

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.270 OF 2024

Mohit Bharatiya @ Mohit Kumboj .. Applicant
Versus
State of Maharashtra .. Respondent

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- Mr. Faiz Merchant a/w. Mr. Faisal Shaikh, Advocates for Applicant.
 - Ms. Sangeeta E Phad, APP for Respondent - State of Maharashtra.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 21, 2024

ORAL JUDGEMENT:

1. Heard Mr. Merchant, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent – State of Maharashtra.

2. The issue which is deliberated before me in the present case hinges on interpretation and application of Article 20 (2) of the Constitution of India read with the provisions of Section 300 (1) and (2) of Criminal Procedure Code, 1973 (for short ‘**Cr.P.C.**’) as applicable to the facts in the present case. A case of double jeopardy is pleaded before me by the Revision Applicant. ‘Revision Applicant’ shall be referred to as ‘Applicant’ for convenience.

3. Briefly stated, crime is registered by First Information Report (for short “**FIR No.2**”) bearing No.2 of 2009 filed at 14:00 hours on 15.12.2009 against Applicant for offences committed under Section 52 read with Section 43 of the Maharashtra Regional and Town Planning

Act, 1966 (for short '**M RTP Act**') by one Mr. Shrikant Patil (Junior Engineer of Bombay Municipal Corporation). Applicant stands acquitted after a full fledged trial vide judgement dated 20.01.2016. In the interregnum, he has been arrested twice, granted bail twice and there has also been a remand of this case by this Court on challenges maintained to interlocutory orders passed by the Trial Court.

4. Strangely, on the same date FIR No.234 of 2009 is filed at 20:02 hours under Section 353 of the Indian Penal Code, 1860 (for short "**IPC**") by one Mr. Ashok Tardekar (Sub-Engineer of Bombay Municipal Corporation). Both Mr. Merchant and Ms. Phad are *ad idem* that both the aforesaid FIRs are in respect of the same set of facts. And undoubtedly pursuant to the same incident. There is no dispute about this. The only point of distinction argued by Ms. Phad is that since the offences concerned / registered in both FIRs are under two different statutes, Applicant cannot claim protection under the provisions of Section 300(1) read with 300 (2) of Cr.P.C. and she would emphasize on the word 'offence' as appearing in Article 20 of Constitution of India while arguing that when there are two distinct and different offences under two different and distinct statutory provisions, no protection can be claimed by the Applicant under Section 300 of Cr.P.C.. However, Ms. Phad in her usual fairness would concede on being put a direct question by the Court that in the present case for indicting the Applicant under the provisions of Section 353 of IPC (the second FIR)

consent of the State Government has not been obtained before proceeding with the impugned action. Before I advert to the submissions made by learned Advocates, considering the provisions of Article 20 of Constitution of India read with Section 300 of Cr.P.C., it would be worthwhile to refer to the relevant facts to understand the plea of double jeopardy pleaded by Applicant in his discharge Application before the learned Trial Court, which stands rejected by the impugned order dated 07.03.2024 in Sessions Case No.921 of 2022. The Revision Application is opposed vehemently by the State. The discharge Application and the impugned order dated 07.03.2024 are appended at Exhibits 'D' and 'E' respectively of the Application. I have perused the same.

5. Briefly stated, complainant in FIR No.234 of 2009 received information from the Junior Engineer working in his own office and under him namely Shri Shrikant Patil (first informant – complainant in the previous FIR) about unauthorised construction carried out by Applicant at his premises in Zaveri Bazar, Mumbai – 400 002 and that when he approached Applicant for demolition of the alleged unauthorized construction alongwith a *bandobast* team of L.T. Marg Police Station on 15.12.2009, he was obstructed. Precursor to this act on the part of first informant – complainant lodging FIR No.234 of 2009 at 20:02 hours are two specific incidents. One, on 14.12.2009, the first informant – complainant in FIR No.234 of 2009 issued a

statutory notice under Section 354(A) of the Mumbai Municipal Corporation Act, 1888 (for short “**MMC Act**”) to Revision Applicant. When such a notice is issued, it is incumbent upon the concerned Officer to wait for 24 hours from the notice to stop the alleged work as per the statutory provisions of the Act itself before commencing with any further coercive action. It is seen that this 24 hour deadline is not followed by the Corporation Officers. On 15.12.2009, with respect to the said notice, the Junior Engineer working in the office of first informant – complainant in FIR No.234 of 2009 lodged a complaint at 14:00 hours against Applicant for offences committed under Section 52 read with Section 43 of MRTP Act. As delineated above, at 20:02 hours on 15.12.2009 with respect to what transpired at the premises of Applicant between 13:30 hours and 13:45 hours, the first informant – complainant lodged the second FIR at 20:02 hours on the ground of receiving information at about 18:15 hours of the incident from his junior officer which on 15.12.2009.

6. After trial, Applicant is acquitted vide judgment dated 20.01.2016 in CC No.57/PW/2012 arising out of FIR No.2 of 2009 (first FIR), copy of which is appended at Exhibit ‘C’, page No.47 of the Application. It is interesting reading of this judgement, in view of the findings and observations returned therein, which I shall advert to later.

7. After a hiatus of almost six years after acquittal in CC No.57/PW/2012, FIR No.234 of 2009 (second FIR) which is the subject matter of Sessions Case No.921 of 2022 is sought to be pressed by prosecution against Applicant. Discharge Application below Exhibit-4 is filed by Applicant claiming double jeopardy by taking recourse to Section 300 (1) read with Section 300 (2) Cr.P.C. on the premise that once the Applicant has stood acquitted in respect of the same set of facts for which offence was registered, albeit under the MRTP Act, Applicant cannot be tried twice on the same set of facts for which offence is registered under Section 353 of IPC. Mr. Merchant after taking me through the previous judgement of acquittal dated 20.01.2016 and the impugned order 07.03.2024 rejecting discharge Application would contend that it was open to the prosecution to have moved an Application under Section 301 of Cr.P.C. to frame alternate charge under Section 353 in the previous case emanating from FIR No.2 of 2009 based on the same set of facts, which the prosecution did not do. Next he would submit that the judgement of acquittal dated 20.01.2016 passed by the Trial Court in CC No.57/PW/2012 arising out of FIR No.2 of 2009 (first FIR) has not been challenged by the Respondent – State till date. The aforesaid are relevant facts before me which require consideration.

8. Mr. Merchant has made three specific submissions after taking me through the record of the case:-

(i) Firstly, he would submit that both FIRs have been registered arising out of the same set of facts. This is an undisputed position. He would submit that FIR No.2 of 2009 lodged under Sections 52 and 43 of the MRTP Act and registered by L.T. Marg Police Station does not disclose the time of the offence. He would submit that however information received by the Police Station appears to be on 15.12.2009 at 14:00 hours. He would submit that consequently, the FIR at hand i.e. FIR No.234 of 2009 (second FIR) lodged under Section 353 of the IPC and registered by L.T. Marg Police Station against the Applicant notes the time of occurrence of the incident from 13:30 hours to 13:45 hours. He would submit that considering the fact that information of the first FIR No.2 of 2009 was given to the Police Station at 14:00 hours, commission of any offence under Section 353 of IPC during the alleged incident from 13:30 hours to 13:45 hours ought to have also been disclosed to the Police Station at the same time. This was not done. Further Prosecution also failed to club both the offences together before the Trial Court which tried the offence under the first FIR. Rather Prosecution maintained a stoic silence throughout the trial and for six years thereafter without challenging the order of acquittal.

(ii) Secondly, he would submit that the crime at hand emanated from a prior FIR registered with the L.T. Marg Police Station vide FIR No.2 of 2009 for the alleged offences punishable under Section 52 read with Section 43 of the MRTP Act. He would submit that the Applicant

after pleading not guilty, stood tried for the said offence before the learned Metropolitan Magistrate's 41st Court at Shindewadi, Dadar in CC No.57/PW/2012 and was acquitted from the said case as prosecution miserably failed to prove that Applicant had committed either of the offences as alleged in the said crime. He would submit that while acquitting the Applicant, Trial Court has made pertinent observations raising serious questions against the conduct of the Municipal officers purporting to act in discharge of their official duty on 15.12.2009. He would submit that perusal of the judgment of acquittal dated 20.01.2016 would demonstrate that prosecution utterly failed to bring home the guilt of Applicant or that Applicant committed the offences under Section 52 read with Section 43 of the MRTP Act. He would submit that finding is returned to the effect that there was absolutely nothing to substantiate that the first informant therein had visited the premises of the Applicant in discharge of his official duty.

(iii) Lastly on the issue of double jeopardy, he would submit that the Sessions Court failed to appreciate the primary submission of Applicant that since Applicant stood acquitted from the previous offence framing charge in the subsequent FIR (second FIR) on the same set of facts would be contrary to the statutory provisions enshrined under Section 300 (1) and 300 (2) of the Cr.P.C.

8.1. On the basis of the above submissions, he would submit that

the Sessions Court failed to appreciate the submission of Applicant that the subsequent FIR under Section 353 IPC was nothing but an off-shoot of the previous FIR registered under the MRTP Act on the same set of facts and there cannot be a second trial on the same set of facts. He would submit that since prosecution in the trial under MRTP Act failed to prove that the Municipal officer had visited the premises of Applicant in discharge of his official duty, framing of charges against Applicant in the present crime under Section 353 IPC for obstructing the same Officer (on official duty) would be a travesty of justice. He would further submit that in the instant case, the prosecution did not seek revision of the discharge Application before the learned Sessions Court filed by Applicant and instead made a statement that since the matter was already subjudice, appropriate orders be passed on discharge Application. In support of his above submissions and proposition on double jeopardy, he has referred to and placed reliance on the following decisions of the Supreme Court and this Court:-

- (i) *State through Superintendent of Police, CBI / SIT Vs. Nalini and Others*¹;
- (ii) *T. T. Antony Vs. State of Kerela and Others*²;
- (iii) *Arnab Ranjan Goswami Vs. Union of India and Others*³;
- (iv) *Amish Devgan Vs. Union of India and Others*⁴;

1 (1999) 5 Supreme Court Cases 253.

2 (2001) 6 Supreme Court Cases 181.

3 2020 SCC OnLine SC 462.

4 2020 SCC OnLine SC 994.

- (v) *T. P. Gopalakrishnan Vs. State of Kerala*⁵;
- (vi) *Chandi Puliya Vs. The State of West Bengal*⁶; and
- (vii) *Amer Khan Vs. State of Maharashtra and Others*⁷.

9. On the basis of the aforesaid he would persuade the Court to allow the Revision Application and set aside the impugned order dated 07.03.2024 passed in the Sessions Case No.921 of 2022 rejecting the Discharge Application of the Applicant.

10. *PER CONTRA*, Ms. Phad at the outset, has persuaded me to consider the provisions of Section 300 (1) and 300 (2) Cr.P.C. readwith Article 20 of the Constitution of India while laying emphasis on the word ‘*offence*’ as appearing in Article 20 of Constitution of India and use of word of ‘*same offence*’ in Section 300 (1) of Cr.P.C.. She would submit that this Court needs to take into cognizance the fact that in the present case registration of charge is under two different set of offences namely one under the statutory provisions of 52 read with Section 43 of MRTP Act and the second FIR lodged under Section 353 of IPC. However, in her usual fairness she would state that in so far as challenging the decision of acquittal of Applicant dated 20.01.2016 under MRTP Act is concerned, the State has admittedly not filed any appeal. However she would contend that it would not come

⁵ (2022) 14 Supreme Court Cases 323.

⁶ Criminal Appeal Arising From SLP (Criminal) No.9897 of 2022 decided on 12.12.2022.

⁷ 2023 SCC OnLine Bom 818 : (2023) 2 AIR Bom R (Cri) 399.

in the way to prosecute Applicant under the second FIR registered under Section 353 of IPC. However, she would concede that in so far as applicability of sub Section (2) of Section 300 Cr.P.C. is concerned, consent of the State Government has not been obtained to proceed against the Applicant. In support of her aforesaid submissions, she would refer to and rely upon two decisions cited by the learned Advocate of the Applicant namely the case of *T. P. Gopalakrishnan* (5th *supra*) and the decision in the case of *Chandi Puliya* (6th *supra*) to contend that in the present case both FIRs are lodged with respect to two distinct offences committed by Applicant under two distinct / separate provisions of two different statutes and therefore the question of double jeopardy cannot be applied to Applicant's case by referring to the provisions of Articles 20 and 21 of the Constitution of India read with Section 300 of Cr.P.C..

11. I have heard Mr. Merchant, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent – State and with their able assistance perused the record of the case. Submissions made by them have received due consideration of the Court.

12. At the outset, the following provisions of law would be inherently applicable for a decision in this case. Part – III of the Constitution of India deals with fundamental rights. Articles 20 to 22 deal with personal liberty of citizens and others. Article 20(2)

expressly provides that no person should be prosecuted or punished for the same offence more than once. The protection against double jeopardy is also supplemented by statutory provisions contained in Section 300 of Cr.P.C., Section 40 of the Indian Evidence Act, 1872, Section 71 of IPC and Section 26 of the General Clauses Act, 1897. That apart, Section 220 of Cr.P.C. in regard to trial for more than one offence and more specifically Section 220 (1) is also relevant. For ease of reference, the aforesaid statutory provisions are delineated hereinbelow:-

12.1. Article 20 of the Constitution of India reads thus:-

“20. Protection in respect of conviction for offences.-

(1) xxx xxx xxx

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

(3) xxx xxx xxx.”

12.2. Section 300 of Cr.P.C. reads thus:-

“300. Person once convicted or acquitted not to be tried for same offence.—

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1)

of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, 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 acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.”

12.3. Section 40 of the Indian Evidence Act, 1872 reads thus:-

“40. Previous judgments relevant to bar a second suit or trial.

The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of a such suit, or to hold such trial.”

12.4. Section 71 of Indian Penal Code, 1860 reads thus:-

“71. Limit of punishment of offence made up of several offences.- Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences].”

12.5. Section 26 of the General Clauses Act, 1897 reads thus:-

“26. Provision as to offences punishable under two or more enactments.—*Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”*

12.6. Section 220 of Cr.P.C. reads thus:-

“220. Trial for more than one offence. — (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).”

13. A bare perusal of both the above provisions indicate that Article 20 of the Constitution of India and Section 300 of the Cr.P.C use the term 'same offence'. The term 'same offence' in simple language means where the offences are not distinct and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India has no application although the offences may have some overlapping features. The crucial requirement of Article 20 is that the offence is the same and identical in all respects.

14. That apart, the meaning of the term 'double jeopardy' argued by the Applicant is well explained and quoted by Supreme Court in paragraph Nos.18 to 20 of the decision in *T. P. Gopalakrishnan* (5th *supra*). The Supreme Court states that in India, protection against double jeopardy is a fundamental right enshrined under Article 20 (2) of the Constitution of India and it quotes further that Section 300 of Cr.P.C. is also based on the same principle.

14.1. As held by the Supreme Court in paragraph Nos.24 to 27 of the aforementioned decision, it is seen that Section 300 Cr.P.C. embodies the general rule which affirms the validity of the pleas of *autrefois acquit* (previously acquitted) and *autrefois convict* (previously convicted). Sub-section (1) of Section 300 Cr.P.C. lays down the rule of double jeopardy and Sub-sections (2) to (5) thereof

deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a Court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same set of facts, except for cases dealt in with under sub-sections (2) to (5) of that Section. Section 300 Cr.P.C. is based on the maxim *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* which means that a person cannot be tried a second time for an offence in which he was previously tried and charged. As per the decision of this Court in *Vijayalakshmi Vs. Vasudevan*⁸ in order to bar the trial of any person already tried, it must be shown that (i) he has been tried by a Competent Court for the same offence or one for which he might have been charged or convicted at trial, on the same facts; (ii) he has been convicted or acquitted at the trial, and (iii) such conviction or acquittal is in force. The whole basis of this provision is that the first trial should have been before a Court of competent jurisdiction. There must have been a trial of the accused, that is to say, that there should have been a hearing and determination or adjudication of the case on merits. Where the accused has not been tried and as such convicted or acquitted, Section 300(1) Cr.P.C. shall not be applicable. Section 300 Cr.P.C. bars the trial of a person not only for the same offence but also for any other offence on the same set of facts as held by the Supreme

8 (1994) 4 SCC 656 : 1994 SCC (Cri) 1317.

Court in the case of *Thakur Ram Vs. State of Bihar*⁹.

15. At the outset, it is seen that the judgement of acquittal dated 20.01.2016 passed by the Trial Court in Case No.57/PW/2012 filed by the Corporation under MRTP Act has become absolute. It is admittedly not challenged. Findings which have been referred to while recording the submissions made by Mr. Merchant hereinabove are crucial. Nevertheless, I would like to refer to only one finding therein returned by the Trial Court which categorically opines that presence of the BMC Officers at the premises on date of incident was not in their official capacity and that itself clinches the entire issue. Section 354A requires the Corporation to wait for a period of 24 hours after service of notice to take any coercive action. What is crucial is that information of what transpired at the incident spot between 13:30 hours and 13:45 hours was given by the Junior Engineer Shri Shrikant Patil to his senior Mr. Ashok Tardekar, Sub-Engineer of the Corporation in whose office he himself used to sit and it is only thereafter on the basis of what transpired, Sub-Engineer Mr. Ashok Tardekar lodged the complaint under Section 353 IPC. The decisions of the Court, *inter alia*, with respect to the principal issue in the present case pertaining to double jeopardy has already been delineated hereinabove. Both Mr. Merchant and Ms. Phad have placed reliance on the same.

9 1965 SCC OnLine SC 14 : AIR 1966 SC 911.

16. In the present case as stated hereinabove, provisions of Section 300 (1) and Section 300 (2) Cr.P.C. are relevant. Section 300 (1) Cr.P.C. clearly elucidate that the person once convicted or acquitted is not liable to be tried again for the same offence nor on the same set of facts or for any other offence for which a different charge from the one made against him might have been made earlier on the same set of facts. Section 300 (2) of Cr.P.C. gives an opportunity for effecting trial in respect of person who has been acquitted or convicted of any offence for the second time but only with the express consent of the State Government. As observed, the consent of State Government in the present case has not been obtained to prosecute the Applicant under Section 353 of IPC in Sessions Case No.921 of 2022. Six years after he has been acquitted by the Trial Court for the offences under Section 52 read with Section 43 of the MRTP Act for the same set of facts (offence) (*emphasis supplied*). Once that is the admitted position, the concept of double jeopardy which is primarily used to denote protection to Accused that he has already had a fair trial for the same offence wherein a fair trial would mean trial according to law and established procedure, then he cannot be tried again. The concept of double jeopardy has been explained by the Supreme Court in the case of ***T. P. Gopalakrishnan*** (*5th supra*) *qua* the provisions of Section 300 of Cr.P.C. and Articles 20 to 22 of the Constitution of India. Paragraph Nos.20 to 33 are directly relevant to the facts in

question in the present case which have been delineated hereinabove and are reproduced below for immediate reference and convenience as also to avoid repetition:-

“20. The word “jeopardy” is used to designate the danger of conviction and punishment which an accused in a criminal action incurs. “Jeopardy” implies an exposure to a lawful conviction for an offence for which a person has already been acquitted or convicted. The terms “double jeopardy”, “former jeopardy”, “jeopardy for life or limb”, “jeopardy for the same offence”, “twice put in jeopardy of punishment” and other similar expressions used in various Constitutions and statutes are to be construed substantially, to the same effect. In other words, “double jeopardy” is used to denote the protection to an accused, that he has had a fair trial for the same offence, wherein fair trial means trial according to law and established legal procedure.

21. xxx;

22. xxx;

23. xxx;

24. Section 300 CrPC embodies the general rule which affirms the validity of the pleas of autrefois acquit (previously acquitted) and autrefois convict (previously convicted). Sub-section (1) of Section 300 lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section.

25. Section 300 CrPC is based on the maxim nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa which means that a person cannot be tried a second time for an offence which is involved in an offence with which he was previously charged. As per the decision of this Court in Vijayalakshmi v. Vasudevan [Vijayalakshmi v. Vasudevan, (1994) 4 SCC 656 : 1994 SCC (Cri) 1317] in order to bar the trial of any person already tried, it must be shown that:

- (i) he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at a trial, on the same facts,*
- (ii) he has been convicted or acquitted at the trial, and*
- (iii) such conviction or acquittal is in force.*

26. The whole basis for this provision is that the first trial should have been before court of competent jurisdiction. There must have been a trial of the accused, that is to say, that there should have been a hearing and determination or adjudication of the case on merits. Where the accused has not been tried and as such convicted or acquitted, Section 300(1) shall not be applicable.

27. Section 300CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, vide Thakur Ram v. State of Bihar [Thakur Ram v. State of Bihar, 1965 SCC OnLine SC 14 : AIR 1966 SC 911] .

*28. Under clause (2) of Article 20, no person shall be prosecuted and punished for the same offence more than once. Article 20(2) of the Constitution of India incorporates within its scope, the plea of autrefois convict, meaning, previously convicted as known to British jurisprudence, or the plea of double jeopardy known to the American Constitution. However, the said concepts are circumscribed in Article 20(2) which provides that there should be not only a prosecution but also punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence. On a plain reading of clause (2) of Article 20, it is clear that the said provision bars a second prosecution only where the accused has been both **prosecuted** and **punished** for the same offence previously vide S.A. Venkataraman v. Union of India [S.A. Venkataraman v. Union of India, 1954 SCC OnLine SC 26 : AIR 1954 SC 375] (“S.A. Venkataraman”). But this clause does not bar subsequent trial if the ingredients of the offences in the previous and subsequent trials are distinct. In Maqbool Hussain v. State of Bombay [Maqbool Hussain v. State of Bombay, (1953) 1 SCC 736 : (1953) 1 SCC 736 : AIR 1953 SC 325] , this Court has held that clause (2) is not applicable unless the person has been both prosecuted and punished.*

29. There are three conditions for the application of the clause. Firstly, there must have been previous proceeding before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive. Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts. In other words, the clause has no application when the subsequent proceeding is a mere continuation of the previous proceeding, for example, where an appeal arises out of such acquittal or conviction. In order to sustain a plea of double

jeopardy, it must be shown that all the aforesaid conditions of this clause are satisfied, vide S.A. Venkataraman [S.A. Venkataraman v. Union of India, 1954 SCC OnLine SC 26 : AIR 1954 SC 375] .

30. *What is to be noted here is that both these provisions i.e. Section 300CrPC and Article 20 of the Constitution of India use the term “same offence”.*

31. *Before dealing with the issue at hand, it is necessary to understand what the term “same offence” means and includes. The term “same offence” in simple language means, where the offences are not distinct and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India, has no application, though the offences may have some overlapping features. The crucial requirement of Article 20 is that the offences are the same and identical in all respects, vide State (NCT of Delhi) v. Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] .*

32. *The concept of double jeopardy can also be understood in terms of Article 21 of the Constitution of India which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. “Life” under Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider connotation; it includes the right to live with human dignity. In the celebrated judgment in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597] , this Court gave a new dimension to Article 21, wherein it stated that the right to live includes within its ambit the right to live with dignity. Under the umbrella of Article 21, various rights like right to free legal aid, right to speedy trial, right to fair trial, etc. have been included. Similarly, protection against double jeopardy is also included under the scope of Article 21 of the Constitution of India. Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity.*

33. *Double jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a*

protection against double jeopardy for the same offence, that is, against a second trial for the same offence.”

17. The ratio of the decisions referred to above supports the view that so long as an order of acquittal or conviction by a Court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same set of facts / situation unless it falls under the exceptions categorized under sub sections (2) to (5) of Section 300 of the Cr.P.C. Admittedly, the factual position in the present case does not fall within the scope and ambit of the exceptions culled out in sub clauses (2) to (5) of Section 300 Cr.P.C.

18. The submissions made by Ms. Phad have been clearly covered by observations and findings in paragraph No.25 in the decision of *T. P. Gopalakrishnan* (5th *supra*) wherein the Supreme Court has referred to an earlier decision in the case of *Vijayalakshmi* (8th *supra*) which has already been discussed hereinabove. In the present case, there has been trial in Case No.57/PW/2012 before the Court of competent jurisdiction which has been determined and adjudicated on merits resultantly, acquitting the Applicant. Hence, the parameters envisaged under Section 300 of Cr.P.C. fully cover the present case.

19. As observed by the Supreme Court, both the provisions namely Section 300 of Cr.P.C and Article 20 of Constitution of India used the words 'same offence'. In that view of the matter, concept of double jeopardy clearly applies to the facts in the present case indicting the Applicant. No different view can be taken by me as it has been rightly observed by the Supreme Court that double jeopardy can be confused with double punishment. Hence, on the first ground, the application of Section 300 (1) read with Section 300 (2) of Cr.P.C. clearly applies to the case of the Applicant which is his legal right and it cannot be dispensed with by subjecting and subjugating the Applicant to a fresh trial in Sessions Case No.921 of 2022.

20. Next is the decision of Supreme Court in the case of ***Arnab Ranjan Goswami*** (*3rd supra*) to which my attention has been drawn by both Mr. Merchant and Ms. Phad. The decision in this case pertains to filing of multiple FIRs for the same offence. Rather in this case multiple FIRs and complaints were registered in multiple States arising from the same cause of action. FIRs and criminal complaints were lodged against Petitioner therein in the states of Maharashtra, Rajasthan, Uttar Pradesh, Jharkhand and Telangana. While referring to the decision on the law covering multiple criminal proceedings on the basis of same cause of action as analysed in the judgment of ***T. T. Antony*** (*2nd supra*), the Supreme Court held that there can be no second FIR where the information concerns the same offence alleged in

the first FIR or the same occurrence or incident will give rise to one or more cognizable offence. The aforesaid finding of the Supreme Court aptly covers the facts delineated in the present case. The legal position is that there cannot be two FIRs against the same Accused in respect of the same case or cause of action and on the same set of facts. In the present case, first FIR is lodged under Section 52 read with Section 43 of the MRTP Act, the precursor to which is the statutory notice issued on the previous day. Without following the due process of law, Officers of the Corporation presented themselves at the premises of Applicant on the date of incident, whose presence has been clearly set aside as being unofficial by the Trial Court in its judgement dated 20.01.2016. What transpired at the then time is with respect to the same cause of action and on the same set of facts as informed by the Officer present to his superior i.e. Mr. Ashok Tardekar, Sub-Engineer who on the same evening filed the second FIR at 08:02 p.m.

21. As far back as in 2010, the Supreme Court in the case of *Babubhai Vs. State of Gujarat*¹⁰ in paragraph No.21 has categorically observed that in such a case all that the Court has to do is to examine facts and circumstances giving rise to both FIRs and “ *Test of sameness*” (*emphasis supplied*) is to be applied to find out whether both the FIRs relate to the same incident in respect of occurrence or are in regard to incidents which are of two or more parts of the same

¹⁰ 2010 12 SCC 254.

incident. The Supreme Court holds that if answer is in the affirmative, the second FIR is liable to be quashed. The same holds true in the facts and circumstances of the present case. This decision has been referred to and relied upon with approval in the case of ***Arnab Ranjan Goswami*** (3rd *supra*) by the Supreme Court. Once that is the case, subjecting the Applicant to numerous / multiple proceedings arising out of the second FIR on the basis of the same cause of action cannot be accepted as it would go against the tenets of law. The Court is therefore empowered and adverted to the need to strike a just balance between the fundamental rights of the citizens under Articles 19 and 20 of the Constitution of India and rights of police to investigate cognizable offences. The Supreme Court has also held that barring situations in which a counter-claim is filed, fresh investigation of a second FIR on the basis of same or connected cognizable offence would constitute an abuse of statutory power of investigation and may be a fit case for exercise of powers under Section 482 of Cr.P.C. or Articles 226 and 227 of the Constitution of India. Double jeopardy is completely against all settled norms of criminal jurisprudence and an abuse of the process of law. The second prosecution has to fail as it is in contravention of Applicant's fundamental right under Article 20 (2) of the Constitution of India and Section 300 Cr.P.C. The proceeding before me is with respect to rejection of discharge Application filed by Applicant on the aforementioned issue. No different yardstick can be

applied by me and I am bound to follow the decisions of the Supreme Court. The third decision of the Supreme Court later in point of time is the judgement of the Supreme Court in the case of ***Amish Devgan*** (*4th supra*). It quotes previous decisions of the Supreme Court in the case of ***T. T. Antony*** (*2nd supra*) as also the decision in the case of ***Arnab Ranjan Goswami*** (*3rd supra*) is quoted with approval. The decision in the case of ***Chandi Puliya*** (*6th supra*) is on applicability of provisions of Section 353 IPC regarding obstruction of public servant from carrying out his official duty and it goes to the extent of stating that if at all the said provision is to be applied, it has to be applied sparingly. Though in that case prayer for discharge of Accused was not granted by the Supreme Court in view of dismissal of his Petition under Section 482 of Cr.P.C., the ratio of the said case is evident from paragraph No.6 onwards therein. While interpreting provisions of Section 227 of Cr.P.C. pertaining to discharge, the Court holds that once the Judge considers that there is no sufficient ground for proceeding against the Accused, he shall discharge the Accused and record the reasons. In the present case also, apart from the provisions of Section 300 of Cr.P.C., Mr. Merchant has placed reliance on other enabling statutory provisions contained in Section 40 of the Indian Evidence Act, 1872; Section 71 of the IPC, and Section 26 of the General Clauses Act, 1897; Section 220 of the Cr.P.C. and Articles 20 to 22 of the Constitution of India wherein said the provisions expressly provide that

no person should be prosecuted or punished for the same offence more than once.

22. In view of the above observations and findings, the impugned order is not sustainable and deserves to be quashed and set aside. Resultantly, the discharge Application filed below Exhibit-4 stands allowed.

23. With the above directions, the Criminal Revision Application is allowed in terms of prayer clause (i) which reads thus:-

“i. That this Hon’ble Court be pleased to allow the present Revision Application and thereby set aside the impugned order dated 07/03/24 passed by the Hon’ble Sessions Court in Sessions Case No. 921 of 2022 and thereby discharge the Applicant in connection with Sessions Case No. 921 of 2022 pending before the Hon’ble 56th Court of Sessions.”

24. Criminal Revision Application is allowed in the above terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date: 2024.11.29
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