

(2000) 02 MP CK 0039

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Criminal Case No. 451/98

N.T.C. Ltd. and Others

APPELLANT

Vs

Mohan Singh Sisodiya

RESPONDENT

**Date of Decision:** Feb. 7, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 20(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 300, 403
- Penal Code, 1860 (IPC) - Section 406

**Citation:** (2000) 3 MPHT 474

**Hon'ble Judges:** Jayant Govind Chitre, J

**Bench:** Single Bench

**Advocate:** S. Bhargava and V. Shukla, for the Appellant; P. Verma, G.A. for State and A.H. Khan, for R.P.F.C., for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

J.G. Chitre, J.

The grievance of the petitioner is that he is required to face two prosecutions on one and same time for allegedly the same offence which is causing him the hardship of double jeopardy. Shri Bhargava submitted that the R.P.F.C. (Regional Provident Fund Commissioner) has moved the police machinery for prosecuting the petitioner and a prosecution initiated, however, on petitioner's depositing the amount pertaining to the employee's share, the Commissioner has requested the Police not to prosecute the petitioner so far as criminal breach of trust is concerned. Both Shri Bhargava and Khan submitted that the criminal prosecution is pending against the petitioner in respect of non-payment of employer's share at the instance of R.P.F.C.

2. The views in respect of the criminal breach of trust on the part of Government servants are being liberalised by various State Governments. The Circulars have been issued that whenever such amount is deposited by the suspect, such prosecution can be withdrawn. When that is so and when an action has been taken by the Commissioner of Provident Fund by requesting the police not to prosecute the petitioner in context with allegation of committing a crime which is punishable u/s 406, IPC, and there is no point in permitting the said prosecution to be continued.

3. Article 20(2) of Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. That has been also expressed by provisions of Section 300, Cr.P.C. 1973 (Section 403 of Cr.P.C. 1898) the principle of *autrefois acquit* and double jeopardy of the prosecution is being considered and weighed seriously in criminal jurisprudence. Every prosecution indicates annoyance, expenditure, hardship to a person who happens to be prosecuted, because to attend the lawyer's offices intermittently for preparing the case by instructing them, to attend the Courts on various dates and to remain in the atmosphere of the prosecution and prosecuted persons is by itself annoying and speaking of its own effects. The petitioner happens to be once upon a time a Government servant who has been appointed by the President of India as indicated by Annexure P4 and has been entrusted with the duty of functioning as Chairman-cum-Managing Director of N.T.C. (M.P.). He holds the responsible post in the Government and his appointment has been on the Order passed by the President of India. Whether such a person should be exposed to torture, annoyance and exposing himself to the hanging sword of being prosecuted twice ? That does not befit to the action taken by his own department. It is true that one can prosecute another person but there has to be a basis for initiation of such prosecution, and that prosecution should be also permissible by the provisions of law. When the doctrine of *autrefois acquit* and double jeopardy based on the maxim *nemo debet bis vexari* come in the way of prosecuting the petitioner on a private complaint, this Court will not permit it to continue and put a responsible Government officer to the annoyance and torture, hardship of the hanging sword of a prosecution and resultant expenditure annoyance, waste of energy and losing of the golden days of his life and career.

4. This petition stands allowed and the prosecution which has been initiated against the petitioner on private complaint stands hereby quashed.