IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRWP No. 232 of 2017
Date of decision : 27.09.2017

Sudesh Kumar Arora and others ... Petitioners

VERSUS

Central Bureau of Investigation ... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Saroj, Advocate
for the petitioners.

Mr. S.S. Sandhu, Advocate
for the respondent-CBI.

<u>SURINDER GUPTA, J.(Oral)</u>

This is petition under Article 226 of Constitution of India and Section 482 Cr.P.C. filed by Sudesh Kumar Arora, Rahul Arora, Vikram Puri and M/s Well Rope International Ltd. seeking quashing of proceedings in case no. 2373 of 2004, under Sections 420, 467, 468, 471 read with Section 120-B of Indian Penal Code (for short 'IPC') and FIR bearing no. RC.SIA/2003/E/0001 dated 30.06.2003, registered at Police Station SIU (X) BSFC/SPE/CBI/New Delhi pending in the Court of Special Judicial Magistrate, CBI, Panchkula, Haryana.

2. The instant FIR was registered on the detailed enquiry report of Chief Vigilance Officer, Oriental Bank of Commerce, New Delhi wherein he found that M/s Well Rope International Ltd. (WRIL) and Himachal Filament Pvt. Ltd. (HFPL) have indulged in causing huge loss to their bank in connivance with bank officials by producing false documents/bills and misrepresentation, concealment and fabricating the facts. Though, in report several such instances have been quoted but I

will refer to few instances mentioned in the report, which form part of FIR and reads as follows:-

> *"A Term Loan against immovable property in the name of Sh. R.K. Arora, Director, was sanctioned by Regional Office vide letter dated 04.02.2000 for an amount of ₹10 lacs repayable in 36 monthly installments of ₹35,000/-. The first such installment was due in March, 2000. This loan account became irregular from Jan, 2001. The o/s and overdue position of this account were never mentioned by the branch or called for by the Regional Office while recommending/sanctioning limits to HFPL on 14.02.2001 or at the time of renewal of facilities of WRIL on 11.02.2002 on which dates this account was irregular. An amount of ₹5.87 lacs is outstanding in this account alongwith interest."*

3. The property mortgaged has already been sold before execution of mortgage deed. About HFPL, it was also observed that while sanctioning loan vide letter dated 14.02.2001, it was mentioned that credit report from previous bankers have been obtained but in fact no such report was obtained and the limits sanctioned and availed by this company at SBI, HPSIDC were concealed. At that time there was outstanding loan against this company aggregated ₹31.65 lacs and the account of company was taken over without adhering to norms contained in circular dated 22.09.1999. Several other instances of fraud/concealment were found and find mentioned in the report.

4. About WRIL, it was observed in the report in para 14 and 15 as follows:-

> *"14. It is pertinent to note that the outstanding bills aggregating ₹66.67 lacs on 24.05.2002 were approx. two months old. The fact that bills drawn on M/s WRIL Sudan had been purchased, was reflected in the Monitoring Officer's Report on the account for the quarter ended 31.03.2002 but no queries were asked or raised by regional office on this aspect while sending its letter dated 21.05.2002 to the branch on the Monitoring Officer's Report of 31.03.2002. Earlier too, as per Ambala Cantt. Branch letter dated 07.02.2002 while seeking confirmation from regional office for having purchased a bill for US $24700 (INR ₹12 lacs), the branch had mentioned that the bill was drawn on sister concern M/s WRIL Sudan. The regional office has not responded to the branch letter of 07.02.2002. In branch letter dated 24.05.2002 the fact that 2 bills drawn on M/s WRIL, Sudan had been purchased has been clearly mentioned. Regional Office was aware of the bills being drawn on sister concern in Sudan as is further confirmed by Regional Office letter dated 10.05.2002 drawing the branch's attention towards export bills of allied concern M/s WRIL Sudan being*

overdue for payment on 28.05.2002 branch again sought confirmation of action for having purchased another bill for US $15935 (INR ₹7.50 lacs) but RO had neither confirmed the action or taken any measures in case it did not accord the confirmation sought by the branch. All these bills were still outstanding and the entire outstanding amount of ₹66.29 lacs pertain to bills purchased, which are drawn on sister concern i.e. M/s WRIL Sudan.

15. As in the case of M/s WRIL, the bills purchased are not carrying specific approval for each bill from ECGC as Sudan, the country on which they have been drawn is in restricted list and requires specific approval. This was repeatedly brought to the notice of the regional office and was in its knowledge evidenced vide Regional office letter dated 24.09.2001, branch letter dated 24.01.2002 to Regional office and another letter of branch dated 13.03.2002 alongwith party's letter. In regional office letter dated 10.05.2002 to Branch RO has inquired from branch to apprise us whether specific ECCC approval has been obtained in case of export bills drawn on foreign buyers other than M/s WRIL Sudan. In the absence of specific approval ECCC cover may not be available.”

5. Though, entire allegations in the FIR are not being discussed here but it is clear that allegations in the FIR are against two companies i.e. WRIL and HFPL. CBI after completion of investigation presented charge-sheet dated 24.10.2004 against petitioners, Rajender Kumar Arora (since died) and one Naresh Kumar in the Court of Special Judicial Magistrate, CBI, Haryana.

6. Learned Special Judicial Magistrate, CBI, Haryana framed charges for offences punishable under Sections 120-B read with Sections 420, 467, 468, 471 IPC against Sudesh Kumar Arora, Rahul Arora, Chairman and Managing Director of the company, and Vikram Puri and Sections 420, 467, 468, 471 IPC against M/s Well Rope International Ltd. The trial in this case is stated to be pending at the stage of prosecution evidence. With regard to offence committed by HFPL and its Directors, a separate charge-sheet was filed in which learned Special Judge, (Additional District and Sessions Judge) CBI, Haryana framed charges for offences punishable under Sections 120-B read with Sections 420, 467, 468, 471 IPC and 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act (for short 'PC Act') vide order dated 06.12.2006. The accused in this case were convicted and sentenced by the Special Judge CBI Court vide judgment dated 17.08.2012 against which the appeal is stated to be pending in this Court.

7. Learned counsel for petitioners has argued that after filing of first charge-sheet before the Special Judicial Magistrate, CBI, Haryana, CBI could not file a separate charge-sheet against HFPL as there were common allegations against WRIL and HFPL. Both these

companies are sister concern operating from Kala Amb. If some new material had come in the investigation a supplementary challan could be filed in the same Court where challan was earlier filed as petitioners in this case are also Directors of HFPL. Investigating agency has noticed certain irregularities while sanctioning and disbursement of credit facilities to both the companies. The mere irregularity does not attract the penal provisions of IPC. Allegations in the FIR were common against both the companies. It was alleged in the FIR that both the companies have availed credit facilities by submitting forged documents, which find mentioned in para 13 of the FIR. Even charges framed against petitioners in both the cases were common except that charges under the provisions of PC Act, were also framed against accused in charge-sheet filed before the Special Judge, CBI, Haryana. The trial had completed before the Special Judge, CBI, where witnesses are also common and vide judgment dated 17.08.2012 (Annexure P-2) petitioners alongwith two other accused have been convicted and sentenced. Trial of petitioners in this case amounts to double *jeopardy.* While referring to Section 220 Cr.P.C., learned counsel for petitioners has argued that if in one series of act connected together more than one offence has been committed by same person(s), he may be charged with, and tried at one trial for every such offence. Filing of second charge-sheet by the CBI before Special Judge, CBI, as such, was bad in the eyes of law. Even otherwise, the matter of both the companies i.e. WRIL and HFPL was also jointly investigated. The bills allegedly issued by M/s Jamesh Mackintosh & Co. Pvt. Ltd. were alleged to be forged and are subject matter in both the charge-sheets. Even while deciding charges, framed in the challan presented before the Special Judge, CBI, Haryana, facts of the case relating to WRIL were also discussed. Learned counsel for petitioners has also referred to provisions of Section 173 (8) Cr.P.C., which allows investigating agency to present supplementary charge-sheet if some new evidence or fact has come to its notice after filing of challan. Hardeep Kapoor, who had appeared as PW-13 before the Special Judge, CBI, Haryana had also deposed regarding accounts of WRIL with their branch and this fact was discussed and taken note of in the judgment passed by learned Special Judge, CBI, Haryana, which shows that allegations against petitioners and HFPL were similar and the investigating agency has committed grave error by presenting two separate charge-sheets and subjecting petitioners to two trials. While referring to provisions of Section 300 Cr.P.C. learned counsel for petitioners has argued that petitioners, who have once been convicted on the same set of allegations cannot be tried again for the same offences. After the judgment of Special Judge, CBI, Haryana dated 17.08.2012 (Annexure P-2), continuation of trial before the Court of Special Judicial Magistrate, CBI, Haryana amounts to double *jeopardy*. In support of his contention he has relied on judgments of Hon'ble Apex Court in cases ***Sangeeta Ben vs. State of Gujarat and another, 2012 (7) SCC 621, State of Bihar vs. Murad Ali Khan and otheres, 1988 (4) SCC 655, S.A. Venkataraman vs. Union of India and another, AIR 1954 (SC) 375, Maqbool Hussain vs. State of Bombay, AIR 1953 (SC) 325*** and ***Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and***

<u>another</u>, 2013 (6) SCC 348.

9. Learned counsel for CBI has argued that learned counsel for petitioners in his zeal to make out that provisions of Sections 173 (8), 220 and 300 Cr.P.C. are attracted to this case has gone astray and beyond facts of the case. A common FIR was lodged with CBI against two companies i.e. WRIL and HFPL. After investigation for offences committed by WRIL and its directors and bank officials, charge-sheet was filed before the Special Judicial Magistrate, CBI, Haryana. This charge-sheet is confined only to offences committed by WRIL and its directors and not against HFPL. All the documents mentioned in this charge-sheet relate to WRIL. After investigation of offences committed by HFPL and its directors in connivance with bank officials, a separate charge-sheet was presented before the Special Judge, CBI, Haryana. The charge-sheet in that case relate to offences committed by HFPL and its directors in connivance with bank officials and has no concern with offences committed by WRIL. Both the companies i.e. WRIL and HFPL though sister concern are separate entities. If any reference to offences committed by WRIL has been made in the charge-sheet filed against HFPL that is only for the purpose of elucidating the offences committed by HFPL. The accused in both the cases are different. Second charge-sheet filed by CBI does not indict WRIL and its directors and first charge-sheet does not indict HFPL and its directors. The loans were separate and the fraud by both the companies are also separate, as such, provisions of Sections 173 (8), 220 and 300 Cr.P.C. are not attracted to this case.

10. In the case of ***Maqbool Hussain (supra)***, Hon'ble Apex Court dealt with concept of double *jeopardy* and observed in paras 7 to 9 as follows:-

> "*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 Reg. v. Miles. 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."

11. The principles laid down in the aforesaid case were reiterated in the case of ***S.A. Venkataraman (supra)*** and it was observed in para 6 as follows:-

"6. *It has also been held by this court in Maqbool Hussain's case 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. Hon'ble Apex Court again discussed the concept of double *jeopardy* in case of ***Murad Ali Khan (supra)*** as follows:-

> *“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 Jeoparady" [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, {1958 SCR 822} the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said:*
>
> > *"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."*

13. In case of ***Sangeetaben Mahendrabhai Patel (supra),*** while discussing the concept of double jeopardy Hon'ble Apex Court observed as under:-

> *14. This Court in Maqbool Hussain[1] 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*

1 AIR 1953 SC 325; 1953 Cri.LJ 1432

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 attracted."*

14. The legal proposition, as discussed above, is not disputed. The question which arises for consideration in this petition is as to whether petitioners are being subject to double *jeopardy?* To find answer to this question, it will be relevant to have a look at the FIR registered in this case. FIR was registered against two companies i.e. M/s Well Rope International Ltd. (WRIL) and Himachal Filament Pvt. Ltd. (HFPL). Allegations in the FIR are that both the companies separately availed credit facility from the bank and furnished separat securities. Petitioners are directors of WRIL. They are also directors of HFPL. Anomalies were found in the grant of credit facility and operation of accounts of WRIL. There were no credit reports of bills being drawn. The Regional office/Branch and bank officials have committed irregularities in grant of cash credit limit and operation of account. The company was not routing all its transaction through its account and using the sale proceeds to meet its other expenses. The drawing power in the account was being calculated against unsegregated stocks of the company and its allied concern HFPL, which was well within the knowledge of the branch and regional office. In the same manner there were separate allegations against HFPL. After completion of investigation charge-sheet against petitioners and their co-accused was filed before the Special Judicial Magistrate, CBI on 24.10.2004. Against directors and bank officials with regard to matter relating to HFPL, a separate charge-sheet dated 09.03.2005 was filed in the Court of Special

Judge, CBI, Haryana. Perusal of both the charge-sheets show that the first charge-sheet in the Court of Special Judicial Magistrate, CBI was filed relating to offences by WRIL, its directors and bank officials. This charge-sheet does not deal with any offence committed by HFPL or its directors or relating to its account. Allegations and charges in both the cases were also different. Mere fact that petitioners no. 1 to 3 happened to be directors of HFPL as well as WRIL does not mean that they could not be tried separately for the offences committed by them in their capacity as directors of WRIL and HFPL. Though, both the companies are sister concern but have separate entity. Both the companies were having separate accounts and dealings with the bank. Allegations of fraud, fabrication of documents and using them as genuine were also separate. Both the companies have used bills issued by M/s Jamesh Mackintosh & Co. Pvt. Ltd., which constitute separate offences against them, as these bills were used separately in account of the companies.

15. CBI during investigation has found that WRIL has submitted forged documents at initial stage while seeking sanction of cash credit limit, term loan, letter of credit etc. by Oriental Bank of Commerce, which revealed dishonest intention of company and its directors to cheat the bank. The investigation also revealed that petitioners had submitted forged bills of lading and shipping bills alongwith export order drawn on its sister concern, namely, WRIL, Sudan and forged receipt for purported purchase of raw material were also filed. Perusal of both the charge-sheets filed by CBI before Special Judicial Magistrate and Special Judge CBI show that offences committed

by accused in both the cases were distinct transactions and time period was also different.

16. It is quite strange that petitioners never raised any objection after filing of second charge-sheet on 10.03.2005 till it culminated in their conviction vide judgment dated 17.08.2012. Thereafter, they filed appeal before this Court, which is stated to be pending. It is after 12 years of filing of second charge-sheet that this petition has been filed. Though, plea of double *jeopardy* has been raised with the full force by learned counsel for petitioners but I find no merit in it and the same is discarded. Learned counsel for petitioners has also referred to provisions of Section 173 (8) nor of Section 220 Cr.P.C. in support of his contention that if some fresh material has come to the notice of CBI it could file a supplementary charge-sheet and not a fresh charge-sheet as has been filed before the Special Judge, CBI, Haryana. In support of his contention he has referred to observations of Hon'ble Apex Court in the case of ***Amitbhai Anilchandra Shah (supra)***. Legal proposition as enunciated in the above citation which could be culled out on perusal of Section 178 (3) Cr.P.C. is not in dispute. However, this argument in no manner is of any avail to petitioners as second charge-sheet was filed against HFPL and the present petition is not a second petition. Firstly, no objection against the second charge-sheet is made out. Even otherwise the same could be raised in the case and before the Court before which the second charge-sheet was filed.

17. As a sequel of my above discussion, I am of the considered opinion that neither of the provisions of Section 173 (8) nor of Section

220 Cr.P.C. is attracted to this case. This petition after more than 12 years of filing of charge-sheet has no basis and the same is dismissed.

18. Before concluding, it will be a relevant to note that trial of petitioners is pending for the last about 13 years. It will be appropriate to seek a detailed report from the District and Sessions Judge, Panchkula for the reasons that have delayed the disposal of case. Trial Court is also directed to expedite the disposal of case and to dispose of the same at the earliest and preferably within a period of six months, of the receipt of copy of this order. In the event of the case being not disposed of within a period of six months, report citing reasons for delay in disposal shall be submitted to this Court.

(SURINDER GUPTA)
JUDGE

September 27, 2017
jk

Whether speaking/reasoned Yes/No

Whether reportable Yes/No