

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.534 OF 2015

ASHOK TAHILRAM SADARANGANI & ANR.)...APPLICANTS

V/s.

C.B.I. (E.O.W.) AND ANR.)...RESPONDENTS

AND

CRIMINAL REVISION APPLICATION NO.533 OF 2015

KERSI VIRAF MEHTA)...APPLICANT

V/s.

C.B.I. (E.O.W.) AND ANR.)...RESPONDENTS

Mr.Mohanlal Sachwani, Advocate for the Applicant in Criminal Revision Application No.534 of 2015.

Mr.Rajnath Pathak, Advocate for the Applicant in Criminal Revision Application No.533 of 2015.

Ms.Rebecca Gonsalvez, Advocate for Respondent No.1.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 12th APRIL 2017.

ORAL JUDGMENT :

1 Both these revision petitions are being disposed of with this common judgment and order as facts involved in both these revision petitions are identical and both revision petitioners / accused are being prosecuted by the CBI on similar facts constituting various offences.

2 Criminal Revision Petition No.533 of 2015 is filed by Kersi Viraf Mehta against whom a supplementary charge-sheet dated 11th August 2015 is filed by respondent / CBI on 11th August 2015 which has resulted in registration of the Special CBI Case No.78 of 2015 against him for offences punishable under Sections 120B, 420 and 471 of the IPC. By this revision petition, revision petitioner / accused no.4 Kersi Mehta is challenging the order dated 17th November 2015 passed by the learned Special Judge (CBI) for Greater Mumbai rejecting his application at Exhibit 117 filed by him invoking the provisions of Section 300 of the Code of Criminal Procedure with a prayer for dismissal of the said CBI Special Case bearing no.78 of 2015.

3 Criminal Revision Petition No.534 of 2015 is filed by revision petitioners / original accused no.1 Ashish Sadarangani and original accused no.2 Nilesh Sadarangani, who along with other accused are facing trial for offences punishable under Sections 120B read with 409, 420, and 471 of the IPC, so also under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. By this revision petition, these revision petitioners / accused nos.1 and 2 in Special CBI Case No.3 of 2004 are challenging the order dated 7th November 2015 passed by the learned Special Judge (CBI) Mumbai, thereby rejecting their application at Exhibit 110 filed by invoking Section 300 of the Cr.P.C. with the prayer for dismissal of the CBI Special Case No.3 of 2004.

4 Though impugned orders, rejecting applications which are titled as applications under Section 300 of the Cr.P.C. filed by revision petitioners, were passed on different dates in both cases, the learned Special Judge, CBI, Mumbai, has assigned same reasons for rejecting both applications filed by the revision

petitioners in two different CBI cases. The relevant portion incorporating reasons for rejection of applications for dismissal of CBI Special cases can be found in paragraph 7 in both impugned orders. For the sake of convenience, relevant portion of paragraph 7 of the order dated 7th November 2015 passed in Special Case No.3 of 2004 needs reproduction and it reads thus :

“7.

From the present chargesheet it appears that the complaint is different. Here in this case complainant is Vigilance Officer, Union Bank of India, who filed complaint before CBI, EOW, Mumbai, on 30.06.2003 and offence bearing RC No.8/E/2003 was registered for offence punishable under Section 120-B IPC r/w 420 and 471 of the IPC and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. Allegations are in respect of use of forge Lease Deed and Power of Attorney for the purpose of collateral security submitted before Union Bank of India by accused causing wrongful loss to the tune of Rs.3.78 crores. Though the accused are same but the offences are different and complaint are also different. Nature of offence are also different.”

5 Heard. Admit. Heard finally, by consent of parties.

6 The learned advocate appearing for revision petitioners in Criminal Revision Petition No.534 of 2015 after narrating facts of the prosecution case argued that business of revision petitioners was already going on and they had already availed credit facility from the bank. However, for enhancing the limit of that credit facility, they had bonafidely given additional collateral security in the form of lease deeds executed in their favour by Power of Attorney holder Kersi Viraf Mehta (the revision petitioner in other revision petition). This act on the part of revision petitioners / accused persons was bonafide. The offence had an origin from the Power of Attorney and no original Power of Attorney is seized. He further argued that material on record shows that revision petitioners / accused never induced or cheated the bank. Even other property of revision petitioners was mortgaged with the bank and as on today, no dues of the bank are outstanding. It is further argued by the learned advocate for

revision petitioners / accused that the prosecuting agency i.e. the CBI was well aware about prosecution of both revision petitioners / accused at the instance of Kherwadi Police Station in the criminal Case registered on the basis of investigation into the FIR lodged by Homi Sanjana. For this purpose, reliance is placed on order dated 24th March 2005 passed on Bail Application No.39 of 2005 by the learned Special Judge, Greater Mumbai, and the order dated 6th April 2004 passed in R.A.No.3 of 2004 i.e. Bail Application No.61 of 2004 by the learned Special Judge, CBI, Greater Mumbai. With this, the learned advocate further argued that infact a composite charge-sheet ought to have been filed by the prosecuting agency instead of prosecuting the revision petitioners / accused at the instance of Kherwadi Police Station and the CBI. The main thrust of the argument of the learned advocate for revision petitioners / accused is to the effect that having tried for offences punishable under Sections 465, 467, 468, 471, 420 read with 34 and 120B of the IPC before the learned Metropolitan Magistrate, 32nd Court, Bandra, in Criminal Case No.364/P/2002 and their acquittal therein on 30th January 2013

by the said court, the revision petitioners / accused cannot now be tried on same facts by the learned Special Judge, CBI, in Special Case No.3 of 2004 and as such, in view of bar of Section 300 of Cr.P.C., Special Case No.3 of 2004 needs to be dismissed at the threshold itself. It is further argued that alleged offences are arising out of one series of acts so connected together as to form the same transaction and therefore revision petitioners / accused ought to have been tried in only one trial.

7 I have also heard the learned advocate appearing for revision petitioner / accused in Criminal Revision Petition No.533 of 2015. By drawing my attention to the charge leveled against the petitioner in the Special Case by the CBI, he argued that there is no question of committing the offence as stated in the said charge-sheet by the revision petitioner. The revision petitioner / accused had not used forged documents nor approached the bank and requested for disbursement of loan. He reiterated the submissions advanced by the learned advocate appearing in the another revision petition and contended that in view of bar of

Section 300 of the Cr.P.C., the Special CBI Case against the Revision Petition bearing no.78 of 2015 also needs to be dismissed.

8 The learned advocate appearing for the respondent / CBI i.e. the prosecuting agency vehemently argued that bar of Section 300 of the Cr.P.C. is not applicable to cases in hand. She argued that Criminal Case bearing No.364/P/2002 in which revision petitioners / accused were tried and acquitted was for totally different offences. Offences alleged against revision petitioners / accused in both these revision petitions are totally distinct. As offences are not identical and as revision petitioners / accused were not tried for offences alleged against them in Special CBI Case Nos.3 of 2004 and 78 of 2015, there is no question of application of bar of Section 300 of the Cr.P.C. For this purpose, the learned advocate for the prosecuting agency has placed reliance on judgment and order of acquittal of revision petitioners / accused in Criminal Case No.364/P/2002 decided on 30th January 2013 and contended that it was relating to forgery

and cheating of Homi Sanjana – the informant therein as well as the officers from the office of the Sub-Registrar. Allegations therein were to the effect of preparation of forged Power of Attorney of the first informant Homi Sanjana and preparation of forged Income Tax Clearance Certificate for getting lease deeds registered in favour of revision petitioners / accused in Criminal Revision Petition No.543 of 2015. The learned advocate for the CBI by placing reliance on judgment of the Hon'ble Apex Court in matter of **Ashok Sadarangani and Another vs. Union of India and Others**¹ vehemently argued that revision petitioners / accused in Criminal Revision Petition No.534 of 2015 had earlier approached the Hon'ble Apex Court with a prayer for quashing proceedings in the Special CBI Case No.3 of 2004 on the basis of settlement of dues of the bank by them, but the Hon'ble Apex Court considering the nature of offence, was pleased to dismiss that writ petition. The learned advocate for the CBI further placed reliance on judgment of the Hon'ble Apex Court in the matter of **Sangeetaben Mahendrabhai Patel vs. State of Gujarat and**

1 (2012) 11 Supreme Court Cases 321

Anr.² for demonstrating scope and applicability for the principle of double jeopardy envisaged in Section 300(1) of the Cr.P.C. and contended that in the case in hand, revision petitioner / accused no.2 Nitesh Sadarangani was not even prosecuted for commission of the offence and as such, he cannot invoke Section 300 of the Cr.P.C. She further argued that the judgment in the matter of Kolla Veera Raghav Rao vs. Gorantla Venkateswara Rao and Anr.³ relied by learned advocate for the revision petitioners / accused has been considered in the matter of Sangeetaben (supra) and it is held that when offences are entirely different, even if there are some overlapping facts, then the bar of Section 300(1) of Cr.P.C. has no applicability.

9 I have carefully considered the rival submissions and also perused material placed on record including the copy of the judgment and order of acquittal of revision petitioners / accused in Criminal Case No.364/P/2002. Similarly, I have also perused charge-sheets which has resulted in registration of Special CBI

² AIR 2012 SC 2844

³ 2011 (2) SCC 703

Cases bearing Nos.3 of 2004 and 78 of 2015. I have also perused impugned orders passed by the learned Special Judge, CBI, Mumbai, rejecting applications for dismissal of both criminal cases.

10 At the outset, it needs to be mentioned here that revision petitioners / accused have invoked revisional jurisdiction of this court which is required to be exercised sparingly when it is shown that there is manifest error on the point of law or glaring defect of procedure which has resulted in miscarriage of justice. According to learned advocate appearing for revision petitioners / accused, the learned Special Judge, CBI, has committed error of law in not applying the provisions of Section 300(1) of the Cr.P.C. to cases in hand and has committed illegality in not dismissing both criminal cases pending against revision petitioners / accused.

11 In other words, it is case of revision petitioners / accused that they have fundamental right of protection from double jeopardy. Considering arguments advanced by both

parties, provisions of Article 20(2) of the Constitution of India, Section 300(1) of the Cr.P.C. and Section 26 of the General Clauses Act, 1897 are required to be examined in the light of facts of the instant cases.

Article 20(2) of the Constitution of India reads thus :

“Article 20(2) - No person shall be prosecuted and punished for the same offence more than once.”

Section 300(1) of Cr.P.C. reads thus :

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.”

Section 26 of General Clauses Act, 1897, reads thus :

“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 Perusal of these provisions shows that a person is protected from double jeopardy. These provisions of law protect a person and are based on maxim “*Nemo debet bis vexari.*” These provisions incorporate salutary rule of criminal jurisprudence that no person can be vexed twice on same facts constituting one offence. These provisions of law were interpreted by the Hon'ble Apex Court in the matter of **Sangeetaben (supra)** relied by the learned advocate appearing for the prosecuting agency. Paragraph 24 of the said judgment, so also relevant portion from paragraph 26 thereof needs reproduction. They read thus :

“24. In view of the above, the law is well settled that in order to attract the provisions of [Article 20\(2\)](#) of the Constitution i.e. doctrine of autrefois acquit or [Section 300](#) Code of Criminal Procedure or [Section 71](#) Indian Penal Code or [Section 26](#) of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.

26.
Same remained the position so far as the judgment in [Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao & Anr.](#) (2011) 2 SCC 703, is concerned. It has been held therein that once the conviction under [Section 138](#) of Negotiable Instruments Act has been recorded, the question of trying a same person under [Section 420](#) Indian Penal Code or any other provision of Indian Penal Code or any other statute

is not permissible being hit by [Article 20\(2\)](#) of the Constitution and [Section 300\(1\)](#) Code of Criminal Procedure.”

It is, thus, seen that, for applicability of principles of protection from double jeopardy, 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 two trials. Plea of double jeopardy cannot be held to be proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter. Keeping in mind these principles, let us narrate facts which have resulted in institution of both these revision petitions.

13 Revision petitioners / accused nos.1 and 2 namely, Ashok and Nitesh had taken on lease the immovable property belonging to Homi Sanjana on 29th December 1999. In all, five lease deeds came to be executed by the revision petitioner / accused Kersi Mehta on the basis of allegedly forged Power of

Attorney executed by owners of that land. One of the owners, namely, Homi Sanjana, then lodged a FIR in the matter on 2nd June 2000 which has resulted in registration of Crime No.236 of 2002 with Kherwadi Police Station for offence punishable under Section 465, 467, 468, 471, 420 read with 34 and 120B of the IPC. According to the prosecution case, in that matter, Homi Sanjana and his family members were owners of land situated in Aksa Village, Kandivali and Malad area of Mumbai. Revision petitioner Kersi Mehta was acquainted with informant Homi Sanjana and his family members. He forged a Power of Attorney by showing that Homi Sanjana and his family members had authorized him to deal with those immovable properties by Powers of Attorney dated 11th January 1996 and 24th December 1999. On the basis of these forged Powers of Attorney, according to the prosecution case, five lease deeds dated 29th December 1999 were executed in favour of revision petitioners / accused no.1 Ashok Sadarangani and accused no.2 Nitesh Sadarangani. In the meanwhile, informant Homi Sanjana received a letter on 4th April 2000 from the Additional Collector, Mumbai. On the basis of

this letter, first informant Homi Sanjana made inquiry and came to know that revision petitioner / accused Kersi Mehta had prepared forged Power of Attorney and leased out property owned by them by various lease deeds dated 29th December 1999 in favour of revision petitioners / accused no.1 Ashok Sadarangani and accused no.2 Nitesh Sadarangani. It further transpired during investigation of this crime that for getting those lease deeds registered with the office of the Sub-Registrar, Mumbai, accused persons forged Income Tax Clearance Certificate and submitted that certificate purported to be issued under Section 230-A of the Income Tax Act to the office of the Sub-Registrar and got all those five lease deeds registered on 30th December 1999. It was case of the prosecution that subsequent to registration of those lease deeds, revision petitioners / accused no.1 Ashok Sadarangani and accused no.2 Nitesh Sadarangani mortgaged the leased out immovable properties to the bank and obtained cash credit facility of Rs.125 Lakh apart from Import Letter of Credit for Rs.100 Lakh. On completion of investigation, accused in Crime No.236 of 2002 were charge-sheeted and resultantly Criminal Case

No.364/P/2002 came to be registered. Revision petitioner Ashok Sadarangani was accused no.3 and revision petitioner Kersi Mehta was accused no.6 in that criminal case. Revision petitioner / accused Nitesh Sadarangani was shown as absconding accused and was not put to trial. Along with these accused, some other persons were also arraigned as accused in that criminal case. It was tried by the court of the competent jurisdiction i.e. the Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, and all accused persons in that criminal case came to be acquitted of charges leveled against them vide judgment and order dated 30th March 2013.

14 For applying the provisions of Section 300(1) of the Cr.P.C. to cases in hand, one will have to examine what were the charges in that criminal case bearing no.364/P/2002. Following were the points for determination framed and answered by the learned Metropolitan Magistrate in the said case :

1	Does prosecution prove that accused No.1, 3, 6 and 7 along with deceased accused no.2 Harish Nanalal Joshi, and absconding accused – Nitesh Ashok Sadarangani, Babu @ Surato	Not proved.
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	Madhusudan Das, Dharmendra Singh and Raju Shrivastav, committed criminal conspiracy and in furtherance of their common intention, in between 24-12-1999 to 09-05-2000 at the office of Additional District Collector, New Administrative Building, Bandra-E, Mumbai, and in the office of Sub-Registrar, Bandra fabricated certain documents, two Power-of-Attorneys dated 11-01-1996 and 24-12-1999 and the accused no.6-Kersi Mehta, forged the signature of complainant – Homi Dinshaw Sanjana, his wife – Phiroza and his two sons – Berzin and Pesii Sanjana to support a certain claim or title, to show the title over the land belonging to the complainant and his family members, situated at Village-Aksa, Malad-W, Kandivali, Mumbai, and submitted the forged Power-of-Attorneys to the office of Additional District Collector, and the accused no.3 and 6 also forged and got executed five lease deeds showing transaction dated 29-12-1999, and submitted them in the office of Sub-Registrar, Bandra on 03-12-2000 for registration and that the accused no.1 and 2 fabricated and forged Income Tax Clearance Certificate u/Sec.230-A of Income Tax Act for the registration of lease deeds and thereby committed an offence punishable under Section 465 r/w. 34 of the Indian Penal Code ?	
2	Does prosecution prove that accused No.1, 3, 6 and 7 along with deceased accused no.2 Harish Nanalal Joshi, and absconding accused – Nitesh Ashok Sadarangani, Babu @ Surato Madhusudan Das, Dharmendra Singh and Raju Shrivastav, committed criminal conspiracy and in furtherance of their common intention, during the above mentioned period and places	Not proved.

	forged and submitted documents purporting to be valuable security with intention to cheat the complainant – Homi Sanjana and his family members and also government officers and thereby committed an offence punishable under Section 467 r/w. 34 of Indian Penal Code ?	
3	Does prosecution prove that accused No.1, 3, 6 and 7 along with deceased accused no.2 Harish Nanalal Joshi, and absconding accused – Nitesh Ashok Sadarangani, Babu @ Surato Madhusudan Das, Dharmendra Singh and Raju Shrivastav, committed criminal conspiracy and in furtherance of their common intention, during the above mentioned period and places and forged the above mentioned documents i.e. two Power-of-Attorneys, Income Tax Clearance Certificate and five lease deeds purporting to be valuable security intending that, those shall be used for the purpose of cheating the complainant, his family members and government officers and thereby committed an offence punishable under Section 468 r/w. 34 of Indian Penal Code ?	Not proved.
4	Does prosecution prove that accused No.1, 3, 6 and 7 along with deceased accused no.2 Harish Nanalal Joshi, and absconding accused – Nitesh Ashok Sadarangani, Babu @ Surato Madhusudan Das, Dharmendra Singh and Raju Shrivastav, committed criminal conspiracy and in furtherance of their common intention, during the above mentioned period and places used as genuine, forged documents i.e. two Power-of-Attorneys, Income Tax Clearance Certificate and five lease deeds, which you knew at the time when used them to be forged documents and thereby committed an offence	Not proved.

	punishable under Section 471 r/w. 34 of Indian Penal Code ?	
5	Does prosecution prove that accused No.1, 3, 6 and 7 along with deceased accused no.2 Harish Nanalal Joshi, and absconding accused – Nitesh Ashok Sadarangani, Babu @ Surato Madhusudan Das, Dharmendra Singh and Raju Shrivastav, committed criminal conspiracy and in furtherance of their common intention, during the above mentioned period and places cheated the complainant by dishonestly inducing him to deliver the lands belonging to him situated at Aksa, Malad-W, Kandivali in Mumbai to the accused no.3-Ashok Sadarangani and absconding accused -Nitesh Sadarangani with the help of forged power-of-attorneys and thereby committed an offence punishable under Section 420 r/w. 34 of Indian Penal Code ?	Not proved.
6	Does prosecution prove that accused No.1, 3, 6 and 7 along with deceased accused no.2 Harish Nanalal Joshi, and absconding accused – Nitesh Ashok Sadarangani, Babu @ Surato Madhusudan Das, Dharmendra Singh and Raju Shrivastav, during the above mentioned period and places agreed with accused no.3-Ashok Sadarangani and no.6 -Kersy Mehta, the conspirators to do an illegal act i.e. execution of forged power-of-attorneys, Income Tax Clearance Certificate and five lease deeds and besides the above said agreement you did some acts in order to cheat the complainant – Homi Sanjana and his family members, in pursuance of the said agreement to commit the offence of forgery and cheating punishable with imprisonment for two years, seven years, ten years and imprisonment for life and fine	Not proved.

	and thereby committed an offence punishable under Section 120-B of Indian Penal Code ?	
7	What order ?	As per final order.

Perusal of these points for determination as such goes to show that the said prosecution which commenced from the first information report lodged by Homi Sanjana was in respect of allegedly forged Powers of Attorney and allegedly forged Income Tax Clearance Certificate under Section 230-A of the Income Tax Act and use of those forged documents by accused therein for the purpose of cheating the first informant as well as his family members.

15 Now let us examine facts of the charge-sheet filed by the CBI in these cases which have resulted in registration of Special Case No.3 of 2004 and the supplementary charge-sheet against revision petitioner / Kersi Mehta which has resulted in registration of Special CBI Case No.78 of 2015. The criminal law was set in motion in these cases by the Chief Vigilance Officer of the Union Bank of India by lodging the FIR with the CBI.

According to the prosecuting agency i.e. CBI, accused persons after securing credit facility from the bank had utilized such facilities in a dishonest and fraudulent manner by opening Letters of Credit in respect of foreign suppliers of goods without actually bringing goods but inducing the bank to negotiate the Letter of Credits in favour of foreign suppliers and also misusing cash credit facility availed by them. In order to appreciate case of the prosecution in CBI Special Case No.3 of 2004 as well as CBI Special Case No.78 of 2015, it is apposite to reproduce relevant portions of the charge-sheet containing allegations against accused persons. Those read thus :

“1.on the allegation that during the period between 2000 and 2002 at Mumbai A-1 Nitesh Sadarangani, Proprietor of M/s.Anup Impex and his father A-2 Ashok Sadarangani, Proprietor of M/s.Challenger Imports, in connivance with A-3 R.K.Daruwalla, the then Branch Manager, Union Bank of India, Cumbala Hill Road Branch, Mumbai, and other unknown officials of the bank, obtained various credit facilities from Union Bank of India, Cumbala Hill Road Branch, Mumbai, in the names of their proprietorship firms by submitting forged

property documents as collaterals and utilised such facilities in a dishonest and fraudulent manner, by opening Letters of Credit on foreign suppliers of goods without actually bringing in any goods but inducing the bank to negotiate the Letter of Credits in favour of foreign suppliers as also by misusing Cash Credit Facility. The Credit Facilities were allegedly misutilised by A-1 Nitesh Sadarangani and his father A-2 Ashok Sadarangani in collusion with the then Branch Manager A-3 R.K.Daruwalla of Union Bank of India, Cumbala Hill Road Branch, Mumbai. Thus, by aforesaid criminal acts of accused persons, a wrongful loss of Rs.3.78 crores has been caused to Union Bank of India.

2. That, in pursuance of the above said criminal conspiracy A-1 Nitesh Sadarangani opened CD A/c.No.36646 in the name of his proprietorship firm M/s.Anup Impex with Union Bank of India, Cumbala Hill Road Branch, Mumbai on 04/08/1999. (A-3) R.K.Daruwalla allowed to open the account on the introduction of director of M/s.Nitesh Amusement Pvt.Ltd. Which was already maintaining CD A/c. No.36640 with the bank which was not even six months old on 7/01/2000 A-1

Nitesh Sadarangani submitted application for working capital credit facilities from Union Bank of India under the Liberal Trade Finance Scheme of the bank against collateral security of a plot of land at Mahavir Nagar, Kandivali of the alleged market value of Rs.1121 Lakhs. The application was for availing cash credit (Hypothecation of Stock and Book Debts) of Rs.150 Lakhs, Letter of Credit of Rs.125 Lakhs and Letter of Guarantee of Rs.20 Lakhs. In pursuance of the above said criminal conspiracy the proposal of Nitesh Sadarangani was processed and recommended by A-3 R.K.Daruwalla who was then functioning as Branch Manager, Union Bank of India, Cumballa Hill Road Branch, Mumbai, forwarded a processing note on 21.02.2000 recommending limits. Basing on such recommendation the then Deputy General Manager, Union Bank of India, Mumbai (S) sanctioned the credit facilities to M/s.Anup Impex on 24/02/2000 i.e. Hypothecation of Rs.150 Lakhs, Import, LC (DA up 180 days) for Rs.125 Lakhs with a margin of 10% to 15% and Letter of Guarantee for Rs.20 Lakhs with a margin of 25% i.e. the personal guarantee of A-1 Nitesh Sadarangani and collateral security of equitable mortgage of land CTS No.118,

S.No.147, Mahavir Nagar, Kandivali(W) admeasuring to total area of 16025 sq.meters with 1.33 FSI worth Rs.11,21 Crores in the name of Mr.Ashok Sadarangani and other terms such as personal guarantee of Mr.Nitesh Sadarangani declaration to the effect that Goods / Book debts charge to the bank are free from any encumbrance is to be obtained from the borrowed, credit facilities should be released only after obtaining security documents, branch should monitor the operation of the account on weekly basis, and also confirm easy marketability of collateral property and others usual terms and conditions in case of CC Hypothecation and in case of L/C's limit of Rs.125.00 Lakhs security has mentioned as goods under L/C and margin should be obtained 10% + 15% by way of deposit and in case of bank guarantee of Rs.20.00 Lakhs security of counter guarantee of the firm.

4. That the Cash credit Hypothecation Facility was released by the branch on 31-03-2001 in the Account No.40043 of M/s.Anup Impex. It is further revealed that Cash Credit Facility availed by A-1 Ashok Sadarangani, Proprietor of M/s.Anup Impex, was misutilised by transferring the funds to various

other accounts of his sister concerns opened and operated by him and his family members in the same branch of the bank. It is also reflects that, the Credit Entries in the account are mostly by way of cash deposits. However it reflects that A-3 R.K.Daruwalla has failed to monitor the same account properly.

5. That after the credit facilities were sanctioned the bank opened 1) Letter of Credit No.NIOH 40925/CH/00 for US\$ 94948 IR 4462556.00, 2) LC No.NIOH 40926/CH/00 for US\$ 112937 IR 5308077.00 & 3) LC No.NIOH 40927/CH/00 for US\$ 53216 IR 2501152.00 on behalf of A-1 Nitesh Sadarangani favouring M/s.New Country Medical Suppliers LLC.Dubai for import of household articles and toys. All the L/C's were matured on 18/01/2001. The above referred Letters of Credit were opened on 25 days DA (Document against Acceptance) basis. Against the above referred Letters of Credit, the documents were received by Union Bank of India from bankers of foreign suppliers, which were duly accepted by A-1 Nitesh Sadarangani. On acceptance of the documents on 4.1.2001 by A-1 Nitesh Sadarangani, Union Bank of

India remitted the payments to National Bank of Dubai, the bankers of foreign supplier M/s. New Country Medical Supplies Co. LLC. After the documents were accepted by A-1 Nitesh Sadarangani and as a consequence Letters of Credit were paid by the bank to the bankers of foreign supplier. The documents of M/s.Anup Impex accepted by A-1 Nitesh Sadarangani, were in fact handed over by A-2 Ashok T. Sadarangani stating that the same have been signed by A-1 Nitesh Sadarangani when the Accountant Ms.Padma Subramani objected in this regard A-3 R.K.Daruwalla, the Branch Manager intervened and instructed Ms.Padma Subramani to accept the documents.

6. That, it is further revealed that A-1 Nitesh Sadarangani vide his letter dated 16.01.2001 to the Shipping Company M/s.Geodis Overseas Pvt. Ltd. requesting them to hold the consignment at Nava Sheva and move it back to Salalah. Accordingly the consignments were sent back to Salalah Port and from Salalah Port the same container was sent to Jebel Ali Port. From Jebel Ali Port the same container was dispatched on 12.2.20012 to another

firm M/s.Art Import, Mumbai, under same seal number, thereby indicating that the container was not destuffed and it contained the same goods, which were initially loaded into it by M/s.New Country Medical Supplies Co. LLC and dispatched in favour of M/s.Anup Impex. The container arrived at Nava Sheva on 17.2.2001 and when no one came forward to claim the container it was opened and after examination by the Customs, it was auctioned. When the container was opened it was found to contain only household scraps and not the goods originally declared in the documents, which were accepted by A-1 Nitesh Sadarangani. The fact that A-1 Nitesh Sadarangani redirected the consignment, after acceptance of the documents clearly indicates dishonest intention on his part. As per requirement of L/C finances, the importer is expected to file in the copy of Bill of Entry and thereby report the arrival of consignment against which finance has been given by the bank. Bills of Entries were not submitted by A-1 Nitesh Sadarangani, Proprietor of M/s.Anup Impex in all the 3 L/Cs.

9. It is further revealed that after sanction of the credit facilities A-2 Ashok P. Sadarangani, Proprietor

of M/s.Challenger Imports (Account No.40047), was misutilized by transferring the funds to various other accounts of his sister concerns opened and operated by him and his family members in the same branch of the bank. It is also reflects that, the Credit Entries in the account are mostly by way of cash deposits.

14. It is further revealed that M/s.Art Import failed to claim the consignments. Therefore the consignments were opened and after examination by the Customs were auctioned. It was found that the consignments contained household scrap and not household articles and toys as was declared in the documents sent by M/s.New Country Medical Supplies Co. LLC. The fact that A-2 Ashok T. Sadarangani directed the consignments to be diverted after he had accepted the documents and thus caused the payment to be made by the bank to bankers of foreign supplier, indicates dishonest intention on his part. His knowledge about the real contents of the containers can also be inferred from his conduct and the sequence of events that had taken place with his knowledge and as per his instructions. As per requirement of L/C finances the

importer is expected to file in the copy of Bill of Entry and thereby report the arrival of consignment against which finance has been given by the bank. Bills of Entries were not submitted by M/s.Anup Impex and M/s.Challenger Imports in all the six L/Cs.

17. Thus, by adopting *modus operandi* as above, A-1 Nitesh Sadarangani, Proprietor of M/s.Anup Impex, A-2 Ashok T. Sadarangani, Proprietor of M/s.Challenger Imports and A-3 Mr.R.K.Daruwalla, the then Branch Manager of Union Bank of India, Cumballa Hill Road Branch, Mumbai, entered into a criminal conspiracy to cheat the Union Bank of India and thereby cheated the Union Bank of India, Cumballa Hill Road Branch, Mumbai, to the tune of Rs.375.94 lacs.”

16 It is, thus, clear from allegations made by the prosecuting agency i.e. CBI in the charge-sheet that revision petitioners / accused persons are facing the principal charge of indulging in criminal conspiracy of cheating Union Bank of India and as a result of that conspiracy, cheating the Union Bank of India to the tune of Rs.375.94 Lakh.

17 So far as revision petitioner / accused Kersi Mehta is concerned, allegation against him reflected in the supplementary charge-sheet filed against him by the CBI, which reads thus :

That further investigation reveals that Shri Ashok T. Sadarangani (A-2) has introduced SB Account No.78093 with United Bank of India, Khar (W), Branch, Mumbai, which was opened in the name of Shri Kersi Viraf Mehta (A-4). Further, Shri Ashok T. Sadarangani (A-2) was also having SB A/c.No.46507 in the same bank and he had issued three different cheques in favour of Shri Kersi Viraf Mehta (A-4) during the period between April 2000 to May 2000. The details of the cheques are as under :

1. Cheque No.048521 dated 13.04.2000 for Rs.3,15,000/- issued in favour of Shri Kersi Viraf Mehta (A-4).
2. Cheque No.048522 dated 18.04.2000 for Rs.85,000/- issued in favour of Shri Kersi Viraf Mehta (A-4).
3. Cheque No.682387 dated 08.05.2000 for Rs.10,000/- issued in favour of Shri Kersi Viraf Mehta (A-4).

Thus, Shri Kersi Viraf Mehta (A-4) received

Rs.4,10,000/-.

That further investigation revealed that Shri Kersi Viraf Mehta (A-4) sent letter dated 24.02.2000 and 02.03.2000 for allowing separate ceiling share to land owners in respect of property at Village Akse as well as property at Mahavir Nagar, Village Kandivali. He also sent letter dated 22.03.2000 for permission for sale of non vacant land at village Kandivali.

18 It is, thus, seen that the Special CBI Cases Nos.3 of 2004 and 78 of 2015 and Criminal Case No.364/P/2002 decided on 30th January 2013 by the learned Metropolitan Magistrate, Mumbai, are in respect of two different offences. Offences involved in these two sets of cases are not identical. Even allegations of facts in these two matters are entirely different. By no stretch of imagination it can be said that in these two sets of cases, offences are the same warranting application of the bar prescribed by Section 300(1) of Cr.P.C. or under Section 26 of General Clauses Act. Previous criminal case initiated at the instance of Homi Sanjana was for cheating Homi Sanjana and his family members by preparation of forged Powers of Attorney and

execution of lease deeds by using those forged Powers of Attorney for transferring lands in favour of co-accused and preparation of forged Income Tax Clearance Certificate and using thereof for the purpose of cheating. Present cases initiated at the instance of the Chief Vigilance Officer of the Union Bank of India are in respect of securing credit facilities by accused persons and utilizing these credit facilities in a dishonest and fraudulent manner for cheating the Union Bank of India to the tune of Rs.375.94 Lakh. Though some of the accused persons in cases in hand and the criminal case decided by the Metropolitan Magistrate are same, by that itself it is not possible to hold that offence in both these cases are same or arising out of same facts. Facts constituting conspiracy and cheating Homi Sanjana and his family members so also the Income Tax Officer and the Sub-Registrar by forging Powers of Attorney and Income Tax Clearance Certificate are not ingredients of indulging in conspiracy and cheating the Union Bank of India. Forging Powers of Attorney and getting lease deeds registered on the basis of forged Powers of Attorney might have facilitated commission of offence of cheating the Union Bank of India by

using those lease deeds and properties covered by them but both these offences are distinct ones and facts of the offence registered at the instance of the Chief Vigilance Officer of the Union Bank of India are totally different from the facts of offence registered at the instance of Homi Sanjana. Those do not fall in the category of same offence within the meaning of either Section 300 of the Cr.P.C. or under Article 21(2) of the Constitution of India. Section 218 of the Cr.P.C. provides that for every distinct offence of which a person is accused, there shall be a separate charge and every such charge shall be tried separately. In this view, the judgment in the matter of Kolla Veera Raghav Rao (supra) cited by the learned advocate for the revision petitioners /accused is of no application.

19 In the result, no error of law can be seen from impugned order rejecting the plea of double jeopardy by the learned Special Judge, CBI, Mumbai, raised by these revision petitioners.

20 Therefore, revision petitions are devoid of merit and
are dismissed.

(A. M. BADAR, J.)