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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 30.01.2017

% **W.P.(CRL) 319/2017**

RANVEER SINGH

..... Petitioner

Through: Mr. Ravindra S. Garia, N.K. Khanna,
Amitabh Nihar and Rakesh Bhati,
Advocates

versus

N.C.T. OF DELHI

..... Respondent

Through: Mr. Rajesh Mahajan, ASC with Mr.
Peeyush Bhatia, Adv for State with SI
Sanjeev Kumar, PS Vivek Vihar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner has preferred the present writ petition to seek the quashing of FIR 616/2015 dated 09.07.2015 registered u/s 420/406/34 IPC at PS Vivek Vihar. The premise on which the said prayer is made is that on the same facts, respondent no.2/ complainant had preferred a complaint u/s 138 of Negotiable Instrument Act, which has been dismissed in default for want of prosecution on 20.08.2015 by the Ld. Judicial Magistrate. The petitioner has placed reliance on section 256 Cr PC to submit that the dismissal of the said complaint tantamounts to acquittal of the accused. The further submission is that since the petitioner/ accused stands acquitted in the said complaint – which was premised on the same facts on the basis of

which the FIR in question has been registered, by force of section 300 Cr PC the petitioner cannot be tried again in the aforesaid police case FIR registered against the petitioner vide FIR No. 616/2015.

2. Section 300(1) Cr PC is relevant for the present purpose and the same reads as follows:

“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”.

3. The submission of the petitioner is that, since “*on the same facts*”, the two offences were alleged against the petitioner, and the petitioner stands acquitted in respect of the offence u/s 138 of Negotiable Instrument Act, he cannot be charged and tried for the offence u/s 420/406/34 IPC. In support of his submission, learned counsel for the petitioner has sought to place reliance on the decision of the Supreme Court in ***Kolla Veera Raghav Rao v. Gorntla Venkateswara Rao & Anr.***, rendered by a bench of two learned Judges of the Supreme Court on 01.02.2011 in CrI A No.1160/2006. Since the said judgment is contained in a short order, I consider it appropriate to set it out, insofar as it is relevant:

“Learned counsel for the appellant submitted that the appellant was already convicted under Section 138 of the Negotiable Instruments Act, 1881 and hence he could not be again tried or punished on the same facts under Section 420 or any other provision of IPC or any other statute. We find force in this submission. It may be noticed that there is a difference between the language used in Article 20(2) of the Constitution of India and Section 300(1) of Cr.P.C.. Article 20(2) states:

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

On the other hand, Section 300(1) of Cr.P.C. States: “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 subsection (1) of section 221 or for which he might have been convicted under sub-section (2) thereof.”

Thus, it can be seen that Section 300(1) of Cr.P.C. is wider than Article 20(2) of the Constitution. While, Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) of Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) of Cr.P.C.

applies. Consequently, the prosecution under Section 420, IPC was barred by Section 300(1) of Cr.P.C.

The Appeal is allowed and the impugned judgment of the High Court is set aside”.

4. Mr. Mahajan has, however, opposed the petition by submitting that the expression “*same facts*” referred to in section 300 Cr PC mean relevant facts which constitute an offence. He submits that the relevant facts which constitute an offence u/s 138 Negotiable Instrument Act i.e. those facts which are essential ingredients of the said offence, are distinct from those which constitute the offence u/s 406/420 IPC. In support of his submission, Mr. Mahajan has placed reliance on the decision of the Supreme Court in ***Sangeetaben Mahendrabhai Patel v. State of Gujarat & Anr.***, (2012) 7 SCC 621. Mr. Mahajan points out that in this case, the Supreme Court by a detailed decision, after reference to numerous earlier decisions including those of the Constitution Bench, held that -both for purposes of Article 20(2) of the Constitution of India, which incorporates the doctrine of *autrefois acquit* i.e. the doctrine against double jeopardy, and for the purpose of section 300 Cr PC, section 71 IPC, and section 26 of the General Clauses Act, it is the ingredients of the offences in the earlier case as well as in the later case which must be the same, and not different.

5. I may observe that upon this later decision being pointed out by Mr. Mahajan, counsel for the petitioner urged that the decision of the Supreme Court in ***Kolla Veera Raghav Rao*** (supra) is the earlier decision, and the same had not been considered by the Supreme Court in ***Sangeetaben*** (supra) – which is also a decision of two learned Judges. Counsel for the petitioner

had, therefore, urged that the subsequent decision would have to be considered as *per incuriam* in the light of the decision in **Sundeep Kumar Bafna v. State of Maharashtra & Anr.**, 2014 (2) JCC 1264 and in particular para 15 thereof, wherein the Supreme Court, inter alia, observed that:

“It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam”.

6. The aforesaid submission of counsel for the petitioner may first be dealt with at this stage itself. A perusal of the decision in **Sangeetaben** (supra) shows that in para 36 of the said decision, the decision in **Kolla Veera Raghav Rao** (supra) has been expressly considered. Para 36 of **Sangeetaben** (supra) reads as follows:

“36. Same remained the position so far as the judgment in Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao [(2011) 2 SCC 703 : (2011) 1 SCC (Cri) 882 : (2011) 1 SCC (Civ) 547] is concerned. It has been held therein that once the conviction under Section 138 of the Negotiable Instrument Act has been recorded, the question of trying the same person under Section 420 IPC or any other provisions of IPC or any other statute is not permissible being hit by Article 20(2) of the Constitution and Section 300(1) CrPC”.

7. Upon the aforesaid being pointed out, learned counsel for the petitioner has argued that in **Sangeetaben** (supra), the Supreme Court has wrongly interpreted the decision in **Kolla Veera Raghav Rao** (supra) inasmuch, as, the Supreme Court has referred to the said decision by

observing “*same remains the position so far as the judgment in Kolla Veera Raghav Rao (supra) is concerned*”.

8. I do not find any merit in this submission of counsel for the petitioner. Since the earlier decision in *Kolla Veera Raghav Rao* (supra) has been squarely considered by the Supreme Court, it is not for this court to sit in judgment over the subsequent decision of the Supreme Court in *Sangeetaben* (supra), and to examine whether *Kolla Veera Raghav Rao* (supra) has been considered in the correct perspective, or not. Since the earlier decision in *Kolla Veera Raghav Rao* (supra) has been expressly considered in the subsequent decision in *Sangeetaben* (supra), there is no question of invoking the principle laid down by the Supreme Court in *Sundeep Kumar Bafna* (supra). The decision in *Sangeetaben* (supra), therefore, cannot be said to be *per incurium*.

9. I now proceed to consider, in some detail, the decision of the Supreme Court in *Sangeetaben* (supra). In *Sangeetaben* (supra), the Supreme Court considered, firstly, the decision of the Constitution Bench in *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325. The said case pertained to illegal import of gold. Action was taken against the accused under the Customs Act. Later on, prosecution was launched against the accused in a criminal court charging him with commission of offence u/s section 8A of the Foreign Exchange Regulations Act, 1947. The plea of double jeopardy was raised by the accused seeking protection under Article 20(2) of Constitution of India. The Supreme Court held that the said plea of double jeopardy 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”.

10. The Supreme Court also referred to the decision in ***Om Prakash Gupta v. State of U.P.***, AIR 1957 SC 458, and ***State of M.P. v. Veereshwar Rao Agnihotri***, AIR 1957 SC 592, wherein it had been held that the prosecution and conviction or acquittal u/s 409 IPC does 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. The Supreme Court also relied on ***Leo Roy Frey v. Superintendent, District Jail***, AIR 1958 SC 119. In this case, initially, proceedings were undertaken against the accused before the custom authorities u/s 167(8) of the Sea Customs Act and personal penalties were imposed against the accused. Thereafter, they were charged for offence u/s 120B IPC. The Supreme Court held that the offence u/s 120B IPC is not the same offence as that under the Sea Customs Act. The Supreme Court, inter alia, held:

“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.”

11. The Supreme Court then proceeded to consider the decision in ***State of Bombay v. S.L. Apte***, AIR 1961 SC 578. In this case, while dealing with the issue of double jeopardy under Article 20(2) of Constitution of India, the Supreme Court held as follows:

“13. To operate as a bar the second prosecution and the consequential punishment thereunder, must be for ‘the same offence’. The crucial requirement therefore for attracting the article is that the offences are the same i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out. ...

16. The next point to be considered is as regards the scope of Section 26 of the General Clauses Act. Though Section 26 in its opening words refers to ‘the act or omission constituting an offence under two or more enactments’, the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to ‘shall not be liable to be punished twice for the same offence’. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked.”(emphasis supplied)

12. Reference was also made to ***Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra***, AIR 1965 SC 682, wherein the court held:

“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 [AIR 1957 SC 747 : 1957 Cri LJ 1325] . 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 supplied).

13. In *State of A.P. v. Kokkiligada Meerayya*, AIR 1970 SC 771, the Supreme Court culled out the important rules which emerge from section 403 Cr PC, 1898, which is *para materia* with section 300 of the present Code. The following rules were noted in the said decision:

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

(2) If in the course of a transaction several offences are committed for which separate charges could have been made, but if a person is tried in respect of some of those charges, and not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.

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

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

14. At this stage, I may observe that the submission of counsel for the petitioner is that the first rule quoted above is applicable in the facts of the present case inasmuch, as, the learned Magistrate trying the complaint of the

respondent u/s 138 Negotiable Instrument Act had the competence to try the offence alleged against the petitioner in the FIR in question. Not having been tried for the same, the petitioner cannot be now tried for the said offence. This submission shall be dealt with a little later. Before considering the same, I may first proceed to conclude my dealing with *Sangeetaben*(supra).

15. There are several other decisions taken note of by the Supreme Court in *Sangeetaben* (supra). However, it is not necessary to refer to each one of them for the present purpose. It is the submission of the petitioner that the other cases referred to by the Supreme Court were cases involving commission of an offence under the Customs Act, which were tried by the customs authorities and not tried before a court and, therefore, in respect of other offences which could be tried before a criminal court, the provisions of section 300 Cr PC could not have been invoked.

16. I may, however, take note of the decision in *State of Rajasthan v. Hat Singh*, AIR 2003 SC 791, dealt with in *Sangeetaben*(supra). In relation to this case, the Supreme Court observed in para 30 as follows:

“30. In State of Rajasthan v. Hat Singh [(2003) 2 SCC 152 : 2003 SCC (Cri) 451 : AIR 2003 SC 791] this Court held that as the offence of glorification of Sati under Section 5 of the Rajasthan Sati (Prevention) Act, 1987, is different from the offence of violation of prohibitory order issued under Section 6 thereof, the doctrine of double jeopardy was not attracted for the reason that even if the prohibitory order is promulgated, a subsequent criminal act even if it falls under Section 5 could not be covered under Section 6(3) of the said

Act. Doctrine of double jeopardy is enshrined in Section 300 CrPC and Section 26 of the General Clauses Act. Both the provisions employ the expression “same offence””. (emphasis supplied)

17. Therefore, the test applied by the Supreme Court for application of section 300 Cr PC was that the same offence should have been tried earlier, and it makes no difference if the facts were the same in respect whereof the earlier trial was held and the subsequent trial was sought to be undertaken in respect of a different offence..

18. I may now proceed to cull out the conclusion drawn by the Supreme Court in para 33, which reads as follows:

“33. 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 CrPC or Section 71 IPC or Section 26 of the General Clauses Act, the 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 the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the 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”.(emphasis supplied).

19. Pertinently, in ***Sangeetaben*** (supra), the issue of double jeopardy was raised before the Supreme Court in the context of a complaint u/s 138 of Negotiable Instrument Act being preferred and a prosecution being launched u/s 406/ 420 IPC on the same facts. In that respect, the Supreme Court

observed:

“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”.(emphasis supplied).

20. There is another aspect that needs to be noticed regarding Section 300 Cr.P.C. The said section uses the words *“A person who has once been tried by a Court shall not be liable to be listed again ”*. Can it be said that the petitioner was tried by the Judicial Magistrate who acquitted him by resort

to Section 256 Cr.P.C.? The Supreme Court in *Sangeetaben*(supra) considered the decision of another Constitution Bench in *S.A. Venkataraman v. Union of India*, AIR 1954 SC 375, wherein the scope of the doctrine of double jeopardy enshrined under Article 20(2) of Constitution of India was considered. In that decision, the Constitution Bench held that 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.

21. In the present case, since the acquittal of the petitioner in the complaint case u/s 138 of the Negotiable Instrument Act is premised on the non prosecution of the complaint by the complainant, no finding of fact – one way or another, has been returned by the concerned court while acquitting the petitioner.

22. Though the petitioner stands technically “acquitted” by application of Section 256 CrPC, his “acquittal” is not after a trial. Thus, in my view, it cannot be said that the petitioner is a “*person who has once been tried by a Court of Competent jurisdiction*”. All that can be said is that he is a person who has been acquitted. “Acquittal” may result with, or without, a trial – like in the present case.

23. Though in a different context, the expression “trial” and “tried” were considered, firstly, by the Supreme Court in *State of Bihar Vs. Ram Naresh Pandey & Another*, AIR 1957 SC 389, and, thereafter, more exhaustively in

Khazansingh & Others Vs. State of Rajasthan, AIR 1967 Raj 221. The relevant discussion in ***Khazansingh*** (supra) may be reproduced:

“10. x x x x x x x x x

In State of Bihar v. Ram Naresh, AIR 1957 SC 389, an authority on which both the learned counsel placed their reliance the words “trial” and “tried” came to be considered with reference to the procedure contained in ‘Section 494 of the Cr PC’. Their Lordships observed.

“The words “tried” and “trial” appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words “tried” and “trial” have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. ‘They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration’”. (Note (oo). The reference is mine).

11. Several text books and authorities have been cited before me by the learned counsel regarding the meaning of the words “tried” and “trial”. I will notice some of them. Trial is ***“the formal examination of the matter in issue in a case before a competent tribunal for the purpose of determining such issue: the mode of determining a question of fact in a Court of law: (Webster's Third New International Dictionary, Volume II, Page 2439).***

12. Trial “1. Law. **The examination and determination of a cause by a Judicial Tribunal;** determination of the guilt or innocence of an accused person by a Court”. (The Oxford English Dictionary, 1933 Edition, Volume XI. Page 334).

13. Trial: “A **judicial examination** in accordance with law of the land, of a cause, either civil or criminal, **of, the issue between the parties, whether of law or fact, before a Court that has jurisdiction over it.** (Black's Law Dictionary. Fourth Edition Page 1675).

14. Trial: (1) A ‘Trial’ is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal. Therefore, the hearing of the reference of an action “and all matters in difference” is not a trial within Attendance of Witnesses Act, 1954, (Stroud's Judicial Dictionary, 3rd Edition, Volume 4, Page 3092).

15. These words have been considered in some judicial decisions. I have already noticed the Supreme Court decision above where for the purposes of Section 494 of the Cr PC in the words “tried” and “trial” enquiry was held to be included by the Supreme Court. In *Sajjansingh v. Bhogilal*, AIR 1958 Raj 307, this Court has observed:

“Broadly speaking, however, a trial is the examination by a competent Court of the facts or law in dispute or put in issue in a case. It is the judicial examination of issues between the parties whether they are of law or of fact”.

16. This appears to have been taken from Tomlin's Law Dictionary. In *Ganesh v. State*, ILR (1962) 12 Raj 996, this Court has held:

“The proceedings under Section 251-A(1) and (2) of the Cr PC cannot be regarded as in the nature of a trial. The procedure laid down under these sections in fact begins in the accepted sense of that term when the charge is read and explained to the

accused and he is asked whether he is guilty or claims to be tried”.

17. *Broomfield J. in Dagdu Govindset v. Punja Vedu, AIR 1937 Bom 55, observed.*

“But according to my experience of the administration of Criminal justice in this Presidency, which is not inconsiderable, the Courts have always accepted the definition of trial which has been given in (1898) 25 Cal 863, that is to say, ‘trial’ has always been understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case”.”

24. Reference may also be made to a decision of the Court of Appeal in *Gardner Steel Ltd. Vs. Sheffield Brothers (Profiles) Ltd.*, (1978) 1 WLR 916, wherein reference was made to the earlier decision of Lord Denning M.R. in *Wallersteiner Vs. Moir (No.2)*, (1975) QB 373. In *Wallersteiner* (supra), Lord Denning held as follows:

“I think that that note may be putting too narrow a construction on the word ‘tried.’ It seems to me that, after all the evidence and arguments which were heard in this case, it could well be said that these were proceedings ‘tried’ in a court of record. Similarly with proceedings under R.S.C., Ord. 14. But it is unnecessary to go into this for this simple reason: we did not order interest to be paid under the Act of 1934, but under the equitable jurisdiction of the court.”

25. In this decision, the definition contained in the *Stroud’s Judicial Dictionary*, 4th Edition, was also referred to, which is as follows:

“Trial; tried. (1) A trial is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal.” That seems to me to be a natural interpretation of the words “trial” and “tried.”

26. In his concurrent view Ormrod L.J. held that *““Tried” must mean “determined” in that context, and here the court has decided that there is no defence.”*

27. The discussion in ***Gardner Steel Ltd.*** (supra) had arisen in relation to the plaintiff’s claim for interest in a summary proceeding. To be able to claim interest, it was essential that the proceeding should have been “tried” in a Court of record, as required by Section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934. The Court of Appeal held the plaintiff entitled to interest on a conclusion that even though the proceedings were summary in nature, a trial had taken place.

28. What emerges from the aforesaid extract is that “trial” is the mode of determining a question of fact or law in a Court of law. It is the determination of a cause by a Judicial Tribunal; determination of guilt or innocence of an accused person by a Court. It is a judicial examination of the issue between the parties, including those of fact. Trial is the examination by a competent Court of facts or law in dispute, or put in issue in a case. It has been understood to mean the proceedings which commences when the case is called on with the Magistrate on the Bench; the accused in the dock, and; the representatives of the prosecution and defence – if the accused be defended, present in Court for the hearing of the case. Lastly and most importantly, the words “trial” and “tried” have no fixed or universal meaning. These are words which must be considered with regard

to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration.

29. In the facts of the present case, the acquittal of the petitioner accused in the complaint case under Section 138 of the NI Act was a result of non-appearance of the plaintiff and by resort to Section 256 of the Code. There was no determination, one way or another, of any issue of fact or law by the learned Magistrate, and there was no trial by the learned Magistrate in the said complaint case. No finding or decision was rendered- either on facts, or in law by the learned Magistrate who had acquitted the accused. The result of such acquittal, by force of Section 300(1), would be that “*while such acquittal remains in force*”, the petitioner accused shall not be liable to be tried again for the same offence, namely the offence under Section 138 of the NI Act in relation to the dishonour of the cheque(s) which formed the basis of the complaint. In my view, the further prohibition against the accused being tried on the same facts for any other offence would not apply to this fact situation. The relevant words “nor on the same facts” clearly show that for latter part of Section 300(1) to apply, the “same facts” should have been tried and determined in the earlier trial conducted for any other offence. This becomes clear from paragraph 23 of the decision in ***Sangeetaben*** (supra), wherein the Supreme Court commented on the principle of “issue estoppels” in a criminal trial. The Supreme Court observed:

*“23. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that **where an issue of fact has been tried by a competent court on an earlier***

occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, the rule relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue. (Vide Pritam Singh v. State of Punjab [AIR 1956 SC 415 : 1956 Cri LJ 805] , Manipur Admn. v. Thokchom Bira Singh [AIR 1965 SC 87 : (1965) 1 Cri LJ 120] , Workmen v. Gujarat Electricity Board [(1969) 1 SCC 266 : AIR 1970 SC 87] and Bhanu Kumar Jain v. Archana Kumar [(2005) 1 SCC 787 : AIR 2005 SC 626] ”. (emphasis supplied).

30. I may, at this stage, test the aforesaid proposition by reference to a realistic situation. Let us assume that in relation to the same transaction, the accused has issued multiple cheques to the complainant. The cheques may be of the same date, or staggered over a period of time i.e. they were post dated. In relation to dishonor of each of the cheques, a separate and independent cause of action and a separate offence would arise. The complainant would be entitled to maintain separate and distinct complaints in respect of each of the dishonoured cheques. Now, if one of such complaints were to be dismissed and the accused acquitted by resort to Section 256 Cr.P.C., could it be said that since the other complaints- in

respect of the other dishonoured cheques were issued in relation to the same transaction, i.e. “on the same facts”, they would also be liable to be dismissed by resort to Section 300(1) Cr.P.C.? In my view, the answer is an obvious “NO”. This is simply for the reason that though the accused may have been technically “acquitted” in respect of one of such complaints, there would be no determination of any issue of fact, or law, since no trial had taken place determining any issue of fact, or law. However, if one of such complaints were to result in an acquittal after a trial, the findings returned by the Court in its decision “*would constitute estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/ reception of evidence to disturb the findings of fact when the accused is tried subsequently for a difference offence*”. Since the “trial” in the complaint case under section 138 of the NI Act had not taken place, there would be no question of the petitioner accused being “*tried again*”.

31. Mr. Mahajan has also pointed out another important aspect of the matter. He submits- and in my view rightly so, that the words used in section 300 Cr PC “*on the same facts for any other offence*” have to be read and understood in the context of the remaining part of the same sentence. When read as a whole, it becomes clear that the said words have been used in the context of section 221 Cr PC. Section 221 Cr PC reads as follows:

221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be

proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub- section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

32. Section 221 Cr PC contemplates a situation where a single act, or a series of acts raises a doubt as to which of the several offences may have been committed. In such a situation, the accused may be charged of having committed all, or any of such offences, and number of such charges may be tried at once, or he may be charged in the alternative with having committed some/ one of the said offences. It further provides that if, in such a case, the accused is charged with one offence and it appears from the evidence that he committed a different offence for which he might not have been charged, he may be convicted of the offence, which he is shown to have committed, though not charged with it. In the present case, it is not even the submission of the petitioner that Section 221 CrPc was involved or applicable.

33. In the present case, the learned Judicial Magistrate, Gurugram, was dealing with the complaint of the complainant u/s 138 of Negotiable Instrument Act. Merely because in the said complaint, the facts which constitute offences u/s 406/420 IPC may have been laid out, it does not follow that the Magistrate was obliged to take cognizance of the said offences and he having failed to do so, the FIR in question could not have

been registered against the accused. Pertinently, in **Kokkiligada Meerayya**(supra), the second rule which emerges from the Code and, as taken note of by the Supreme Court is as follows:

“(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”.

34. Thus, even if the petitioner was tried in respect of one of the charges, namely, u/s 138 of Negotiable Instrument Act, and even if he is taken to have been acquitted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not made. It is the second rule, and not the first rule set out in **Kokkiligada Meerayya**(supra) which would be attracted in the facts of the present case. The first rule was laid down to deal with cases where the court trying the first offence was not competent to try the other offence. Even in such cases, Section 403 CrPC 1898 was held to be not applicable. In the face of rule (2) set out here in above, the sequitor of the first rule cannot be understood to mean that, if the Court trying the first offence is competent to try the other offence, and it does not try the same, the subsequent trial in the other offence would be barred by section 403 CrPC 1898.

35. For all the aforesaid reasons, I do not find any merit in this petition. Dismissed.

VIPIN SANGHI, J

JANUARY 30, 2017/sr