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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 7th February, 2019

Decided on:- 29th March, 2019

+ CRL.M.C. 4363/2018

**M/S RAJASTHAN CYLINDERS
& CONTAINERS LTD**

..... Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with
Mr. Sushil Gupta, Mr. Manan
Verma & Mr. Siddarth Bhatia,
Advs.

versus

COMPETITION COMMISSION OF INDIA..... Respondent

Through: Mr. Prashanto C. Sen, Sr. Adv.
with Sanjeev Chhikara, Adv.
and Mr. Kuldeep Kumar, Joint
Director CCI.

+ CRL.M.C. 5324/2018

SHRI JOSE C. MUNDADAN

..... Petitioner

Through: Mr. Saiby Jose Kidangoor, Mr.
Raneev Dahiya & Ms. Yammi
Phazang, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP
for the State.
Mr. Prashanto C. Sen, Sr. Adv.
with Mr. Siddharth Jain, Mr.
T.N. Durga Prasad, Mr. Gagan
Kr. & Mr. Anoop Kr., Advs. for
R-2.

+ **CRL.M.C. 5371/2018**

JOSE C MUNDADAN

Through:

..... Petitioner

Mr. Saiby Jose Kidangoor, Mr.
Raneev Dahiya & Ms. Yammi
Phazang, Advs.

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP
for the State.
Mr. Prashanto C. Sen, Sr. Adv.
with Mr. Siddharth Jain, Mr.
T.N. Durga Prasad, Mr. Gagan
Kr. & Mr. Anoop Kr., Advs. for
R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. The Competition Commission of India (“the Commission”, for short), a statutory body established by the Central Government in exercise of its power under Section 7 of the Competition Act, 2002 (“the Competition Act”, for short), the respondent herein, has instituted, through its authorized representative, criminal complaints against the petitioners on which the Chief Metropolitan Magistrate (CMM) Delhi has taken cognizance of the offences allegedly committed under Section 42(3) of the Competition Act and issued process. These petitions preferred under Section 482 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”, for short) bring a challenge to the said summoning orders. Since the question of law, in almost

similar factual matrix, raised in these petitions is identical, they have been heard together and are being disposed of by this common order.

THE FACTS

2. It will be appropriate to look at the background facts, to the extent necessary, in the three cases at the outset.

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3. The petitioner M/s. Rajasthan Cylinders and Containers Limited (RCCL) is a company based in Jaipur, engaged in manufacture of LPG cylinders. In 2014, it had entered into a contract with another company (HPCL) procuring certain supplies through two tenders which were perceived by the Commission to be “anti-competitive”. The Commission initiated *suo-motu* proceedings under Section 19(1) of the Competition Act against RCCL, directing by order dated 02.02.2014 the Director General of the Commission to cause an investigation. The Director General issued summons dated 24.06.2016 followed by another on 13.07.2016 to RCCL, which were not complied with. On the report of Director General regarding non-compliance with the said processes, the Commission through Secretary issued show cause notices on 22.09.2016 and 02.12.2016. There being no response to such notices, the Commission imposed penalty of Rs.5,00,000/- by order dated 09.02.2017 under Section 43 of the Competition Act. The RCCL sent a reply on 28.04.2017, the Commission issuing a notice of demand on 21.07.2017 requiring penalty amount to be deposited within thirty days. On 19.04.2018, the Commission by its order decided to initiate criminal complaint under Section 42(3) of the

Competition Act, the complaint (CC No.11151/2018) being submitted in its wake. The CMM issued the process by the impugned order on 30.05.2018. The petitioner deposited the penalty on 13.08.2018 and 20.08.2018.

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4. A company named Cinemax India Limited (“the informant”) is engaged in business of exhibition of films at its cinema halls in Kerala. On 21.09.2012, the said company gave information under Section 19(1) (a) of the Competition Act to the Commission alleging contravention of Sections 3 and 4 of the Competition Act by Films Distributors Association (FDA) of Kerala in which the petitioner was then the honorary General Secretary. The Commission acting on the said complaint (case No.32/2013), by its order dated 17.05.2013, after forming an opinion under Section 26(1), directed the Director General for carrying out an investigation. The Director General sent a notice on 13.06.2013 to the petitioner calling him upon to furnish certain information/documents, this being followed by another notice on 17.06.2013 which was eventually served through the District Collector on 13.09.2013, there being no response or compliance.

5. The Director General made a report to the Commission on 16.01.2014 seeking imposition of penalty under Section 43 of the Competition Act. In the wake of decision of the Commission rendered on 28.01.2014, show cause notices were sent on 12.02.2014, *inter alia*, to the petitioner, he having failed to send any reply, the notice addressed to him having returned undelivered. It may be mentioned

here that it is his case that he had ceased to be an office bearer of FDA, his term having ended on 30.10.2013. It also must be noted that even as per the averments of the Commission (in the criminal complaint) the FDA had sent a reply on 01.03.2014 informing that newly elected committee had taken charge on 01.11.2013. Be that as it may, the Commission, by its decision dated 26.03.2014, directed fresh notice to be sent to the petitioner, also calling upon the Director General to confirm whether FDA had complied with the notices. On 07.06.2014, the petitioner sent a letter to the Commission, received by it on 09.06.2014, stating that he had not received the earlier notices of June, 2013, reiterating that his tenure having ended, he was not aware regarding compliance by FDA.

6. The Director General submitted a report to the Commission pointing out default in compliance or submission of reply by FDA in response to notices of June, 2013 attributing full knowledge to the petitioner, recommending action under Section 43 of the Competition Act. Show cause notices were issued under directions of the Commission on 12.02.2014 to FDA and to the petitioner (in his capacity as General Secretary of FDA) respecting proposed action under Section 43 of the Competition Act. The Commission rejected the contention of FDA about newly elected office bearers (who had taken over *w.e.f.* 31.10.2013) not being aware of the directions of the Director General and forming an opinion that no reasonable cause had been shown by FDA or the petitioner for non-compliance, imposed by order dated 11.12.2014 penalty on FDA in the sum of Rs.14,60,000/- at Rs.10,000/- per day for the period of non-compliance, i.e.,

13.09.2013 to 06.02.2014, also taking note of similar non-compliance by FDA in another matter (case No.62/2012) it showing the said entity to be one indulging in “*habitual non-cooperation*”. Further, by the same order, the Commission also imposed penalty of Rs.4,80,000/- against the petitioner, *inter alia*, observing that his reply dated 07.06.2014 demonstrated that he was fully aware of the notice which had been affixed outside his office on 13.09.2013 and yet had failed to comply or adduce any evidence to show that non-compliance was without his knowledge or despite due diligence on his part.

7. The copy of order dated 11.12.2014 was statedly served on the petitioner on 20.12.2014. He failed to deposit the penalty within stipulated period of sixty days. A demand notice was issued by the Commission on 26.03.2015, it statedly having been served on 10.04.2015. Since no deposit was made, a recovery certificate was issued by the Commission on 22.05.2015. The penalty not having been deposited, the Commission, by its order dated 16.03.2016, decided to initiate criminal action under Section 42(3) of the Competition Act, the criminal complaint (No.48345/2016) being instituted on 22.08.2016 before the CMM.

8. It is the petitioner’s case that he had sent replies to the Commission, *inter alia*, informing cessation of his responsibility qua the office of Hony. Secretary to FDA w.e.f. 30.10.2013, new office bearers having taken over. He also refers to appeal (No.55/2015) having been preferred by him against similar order (dated 31.10.2014) passed in the other case (No.62/2012) before Competition Appellate

Tribunal (“the appellate tribunal”, for short), the said appeal having been dismissed on 17.08.2015, the SLP moved before the Supreme Court also having been declined.

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9. The petitioner in this case is same as in the previous matter, he being held responsible on account of the position of Hony. Secretary held by him in FDA against similar backdrop. On the information received on 21.09.2012, as earlier stated, the Commission by its order dated 18.10.2012, under Section 26(1), had directed the Director General to conduct investigation, this being subject matter of a separate case (No.62/2012). Notices sent by the Director General, *inter alia*, to the petitioner and FDA, on 19.11.2012, 01.01.2013, 18.02.2013, 20.03.2013 and 12.06.2013 did not yield any response. The Director General got the notice dated 12.06.2013 served through the District Collector, by communication dated 10.07.2013, the service having been effected on the petitioner by affixation, there being no response. Eventually, on the report of the Director General, the Commission by its decision in the meeting of 28.01.2014 initiated action for imposition of penalty under Section 43 of the Competition Act. Show cause notices were issued in the wake of such decision, a reply being filed by FDA. On 09.06.2014 the Commission received letter dated 07.06.2014 of the petitioner. His contentions on same lines, as noted in the context of previous case, were rejected, the process eventually leading to imposition of penalty by the Commission by its order dated 31.10.2014, in the sum of

Rs.35,20,000/- against FDA and Rs.19,25,000/- against the petitioner at Rs.25,000/- per day for the period of default, *i.e.*, 14.08.2013 to 30.10.2013.

10. The copy of the order imposing penalty was statedly served on the petitioner on 22.11.2014. He did not make the payment. This led to demand notice dated 18.02.2015 being issued and statedly served on 26.02.2015, followed by recovery certificate issued by the Commission on 01.04.2015. The penalty not having been deposited, the Commission, by its order dated 16.03.2016, decided to initiate criminal action against the petitioner under section 42(3) of the Competition Act, the criminal complaint (No.48346/2016) having been filed before CMM in its wake.

11. As mentioned in the context of the previous matter, the challenge of the petitioner to the imposition of penalty by the Commission before the Appellate Tribunal (by appeal No.55/2015) and before the Supreme Court (by SLP) have concededly been unsuccessful.

THE CONTENTIONS

12. It is the argument of the petitioners that the offence proved by Section 42(3) of the Competition Act cannot be invoked on the basis of allegation that the penalty imposed by the Commission under section 43 has not been paid, the penal clause leading to such criminal action in the court of CMM being intended to cover non-compliances of different nature. It is also the argument of the petitioners that criminal action under Section 42(3), in such circumstances as noted

above, would lead to double jeopardy which is unfair, unjust and impermissible.

13. The petitioner in the second and third matters also raises the grievances that the Commission while initiating the impugned criminal complaints against him has failed to bear in mind that he did not have any personal interest or stake, his responsibilities having come to an end w.e.f. 30.10.2013, he having been unfairly proceeded against even thereafter, despite the fact of change in the office bearers having been brought to the notice of the Commission by the FDA and the new committee, it being primarily the responsibility of the latter to provide the requisite information and documents.

14. The Commission, *per contra*, seeks to justify the initiation of criminal action arguing that the penal clause contained in Section 42(3) covers the event of non-compliance with all kinds of orders or directions of the Commission, including those specified in sub-section (2) of Section 42, besides failure to pay the fine as additionally imposed under the last said clause.

15. The Commission justifies the criminal complaint against the petitioner in the second and third matters, despite cessation of his connection with FDA w.e.f. 30.10.2013, referring in this context to the default despite knowledge on his part during the period preceding the said date, its submissions being that the issues raised by the said petitioner on this score are at best his defences giving rise to questions of fact which ought to be left for determination at the trial rather than

being addressed in the jurisdiction under Section 482 Cr.P.C. where, it is argued, such inquiry may not be feasible.

JURISDICTON AND POWERS OF THE COMMISSION

16. The Competition Act, 2002 (“the Competition Act”) came on the statute book w.e.f. 13.01.2003 for “*the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto*”. With this legislation, the then existing Monopolies and Restrictive Trade Practices Act, 1969 stood repealed and Monopolies and Restrictive Trade Practices Commission (MRTPC) established under the said repealed Act was dissolved. The Competition Act has established, by virtue of Section 7, the Commission (called “Competition Commission of India”). The law also provides for an investigative machinery which aids and assists the Commission, it being headed by a functionary styled as “Director General”, as envisaged in Section 41.

17. The Competition Act prohibits “*anti-competitive agreements*” (Section 3) and “*abuse of dominant position*” (Section 4). The prime duty of the Commission, as indicated by Section 18, is besides promoting and sustaining competition and the interest of the consumers ensuring freedom of trade. The Commission is vested with the power to “*inquire*” into allegations of anti-competitive agreements or acts of commission or omission constituting abuse of dominant

position or combinations violative of the prescription of law, by detailed provisions contained in Sections 19 and 20, such power to be exercised upon receipt of information, or complaint, or on its own motion, or upon reference. For its aid and assistance, the Director General (appointed under Section 16) is vested with the duty to “investigate”, when so directed by the Commission.

18. The duties, powers and functions of the Commission are spelt out by the legislation (in the Chapter IV), the same including the authority to issue orders of certain nature viz., orders by Commission after inquiry into agreements or abuse of dominant position (Section 27); division of enterprise enjoying dominant position (Section 28); orders of Commission on certain combinations (Section 31); acts taking place outside India but having an effect on competition in India (Section 32); power to issue interim orders (Section 33); compensation in case of contravention of orders of Commission (Section 42-A); power to impose penalty for non-furnishing of information on combinations (Section 43-A). The Commission also has the jurisdiction to impose monetary penalty in certain other situations including penalty for failure to comply with directions of the Commission and Director-General; penalty for making false statement or omission to furnish material information (Section 44) besides penalty for offences in relation to furnishing of information (Section 45).

19. The Commission has been vested with the jurisdiction for execution of its orders imposing monetary penalty and, for this, the procedure is indicated in Section 39.

20. The failure to comply with the directions, or orders, of the Commission under Sections 27, 28, 31, 32, 33, 42-A and 43-A is made punishable with fine to be determined by the Commission, in terms of Section 42(2). The provision contained in Section 42(3) renders non-compliance with the orders or directions issued, or failure to pay fine imposed under Section 42(2), a penal offence which is triable by the court of Chief Metropolitan Magistrate, Delhi (CMM), cognizance thereof be taken on a complaint.

21. The Commission is conferred, by Section 36 (2), for purposes of its “*inquiry*”, with the powers of the civil court under the Code of Civil Procedure, 1908 in certain matters including summoning or enforcing attendance of any person, requiring discovery and production of documents, requisitioning any public record or document, receiving evidence on affidavit or on commission, etc. These powers of the Commission are also extended to and conferred upon the Director General by Section 41(2) for purposes of its “*investigation*”.

22. It is in the above context that the failure to comply with the processes, orders or directions of the commissions or of the Director General are likely to be visited by penalty as envisaged by Section 43 which reads thus:-

“43. Penalty for failure to comply with directions of Commission and Director-General. – If any person fails to comply, without reasonable cause, with a direction given by –

(a) The Commission under sub-sections (2) and (4) of section 36; or

(b) The Director-General while exercising powers referred to in sub-section (2) of section 41,

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.”

23. The clause contained in sub-Section (3) of Section 42 is the only “offence” prescribed by the Competition Act, the jurisdiction to deal with which is conferred on the Chief Metropolitan Magistrate of Delhi, the pre-requisite being a complaint made by the Commission or any of its officers on its behalf. This offence is provided, with punishment thereby attracted indicated, (in Chapter-VI), under the heading of “penalties”. Noticeably, the power to impose penalties that can be levied under the law in various fact-situations is conferred on the Commission itself.

24. Section 42 needs to be quoted verbatim:-

“42. Contravention of orders of Commission. –

(1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under Sections 27,28,31,32,33,42A and 43A of the Act, he

shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.”

OPINION OF COURT

25. It is the argument of the petitioners that the penal offence under Section 42(3), triable by a criminal court, has to be construed in light of the clause immediately preceding it that is to say sub-section (2) of Section 42 which, in turn, refers to the failure in compliance with the orders or directions of the Commission under specified provisions of the Competition Act, such provisions not including the one for penalty imposed under Section 43. It is argued that since failure to pay penalty under Section 43 is not failure to comply with the orders or directions within the meaning of Section 42(2), such failure cannot lead to prosecution for the offence under Section 42(3).

26. It is also the argument of the petitioners that the provision contained in Section 42 is to deal with the situations arising out of

“contravention of orders of Commission” (as is the marginal heading) and, therefore, the failure to comply with the processes issued by the Director General during investigation, in exercise of his power under Section 41(2) cannot be equated with failure to comply with the orders of the Commission within the meaning of Section 42(3).

27. It is further the submission of the petitioners that the failure to comply with processes of the Commission under Section 36 or of the Director General under Section 41 attracts penalty in terms of Section 43, as has been imposed in the present cases, prosecution for the offence under Section 42(3) would be in the nature of double jeopardy prohibited by Article 20(2) of the Constitution of India.

28. The above arguments do not impress this court. The reasons may be set out hereinafter.

29. It is well settled that use of a comma and word “or” between two parts of a clause makes the two parts disjunctive. In *Union of India vs. Rabinder Singh*, (2012) 12 SCC 787, while construing similarly placed clause appearing in Section 42(f) of the Army Act, 1950, it was observed thus:-

“25. We accept the submission of Shri Tripathi that the two parts of Section 52(f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction “or” between the two parts of this clause (f) viz. (i) does any other thing with intent to defraud, and (ii) to cause wrongful gain to one person or wrongful loss to another person. If the legislature wanted both these parts to be read together, it would have used the conjunction “and”. As we have noted earlier in Vimla AIR 1963 SC 1572 it was held that the term

“fraudulently” is wider than the term “dishonestly” which however, requires a wrongful gain and a wrongful loss. The appellants had charged the respondent for acting with “intent to defraud”, and therefore it was not necessary for the appellants to refer to the second part of Section 52(f) in the charge. The reliance by the Division Bench on the judgment in S. Harnam Singh (1976) 2 SCC 819 to justify the conclusions drawn by it was clearly erroneous.”

30. Similarly, in *A. K. Gopalan vs. State of Madras*, AIR 1950 SC 27, while interpreting Article 22(7) of the Constitution of India, it was held thus:-

“34. Section 12 of the impugned Act is challenged on the ground that it does not conform to the provisions of Article 22(7). It is argued that Article 22(7) permits preventive detention beyond three months, when Parliament prescribes “the circumstances in which, and the class or classes of cases in which”, a person may be detained. It was argued that both these conditions must be fulfilled. In my opinion, this argument is unsound, because the words used in Article 22(7) themselves are against such interpretation. The use of the word “which” twice in the first part of the sub-clause, read with the comma put after each, shows that the legislature wanted these to be read as disjunctive and not conjunctive. Such argument might have been possible (though not necessarily accepted) if the article in the Constitution was “the circumstances and the class or classes of cases in which...”. I have no doubt that by the clause, as worded, the legislature intended that the power of preventive detention beyond three months may be exercised either if the circumstances in which, or the class or classes of cases in which, a person is suspected or apprehended to be doing the objectionable things mentioned in the section. This contention therefore fails.”

31. The view taken in *Sambhu Nath Sarkar vs. State of West Bengal*, (1973) 1 SCC 856, is similar.

32. Noticeably, in the clause defining the offence punishable under Section 42(3), the failure to pay the fine imposed under sub-section (2) of Section 42 is included as one of the possible reasons leading to such criminal action, it being provided by a disjunctive clause, the words “*or fails to pay the fine imposed under sub-section (2)*” being preceded and followed by a comma. The comma (,) appearing prior to the said words separates it from the words “*if any person does not comply with the orders or directions issued*”. The use of comma (,) is with a purpose. It indicates that a cause of action for criminal complaint to be filed in the court of CMM arises in two possible situations, viz., (1) there has been a failure on the part of a person to “comply with the orders or directions” issued to him under the law or (2) on account of failure to pay fine imposed for non-compliance with orders or directions of the Commission under specified provisions (*i.e.*, Sections 27, 28, 31, 32, 33, 42A and 43A), the Commission, after inquiry, having found absence of “reasonable cause”. This court does not accept the argument that the words “orders” and “directions” in the first limb of section 42(3) are to be read as qualified by reference to the failure to pay the fine imposed under Section 42(2) as appearing in the second limb of Section 42(3).

33. It may be that the marginal heading of Section 42 refers to contravention of orders of the Commission. But, noticeably, only the first two sub-sections of Section 42 refer to “the Commission”, such

words being conspicuously missing in sub-section (3), the clause which provides for the offence. It is clear that the legislature intended the offence thus provided to have a larger sweep, covering failure to comply with the “orders or directions issued” under the law, irrespective of whether they had been issued by the Commission or by its functionaries, like Director General.

34. For the above reasons, the suggested interpretation of Section 42(3) of the Competition Act does not commend itself to this court.

35. As regards the argument of double jeopardy, the same can be rejected by pointing out that the penalty under Section 43 is civil in nature imposed by the statutory authority (the Commission) in exercise of the powers conferred on it by the law, the criminal complaint alleging offence under Section 42(3) carrying the additional element of failure to comply further with the said direction, the criminal action even otherwise being not violative of Article 20(2), this view finding strength from the following observations of the Supreme Court in *Union of India & Anr. vs. Purushottam*, (2015) 3 SCC 779:-

“10. The Constitution of India charts a contrasting course in the context of incorporation of the doctrine of double jeopardy in that Article 20(2) postulates that:

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

This variance from constitutional protections given in other countries has prompted us to sift through the “Debates of the Constituent Assembly” so as to ascertain

whether autrefois convict in preference to the more preponderant autrefois acquit, was the position intended to be ordained by the drafters of our Constitution. These Debates bear witness to the fact that it was indeed meditated and intended. The original proposal was — “No person shall be punished for the same offence more than once.” A proposed amendment whereby the words “otherwise than as proposed by the Code of Criminal Procedure, 1898,” was sought to be added, but was roundly rejected. The suggestion made by Shri Naziruddin Ahmad was that “the principle should be that a man cannot be tried again, tried twice, if he is acquitted or convicted by a court of competent jurisdiction, while the conviction or acquittal stands effective.... A man acquitted shall also not be liable to be tried again.” (2-12-1948). On the next day, the extracted intervention of Shri T.T. Krishnamachari was accepted, sounding the death knell for “autrefois acquit” and leading to Article 20(2) as it stands today. Shri T.T. Krishnamachari (Madras: General):

“Mr Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one. In this Article 14, clause (2) reads thus: ‘No person shall be punished for the same offence more than once’. It has been pointed out to me by more Members of this House that this might probably affect cases where, as in the case of an official of Government who has been dealt with departmentally and punishment has been inflicted, he cannot again be prosecuted and punished if he had committed a criminal offence; or, per contra, if a government official had been prosecuted and sentenced to imprisonment or fine by a court, it might preclude the Government from taking disciplinary action against him. Though the point is a narrow one and one which is capable of interpretation whether this provision in this particular clause in the fundamental rights will affect the discretion of Government acting under the rules of

conduct and discipline in regard to its own officers, I think, when we are putting a ban on a particular type of action, it is better to make the point more clear.

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus: 'No person shall be prosecuted and punished for the same offence more than once.' If my Hon'ble Friend Dr Ambedkar will accept the addition of the words 'prosecuted and' before the word 'punished' and if you, Sir, and the House will give him permission to do so, it will not merely be a wise thing to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit."

*11. It would be relevant to mention that modern jurisprudence is presently partial to the perusal of Parliamentary Debates in the context of interpreting statutory provisions, although earlier this exercise was looked upon askance. Suffice it to mention the analysis of the Constitution Bench in *R.S. Nayak v. A.R. Antulay* (1984) 2 SCC 183 and in *Haldiram Bhujiawala v. Anand Kumar Deepak Kumar* (2000) 3 SCC 250 and particularly *Samatha v. State of A.P.* (1997) 8 SCC 191, where Parliamentary Debates were studied by this Court. It appears to be beyond debate that the Framers of our Constitution were fully alive to the differing and disparate concepts of *autrefois acquit* and *autrefois convict* and consciously chose to circumscribe the doctrine of double jeopardy only to prosecution culminating in a conviction. This facet of the law has already been carefully considered by the Constitution Bench in *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325, and we cannot do better than extract the relevant portions therefrom: (AIR pp. 328-29, paras 7 & 11-12)*

“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 R. v. Miles [(1890) LR 24 QBD 423 : (1886-90) All ER Rep 715 (CCR)] .) To the same effect is the ancient maxim ‘Nemo Bis Debet Puniri 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.

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11. These were the materials which formed the background of the guarantee of fundamental right given in Article 20(2). It incorporated within its scope the plea of ‘autrefois convict’ as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

12. The words ‘before a court of law or judicial tribunal’ are not to be found in Article 20(2). But if regard be had to the whole background indicated above it is clear that in order that the protection of Article 20(2) be invoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of Article 20

and the words used therein—‘convicted’, ‘commission of the act charged as an offence’, ‘be subjected to a penalty’, ‘commission of the offence’, ‘prosecuted, and punished’, ‘accused of any offence’, would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.”

12. Keeping in perspective this exposition of double jeopardy as postulated in our Constitution, the obiter dicta in State of Bihar v. Murad Ali Khan [(1988) 4 SCC 655 : 1989 SCC (Cri) 27] , expressed en passant by the two-Judge Bench does not correctly clarify the law, as this view is contrary to the dictum of the Constitution Bench [Maqbool Hussain v. State of Bombay, AIR 1953 SC 325 : 1953 Cri LJ 1432 : 1953 SCR 730] , which was not brought to the notice of the Bench.

13. The US Supreme Court has extensively excogitated over the conundrum as to what constitutes a successive “punishment” for the purposes of attracting constitutional protection against double jeopardy, under the Fifth Amendment. The Court, in Hudson v. United States [Hudson v. United States, 139 L Ed 2d 450 : 522 US 93 (1997)] , affirmed the distinction between civil punishment and proceedings and criminal punishment and prosecution, and held that the Fifth Amendment proscribes two (or more) successive punishments or prosecutions of a criminal nature only, and permits civil punishment or proceedings either preceding or succeeding a criminal prosecution or punishment. In the case before the US Supreme Court, John Hudson was the Chairman of the First National Bank of Tipton and the First National Bank of Hammon, and used his position to

regain bank stock he had used as collateral on defaulted loans through a series of bank loans to other parties. Upon investigation the Office of the Comptroller of Currency (OCC) found that the loans were made in violation of several banking statutes and regulations. The OCC fined and debarred Hudson for the violations. Later, he faced criminal indictment in the Federal District Court for violations tied to those same events. Hudson objected, arguing that the indictment violated the double jeopardy clause of the Fifth Amendment. Overruling United States v. Halper [104 L Ed 2d 487 : 490 US 435 (1989)] , wherein the Court had ruled as unconstitutional successive proceedings taking place in similar circumstances to Hudson's case, the Court in Hudson [Hudson v. United States, 139 L Ed 2d 450 : 522 US 93 (1997)] reaffirmed the distinction established between the “civil” and “criminal” nature of the particular successive punishment, in United States v. Ward [65 L Ed 2d 742 : 448 US 242 (1980)] . The US Supreme Court thus held in Hudson case [Hudson v. United States, 139 L Ed 2d 450 : 522 US 93 (1997)] that the double jeopardy clause did not preclude his subsequent criminal prosecution, because the OCC administrative proceedings were civil, not criminal. Inter alia, the civil nature of the punishment was ascertained with reference to the money penalties statutes' express designation of their sanctions as “civil”. This reference indubitably eases the resolution of the double jeopardy question in the present appeal. As has been detailed earlier, Article 20(2) does not within it imbibe the principle of autrefois acquit. The Fifth Amendment safeguards, inasmuch as it postulates both autrefois acquit and autrefois convict, could have been interpreted to prohibit civil punishment even in the wake of an acquittal in prosecution, but was not found by the US Supreme Court to do so. A fortiori Article 20(2), which contemplates “prosecuted and punished” thus evincing the conscious exclusion of autrefois acquit,

palpably postulates that the prescribed successive punishment must be of a criminal character. It irresistibly follows that departmental or disciplinary proceedings, even if punitive in amplitude, would not be outlawed by Article 20(2).”

36. The petitioner in the second and third captioned matters has raised questions of fact about extent of his responsibilities, his ignorance, non-service of some of the notices or processes, generally referring to cessation of his role as the Honorary Secretary of FDA after 30.10.2013. These questions of fact would need inquiry and scrutiny of evidence. The forum of Section 482 Cr.P.C. is not the correct one to embark upon such inquiry [*Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330*].

37. For the foregoing reasons, these petitions cannot be accepted. There are no good grounds as to why the criminal action initiated in the court of Chief Metropolitan Magistrate should be interfered with by this court at this stage.

38. The petitions are dismissed.

R.K.GAUBA, J.

MARCH 29, 2019

nk/vk