

260 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI-GARH**CRM-M-48635-2022 (O&M)
Date of decision: 19.09.2023**

Jaipal Pamma

...Petitioner

VS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Jitender K. Sehrawat, Advocate,
for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

Mr. Chankya Batta, Advocate for the complainant.

ARUN MONGA, J. (ORAL)

Petitioner seek quashing of quashing of the judgment dated 14.09.2022 Annexure P-5, passed by the learned Judicial Magistrate Ist Class, Phillaur, in complaint NO. NACT-216-2017, only to the extent that learned Magistrate has issued a direction to the SHO, Police Station, Phillaur, to register FIR under section 420 IPC against the petitioner and conclude the investigation within 3 months and to quash the FIR No.287 dated 30.09.2022 Annexure P-6 registered under Section 420 IPC at aforesaid police station, whereas vide the same judgment the complaint under section 138 of Negotiable Instruments Act has been dismissed and the petitioner has been acquitted of the notice of accusation under the Act *ibid* served upon him.

2. Learned counsel for the petitioner submits that the respondent no.2 had filed a complaint under section 138 Negotiable Instrument Act, 1881 alleging that on 15.02.2016 respondent no.2 sold popular trees to accused/petitioner for a sum of Rs.3,60,197/-. Thereafter in discharge of his legal enforceable liability, accused/petitioner issued two post dated cheques, first cheque bearing no. 713990 dated 01.06.2016 for Rs. 2,75,197/-and second cheque bearing no.713989 dated

District Jalandhar in favour of the complainant/respondent no.2 on the understanding that after selling the wood the accused will deposit amount in his bank account and the complainant/respondent no.2 will present the cheque for encashment. The cheque bearing no.713989 dated 01.06.2017 for a sum of Rs. 85,000/- was dishonoured and resultantly the complaint under Section 138 Negotiable Instruments Act 1881, was filed.

2.2 He next contends that learned trial Court after duly considering the evidence on record acquitted the petitioner under section 138 Negotiable Instrument act, 1881 vide judgement dated 14.09.2022 (Annexure P-5). However, it has wrongly/illegally directed the SHO Police Station Phillaur to register the FIR against the petitioner and conclude the investigation within 3 months.

2.3. In compliance of the aforesaid direction issued by the learned trial Court the impugned FIR, Annexure P-6, has been registered against the petitioner. The petitioner has also been granted concession of pre-arrest bail vide order dated 10.11.2022 by the learned Additional Sessions Judge, Jalandhar.

3. *Per contra*, learned State counsel, on instructions from police official, submits that the direction vide order dated 14.09.2022 to register FIR under section 420 IPC against the petitioner has rightly been given.

4. Learned counsel for the petitioner relies upon an Apex Court judgment in **Kola Veera Raghav Rao vs. Gorantla Venkateswara Rao and another**, 2011 AIR (SC) 641, the relevant part of which is being reproduced hereinbelow:

"5.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 sub-section (1) of section 221 or for which he might have been convicted under sub-section (2) thereof."

6. *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.*

7. 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."

5. Present case is squarely covered by the aforesaid judgment. I am of the view that the learned trial Court clearly misdirected itself in directing the registration of FIR under Section 420 IPC while acquitting the petitioner for the commission of offence under Section 138 of the Negotiable Instruments Act, 1881. Concededly, it was the same very cheque *qua* which private complaint was filed by the complainant/respondent no.2 under Section 138 of the Negotiable Instruments Act read with Section 420 IPC.

6. Pertinently, Section 300(1) of the Code of Criminal Procedure goes even beyond the protection provided by Article 20(2) Constitution of India. It states that a person who has once been tried by a court of competent jurisdiction for an offense and has been either convicted or acquitted of that offense, cannot be tried again for the same offense. Moreover, it also states that the person cannot be tried for any other offense based on the same set of facts. The distinction between the two is crucial. While Article 20(2) primarily prevents repeat of prosecution for the same offense, Section 300(1) of Cr.P.C. provides a broader safeguard by preventing further prosecutions for the same offense or any other offense arising from the same facts.

7. The aforesaid interpretation is in line with the legal principle of *double jeopardy* and provides stronger protection for individuals by preventing

multiple prosecutions based on the same set of facts, even for different offenses. It is important to strike a balance between ensuring that the accused is not subjected to multiple trials for the same conduct and safeguarding the interests of justice. Comprehensive protection to the accused in situations involving identical facts, ought to be provided, once the circumstances reflect so.

8. In the case in hand, I am of the opinion, that even if the offenses being considered were different, the underlying facts are the same. Therefore, bar under Section 300(1) of Cr.P.C. would apply, and the prosecution under Section 420 of the Indian Penal Code (IPC) is barred.

9. In the aforesaid premise, the direction of the trial Court for registration of the aforesaid FIR under section 420 IPC is thus liable to be quashed.

10. Accordingly, petition is allowed. Judgment/order dated 14.09.2022 Annexure P-5, passed by the learned Judicial Magistrate Ist Class, Phillaur, in complaint No. NACT-216-2017, is partly set aside to the extent that it directed the SHO, Police Station, Phillaur, to register FIR under section 420 IPC against the petitioner. The case registered pursuant to said direction in aforesaid judgment namely FIR No.287, dated 30.09.2022 under Section 420 of the IPC (Annexure P-6) and all proceedings emanating there from *qua* the petitioner also stand quashed.

11. In the parting, I may hasten to add here that the reliance placed by learned trial Court on Apex Court judgment in '*Maqbool Hussain Vs. State of Bombay*', AIR 1953 SC 325 is in misplaced. Pertinently, in Maqbool Hussain it was noticed that qua the same incident, of having brought in gold to India by the delinquent in contravention of the applicable laws, two proceedings were initiated against the accused i.e. one under Section 167 of The Sea Customs Act (India Act VIII, 1878) and the second under Section 8 of the Foreign Exchange Regulation Act 7 of 1947 before Chief Presidency Magistrate, Bombay. Supreme Court held that Sea Customs Authorities under the Sea Customs Act are neither a judicial Tribunal nor any order passed by them constitutes a judgment or order of a Court or judicial Tribunal,

which is necessary for the purpose of supporting the plea of double jeopardy. As against the same, in the present case, the proceedings under section 420 of IPC initiated against the petitioner qua the offence of dishonor of a cheque, after he was acquitted under section 138 of NI Act based on the identical facts, is directly hit by the principle of *double jeopardy*.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

19.09.2023
'D'Vir/vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No