HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

BEFORE JUSTICE S.K.AWASTHI

Criminal Revision No. 1015/2015

Omprakash Gupta
Versus
State of MP and another

Shri S.K.Tiwari, Advocate for the applicant.
Shri S.S.Dhakad, Additional Public Prosecutor for the respondent No.1/State.
Shri Mukesh Sharma, Advocate for the respondent No.2/complainant.

Criminal Revision No. 1052/2015

Smt. Indu Gupta
Versus
State of MP and another

Shri Omprakash Singhal, Advocate for the applicant.
Shri S.S.Dhakad, Additional Public Prosecutor for the respondent No.1/State.
Shri Mukesh Sharma, Advocate for the respondent No.2/complainant.

Whether approved for reporting : Yes

Law laid down	Relevant paras
The law relating to Double Jeopardy is well settled. The test *to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in*	**Para 7**

the previous charge necessarily involves an acquittal of the latter charge.	
With regard to applicability of Section 42 (c) of the Indian Partnership Act, 1932, suffice it to observe that the said provision does not confer any immunity from criminal prosecution where for legal purposes; the firm is dissolved, but for deriving any unlawful benefit, the firm is shown to be in existence.	**Para 9**

O R D E R
(24.10.2017)

This Order shall govern the outcome of Criminal Revision 1015/2015 and Criminal Revision No. 1052/2015, as both the matters are arising out of common facts and impugned Order.

2. For the sake of convenience, the facts in **Criminal Revision No. 1015/2015** are discussed herein below.

This Revision application preferred under Section 397 read with Section 401 of Cr.P.C. takes exception to the order dated 22.09.2015 passed by VIII Additional Sessions Judge, Gwalior, whereby the charges under Sections 420, 467, 468, 471 and Section 120B of IPC have been framed against the present applicant. Vide the same order, the application preferred by the present applicant under Section 227 of Cr.P.C has also been rejected.

3. The facts in brief are that the complainant submitted a written grievance to the Police Station Kotwali, District Gwalior, on 27.05.2011, that the present applicant who is one of the partners in the firm, Gangaram Bhagwandas, along with Yogesh Gupta, who

is the another partner, have represented that the said firm is in existence and that, all the partners have consented for borrowing money from the complainant. However, it was later on discovered by the complainant that one of the partners to the said firm, Gomti Bai, expired on 06.09.2004, even though this fact was never revealed by the remaining partners of the firm although the credit facility from the respondent No. 2 was secured by posturing that the said firm legally exists.

4. The learned counsel for the applicant submitted that the Trial Court committed error in framing of charges against the present applicant because the present applicant had no involvement in the business transaction of the said firm and the same were solely carried out by Yogesh Gupta. Apart from it, it was submitted that there is no iota of evidence available against the present applicant that may even remotely hint towards any involvement. While advancing these arguments, the learned counsel for the applicant has also placed reliance on provisions of the Indian Partnership Act, 1932 (in short, 'Act of 1932); more particularly, Section 42 (c) of the Act of 1932, to submit that statutorily a partnership firm gets dissolved upon death of a partner and therefore, upon death of Gomti Bai on 06.09.2004, the partnership firm stood dissolved and no penalty can be fastened against the present applicant as a partner of the said firm. It was also argued that the present complainant had also filed a complaint under Section 138 of the Negotiable Instruments Act, 1882 (for short, the 'Act of 1882'), in which the order of acquittal was passed on 23.05.2011. The complainant has not preferred any appeal against the said order of acquittal and therefore, it would be a

travesty of justice if on the same facts, a second bout of litigation is permitted to be initiated against the present applicant.

5. *Per Contra,* learned counsel for the respondents submitted that there is sufficient material available against the present applicant and no one can be permitted to take advantage of their own wrongs. The applicant having complete knowledge about the borrowings made by the said firm cannot simply shirk away from his responsibility by citing a bare provision of the statute. Therefore, the application filed by the applicant deserves to be rejected.

6. Having considered the rival contentions of the parties and having carefully examined the record, this Court is of the considered view that the instant revision application is misconceived.

7. It is borne out from the record that the complainant had filed a complaint under Section 138 of the Act of 1882; however, it is pertinent to point out that the said prosecution was lodged against Yogesh Gupta and the same does not condone the misdeeds of the present applicant which are *prima facie* visible. In any case, the law relating to Double Jeopardy is well settled and it would be relevant to reproduce the observations of the Hon'ble Apex Court in the case of ***Sangeetaben Mahendrabhai Patel v. State of Gujarat***, **(2012) 7 SCC 621**, wherein it was held as under: -

> *"33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 CrPC or Section 71 IPC or Section 26 of the General Clauses Act, the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the*

> *two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge."*

8. It is clear from the above that the contention regarding decision in earlier trial with respect to offence punishable under Section 138 of the Act of 1882, is inconsequential to the facts of the present case.

9. Now, adverting to the submission of applicability of Section 42 (c) of the Act of 1932, suffice it to observe that the said provision does not confer any immunity from criminal prosecution where for legal purposes; the firm is dissolved, but for deriving any unlawful benefit, the firm is shown to be in existence. In any case, the prosecution is not proceeding on the path that a partner is vicariously liable for the deeds of the partnership firm whereas the prosecution has discussed about the individual conduct of each Accused Person for filing of the charge sheet. Thus, on the strength of Section 42 (c) of the Act of 1932, no indulgence can be shown by this Court.

10. The contention of the learned counsel for the applicant is that there is no iota of evidence available against the present applicant. It is observed that marshalling of evidence is beyond the scope of revisional jurisdiction of this Court, which is inherently limited to the enquiry into material available against the accused persons to see that the ingredients of the offences charged against them are made out or not. In order to further fortify this observation, the judgment of the Hon'ble Supreme Court in the case of ***Chitresh Kumar***

***v. State*, (2009) 16 SCC 605**, is pertinent, the relevant portion of which is reproduced hereinbelow: -

> *"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] .)*
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> *26. In Som Nath Thapa [(1996) 4 SCC 659 : 1996 SCC (Cri) 820] a three-Judge Bench of this Court explained the meaning of the word "presume". Referring to dictionary meanings of the said word, the Court observed thus: (SCC p. 671, para 32)*
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> > *"32. ... if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have [Ed.: The words "might have" were emphasised in the original.] committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has [Ed.: Emphasis in original.] committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.*
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> > *(emphasis supplied)"*

11. Taking this view of the matter, both the revision applications (Criminal Revisions No.1015/2015 and 1052/2015) are hereby dismissed.

(S.K.Awasthi)
Judge.

(yogesh)