

Vivek Jain Vs State Of Madhya Pradesh

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: June 22, 2020

Acts Referred: Food Safety And Standards Act, 2006 â€” Section 26, 27, 31(1), 51, 52, 58, 59, 61, 63

Code Of Criminal Procedure, 1973 â€” Section 482

Indian Penal Code, 1860 â€” Section 420, 467, 468

General Clauses Act, 1897 â€” Section 26

Copyright Act, 1957 â€” Section 53, 55, 63, 65

Constitution Of India, 1950 â€” Article 20(2)

Hon'ble Judges: Vishal Mishra, J

Bench: Single Bench

Advocate: R. K. Sharma, M. K. Chaudhary, K. K. Kori,

Final Decision: Dismissed

Judgement

The inherent powers of this Court u/S.482 CrPC are invoked seeking quashment of prosecution launched against the petitioner in shape of ST

No.14/13 pending before 7th Additional Sessions Judge Gwalior in connection with offences punishable u/S. 420. 467, 468 of IPC r/w Section 59 and

61 of Food Safety and Standards Act and Section 63 and 65 of Copyright Act.

Learned counsel for the rival parties are heard on the question of admission.

The sole ground raised to assail the aforesaid prosecution is by invoking doctrine of double jeopardy contained in Article 20(2) of the Constitution of

India. It is contended by relying upon the decision of Apex Court in the case of State of Haryana Vs. Ch. Bhajan Lal and Ors. reported in AIR 1992

SC 604 that the impugned prosecution amounts to double jeopardy as the petitioner is also facing prosecution before the Court of Chief Judicial

Magistrate Gwalior in shape of Criminal Case No.9588/2013 in connection with offences punishable u/S. 26, 27, 31(1) r/w Section 51, 52, 58 and 63 of

Food Safety and Standards Act. In sum and substance, it is submitted that petitioner cannot be prosecuted and punished twice for the same offence.

The facts in nutshell which gave rise the aforesaid two prosecution against the petitioner is that a raid was carried out by the police at the house of

petitioner where spurious Ghee was found. Accordingly, respondent No.2 Food Safety Officer filed a private complaint P/1 in the Court of CJM

which is pending adjudication in shape of criminal Case No.9588/13. It is submitted that simultaneously crime No.506/12 was also registered by P.S.

Bahodapur District Gwalior alleging offences punishable u/S. 420, 468 of IPC r/w 51, 52, 59 of Food Safety and Standards Act and 53 and 55 of

Copyright Act which after completion of investigation led to filing of charge-sheet in the Court where it is pending in shape of ST No.14/13 and whose

quashment is sought.

The application of doctrine of double jeopardy lying behind the provision of Article 20(2) of the Constitution has been amply explained by the Apex

Court in a decision of Apex Court in State of Maharashtra Vs. Sayyed Hasan 2018 SCC online SC 1580. The relevant paragraph No.7 and 8 of the

said judgment are reproduced below:-

7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence.

Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall

not be liable to be punished twice for the same offence. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an

omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. The High Court ought to have taken note of

Section 26 of the General Clauses Act, 1897 which reads as follows:

“Provisions 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.

8. In *Hat Singh*’s case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two

different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent

therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in *State (NCT of Delhi) v. Sanjay* held

that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the

provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties.

We, therefore, set aside the finding of the High Court on the first point.

From the above discussion, it is clear as daylight that prosecution under two different statutes, despite both arising out of the same incident, is not

barred. What is prohibited under Article 20(2) of the Constitution is that a person ought not to be punished twice for the same offence. Therefore,

there is no prohibition in law in the prosecution or punishment of a person under two different enactments notwithstanding both the offences stemming

from the same incident. Thus the petitioner can very well be prosecuted under the IPC on the one hand and Food Safety and Standards Act/

Copyright Act on the other.

It may be made clear that the embargo under Article 20(2) of the Constitution is to prevent same person to be punished twice for the same offence.

Thus petitioner can very well be prosecuted and punished for cheating and forgery under the IPC before a particular court and at the same time can

be prosecuted and punished under the provisions of Food Safety and Standards Act before another court. However, neither of the aforesaid courts

can prosecute and punish the petitioner for the same offence.

An incident can give rise to one or more offences under different enactments. There lies the subtle difference, and thus in a situation like the present

one the said constitutional bar under Article 20(2) of the Constitution would not be attracted.

The confusion which normally arises while correctly interpreting Article 20(2) of the Constitution is because of treating the concept of offence and the

incident to be the same. A single incident can give rise to more than one offences prosecutable and punishable under different penal enactments.

The decision relied upon by the petitioner of Punjab and Haryana High Court in Pradeep Kumar Vs. State of Haryana 2013 (1) FAC 395, Suresh

Chand Vs State of Haryana 2013 (1) FAC 230, Ombir and Anr. Vs. State of Haryana 2013(1) FAC 234 and Jagdish Kumar @ Balla and anr. Vs.

State of Punjab & anr. 2013 (1) FAC 237 fade into insignificance in the light of the the direct decision of Apex Court in Sayyed Hasan (supra).

Consequently, present petition deserves to be and is therefore dismissed sans cost.