Monica Bedi Vs State of A.P.

Criminal Appeal No. 782 of 2007

Court: Supreme Court of India

Date of Decision: Nov. 9, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 136, 20, 20(2), 31#Criminal Procedure Code, 1973 (CrPC) â€" Section 300, 313, 428#Evidence Act, 1872 â€" Section 78(6)#General Clauses Act, 1897 â€" Section 26#Ins

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Hon'ble Judges: S. S. Nijjar, J; B. Sudershan Reddy, J

Bench: Division Bench

Final Decision: Partly Allowed

Judgement

B. Sudershan Reddy, J.
These criminal appeals which are to be disposed of by a common order are directed against the common

judgment of the High Court whereunder the High Court confirmed the conviction of the appellants u/s 120B, 419 and 420 IPC and other

provisions including u/s 13(1)(d) read with 13(2) of the Prevention of Corruption Act. We shall later notice in detail the conviction and sentence as

awarded by the courts below.

2. The Central Bureau of Investigation, SPE, Hyderabad, laid charge sheet against altogether 10 accused persons before the Special Judge for

C.B.I. cases, Hyderabad in which Abu Salem Abdul Qayoom Ansari @ Abu Salem(A-1), Sameera Jumani w/o Abu Salem(A-2), Monica Bedi

(A-3), Chamundi Abdul Hameed (A-6) and Faizan Ahmed Sultan (A-10) were shown as absconders. The learned Special Judge took the charge

sheet on file as C.C. No. 3 of 2005 and issued non-bailable warrants against A-1, A-2, A-3, A-6 and A-10. Case against A-1, A-2, A-6 and A-

10 came to be separated and case proceeded against A-3, A-4, A-5, A-7, A-8 and A-9.

3. The learned Special Judge upon consideration of the material made available framed the following charges against the accused persons:

i) for the offence u/s 120B IPC against A-3 to A-5, A-7 to A-9;

ii) for the offence u/s 419 IPC against A-3;

iii) for the offence u/s 419 read with 109 IPC against A-4, A-5 and A-7 to A-9;

iv) for the offence u/s 468 IPC against A-5;

v) for the offence u/s 420 IPC against A-8;

vi) for the offence u/s 468 IPC against A-7;

vii) for the offence u/s 13(1)(d) read with 13(2) of the Prevention of Corruption Act against A-4, A-5, A-7 and A-8;

viii) for the offence u/s 12 of the Passports Act, 1967 against A-3;

ix) for the offence u/s 420 IPC against A-3;

x) for the offence u/s 420 read with 109 IPC against A-4, A-5, A-7 to A-9.

4. The prosecution in order to substantiate the charges examined altogether 38 witnesses and proved 79 documents. Exhibit D-1 to Exhibit D-4

were marked on behalf of the defence.

5. The learned trial judge upon appreciation of the evidence and material available on record found Monika Bedi (A-3) guilty of the offences

punishable under Sections 120B, 419 and 420 IPC but acquitted of the charge u/s 12 of the Passports Act, 1967; Shaik Abdul Sattar (A-5) guilty

of the offences under Sections 120B, 419 read with 109, 420 read with 109, 468 IPC and Sections 13(1)(d) read with 13(2) of the Prevention of

Corruption Act; Mohammed Yunis (A-7) guilty of the offence u/s 468 IPC and D. Gokari Saheb (A-8) guilty of the offences u/s 120B, 420, 419

read with 109 IPC, 420 read with 109 IPC and under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act. A-3 was

accordingly sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for

one month for the offence u/s 120B IPC; rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- in default, to suffer simple

imprisonment for one month for the offence u/s 420 IPC; rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default, to suffer

simple imprisonment for one month and for the offence u/s 419 IPC; A-5 to suffer rigorous imprisonment for three years and to pay a fine of Rs.

500/-, in default, to suffer simple imprisonment for one month for the offence u/s 120B IPC; rigorous imprisonment for three years and to pay a

fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 419 read with 109 IPC; rigorous imprisonment for

three years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 420 read with 109 IPC;

rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 468

IPC, and rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence

under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act. A-7 to suffer rigorous imprisonment for three years and to pay a fine

of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 468 IPC; A-8 to suffer rigorous imprisonment for three

years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 120B IPC; rigorous imprisonment

for three years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 419 read with 109 IPC;

rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month for the offence u/s 420

read with 109 IPC; rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month

for the offence u/s 420 IPC and rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one

month for the offence under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act. All the substantive sentences were directed to

run concurrently.

6. On appeal the High Court of Andhra Pradesh upon re-appreciation of evidence available on record confirmed the conviction of A-3 for the

offences punishable under Sections 120B, 419 and 420 IPC but reduced the sentence from three years rigorous imprisonment to two years

rigorous imprisonment for the offence punishable u/s 120B IPC, from five years rigorous imprisonment to three years rigorous imprisonment for the

offence punishable u/s 420 IPC and from three years rigorous imprisonment to two years rigorous imprisonment for the offence punishable u/s 419

IPC while maintaining the fine imposed by the trial court. The High Court also confirmed the conviction of A-5 under each count but reduced the

quantum of imprisonment from three years to one year for offences under each count under Sections 120B, 419 read with 109, 420 read with

109, 468 IPC. However, his conviction and sentence imposed for the offences punishable u/s 13 (1)(d) read with 13 (2) of the Prevention of

Corruption Act was confirmed. That so far as A-7 is concerned the High Court while partly allowing the appeal modified the conviction from

Section 468 IPC to that of one u/s 465 IPC and accordingly sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.

500/-, in default, to suffer simple imprisonment for three months. That so far as A-8 is concerned the High Court confirmed his conviction under all

counts but reduced the quantum of imprisonment from three years to one year for offences under each count u/s 120B, 420, 419 read with 109,

420 read with 109, 468 IPC. However, his conviction and sentence imposed for the offences punishable u/s 13 (1)(d) read with 13 (2) of the

Prevention of Corruption Act was confirmed. Hence, these appeals.

Case of Prosecution:

7. In order to consider as to whether the High Court committed any error in convicting and sentencing the appellants as noted herein above, it may

be just and necessary to briefly notice the case of the prosecution. The allegation against Accused No. 3 (appellant in Criminal Appeal No.

782/2007) is that she obtained a second passport in the assumed name of Sana Malik Kamal from the Regional Passport Office, Secunderabad

by submitting false documents like residence certificate, educational certificate with the help of A-4 to A-9. She used the passport to travel Lisbon,

Portugal. The owner of M/s. Faizan Enterprises, Mumbai (A-10) is involved in the business of recruiting people for jobs in foreign countries. He

gave 10 passport size photographs of A-1 to A-3 and fake names and documents to A-9 to secure passports falsely showing them as residents of

Kurnool in the State of Andhra Pradesh. A-9 has relatives in Kurnool. He visited Kurnool in the month of March, 2001 and entrusted the work of

securing passports of A-1 to A-3, to A-6 an unauthorized passport agent. At the instance of A-6, A-7 Mohammed Yunis, Mandal Revenue

Inspector of Mandal Revenue Office, Kurnool issued a false residential certificates in the assumed names intended for the benefit of A-1 to A-3.

A-6 procured fake transfer certificates purported to have been issued by the Headmaster, Zila Parishad High Court, Peddapadu, Kurnool District

in the name of Ramil Kamil Malik and two fake memorandum of marks sheets in the names of Neha Asif Jafari and Sana Malik, purported to have

been issued by the Headmaster, Higher Elementary School, Kurnool, as a proof in support of date of birth. One Abdul Gaffar (PW-1) filled up

three passport applications of A-1 to A-3 at the instance of A-6 and they were accordingly submitted in the Regional Passport Office,

Secunderabad. The authorities accordingly sent the particulars mentioned in the forms to the office of Superintendent of Police, Kurnool which

were received in the office on 16.5.2001 vide exhibit P-28 covering letter. A-5 (appellant in Criminal Appeal No. 784/07) at the relevant time was

working as Writer-Head Constable in special branch. He submitted fake verification reports along with statements of six persons in support of

character and conduct of A-1 to A-3 by portraying them as if they were the neighbours of A-1 to A-3. On receipt of reports, A-4 dispatched

them to Regional Passport Office, Secunderabad. It is on the basis of these reports, passports were accordingly issued to A-1 to A-3 in their

assumed names and they were dispatched by speed post to their respective address at Kurnool as indicated in the passport applications. The

passports were received at the Head Post Office, Kurnool through speed post. On 23.8.2001 two speed post articles addressed to the assumed

names of A-2 and A-3 were entrusted to PW-11 Babu Miah, a postman of Beat 2, for delivery of the same to the addressees. A-8 (D. Gokari

Saheb appellant in criminal appeal No. 783/07) Postman, Head Post Office, Kurnool, approached PW-11 Babu Miah and collected the two

speed post articles by giving his acknowledgement on the delivery slip list falsely representing that he knew the addresses and he would personally

deliver the articles. On 27.8.2001 another speed post article containing passport in the assumed name of A-1 was entrusted to A-8 for delivery

who in turn delivered it to one Aslam Khan, Cashier of Hotel Elite, Kurnool where A-6 was also working. A-6 sent two covers to A-9 on

23.8.2001 and 27.8.2001 in courier service.

8. We shall notice further details only so far as the appellants before us are concerned. Exhibit P1 is the index card of Sana Malik Kamal. (

assumed name for Monika Bedi). PW-1 is the author of exhibit P1. PW-1 filled up exhibit P1 at the request of C.A. Hameed (A-6). PW-4 is the

Superintendent in the Regional Passport Office, Secunderabad. He speaks of issuance of the passports in pursuance of passport application in the

name of Sana Malik. PW-5 P. Krishna Mohan Reddy was the Mandal Revenue Officer, Kurnool Mandal who issued residence certificate dated

9.4.2001 in the name of Sana Malik Kamal based on false verification reports submitted by A-7 Mohammad Yunis. That as per exhibit P9

residence certificate, Sana Malik Kamal (assumed name of Monica Bedi) is stated to be residing at Babu Gounda Street, Kurnool. PW-6 at the

relevant time was working as Deputy Educational Officer, Nandyal, Kurnool District who stated that there was no school by name of Hanuman

Higher Elementary School, Kurnool wherein Sana Malik Kamal was alleged to have studied. PW-7 M. Lakshminarayana at the relevant time was

the Junior Assistant in the District Police Office, Kurnool and he speaks of receiving applications for verification of contents therein. According to

him, A-4 (G. Srinivas) who attended to passport inquiries, received the passport application of Sana Malik Kamal. After receipt of exhibit P15

enquiry report along with exhibits P16 and P17 statements submitted by A-5 S.A. Sattar, A-4 prepared the relevant report and forwarded the

same to the Regional Passport Office, Secunderabad. Exhibit P18 is the letter addressed by the Superintendent of Police to the Regional Passport

Office, Secunderabad reporting no objection for the grant of passport to the applicant. Rest of evidence relates to handing over of speed post

articles relating to Babu Miah as per the instructions of the Head Post Master, Kurnool from whom A-8 Gokari Saheb took the speed post

articles from him for being delivered to the addressees. PW-13 is the owner of the residential apartment wherein Monica Bedi (A-3) is alleged to

have resided as tenant during the years 1995-1997. Rest of the details are not required to be noticed.

9. The learned Special judge for C.B.I. on a careful and meticulous appreciation of the evidence and material made available on record convicted

the appellants as noted herein above. The High Court on re-appreciation of the evidence confirmed the conviction but modified the sentence as

noted herein above.

Submissions:

10. Now we shall proceed to consider the submissions made by the learned senior counsel Shri K.T.S. Tulsi appearing on behalf of the appellant -

Monica Bedi (A-3). The learned senior counsel submitted that the appellant has been tried and convicted by a competent court of jurisdiction at

Lisbon for being in possession of fake passport and, therefore, her trial and conviction for possessing the same passport before the C.B.I. Court at

Hyderabad amounts to double jeopardy and in violation of Article 20(2) of the Constitution of India and as well u/s 300 Cr.P.C. The learned

senior counsel further submitted that there is no evidence of appellant''s involvement in any of offence whatsoever. His further submission was that

the appellant has been denied the benefit of Section 428 of the Code of Criminal Procedure, in as much as she has neither been given the benefit of

the period of sentence undergone by her in Portugal nor has she been given the benefit of the complete period pursuant to sentence in Portugal i.e.

after 18th September, 2004, which she is legally entitled to.

11. We have also heard the learned Counsel appearing on behalf of Shaik Abdul Sattar (A-5), Mohd. Yunis (A-7) and D. Gokari Saheb (A-8).

12. Shri P.P. Malhotra, learned Additional Solicitor General and Shri I. Venkata Narayana, learned senior counsel supported the impugned

judgment. Both of them have submitted that Article 20(2) has no application whatsoever to the facts on hand.

Double Jeopardy

13. Now we shall take up the first contention of Shri Tulsi as to whether the appellant''s guaranteed fundamental right under Article 20(2) has been

infringed? Article 20(2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once.

14. Article 20(2) embodies a protection against a second trial and conviction for the same offence. The fundamental right guaranteed is the

manifestation of a long struggle by the mankind for human rights. A similar guarantee is to be found in almost all civilized societies governed by rule

of law. The well known maxim ''nemo delset bis vexari pro eadem causa'' embodies the well established common law rule that no one should be

put on peril twice for the same offence. BLACKSTONE referred to this universal maxim of the common law of England that no man is to be

brought into jeopardy of his life more than once for the same offence.

15. The fundamental right guaranteed under Article 20(2) has its roots in common law maxim nemo debet bis vexari -a man shall not be brought

into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence,

his former conviction, or as it is technically expressed, take the plea of autrefois convict. This in essence is the common law principle. The

corresponding provision in the American Constitution is enshrined in that part of the Fifth Amendment which declares that no person shall be

subject for the same offence to be twice put in jeopardy of life or limb. The principle has been recognized in the existing law in India and is enacted

in Section 26 of the General Clauses Act, 1897 and Section 300 of the Criminal Procedure Code, 1973. This was the inspiration and background

for incorporating sub-clause (2) into Article 20 of the Constitution. But the ambit and content of the guaranteed fundamental right are much

narrower than those of the common law in England or the doctrine of "double jeopardy" in the American Constitution.

16. In Maqbool Hussain vs. The State of Bombay (1953) SCR 730 , this Court explained the scope of the right guaranteed under Article 20(2)

and as to what is incorporated in it as ""within its scope the plea of autrefois convict as known to the British jurisprudence or the plea of double

jeopardy as it 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."" That in order for the

protection of Article 20(2) to be invoked by a person there must have been a prosecution and as well as punishment in respect of the same offence

before a court of law of competent jurisdiction or a tribunal, required by law to decide the matters in controversy judicially on evidence. That the

proceedings contemplated therein are in 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 the proceedings of a criminal nature in accordance with the procedure prescribed in the statute which

creates the offence and regulates the procedure. This principle is reiterated in S.A. Venkataraman vs. The Union of India & Anr. (1954) SCR

1150 wherein this Court observed that the words ""prosecuted or punished"" are not to be taken distributively so as to mean prosecuted or

punished. Both the factors must co-exist in order that the operation of the clause may be attracted.

17. What is the meaning of expression used in Article 20(2) ""for the same offence""? What is prohibited under Article 20(2) is, the second

prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being

applicable. In Leo Roy Frey vs. Superintendent District Jail, Amritsar (1958) SCR 822 , petitioners therein were found guilty u/s 167(8) of the Sea

Customs Act and the goods recovered from their possession were confiscated and heavy personal penalties imposed on them by the authority.

Complaints thereafter were lodged by the authorities before the Additional District Magistrate u/s 120B of the Indian Penal Code read with

provisions of the Foreign Exchange Regulations Act, 1947 and the Sea Customs Act. The petitioners approached the Supreme Court for quashing

of the proceedings pending against them in the court of Magistrate inter alia contending that in view of the provisions of Article 20(2) of the

Constitution they could not be prosecuted and punished twice over for the same offence and the proceedings pending before the Magistrate

violated the protection afforded by Article 20(2) of the Constitution. This Court rejected the contention and held that criminal conspiracy is an

offence u/s 120B of the Indian Penal Code but not so under the Sea Customs Act, and the petitioners were not and could not be charged with it

before the Collector of Customs. It is an offence separate from the crime which it may have for its object and is complete even before the crime is

attempted or completed, and even when attempted or completed; it forms no ingredients of such crime. They are, therefore, quite separate

offences. The Court relied on the view expressed by the United States, Supreme Court in United States v. Rabinowith (1915) 238 US 78. In The

State of Bombay vs. S.L. Apte (1961) 3 SCR 107, this Court laid down the law stating that if the offences were distinct there is no question of the

rule as to double jeopardy as embodied in Article 20(2) of the Constitution being applicable. It was the case where the accused were sought to be

punished for the offence u/s 105, Insurance Act, after their trial and conviction for the offence u/s 409, Penal Code, this Court held that they were

not sought to be punished for the same offence twice but for two distinct offences constituted or made up of different ingredients and therefore the

bar of Article 20(2) of the Constitution or Section 26 of the General Clause Act, 1897, was not applicable. This Court made it clear that the

emphasis is not on the facts ""alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is

charged."" The ratio of the case is apparent from the following:

To operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence". The crucial requirement

therefore for attracting the Article is that the offences are the same, i.e., they should be identical. If, however, the two offences are distinct, then

notwithstanding that the allegations of fact in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is,

therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their

identity is made out.

That the test to ascertain is whether two offences are the same and not the identity of the allegations but the identity of the ingredients of the

offences.

It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article

20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the

ingredients of both the offences are totally different and they did not form the same offence. In Bhagwan Swarup v. State of Maharashtra AIR

1965 SC 682, the accused was convicted with regard to a conspiracy to commit criminal breach of trust in respect of the funds of one Jupiter

company. There was another prosecution against the accused for the conspiracy to lift the funds of another company, though its object was to

cover the fraud committed in respect of the Jupiter company. This Court held that the defalcations made in the Jupiter may afford a motive for new

conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, ""some of the facts proved to establish the

Jupitor conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in itself would be

sufficient to make the two conspiracies the one and the same offence. The ingredients of both the offences are totally different and do not form the

same offence within the meaning of Article 20(2) of the Constitution and, therefore, that Article has no relevance.

18. In State of Rajasthan vs. Hat Singh & Ors. (2003) 2 SCC 152 , this Court held that the Rajasthan Sati (Prevention) Act, 1987 provided for

different offences and punishment for glorification of sati and for violation of prohibitory order against glorification of sati. They are not the same

offences. While Section 5 of the said Act makes the commission of an act an offence and punishes the same; the provisions of Section 6 are

preventive in nature and make provision for punishing contravention of prohibitory order so as to make the prevention effective. The two offences

have different ingredients. This Court held:

It is, therefore, concluded that in a given case, same set of facts may give rise to an offence punishable u/s 5 and Section 6(3) both. There is

nothing unconstitutional or illegal about it.

19. This appears to be the consistent view of the Supreme Court of the United States. In T.W. Morgan v. Alfonso J. Devine @ Ollie Devine

(1915) 237 U.S. 1153, the U.S. Supreme Court observed that the court has settled that the test of identity of offences is whether the same

evidence is required to sustain them; if not, then the fact that both charges relate to and grow out of one transaction does not make a single offence

where two are defined by the statutes.

20. In United States v. Vito Lanza (1922) 260 U.S. 314, it is held that an act with respect to intoxicating liquor which is denounced as a crime by

both the National and State sovereignties may be punished under the law of each sovereignty without infringing the provision of the 5th Amendment

to the Federal Constitution against double jeopardy for the same offence. It is observed:

An act denounced as a crime by both National and State sovereignties is an offence against the peace and dignity of both, and may be punished by

each. ....We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject matter within the same

territory. Each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts

prohibited by the Amendment. Each government, in determining what shall be an offence against its peace and dignity, is exercising its own

sovereignty, not that of the other.

21. Shri K.T.S. Tulsi, learned senior counsel in the present case before us mainly contended that the facts based on which the appellant (Monica

Bedi) was prosecuted and punished by a competent court of jurisdiction at Lisbon and the facts based on which prosecution has been initiated

resulting in conviction are the same and, therefore, the conviction of the appellant is in the teeth of Article 20(2) of the Constitution and Section 300

of the Code of Criminal Procedure. The submission is not well founded for the simple reason that the same set off facts can constitute offences

under two different laws. An act or an omission can amount to and constitute an offence under IPC and at the same time constitute an offence

under any other law. It needs no restatement that the bar to the punishment to the offender twice over for the same offence would arise only where

the ingredients of both the offences are the same.

22. The question that falls for our consideration is, whether the appellant can be said to have satisfied all the conditions that are necessary to enable

her to claim the protection of Article 20(2) of the Constitution. The charges upon which the appellant has been convicted now, for the charges

under the Indian Penal Code, we will presume for our present purpose that the allegations upon which these charges are based, proved, resulting in

conviction and punishment of the appellant are substantially the same which formed the subject matter of prosecution and conviction under the

penal provisions of Portugal law. But we have no doubt to hold that the punishment of the appellant is not for the same offence.

23. Be that as it may, there is no factual foundation laid as such by the appellant taking this plea before the trial court. Nothing is suggested to the

Investigating Officer or to any of the witnesses that she is sought to be prosecuted and punished for the same offence for which she has been

charged and convicted by a competent court of jurisdiction at Lisbon. She did not even make any such statement in her examination u/s 313

Cr.P.C. It is true that the fundamental right guaranteed under Article 20(2) of the Constitution is in the nature of an injunction against the State

prohibiting it to prosecute and punish any person for the same offence more than ones but the initial burden is upon the accused to take the

necessary plea and establish the same.

24. In Halsbury''s Laws of England, 2nd Edition, Volume-IX, the law is succinctly summarized on this aspect of the matter as:

If the defendant pleads autrefois convict or autrefois acquit, the prosecution replies or demurs. If the prosecution replies, which is the usual course,

a jury is sworn to try the issue(x). The onus of proving the plea is on the defendant (a). He may prove it by producing a certified copy of the record

or proceedings of the alleged previous conviction or acquittal (b), and showing by such copy or by other evidence, if necessary, that he has been

convicted or acquitted of the same, or practically the same, offence as that on which he has been arraigned (c), or that he might on his former trial

have been convicted of the offence on which he has been arraigned (d). The question for the jury on the issue is whether the defendant has

previously been in jeopardy in respect of the charge on which he is arraigned (e), for the rule of law is that a person must not be put in peril twice

for the same offence. The test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts

constituting the one are sufficient to justify a conviction of the other, not that the facts relied on by the Crown are the same in the two trials (f).

25. However, having regard to the nature of the guaranteed right we have examined the judgment passed by a Constitutional Court, Lisbon (a

typed copy of the same made available by the learned senior counsel for the appellant - Monica Bedi which we believe to be a true copy) does not

support the plea of the appellant. The Constitutional Court while considering the issue of extradition of the appellant and the nature of the trial

undergone by her in Portugal observed:

[*]

It is a fact that the appellant has been trialled in Portugal for committing an offence provided and punishable under Article 256 of the penal code.

However, should any facts be found in that process and in that trial that would release her of any guilt regarding offences based upon which she is

wanted by the requesting state, then it is not acceptable by means of a restrictive and formal interpretation of a principle which is deemed to

assume wider configurations to authorize her extradition to trial her for facts strongly linked and which may even coincide with those same offences.

In other words, it is not acceptable and it cannot be admitted that the appellant has been trialled and convicted in Portugal for the commission of

the offence of use of forged documents, namely in a decision which revealed in the analysis of the facts regarding the attainment of such documents

(allegedly subsumed by India in the offences of corruption and association) that the appellant was not involved in those fact. Furthermore, it cannot

be admitted that her extradition is authorized in order to trial her for committing such act.

Extradition process which brings in contact a variety of legal systems and different forms of legal classification and of behaviour punishments, but

which does not allow going deeper in those laws, as well as in the evidence based upon which the requests for extradition were made requires a

wider interoperation of the principle of ne bis idem.

It is further observed:

The Indian Union claims extradition of the appellants to trial her for the commission of an offence of criminal conspiracy. We consider that this

offence has no correspondence in our legal and penal system and that it is not the object of an autonomous incrimination. As a matter of fact, it

constitutes a from that could be classified as joint authorship;

... As a matter of fact, we consider that such arguments have no legal basis. Because the requesting state wants at any cost the appellants

extradition, it is clear that it is justifying its request by stating that criminal conspiracy as opposed to what the person to be extradited claims

constitutes an autonomous incrimination.

However, careful analysis of the original version of Article 120 B of the Indian Penal Code (included in the records, but attached herewith as

documents No. 1 and which is incorrectly translated into Portuguese) allows one to conclude, with safety, that the type of conspiracy described

therein as being the conduct of someone who commits an offence associated with someone else (complicit), is not coincident with the incorporation

of a stable organization, hierarchically defined and whose object is the commission of offences.

...Given that our judiciary authorities are convinced that the question under consideration is the charge against the appellant regarding offence

subsumable under an offences of criminal association which does not correspond to the Indian charges.

...it is not up to the constitutional court to interpret and set out the meaning of any provisions contained in the Indian Penal Code and establish on a

final basis the scope of criminal conspiracy, given that this would transcend the object of constitutional rules control.

Taking into consideration the reasons stated in the appealed decision, one cannot accept the argument that the appealed courts interpretation of

Article 31, No. 2 of law 144/99 of 31st August was in the sense that the judge is not obliged to substantiate and explain (in the decision to

extradite someone claimed for the commission of offences which do no fall within the range of offences provided under our legal system) the

reasons why the offence should be appealed decision, the appellant could not have raised this unconstitutionality based on the different of legal

qualification of the offences that the was charged with by both legal systems in concurrence. As a matter of fact, the question under consideration is

the charge with different offences, one should note that, besides the fact that this statement does not faithfully reproduce what is said in the

summary decision, the two subsequent paragraphs demonstrate that the real problem does not involve the facts but rather the different legal

classification thereof.

[* There are number of typographical errors and mistakes in construction of sentences and we did not correct the same and extracted as it is from

the copy supplied.]

26. In the light of these findings and conclusions reached by the Constitutional Court at Lisbon and on a careful consideration of the entire matter

and the facts placed before us, we are of the considered opinion that the appellant"s plea of double jeopardy is wholly untenable and

unsustainable. This point is accordingly answered against the appellant.

Merits:

27. Now we shall proceed to consider as to whether the courts below committed any error in convicting and sentencing the appellant for the

charged offences? Is there no evidence against the appellant as contended by the learned senior counsel? It is fairly settled that this Court in

exercise of its jurisdiction under Article 136 of the Constitution of India normally does not interfere with the concurrent findings of facts arrived at

by the courts below on proper appreciation of evidence. It is not the function of this Court to re-appreciate the evidence and substitute the findings

for that of the courts below unless it is clearly established that the findings and the conclusions so arrived at by the courts below are perverse and

based on no evidence.

28. The simple case of the prosecution is that all the appellants entered into a conspiracy in order to secure a passport in the assumed name of

Sana Malik Kamal, for the benefit of Monica Bedi so as to enable her to utilize the same to leave the country and travel abroad. There is no

controversy whatsoever that Monica Bedi travelled abroad on the strength of the passport secured by her in the assumed name. She entered

Portugal with the aid of passport standing in the name of Sana Malik Kamal for which she has to face the prosecution and suffer conviction and

sentence in Portugal.

29. It is evident from the record that the involvement of the appellants is at two stages. Stage one is where Monica Bedi (A-3) and Mohd. Yunis

(A-7) are involved in the pre-passport application at the threshold and even before the preparation of application seeking the passport in the

assumed name. Stage two is the involvement of Monica Bedi (A-3), Shaik Abdul Sattar (A-5) and D. Gokari Saheb (A-8) after the submission of

passport application before the authorities. Exhibit P2 is the passport application submitted in the assumed name of Sana Malik Kamal which

contains the photograph of Monica Bedi (A-3). Essential requirements for obtaining the passport are: (1) passport application; (2) proof of

residence and (3) date of birth certificate as spoken to by P Ws. 2, 3, 21 and 31. How these documents are obtained for the benefit of Monica

Bedi has been clearly brought on record through a number of witnesses whose evidence remained unimpeached. It is Mohd. Yunis (A-7), the

Mandal Revenue Inspector who verified the residence particulars of Sana Malik Kamal on the instructions of PW-5, Mandal Revenue Officer,

Kurnool and submitted a false verification report based on which exhibit P9 residence certificate was issued by PW-5. PW-17 on requisition from

C.B.I officials once again got verified and issued exhibit P30 certificate to the effect that no person by name Sana Malik Kamal resides in the

house as earlier submitted by Mohd. Yunis (A-7). PW-37 is the Investigating Officer who in his evidence stated that he verified the particulars of

occupants of the said house in the presence of PW-27 (D.V. Ratnamaiah), Assistant Superintendent of Post Offices, Kurnool and found no such

person named Sana Malik Kamal ever resided therein. It is based on this evidence the trial court and appellate court came to the right conclusion

that the prosecution established its case that it is Mohd. Yunis (A-7) who gave false verification based on which exhibit P9 residence certificate

was issued by PW-5 in the name of Sana Malik Kamal. The trial court convicted Mohd. Yunis (A-7) for the offence u/s 468 IPC which reads as

under:

468. Forgery for purpose of cheating. - Whoever commits forgery, intending that the document or electronic record forged shall be used for the

purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable

to fine.

Section 463 defines forgery, which reads as under:

463. Forgery.- Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause

damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any

express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

30. The High Court came to the conclusion that in submitting the false verification report in respect of residence of Sana Malik Kamal he may not

have been aware and knew that the certificate so obtained would be used for the purpose of securing the passport in the assumed name of Sana

Malik Kamal. At any rate there is no evidence on that aspect of the matter. The High Court also came to the conclusion that by the time Mohd.

Yunis (A-7) submitted a false verification there is nothing on record that he was hand in glove with the other accused for the purpose of cheating.

Be it noted that the High Court confirmed the acquittal of A-7 of the charge u/s 120B IPC. The High Court, accordingly, found that the proper

offence made against him would be one for making forged document simplicitor punishable u/s 465 IPC. In our considered opinion, the High Court

was not justified in convicting Mohd. Yunis (A-7) at all for it had found no case against the appellant made out u/s 120B IPC and further found

that there is no evidence to assume that he was hand in glove with the other accused for the purpose of cheating. That there is no evidence that A-

7 prepared false document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any

person to part with property, or to enter into any express or implied contract, or with intent to commit fraud. The ingredients of Section 463 are

not satisfied. In such an event the conviction of the appellant u/s 465 IPC is unsustainable.

31. That so far as D. Gokari Saheb (A-8) is concerned there is a clear evidence which has been properly appreciated by the courts below that he

who took the article (envelop contained the passport) addressed to Sana Malik Kamal from PW-11 representing that he knew the addressee and

deliver the same. The said article was actually entrusted to PW-11 for its delivery but D. Gokari Saheb (A-8) took the same from PW-11 for

delivery to Sana Malik Kamal - assumed name of Monica Bedi (A-3). The courts below found that D. Gokari Saheb (A-8) was aware of the

contents of the article. It is under those circumstances the courts below came to the right conclusion that evidence available on record clearly

establish that he participated in the conspiracy in securing the passport for Monica Bedi in the assumed name of Sana Malik Kamal. Thus the

conviction of D. Gokari Saheb (A-8) for the charged offences is accordingly upheld. We do not find any reason whatsoever to interfere with the

view taken by the High Court. However, the sentence of one year rigorous imprisonment under each count awarded while maintaining the fine

imposed by the trial court is reduced to that of 6 months rigorous imprisonment under each count while maintaining the fine amount.

32. Shaik Abdul Sattar (A-5) is the Head Constable who submitted exhibit P15 report. PW-7, PW-8 and PW-14 are the material witnesses

examined by the prosecution to prove the accusations leveled against A-5. PW-7 at the relevant time was Junior Assistant in the District Police

Office, Kurnool who speaks about entrustment of the verification of the passport application in respect of Sana Malik Kamal to A-5. He also

speaks about A-5 submitting Exhibit P15 inquiry report together with statements of persons purported to have been recorded by him in exhibit

P16 and P17. There is absolutely nothing on record to disbelieve the evidence of PW-7 who stated in his evidence that A-5 submitted exhibit P15

report knowing it to be a false one apart from certifying that Sana Malik Kamal was residing at that particular house in Kurnool and was not

involved in any civil and criminal cases and there was nothing adverse against her. PW-8 was working as Inspector of Police, District Special

Branch, Kurnool who prepared exhibit P18 letter on the basis of exhibit P15 inquiry report submitted by A-5. PW-14 is the Sub-Inspector,

District Special Branch, Kurnool who testified that A-5 submitted exhibit P15 report and it bears signature of A-5. The courts below held that the

evidence of PW-7, PW-8 and PW-14 is cogent and consistent which in clear and categorical terms prove the fact that A-5 is the person who

verified the passport application particulars of Sana Malik Kamal and submitted exhibit P15 inquiry report along with exhibit P16 and exhibit P17

enclosures. There cannot be any doubt whatsoever that A-5 submitted a false report in order to enable Monica Bedi to secure a passport for

herself in the assumed name of Sana Malik Kamal. His conviction for the charged offences is accordingly upheld. The High Court however,

reduced the sentence awarded by the trial court to one year rigorous imprisonment under each count while maintaining the fine imposed by the trial

court. The sentence awarded u/s 13(1)(d) read with 13(2) of Prevention of Corruption Act has been confirmed. Having regard to the facts and

circumstances of the present case, we however, reduce the sentence to that of six months rigorous imprisonment under each count while

maintaining the fine imposed by the trial court and the sentence to suffer imprisonment, in default, of payment of fine. Sentences are directed to run

concurrently.

Case of Monica Bedi - Appellant in Criminal Appeal No. 782/2007:

33. So far as the appellant - Monica Bedi is concerned she is involved in the conspiracy as proved at both stages i.e. pre-passport application

stage and post-passport application stage. The conspiracy itself has been hatched only with a view to secure a passport for Monica Bedi in the

assumed name of Sana Malik Kamal. We do not find any merit in the submission of Shri Tulsi, learned senior counsel that there is no evidence

whatsoever against Monica Bedi to prove her involvement for the offence punishable under Sections 120B, 419 and 420 IPC. The sequence of

events as unfolded by the evidence, which we do not want to recapitulate once again as we have noticed the same in detail in the preceding

paragraphs, clearly prove the charges levelled against Monica Bedi. It is for her benefit that the entire conspiracy has been hatched involving more

than one individual in order to secure a passport for her benefit enabling her to travel abroad in the assumed name of Sana Malik Kamal. There is

no material based on which this Court is to differ with the findings and conclusions concurrently arrived at by the courts below.

Shri Tulsi, however, reiterated the submission which he made before the High Court that exhibit P50 is a Photostat copy of the passport in the

name of Sana Malik Kamal and the same is inadmissible document as it is not authenticated by legal keeper as provided u/s 78(6) of the Indian

Evidence Act. The submission was that based on such inadmissible document no prosecution could be launched and once it is to be held that the

said document is not admissible the whole case of the prosecution collapses like a pack of cards. The High Court after elaborate consideration of

the matter came to the right conclusion that Section 78(6) of the Evidence Act, 1872 deals with public document of any other class in a foreign

country. In the present case, the original of exhibit P50 is the passport issued by the competent authorities in this country and, therefore, Section

78(6) has no application whatsoever to the facts of this case. The issuance of original of exhibit P50 passport is clearly proved. It is based on that

passport Monica Bedi travelled abroad and entered Portugal for which she has to face a prosecution and suffer conviction and sentence. The

prosecution cannot be held to be vitiated. We accordingly reject the contention and uphold the conviction of the appellant for the offence

punishable under Sections 120B, 419 and 420 IPC. The High Court, however, reduced the sentence of imprisonment imposed on the appellant -

Monica Bedi (A-3) as noticed in the preceding paragraphs. The High Court also held that she is entitled for set off of the periods of detention

suffered by her in Lisbon i.e. from 18.9.2004 to 4.6.2005 and 3.11.2005 to 10.11.2005.

However, having regard to the facts and circumstances of the case and the fact that she had undergone more than 2Ã¯Â¿Â½ years of sentence, we

consider it appropriate to reduce the sentence to that of already undergone by her while maintaining fine amount imposed by the courts below.

34. In the view we have taken it is not necessary to go into the question as to the interpretation of Section 428 Cr.P.C and her entitlement to set

off against the sentence imposed on her.

Conclusion:

35. Criminal Appeal No. 782 of 2007 (Monica Bedi - A-3)

For all the aforesaid reasons, we confirm the conviction of Monica Bedi (A-3) under Sections 120B, 419 and 420 IPC. The sentence awarded

under each count directed to run concurrently is reduced to that of the period already undergone by her while maintaining the sentence of fine

awarded by the courts below. The bail bonds shall stand cancelled.

The appeal is, accordingly, partly allowed.

Criminal Appeal No. 784 of 2007 (Shaik Abdul Sattar - A-5)

The conviction of Shaik Abdul Sattar (A-5) under Sections 120B, 419 read with 109, 420 read with 109 and 468 IPC and as well as u/s 13(1)

(d) read with 13(2) of the Prevention of Corruption Act is, accordingly, upheld. However, the sentence awarded under each count is reduced to

that of six months rigorous imprisonment while maintaining the fine imposed by the courts below. Sentences are directed to run concurrently. He

shall surrender before the trial court to serve the remaining sentence, if any.

The appeal is, accordingly, partly allowed.

Criminal Appeal No. 1357 of 2007 (Mohd. Yunis - A- 7)

Mohd. Yunis (A-7) is acquitted for the offence u/s 465 IPC and sentence awarded is set aside. The bail bonds shall stand cancelled.

The appeal is, accordingly, allowed.

Criminal Appeal No. 783 of 2007 (D. Gokari Saheb -A-8)

The conviction of D. Gokari Saheb (A-8) under Sections 120B, 419 read with 109, 420 read with 109 and 468 IPC and as well as u/s 13(1)(d)

read with 13(2) of the Prevention of Corruption Act is, accordingly, upheld. However, the sentence awarded under each count is reduced to that

of six months rigorous imprisonment while maintaining the fine imposed by the courts below. Sentences are directed to run concurrently. He shall

surrender before the trial court to serve the remaining sentence, if any.

The appeal is, accordingly, partly allowed.