

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45959 of 2014

Arising Out of PS.Case No. -315 Year- 2012 Thana -KUCHAIKOTE District- GOPALGANJ

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Vijay Shankar Prasad S/o Ram Bilash Ray an Employee of North Eastern Carrying Corporation Ltd. Andi Gola, P.S. Town, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Sales Tax Commissioner Cum Chief Secretary, State of Bihar, New3 Secretariate, Patna
3. Sales Tax Authority, Check Post, Jalalpur, District - Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Prasad, Adv.
Mr. Vijayeshwar Prasad, Adv.

For the Opposite Party No.1 : Mr. B.N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 13-12-2017

The present case arise out of Kuchaikot P.S. Case No. 315 of 2012 lodged under Sections 415, 416, 417, 418, 419, 420, 406, 407, 468, 471, 407, 409, 120(B)/34 of the Indian Penal Code.

2. The aforesaid FIR has been registered on the basis of the complaint of the Commercial Taxes Officer, Jalalpur, Gopalganj dated 01.12.2012 wherein it has been alleged that three transport companies, as mentioned in the said complaint, one of them being the petitioner herein, were carrying goods loaded on trucks and were intercepted at the check post, whereafter the built (chalan) and bill produced were inspected and it was found that the TIN number of the purchaser mentioned on the bill was not valid. It was further found that the efforts were made to sneak the good loaded truck through the



check post by scribing the forged TIN number of the concerned State on the bills showing the same to be on an out to out basis. It has also been stated in the said complaint that the main purpose of the aforesaid forgery was evasion of tax and causing revenue loss to the Government wherein the transport companies were fully involved. On the basis of the said complaint dated 01.12.2012, the aforesaid FIR was lodged on 01.12.2012.

3. The learned Chief Judicial Magistrate, Gopalganj, by an order dated 20.07.2013, has taken cognizance under Sections 415, 416, 417, 418, 419, 420, 406, 407, 468, 471, 407, 409, 120(B)/34 of the Indian Penal Code against the petitioner herein and others.

4. The aforesaid order dated 20.07.2013 is under challenge in the present proceedings.

5. The only point urged by the learned counsel for the petitioner is that the opposite parties have already initiated proceedings under Sections 60(3) and Section 31(2) of the Bihar Value Added Tax, 2005 for the offences as alleged in the complaint petition, hence the present FIR could not have been lodged for the same offence in view of the well settled principle of law that a person cannot be convicted twice for the one and the same offence. The learned counsel for the petitioner has further placed reliance on Article 20(2) of the Constitution of India and on a judgment dated



06.07.2012 passed by this Court in Miscellaneous Appeal No. 965 of 2010 and other analogous cases.

6. I have perused the materials on record and heard the learned counsel for the parties. Firstly, the order dated 06.07.2012 passed by this Court in Miscellaneous Appeal No. 965 of 2010 is of no avail to the petitioner herein inasmuch as the same pertains to completely different aspect of the Bihar Finance Act, 1981 and the same nowhere relates to continuance of the civil and criminal proceedings simultaneously or the principle of double jeopardy. Secondly, upon a query put by this Court to the learned counsel for the petitioner to show as to whether the Bihar Value Added Tax, 2005 provides for any criminal prosecution for the offences as alleged in the complaint, the learned counsel for the petitioner was unable to show the same and instead, he merely relied on Section 31(2)(a) and Section 60(3) of the Bihar Value Added Tax, 2005.

7. It would be useful to produce Section 31(2)(a) and Section 60(3) of the Bihar Value Added Tax Act, 2005:-

“Section 31(2) (a): The prescribed authority shall, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, direct that the dealer shall, besides the amount of interest payable under sub- section (10) of section 24, pay by way of penalty, a sum equal to three times the amount of tax which is or may be assessed on the turnover of sale or purchase which escaped assessment.

Section 60 (3): Any authority or officer who may be



authorised by the State Government in this behalf, may, for the purpose of verifying, whether any goods are being transported in contravention of the provisions of sub- section (2) and in such manner as may be prescribed, intercept, detain and search any goods carrier; and the person, transporting goods or for the time being in- charge of goods, shall render all possible assistance to such authority or officer in carrying out the search.”

8. From a bare perusal of Section 31 of the said Act it is clear that the same pertains to reopening of the cases wherein original order of assessment or re-assessment was passed, if the authorities finds that a reasonable ground exists to believe that any purchase of goods liable to tax under this Act has been either under assessed or has escaped assessment or has been assessed to tax at a lower rate etc. and in case where the dealer has concealed, omitted or failed to disclose full and correct particulars of sale or purchase etc., penalty would be levied. Similarly Section 60(3) of the Bihar Value Added Tax, 2005 provides for inspection, detention and search of any goods carrier for verifying as to whether any goods are being transported in contravention of the provisions and further provides that persons transporting goods or for the time incharge of goods shall render all possible assistance to the authorities carrying out the search.

9. Thus, it is apparent that the learned counsel for the petitioner has failed to demonstrate any provisions in the Bihar Value Added Tax, 2005, which provides for criminal prosecution of the



person who has furnished forged TIN number of the purchaser on the bills pertaining to the goods being transported through the check post.

10. The various provisions of the Indian Penal Code under which the FIR has been lodged are not being re-produced herein below for the sake of brevity but it would be apropos to state that the same pertains to commission of penal offence of cheating and forgery.

11. It may be relevant to mention here that the fundamental rights guaranteed under Article 20(2) of the Constitution of India incorporates the principles of autrefois convicts or double jeopardy, which means that no person shall be prosecuted or punished for the same offence more than once. In order to attract the protection guaranteed under Article 20(2) of the Constitution of India, it is to be seen as to whether the ingredients of the offences alleged under two separate Acts are same or different.

12. Ostensibly the prosecution in criminal law and proceedings arising under the Bihar Value Added Tax Act are undoubtedly independent proceedings and therefore, there is no impediment in law for the criminal proceeding to proceed even during the pendency of the proceedings under the Bihar Value Added Tax Act, 2005. It is a trite law that the same fact in a proceeding can constitute offence under two different laws and an act or omission can amount to an offence under the Indian Penal Code and at the same



time constitute an offence under any other law. In order to buttress the aforesaid position in law, it would be relevant to quote the relevant paragraphs of the judgments rendered by the Apex Court, on the aforesaid subject matter, herein below:

- (i) *2001 SCC (Cri) 544 [Commissioner of Income Tax, Mumbai vs. Bhupendra Champak Lal Dalal and Another]* Para- 3 & 4:

"3. The prosecution in criminal law and proceedings arising under the Act are, undoubtedly, independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the Appellate Authorities have a relevance and bearing upon the conclusions to be reached in the case ⁴⁶¹ necessarily one authority will have to await the outcome of the other authority.

4. This Court in *G.L. Didwania v. ITO*¹ dealt with the similar situation where there is a prosecution under the Act for making a false statement that the assessee had intentionally concealed his income and the Tribunal ultimately set aside the assessment holding that there is no material to hold that such income belongs to the assessee and the petition was filed before the Magistrate to drop the criminal proceedings and thereafter, an application was filed before the High Court under Section 482 CrPC to quash those criminal proceedings. This Court held that the whole question is whether the appellant made a false statement regarding the income which according to the assessing authority has escaped assessment and this issue was dependent on the conclusion reached by the Appellate Tribunal and hence the prosecution could not be sustained. In *Uttam Chand v. ITO*² this Court held that in view of the finding recorded by the Tribunal on appraisal of the entire material on the record that



the firm was a genuine firm and the assessee could not be prosecuted for filing false returns and, therefore, quashed the prosecution. In *P. Jayappan v. S.K. Perumal, First ITO*³ this Court observed that the pendency of the reassessment proceedings under the Act cannot act as a bar to the institution of the criminal proceedings and postponement or adjournment of a proceedings for unduly long period on the ground that another proceedings having a bearing on the decision was not proper."

(ii) **(2012) 7 SCC 621 [Sangeetaben Mahendrabhai Patel vs. State of Gujarat and Another]**, Para- 9, 12, 14, 15, 16, 17, 18, 19, 20, 21, 25, 28, 31, 37, 38 and 39:

"9. The sole issue raised in this appeal is regarding the scope and application of the 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 CrPC; Section 26 of the General Clauses Act and Section 71 IPC.

13. In *Maqbool Hussain v. State of Bombay*², 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 ⁶²⁷relevant 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 "the 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*² 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 punished twice 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*³ 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 coexist in order that the operation of the clause may be attracted.

16. In *Om Parkash Gupta v. State of U.P.*⁴ and *State of M.P. v. Veereshwar Rao Agnihotri*⁵ this Court has held that the 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. Supt., District Jail*⁶, 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 ^{₹628} 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 IPC is not the same offence as that under the Sea Customs Act: (AIR p.



121, para 4)

"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 *State of Bombay v. S.L. Apte*² the Constitution Bench of this Court while dealing with the issue of double jeopardy under Article 20(2) of the Constitution, held: (AIR pp. 581 & 583, paras 13 & 16)

"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. ...

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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 v. State of Punjab*⁸, 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 ⁶²⁹IPC, though it would be appropriate not to pass two separate sentences. A similar view has been reiterated by this Court in *Kharkan v. State of U.P.*⁹

20. In *Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra*¹⁰, while dealing with the issue, this Court held: (AIR pp. 688-89, paras 11-12)

"11. ... 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*¹¹. 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 *State of A.P. v. Kokkiliagada Meerayya*¹² this Court while having regard to Section 403 CrPC, 1898, held: (SCC pp. 163-64, para 6)

"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* ⁶³⁰ *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)

25. In *P.V. Mohammad Barmay Sons v. Director of Enforcement*¹⁹ it was held: (SCC p. 732, para 11)

"11. The further contention that under the Customs Act, 1962 for the selfsame contravention,



the penalty proceedings terminated in favour of the appellant, is of little avail to the appellant for the reasons that the two Acts operate in different fields, one for contravention of FERA and the second for evasion of [excise] duty. The mere fact that the penalty proceedings for evasion of the [excise] duty had ended in favour of the appellant, does not take away the jurisdiction of the enforcement authorities under the Act to impose the penalty in question. The doctrine of double jeopardy has no application.” (See also *State of Bihar v. Murad Ali Khan*²⁰, *Union of India v. K.V. Jankiraman*²¹, *State of T.N. v. Thiru K.S. Murugesan*²² and *State of Punjab v. Dalbir Singh*²³.)

28. In *Union of India v. Sunil Kumar Sarkar*²⁵, this Court considered the argument that if the punishment had already been imposed for court-martial proceedings, the proceedings under the Central Rules dealing with disciplinary aspect and misconduct cannot be held as it would amount to double jeopardy violating the provisions of Article 20(2) of the Constitution. The Court explained that the court-martial proceedings deal with the penal aspect of the misconduct while the proceedings under the Central Rules deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap at all and, therefore, there was no question of attracting the doctrine of double jeopardy. While deciding the said case, the Court placed reliance upon its earlier judgment in *R. Viswan v. Union of India*²⁶.

31. Similar view has been reiterated by this Court in *State of Haryana v. Balwant Singh*²⁹, observing that there may be cases of misappropriation, cheating, defamation, etc. which may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages, etc. Therefore, it is not always necessary that in every such case the provisions of Article 20(2) of the Constitution may be attracted.

37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of



issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.

38. In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.

39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."

(iii) (2011) 1 SCC 534 [**Institute of Chartered Accounts of India vs. Vimal Kumar Surana and Another**] para- 20,21,22,23,24 and 36:

"20. In other words, if the particular act of a member of the Institute or a non-member or a company results in contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and  545 such act also amounts to criminal misconduct which is defined as an offence under IPC, then a complaint can be filed by or under the order of the Council or of the Central Government under Section 28, which may ultimately result in imposition of the punishment prescribed under Section 24 or sub-section (2) of Sections 24-A, 25 or 26 and such member or non-member or company can also be prosecuted for any identified offence under IPC.

21. The object underlying the prohibition contained in Section 28 is to protect the persons engaged in profession of Chartered Accountants against false and untenable complaints from dissatisfied litigants and others. However, there is nothing in the language of the provisions contained in Chapter VII from which it can be inferred that



Parliament wanted to confer immunity upon the members and non-members from prosecution and punishment if the action of such member or non-member amounts to an offence under IPC or any other law.

22. The issue deserves to be considered from another angle. If a person cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is (Section 416 IPC), then he can be charged with the allegation of cheating by personation and punished under Section 419 for a term which may extend to 3 years or with fine or both. If a person makes any false document with the intent to cause damage or injury to the public or to any person, or to support any claim or title, then he can be prosecuted for an offence of forgery (Section 463) and can be punished under Section 465 with imprisonment which may extend to 2 years or with fine or with both. If a person commits forgery for the purpose of intending that the document forged by him shall be used for the purpose of cheating then he can be punished with imprisonment for a term which may extend to 7 years and fine (Section 468). If a person makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for committing any forgery which would be punishable under Section 467 or with such intent, in his possession any such seal, plate or other instrument, knowing the same to be counterfeit then he is liable to be punished with imprisonment for life or with imprisonment which may extend to 7 years. He shall also be liable to fine.

23. The provisions contained in Chapter VII of the Act neither define cheating by personation or forgery or counterfeiting of seal, etc. nor provide for punishment for such offences. If it is held that a person acting in violation of Section 24 or contravening sub-section (1) of Sections 24-A and 26 of the Act can be punished only under the Act even though his act also amounts to one or more offence(s) defined under IPC and that too on a complaint made in accordance with Section 28, then the provisions of Chapter VII will become discriminatory and may have to be struck down on the ground of violation of Article 14.



 ⁵⁴⁶ **24.** Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrongdoer by filing the first information report or complaint under the relevant provisions of CrPC.

36. In view of the above discussion, the argument of the learned Senior Counsel appearing for the respondent that the Act is a special legislation vis-à-vis IPC and a person who is said to have contravened the provisions of sub-section (1) of Sections 24, 24-A, 25 and 26 cannot be prosecuted for an offence defined under IPC, which found favour with the High Court does not commend acceptance."

13. Therefore, it is clear that the prosecution in criminal law and proceedings arising under the Bihar Value Added Tax Act, 2005 are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Bihar Value Added Tax Act, 2005. In the present case, while the petitioner is being proceeded under the Bihar Value Added Tax Act, 2005, for concealing or failing to disclose full and correct particular of sale or purchase etc. as well as for evasion of tax, the present prosecution has been launched under various sections of the Indian Penal Code for



committing forgery and cheating by furnishing invalid and false TIN number of the purchaser on the bill. Thus, the offence under the provisions of the Bihar Value Added Tax Act were, it seems, consequent to the offences under the Indian Penal Code, which ostensibly were committed first. Hence, in the present case, the same set of facts definitely constitute offence under two different law i.e. one under the Indian Penal Code and other under the Bihar Value Added Tax Act, 2005, thus neither Article 20(2) of the Constitution of India has any relevance to the present case nor the present criminal prosecution can be said to be barred or a case of double jeopardy, much less liable to be quashed, therefore, there is no merit in the contention raised by the petitioner herein.

14. Having regard to the facts and circumstances of the present case as also the law settled by the Apex Court, there is no merit in the present petition and the same is dismissed.

(Mohit Kumar Shah, J)

BTiwary/-

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