the common law rule to the level of a fundamental right and thus make it immune from legislative interference. This has been left to be regulated by the general law of the land.

In order to enable a citizen to invoke the protection of clause (2) of [article 20](#) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted and punished" are to be taken not district butively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted. The position is also different under the American Constitution. There the prohibition is not against a second



punishment but against the peril in which a person may be placed by reason of a valid indictment being presented against him, before a competent court, followed by proper arraignment and plea and a lawful impanelling of the jury. It is not necessary to have a verdict at all; Vide Willis on Constitutional Law, p. 528.

(6) It has also been held by this court in Maqbool Hussain's case(2) that the language of [article 20](#) and the words actually used in it afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence. In that case the proceedings were taken under the Sea Customs Act before a Customs authority who ordered confiscation of goods. It was held that such proceedings were not "Prosecution", nor the order of confiscation a "punishment"

within the meaning of [article 20\(2\)](#) inasmuch as the Customs authority was not a court or a judicial tribunal and merely exercised administrative powers vested in him for revenue purposes.”

12. In ***The State of Bombay, Appellant v. S. L. Apte and another, Respondents*** reported in ***A.I.R. 1961 SC 578***, it has been held:-

“(14) This aspect of the matter based on the two offences being distinct in their ingredients, content and scope was not presented to the learned Judges of the High Court, possibly because the decisions of this Court construing and explaining the scope of [Art. 20\(2\)](#) were rendered later. In [Om Prakash Gupta v. State of U.P.](#) AIR 1957 SC 458 (1) the accused, a clerk of a municipality had been convicted of an offence under [s. 409](#) of the Indian Penal Code for having misappropriated sums of money received by him in his capacity as a servant of the local authority and the conviction had been affirmed on appeal, by the Sessions Judge and in revision by the High Court. The plea raised by the accused before

this Court, in which the matter was brought by an appeal with special leave, was that s. 409 of the Indian Penal Code had been repealed by implication by the enactment of sub-ss. (1) (c) and (2) of s. 5 of the Prevention of Corruption Act because the latter dealt with an offence of substantially the same type. This Court repelled that contention. It analysed the ingredients of the two offences and after pointing out the difference in the crucial elements which constituted the offences under the two provisions, held that there was no repeal of s. 409 of the 'Indian Penal Code' implied by the constitution of a new offence under the terms of the Prevention of Corruption Act. It was the application of this decision and the ratio underlying it in the context of Art. 20(2) of the Constitution that is of relevance to the present appeal. The occasion for this arose in State of Madhya Pradesh v. Veereshwar Rao Agnihotry (1). The respondent was a tax-collector under a municipality and was prosecuted for offences among others under s. 409 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act for misappropriation of sums

'entrusted to him as such tax-collector. By virtue of the provision contained in s. 7 of the Criminal Law Amendment Act, XLVI of 1952, the case was transferred to a Special Judge who was appointed by the State Government after the prosecution was commenced before a Magistrate. The Special Judge found the accused guilty of the offence under s. 409 of the Indian Penal Code and convicted him to three years' rigorous imprisonment but as regards the charge under S. 5(2) of the Prevention of Corruption Act, he acquitted the accused on the ground of certain procedural non-compliance with the rules as to investigation prescribed by the latter enactment. The respondent appealed to the High Court against this conviction and sentence under s. 409 of the Indian Penal Code and there urged that by reason of his acquittal in respect of the offence under s. 5(2) of the Prevention of Corruption Act, his conviction under s. 409 of the Indian, Penal Code could not also be maintained, the same being barred by Art. 20(2) of the Constitution. The High Court of Madhya Bharat accepted this argument and allowed the appeal and the State

challenged the correctness of this decision by an appeal to this Court. Allowing the appeal of the State, Govinda Menon, J., delivering the judgment of the Court observed:

"This Court has recently held in 1957 SCR 423: ((S) AIR 1957 SC 458) that the offence of criminal misconduct punishable under s. 5(2) of the Prevention of Corruption Act, 11 of 1947, is not identical in essence, import and content with an offence under s. 409 of the Indian Penal Code. In view of the above pronouncement, the view taken by the learned Judge of the High Court that the two offences are one and the same, is wrong, and if that is so, there can be no objection to a trial and conviction under s. 409 of the Indian Penal Code, even if the respondent has been acquitted of an offence under s. 5(2) of the Prevention of Corruption Act, II of 1947. The High Court also relied on Art. 20 of the Constitution for the order of acquittal but that Article cannot apply because the respondent was not prosecuted after he had already been tried and acquitted for the same offence in an earlier trial and, therefore, the well-known maxim "Nemo debet

bis vexari, si constat curiae quod sit pro una et eadem causa" (No man shall be twice punished, if it appears to the court that it is for one and the same cause) embodied in Art. 20 cannot apply"

Before leaving this part of the case we might also point out that a similar view of the scope of the rule as to double-jeopardy has always been taken by the Courts in America. The words of the Vth Amendment where this rule is to be found in the American Constitution are:

"Nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb."

and it will be noticed that there as well, the ban is confined to a second prosecution and punishment for the same offence. Willoughby after referring to the words quoted in the Fifth Amendment says: "Cases may occur in which the same act may render the actor guilty of two distinct offences; In such cases the accused cannot plead the trial and acquittal, or the conviction and punishment for one offence in bar to a conviction for the other. In Albrecht v. United States, (1928) 273 U.S. 1: 71 Law Ed

505. Brandeis, J., speaking for a unanimous Court said:

"There is a claim of violation of the Vth 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 offences. 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 offence. 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."

13. In ***Kharkan and others, Appellants v. State of Uttar Pradesh, Respondent reported in A.I.R. 1965 SC 83***, it has been held:-

"8. There is nothing in common between the present appeal and the two cases relied upon by the appellants. In this case there is no doubt a prior acquittal but on a charge which was quite different from and independent of the charge in the present case. The assault on Tikam was over when the unlawful assembly formed its new common object namely the assault on Puran. The acquittal proceeded mainly because Puran compounded the offence under s. 323 and the High Court did not feel impressed by the evidence about the remaining charges, The charges on which that acquittal took place had nothing whatever to do with the charges on which there is conviction in the present appeal. A plea of autrefois acquit which is statutorily recognised in India under s. 403 of the Code of Criminal Procedure arises when a person is tried again for the same offence or on the same facts

for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under s. 237.”

14. In ***Bhagwan Sawrup Lal Bishan Lal v. State of Maharashtra*** reported in ***A.I.R. 1965 SC 682***, it has been held:-

“11. Learned counsel for this appellant argued before us that the said accused was convicted by the Sessions Judge for being a member of the conspiracy in the Jupiter case in respect of his acts pertaining to that conspiracy and therefore he could not be convicted over again in the present case on the basis of the facts on which the earlier conviction was founded; in other words, it is said that he was convicted in the present trial for the same offence in respect of which he had already been convicted in the Jupiter case and such a conviction would infringe his fundamental right under Article 20(2) of the Constitution, and in support of this contention reference was made to certain decisions of the Supreme Court of the United States of America. The said article reads:

“No person shall be prosecuted and punished for the same offence more than once.”

The previous case in which this accused was convicted was in regard to a conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter and that case was finally disposed of by this Court in Sardul Singh Caveeshar v. State of Bombay 1958 SCR 161. Therein it was found that Caveeshar was a party to the conspiracy and also a party to the fraudulent transactions entered into by the Jupiter in his favour. The present case relates to a different conspiracy altogether. The conspiracy in question was to lift the funds of the Empire, though its object was to cover up the fraud committed in respect of the Jupiter. Therefore, it may be that the defalcations made in Jupiter may afford a motive for the new conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, some of the facts proved to establish the Jupiter conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in



itself would be sufficient to make the two conspiracies the one and the same offence. Learned counsel suggests that the question raised involves the interpretation of a provision of the Constitution and therefore the appeal of this accused will have to be referred to a Bench consisting of not less than 5 Judges. Under Article 145(3) of the Constitution only a case involving a substantial question of law as to the interpretation of the Constitution shall be heard by a bench comprising not less than 5 Judges. This Court held in State of Jammu and Kashmir v. Thakur Ganga Singh, AIR 1960 SC 356 that a substantial question of interpretation of a provision of the Constitution cannot arise when the law on the subject has been finally and effectively decided by this Court. Two decisions of this Court have construed the provisions of Article 29(2) of the Constitution in the context of the expression "same offence". In Leo Roy Frey v. Superintendent, District Jail, Amritsar 1958 SCR 822 at p. 827 proceedings were taken against certain persons in the first instance before the Customs Authorities under Section 167(8) of the Sea



Customs Act and heavy personal penalties were imposed on them. Thereafter, they were charged for an offence under Section 120-B of the Indian Penal Code. This Court held that an offence under Section 120-B is not the same offence as that under the Sea Customs Act. Das, C.J., speaking for the court, observed:

“The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.”

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. There the respondents were both convicted and sentenced by the Magistrate under Section 409 of the Indian Penal Code and Section 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 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.”

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 Article 145(3) of the Constitution."

15. In ***Mohammad Safi, Appellant v. The State of West Bengal, Respondent reported in AIR 1966 SC 69***, it has been held:-

"5. In order to appreciate the argument advanced before us by Mr. D. N. Mukherjee on behalf of the appellant it is necessary to set out the provisions of sub-s. (1) of s. 403 of the Code. They are as follows;

"A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236 or for which he might have been convicted under section 237."

These provisions are based upon the general principle of autrefois acquit recognised by the



English courts. The principle on which the right to plead autrefois acquit depends is that a man may not be put twice in jeopardy for the same offence. This principle has now been incorporated in Art. 20 of the Constitution. The defence of autrefois acquit, however, has no application where the accused person was not liable lawfully to be convicted at the first trial because the court lacked jurisdiction. This is what has been pointed out by the Court of Criminal Appeal in Thomas Ewart Flower v. R.(1). From the language used in s. 403(1) of the Code it is clear that what can be successfully pleaded as a bar to a subsequent trial for the same offence or for an offence based on the same facts is that the accused had been (a) tried by a court, (b) of competent jurisdiction and (c) acquitted of the offence alleged to have been committed by him or an offence with which he might have been charged under s. 236 or for which he might have been convicted under s. 237, of the Code. Mr. Mukherjee, however, says that in so far as competency of the court is concerned it was there because the offence in question was cognizable by a Special Court and



Mr. Ganguly made the order of acquittal as Judge of the Special Court. The competence of a court, however, depends not merely on the circumstance that under some law it is entitled to try a case falling in the particular category in which the offence alleged against the accused falls. In addition to this taking cognizance of the offence is also material in this regard. Under the Code of Criminal Procedure a court can take cognizance of an offence only if the conditions requisite for initiation of proceedings before it as set out in Part B of Chapter XV are fulfilled. If they are not fulfilled the court does not obtain jurisdiction to try the offence. In the case before us Mr. Ganguly took the view, though erroneously, that as one of the conditions requisite for taking cognizance of the offence was not satisfied he had no jurisdiction over the matter. Having come to that conclusion he had no option but to put a stop to those proceedings. It appears, however, that he (1) 40 Cr. App. R. 189. 471 felt that having already framed a charge the only manner in which he could put an end to the proceedings was by making an order of acquittal. It requires, however, no argument to



say that only a court which is competent to initiate proceedings or to carry them on can properly make an order of acquittal, at any rate, an order of acquittal which will have the effect of barring a subsequent trial upon the same facts and for the same offence. Mr. Mukherjee, however, raises two contentions on this aspect of the matter. In the first place, according to him, the view taken by Mr. Ganguly that he could not have taken cognizance of the offence was erroneous as has been pointed out by this Court in Ajit Kumar Palit v. State of West Bengal(1) and, therefore, he could legally acquit the appellant. He further says that since Mr. Ganguly had not only framed a charge against the appellant but also examined all the witnesses both for the prosecution and for the defence and recorded the examination of the appellant he had completed the trial. In the second place, he says, that where a charge has been framed against an accused person in a warrant case the proceedings before the court can end either in acquittal or in conviction and in no other way. He points out that under s. 494 of the Code the Public Prosecutor may with the

consent of the court withdraw before a certain stage is reached, the prosecution of any person and that the only order which the court is competent to make is to acquit the accused if the withdrawal is made after a charge has been framed.”

16. In ***State of Bihar, Appellant v. Murad Ali Khan and others reported in (1988) 4 SCC 655***, it has been held:-

“25. The proviso to [Section 56](#) has also a familiar ring and is a facet of the fundamental and salutary principles that permeate penology and reflected in analogous provisions of sec. 26 of [General Clauses Act, 1897](#) [Section 71](#) IPC; Sec. 300 of the [Cr.P.C.](#), 1973 and constitutionally guaranteed under [Art. 20\(2\)](#) of the Constitution. Sec. 26 of the [General Clauses Act, 1897](#) provides:

26. 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."

26. Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re- prosecution after acquittal, a protection against re- prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under [Art. 20\(2\)](#). But difficulties are in the application of the principle in the context of what is meant by ' same offence'. The principle in American law is stated thus:

"...The proliferation of technically different offences encompassed in a single instance of crime behavior has increased the importance of defining the scope of the offense that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offenses for double jeopardy purposes only if each provision requires proof of an additional fact which the other does not"
Blockburger v. United States, 284 U.S. 299,

304 1932 Where the same evidence suffices to prove both crimes they are the same for double Jeopardy purposes and the clause forbids successive trials and cumulative punishment for the two crimes. The offenses must be Joined in one indictment and tried together unless PG NO 468 the defendant requests that they be tried separately. *Jeffers v. United States*, (1977) 432 US 137. See "Double Jeopardy" in the *Encyclopedia of Crime and Justice* Vol.2, p. 630, 1983 edn. By Sanford H. Kadish : the Free Press, Collier MacMillan Publishers. London"

27. The expressions "the same offence", 'substantially the same offence' in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in "Double Jeopardy" [Oxford 1969] says at page 108:

"The trouble with this approach is that it is vague and hazy and conceals the thought processes of the Court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for

future decisions. A more serious consequences is the fact that a decision in one case that two offences are 'substantially the same' may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible.....

28. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In Leo Roy Frey v. The Superintendent, District Jail, Amritsar, [1958J SCR 822 the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said: (SCR p. 827)

"The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of

conspiracy as one of its ingredients. They are, therefore, quite separate offences."

29. *In State of Madhya Pradesh v. Veereshwar Rao Angnihotry [1957] SCR 868 the accused was tried by the special judge for offences under sec. 409 IPC, and sec. 5(2) PG NO 469 of the Prevention of Corruption Act, 1947. While convicting him under sec. 409, IPC, the Special Judge held that the accused could not be tried under sec. 5(2) of the Prevention of Corruption Act, 1947, as there was a breach of the requirement of law that the investigation be by a police officer not below a particular rank. In appeal, the High Court set aside even the conviction under Sec. 409 IPC, PG NO 469 applying the doctrine of autrefois acquit holding that the Special Judge's finding on the charge under Sec. 5(2) amounted to an acquittal and that punishment as a charge under Sec. 409, would be impermissible. This court following the pronouncement in Omprakash Gupta v. State of UP, [1957] SCR 423 held that the two offences were distinct and separate offences.*

30. *In The State of Bombay v. S.L. Apte & Anr.,*



11961] 3 SCR 107, the question that fell for consideration was that in view of earlier conviction and sentence under sec. 409, [IPC](#) a subsequent prosecution for an offence under sec. 105 of [Insurance Act](#). 1935, was barred by sec. 26 of the [General Clauses Act](#) and [Art. 20\(2\)](#) of the Constitution. This Court observed:

"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 facts 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 .. "

"Though [section 26](#) in its opening words refer 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. This is made clear by the concluding portion of the section which refers to 'shall not be liable to be punished twice for the same offence'. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked ...

17. In ***State through Superintendent of Police, CBI/SIT v. Nalini and others with Cr. Appeal No.321 of 1998 with Cr.Appeal No.322 of 1998 with Cr. Appeal No.323 of 1998 with Cr. Appeal No.324 of 1998 with Cr. Appeal No.325 of 1998 reported in (1999) 5 SCC 253***, it has been held:-

“235. The period of the aforesaid activities, as involved in that case, covered the period from 1987 to end of 1991. Section 300(1) of the Code of Criminal Procedure contains the ban against a second trial of the same offence against the same person. Sub-section (1) reads thus:

“300. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same

offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.”

18. In ***The State of Andhra Pradesh, Appellant v. Kokkiligada Meeraiah and another, Respondents reported in AIR 1970 SCC 771***, it has been held :-

“6. The following important rules emerge from the terms of s. 403 of the Code, of Criminal Procedure:

(1) An order of conviction or acquittal in respect of any offence constituted by any act against or in favour of a person does not prohibit a trial for any other offence constituted by the same act which he may have committed, if the Court trying the first offence was incompetent to try that other offence.

(2) If in the course of a transaction several offences are committed for which separate charges could have been made, but if a person is tried in respect of some of those charges, and

not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.

(3) If a person is convicted of any offence constituted by any act, and that act together with the consequences which resulted therefrom constitute a different offence, he may again be tried for that different offence arising out of the consequences, if (1) [1964] 7 S.C.R. 123. L 6 Sup C1169--13 the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.

(4) A person who has once been tried by a court of competent jurisdiction for an offence and has been either convicted or acquitted shall not be tried for the same offence or for any other offence arising out of the same facts, for which a different charge from the one made against him might have been made or for which he might have been convicted under the Code of Criminal Procedure."

19. In ***Balbir Singh v. State of Delhi*** reported in

(2007) 6 SCC 226, it has been held:-

“14. So far as applicability of [Section 300 \(1\) of the Code](#) is concerned, essentially the conditions for invoking the bar are: (i) the Court had jurisdiction to take cognizance and try the accused and (ii) the Court has recorded an order of conviction or acquittal and such conviction/acquittal remains in force.”

20. In *Sangeetaben Mahendrabhai Patel, Appellant v. State of Gujarat and another* reported in (2012) 7 SCC 621, it has been held:-

“9. The sole issue raised in this appeal is regarding the scope and application of doctrine of double jeopardy. The rule against double jeopardy provides foundation for the pleas of autrefois acquit and autrefois convict. The manifestation of this rule is to be found contained in [Section 300 Cr.P.C](#); [Section 26 of the General Clauses Act](#); and [Section 71 I.P.C.](#)

10. [Section 300\(1\) Cr.P.C.](#) reads:

“300 Person once convicted or acquitted not to be tried for same offence.-(1). A person who has once been tried by a Court of competent



jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of [Section 221](#), or for which he might have been convicted under sub-section (2) thereof.”

11. [Section 26](#) of the General Clauses Act, 1897 reads:

“26. 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.”

12. [Section 71](#) of I.P.C. reads:

“71. Limit of punishment of offence made up of several offences. - Where anything which is an offence is made up of parts, any of which

parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.”

13. *In [Maqbool Hussain v. State of Bombay](#), AIR 1953 SC 325, the Constitution Bench of this Court dealt with the issue wherein the central issue arose in the context of the fact that a person who had arrived at an Indian airport from abroad on being searched was found in possession of gold in contravention of the relevant notification, prohibiting the import of gold. Action was taken against him by the customs authorities and the gold seized from his possession was confiscated. Later on, a prosecution was launched against him in the criminal court at Bombay charging him with having committed the offence under [Section 8](#) of the Foreign Exchange Regulation Act, 1947 (hereinafter called 'FERA') read with the relevant notification. In the background of these facts, the plea of “autrefois acquit” was raised seeking protection under [Article 20\(2\)](#) of the Constitution of India, 1950 (hereinafter called the 'Constitution').*



14. This court in Maqbool Hussain AIR 1953 SC 325 held that the fundamental right which is guaranteed under [Article 20 \(2\)](#) enunciates the principle of "autrefois convict" or "double jeopardy" i.e. a person must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim "nemo debet bis punire pro uno delicto", that is to say that no one ought to be twice punished for one offence. The plea of "autrefois convict" or "autrefois acquit" avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned. 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 and not that the facts relied on by the prosecution 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.

15. The Constitution Bench of this Court in [S.A.Venkataraman v. Union of India & Anr.](#),



AIR 1954 SC 375, explained the scope of doctrine of double jeopardy, observing that in order to attract the provisions of [Article 20 \(2\)](#) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words 'prosecuted' and 'punished' are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attractive.

16. In [Om Prakash Gupta v. State of U.P.](#), AIR 1957 SC 458; and [State of Madhya Pradesh v. Veereshwar Rao Agnihotri](#), AIR 1957 SC 592, this Court has held that prosecution and conviction or acquittal under [Section 409 IPC](#) do not debar trial of the accused on a charge under [Section 5\(2\)](#) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content.

17. In [Leo Roy Frey v. Superintendent, District Jail, Amritsar & Anr.](#), AIR 1958 SC 119, proceedings were taken against certain persons in the first instance before the Customs Authorities under [Section 167\(8\)](#) of the Sea Customs Act and heavy personal penalties were

imposed on them. Thereafter, they were charged for an offence under [Section 120-B](#) IPC. This Court held that an offence under [Section 120-B](#) is not the same offence as that under the Sea Customs Act:

“4...The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.”
(Emphasis added)

18. *In [The State of Bombay v. S.L. Apte and Anr.](#) AIR 1961 SC 578, the Constitution Bench of this Court while dealing with the issue of double jeopardy under [Article 20\(2\)](#), held:*

“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 facts 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...

* * *

16. The next point to be considered is as regards the scope of [Section 26](#) of the General Clauses Act. Though [Section 26](#) 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. This is made clear by the concluding portion of the section which refers to “shall not be liable to be punished twice for the same offence”. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked.” (Emphasis added)



19. In [Roshan Lal & Ors. v. State of Punjab](#), AIR 1965 SC 1413, the accused had caused disappearance of the evidence of two offences under [sections 330 and 348 IPC](#) and, therefore, he was alleged to have committed two separate offences under [section 201 IPC](#). It was held that neither [section 71 IPC](#) nor [section 26 of the General Clauses Act](#) came to the rescue of the accused and the accused was liable to be convicted for two sets of offences under [section 201 IPC](#), though it would be appropriate not to pass two separate sentences. A similar view has been reiterated by this Court in [Kharkan & Ors. v. State of U.P.](#), AIR 1965 SC 83.

20. In [Bhagwan Swarup Lal Bishan Lal v. The State of Maharashtra](#), AIR 1965 SC 682, while dealing with the issue, held:

“11The previous case in which this accused was convicted was in regard to a conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter and that case was finally disposed of by this Court in [Sardul Singh Caveeshar v. State of Bombay](#), AIR 1957 SC 747. Therein it was found that Caveeshar was a party to the conspiracy and also a party



to the fraudulent transactions entered into by the Jupiter in his favour. The present case relates to a different conspiracy altogether. The conspiracy in question was to lift the funds of the Empire, though its object was to cover up the fraud committed in respect of the Jupiter. Therefore, it may be that the defalcations made in Jupiter may afford a motive for the new conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, some of the facts proved to establish the Jupiter conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in itself would be sufficient to make the two conspiracies the one and the same offence....

12.....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 and, therefore, that Article has no relevance to the present case.” (Emphasis added)

21. *In The State of A.P. v. Kokkiligada Meeraiah & Anr., AIR 1970 SC 771, this Court while having regard to [Section 403](#) Cr.P.C., 1898, held:*

“6. The following important rules emerge from the terms of [Section 403](#) of the Code of Criminal Procedure:

(1) An order of conviction or acquittal in respect of any offence constituted by any act against or in favour of a person does not prohibit a trial for any other offence constituted by the same act which he may have committed, if the court trying the first offence was incompetent to try that other offence.

(2) If in the course of a transaction several offences are committed for which separate



charges could have been made, but if a person is tried in respect of some of those charges, and not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.

(3) If a person is convicted of any offence constituted by any act, and that act together with the consequences which resulted therefrom constituted a different offence, he may again be tried for that different offence arising out of the consequences, if the consequences had not happened or were not known to the court to have happened, at the time when he was convicted.

(4) A person who has once been tried by a Court of competent jurisdiction for an offence and has been either convicted or acquitted shall not be tried for the same offence or for any other offence arising out of the same facts, for which a different charge from the one made against him might have been made or for which he might have been convicted under [the Code of Criminal Procedure](#).” (Emphasis added)

21. After going through the relevant provisions of law



as indicated above as well as relevant judicial pronouncement referred herein above, it is evident that the privilege so allowed in favour of accused in order to protect him from the concept of double jeopardy under Article 20(2) of the Constitution of India is found duly explained and further, as per Section 300 of the Cr.P.C., it is apparent that during course of appreciation of aforesaid event, accused has got some sort of protection relating to the charge which is going to be framed against him during course of trial, on the ground that the same ought not to be in case for the same occurrence, he had faced rigor of trial which might have been resulted in his acquittal or conviction. Its applicability has further been perceived to the extent that even during course of first trial, there was an opportunity available for framing of proper charge in terms of Section 221(1) or (2) of the Cr.P.C., though not been framed in true sense.

22. Now, the facts of the case is to be taken note of. From the fard-beyan, which was recorded on the same day of alleged occurrence dated 24.06.2006 of Mahendra Paswan on the basis of which Nawada Town P. S. Case No.153 of 2006 was registered speaks each and every event committed by the accused persons and during course thereof, the names of the respective injured including that of Nilam Kumari, daughter of complainant had already been

specified. The aforesaid F.I.R., ultimately recorded guilt of the accused including the petitioner.

23. Present complaint has been filed by the complainant after an interval of so many days wherein there happens to be specific disclosure that police failed to record their statements. From the narration of the complaint petition, it is evident that he had not disclosed with regard to others.

24. Though, case and counter-case or cross-case having two kinds of version with regard to occurrence is permissible, but on the same fact, the second F.I.R. is non-permissible as being hit by Section 162 Cr.P.C.. In likewise manner, in case there happens to be police case as well as the complaint case for the same occurrence, though with certain variance, more particularly relating to status of the accused, then in that event, Section 210 of the Cr.P.C. is found enforceable whereunder a report was expected to be and in likewise manner, the complaint case was only allowed to proceed against those accused persons whose presence is not at all found under the police case. No such activity was ever taken at the end of the learned lower Court and further, from the conduct of the opposite parte no.2/ complainant, it is apparent that same had purposely been withheld and that being so, the learned lower Court remained under the shadow of darkness with regard to police case having been launched on the same

facts.

25. From the judgment of Nawada Town P. S. Case No.153 of 2006 (Annexure-4), it is evident from Para-1 thereof, that charge was framed against the accused for assaulting Nilam Kumari, daughter of Opposite Party No.2, Rajo Paswan including others and in likewise manner, under Para-14 (4) the injury of Nilam Kumari had also been taken into consideration. That being so, the prosecution of the petitioner on account of having been prosecuted and convicted in connection with Nawada Town P. S. Case No.153 of 2006 would not permit second prosecution against him on two counts (a) having been barred in terms of Article 20(2) of Constitution of India, Section 26 of the General Clauses Act as well as Section 300 of the Cr.P.C. and (b) in terms of Section 210(2) of the Cr.P.C.

26. Because of the fact that prosecution of the petitioner happens to be barred on account thereof, the order impugned would not survive resultantly, is set aside relating to the petitioner only. Consequent thereupon, instant petition is allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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