

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 9th OF DECEMBER, 2025

MISC. CRIMINAL CASE No. 22973 of 2017

VAMAN NARAYAN GHIYA

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Mr. S. Nagamuthu - Senior Advocate along with Mr. Pallav Tripathi and Mr. Harshit Sharma - Advocates for petitioner. (Heard through video conferencing)

Mr. Saket Udeniya - Govt. Advocate for respondent/State.

ORDER

This petition under Section 482 of Cr.P.C. has been filed against the order dated 02.11.2017, passed by Additional Sessions Judge, No. 2, Karera, District Shivpuri, in Criminal Revision No. 500097 of 2016. This order affirmed the trial Court's order in Criminal Case No. 272 of 2007, passed by the Judicial Magistrate First Class, Karera, District Shivpuri, which had rejected the petitioner's application dated 13.01.2015 filed under Section 300 Cr.P.C. read with Article 20(2) of the Constitution of India.

2. The brief facts of the case are that, complainant Mani Ram Rawat lodged an F.I.R. on April 13, 2001, at P.S. Jigna, which is now P.S. Karera, District Shivpuri. The report stated that about a year back, the complainant had found a statue of Shiv Parwati in his agricultural field. The said statue was consecrated in the temple, and the complainant used to worship there. In the intervening night of April 12 and 13, 2001, the statue was stolen. A report was lodged by the complainant, which led to the registration of formal F.I.R. No. 39/2001 for offences punishable under Section 379 I.P.C. The complainant had suspicion against one Bharat Baba for the alleged theft. As the investigating agency failed to find any trail, the investigation of the impugned crime went into a limbo.

3. On the other hand, the investigation was resumed upon receipt of information that the stolen statue had been recovered by the Rajasthan Police during the investigation of F.I.R. No. 146/2003, registered at P.S. Vidhyadhar Nagar, Jaipur (Rajasthan). The accused petitioner, who had been arrested by the Vidhyadhar Nagar Police in F.I.R. No. 146/2003, as well as other accused persons, were arrested in the present case after interrogation. The petitioner was arrested on October 1, 2003. During the investigation, it is alleged that the petitioner purportedly gave an information under Section 27 of the Evidence Act regarding the stolen statue. He stated that he had purchased the statue from one Madan Lal

Aggarwal and Manoj Sharma of Mathura for Rs.50,000/- and had sent it abroad to New York through one Pradeep Malhotra. The photograph of the said statue had allegedly been published in Christie's Book in March 2002.

4. Interestingly, the said information under Section 27 of the Evidence Act was never signed by the petitioner, nor was any recovery or discovery effected at the behest of the aforesaid information. It was further alleged, as per the prosecution case, that the statue stolen in the instant case was sent to New York, and a catalogue from Christie's showed that the photo of the aforesaid statue was printed in it at Lot No. 20.

5. That in the aforesaid factual premise, charge sheet came to be filed against the accused petitioner along with other accused persons for offences punishable under Section 379 I.P.C. and Section 3, 14 and 25 of Antiquities and Art Treasures Act, in the court of concerned Magistrate at Karera, District Shivpuri.

6. That the learned Magistrate, proceeded to frame charge against the accused petitioner for offences punishable under Section 414 I.P.C. and Section 25 of the Antiquities and Art Treasures Act, vide order dated 3.1.2011. The petitioner preferred to challenge the said order before the Sessions Court, by way of filing a revision petition, which came to be heard and dismissed by learned Additional Sessions Judge, Karera, District

Shivpuri, vide order dated 21.10.2011, wherein it was observed that the scope of revision against an order of framing charge is very constricted and the issues raised, at the stage of framing charge, could only be adjudicated by the trial court, by appreciation of evidence, in trial.

7. It is further submitted that it is essential to reveal that F.I.R. No.146/2003 was registered at P.S. Vidhyadhar Nagar, Jaipur, on 06.06.2003, for offences punishable under Sections 379, 411, 401 I.P.C. and Sections 5, 14/25(2) of the Antiquities and Art Treasures Act. The case of the prosecution in F.I.R. No. 146/2003, P.S. Vidhyadhar Nagar, was that during the course of investigation of the F.I.R., the petitioner's house situated in Jaipur (Rajasthan) was searched, and various catalogues, including one of Christie's, were recovered from the said house. Following due investigation, a charge sheet was filed against numerous accused, including the present petitioner, by the police of P.S. Vidhyadhar Nagar, Jaipur, in the concerned court of Magistrate for offences punishable under Sections 379, 401, 411, 413, 414 I.P.C. read with Section 120-B, I.P.C. and Sections 5/25(2), 14/25(2) and 3/25(1) of the Antiquities and Art Treasures Act.

8. Upon submission of charge sheet, before the concerned Magistrate, in Jaipur, the same was committed to the Court of Session, Jaipur City,

Jaipur, from where, it was made over to the court of Additional Sessions Judge, Fast Track, No.1, Jaipur City, Jaipur, for trial. The learned trial court proceeded to frame charges against the accused petitioner and other accused persons for offences punishable under Sections 379/120-B, in the alternative 411, 413/120-B, 414 or 414/120-B, 401 I.P.C. and Sections 3/25(1), 5/25(2) and 14/25(2) of the Antiquities and Art Treasures Act, 1972, vide order dated 4.9.2004.

9. A bare perusal of the order of charge specifically states that the accused petitioner along with other accused persons, 30 years prior to 6.6.2003, have been indulging in theft or conspiracy to steal from various places, in Jaipur City, other parts of Rajasthan as also other places of archaeological importance, which happen to be preserved sites as also temples. It was further, specified that the statues so stolen included statue of Shiv Parvati (which happens to be the statue in question in the instant trial). Similarly, charges were framed for the self same articles, for other offences, including Sections 414 or 414/120-B, I.P.C.

10. After the framing of the charge by the Fast Track trial court at Jaipur in the above-mentioned case, the trial commenced. During the course of the trial, 83 prosecution witnesses were examined in all, including the witnesses relating to the present case (F.I.R. No. 39/2001, P.S. Jigna).

11. The trial court at Jaipur, in the trial relating to F.I.R. No. 146/2003 P.S. Vidhyadhar Nagar (Sessions Case No. 76/2006), after reception of the entire evidence including the documentary and ocular evidence relating to the present case at Karera adjudicated upon the matter and passed its judgment on 20.11.2008. The learned trial court acquitted the accused petitioner of various offences, including the offences punishable under Section 414, 414/120-B, I.P.C. (which is relevant in the instant case) and also under Section 5/25(2) of the A.A.T. Act. It is pertinent to mention here that the accused petitioner was also convicted for the offences punishable under Section 411 and 413 I.P.C. as also for some other offences under the A.A.T. Act. Consequently, cross appeals were filed before the Hon'ble Rajasthan High Court, Jaipur Bench, Jaipur: one by the present petitioner, challenging his conviction, and the other by the State of Rajasthan, challenging his acquittal by the trial court.

12. The Division Bench of the Rajasthan High Court allowed the appeal of the petitioner against his conviction and acquitted him from all the charges vide judgment dated 15.1.2014 (Annexure F). Similarly, the aforesaid Division Bench dismissed the appeal of the State of Rajasthan, wherein the acquittal of the petitioner in some of the penal provisions was recorded by the trial court. In other words, the petitioner stands acquitted from all the charges against him. A copy of the judgment passed by the

Division Bench in the State Appeal, bearing D.B. Criminal Appeal No.809/2012, dated 15.1.2014 (Annexure E). This judgment bears testimony to the confirmation of the petitioner's acquittal for offences punishable under Sections 411 and 413 I.P.C. and under Sections 3 read with Section 25(1), and under Section 14 read with Section 25(2) of the AAT Act.

13. Impugned trial pending in the form of Criminal Case No. 272/2007 in the court of concerned Magistrate at Karera, against the accused petitioner is void, on account of the sublime provisions of Section 300 Cr.P.C. The philosophy of Section 300 Cr.P.C. is founded on the rule of double jeopardy, flowing from the *maxim Nemo debet bis vexari*, which means that a person cannot be tried second time for an offence, with which he was previously charged. The aforesaid provision is founded on the theory of *autrefois acquit as also autrefois convict*. The aforesaid provision of law under the Criminal Procedure Code, lays a legal premise, to put a complete embargo on a trial, being held later on, for offences, for which the accused person has already been tried by a competent court and has either been acquitted or convicted. In such circumstances, when the trial was conducted at Jaipur trial court and the said court passed a judgment giving findings on the issue at hand, leading to acquittal u/s 411 and 413 I.P.C. and under Sections 3 read with Section 25(1), and under Section 14

read with Section 25(2) of the AAT Act, the impugned trial before Judicial Magistrate, First Class, Karera, is rendered null and void, in the light of Section 300 Cr.P.C.

14. In the light of provisions of Section 300 Cr.P.C. and Article 20(2) of Constitution of India, the accused petitioner approached the learned trial magistrate at Karera by filing an application with a prayer that the trial, in the instant case, cannot be continued. The aforesaid application came to be heard and dismissed by learned Judicial Magistrate, First Class, Karera vide its order dated 02.02.2010 (Annexure H). The learned Magistrate committed grave error in coming to erroneous findings in its order by stating that Section 300 Cr.P.C. had no application in the instant case, as the instant trial is different from the trial held at Jaipur by Additional Sessions Judge, Fast Track, No.1, Jaipur City. The accused petitioner preferred a revision petition against the order dated 02.02.2010. The said revision petition came to be registered as Criminal Revision No. 50/10 dated 18.03.2010. The same was heard and decided by learned Additional Sessions Judge, Karera, District Shivpuri. The learned revisional court, though observing that the charges framed at Jaipur Trial Court did not cover the charge framed by Judicial Magistrate, Karera in the case at hand, stated further that the order impugned was an interlocutory order and the same could not be entertained by exercising revisional powers, vide order

dated 13.12.2010 (Annexure I).

15. With the advent of the judgment of the Hon'ble Division Bench of Rajasthan High Court dated 15.1.2014, in the appeal of the petitioner as also in the State Appeal, further confirming the legal stand taken by the petitioner, petitioner further ventured to file another application u/s 300 Cr.P.C. r/w Article 20(2) of Constitution of India, leading to seeking relief of discharge in the light of Section 300 Cr.P.C. and Article 20(2) of Constitution of India, before the learned trial magistrate, at Karera. The learned trial Magistrate proceeded to dismiss the application on the premise that he had earlier dismissed an application to the same effect and a review was not legally permissible, under law. While deciding the same, he further also stated that the charge framed by the Additional Sessions Judge, Fast Track, No.1, Jaipur City, Jaipur did not cover the charge framed before it. The learned Magistrate committed a grave illegality by misreading the charge framed by learned Additional Sessions Judge, Fast Track, No.1, Jaipur City, by observing that the aforesaid charge only included statues and artifacts within territorial jurisdiction of Jaipur and Rajasthan. On the contrary, a bare reading of the aforesaid charge speaks of other places outside Rajasthan. More so, the learned Magistrate in his overzealous approach also endeavored to find fault with the trial conducted at Jaipur by the Additional Sessions Judge, Fast Track, No.1, Jaipur City,

observing that it was lacking jurisdiction, to try offence committed at Madhya Pradesh. The learned Magistrate committed a howler by indulging in making such an observation, thereby breaching judicial discipline as the trial court at Jaipur was higher in hierarchy.

16. Counsel for the petitioner submits that on the basis of a acquittal from the Rajasthan High Court, the petitioner filed an application under Section 186, 300 of Cr.P.C. read with Article 20(2) of the Constitution of India before the JMFC, Karera, District Shivpuri. The learned JMFC dismissed the said application on the ground that a case of idol theft had been registered against unknown persons under FIR No. 39/01, and the accused/petitioner, Vaman Narayan, was implicated in the case based on a memo recorded under Section 27 of the Evidence Act. The JMFC further held that the legality of the said memo (panchnama) and the investigation would be examined at the evidence stage. The impact of the failure to recover the idol from the petitioner would also be considered on the basis of the evidence presented in the case, and therefore, at the present stage, these facts were not grounds for acquitting the petitioner. Against this order, the petitioner preferred a revision before the Revisional Court (Cr.R. No. 50/10), which was dismissed on the ground that the challenged order was interlocutory. Consequently, the Revisional Court held that a change, or lack thereof, in the factual situation was irrelevant because the first

order had not been passed on merits. Secondly, the Revisional Court perpetuated further illegality by erroneously observing that the charge framed by the Karera Court was not covered by the charge before the Trial Court at Jaipur. In the facts and circumstances of the case, which amount to a complete abuse of the process of the court and a total failure of justice, the accused/petitioner is left with no option but to invoke the inherent powers of this Hon'ble Court to set aside the gross illegality that has occurred.

17. Per contra, the counsel for the respondent/State opposed the petitioner's submission and argued that the present case is not one of double jeopardy because the two cases were registered in different States (M.P. and Rajasthan, respectively). It is further submitted that the Challan filed before the Jaipur Court was not in relation to the theft of the Idol that took place in Karera in the year 2001. The incident was merely shown in the Challan as a Criminal Antecedent of the petitioner. Further, the charges framed against the petitioner, annexed as Annexure C, reflect that the prosecution was regarding "...जयपुर शहर में तथा राजस्थान के विभिन्न भागों में अन्य स्थानों से प्राप्त मूर्तियों के चोरी," which shows that the Challan only related to offenses committed in Jaipur and other parts of Rajasthan. The charge is very clear that the Charge Under Section 379 does not relate to the offense committed by the petitioner in P.S. Jigna, Karera, Shivpuri. Consequently, in the

absence of a specific charge for the offences committed within the jurisdiction of Police Station Karera, the court's finding regarding the offenses committed in District Jaipur or the State of Rajasthan do not create a bar to prosecute the petitioner in the present Trial pending before the Court of Karera.

18. Even if this argument of the petitioner is accepted for the sake of argument that the Jaipur Court has tried the crime allegedly committed within the jurisdiction of P.S. Jigna—the following principle applies: As per Section 300 of the Cr.P.C., the court which decided the earlier proceeding must be a Court of Competent Jurisdiction. Sections 177 to 189 of the Cr.P.C., which provide for the territorial jurisdiction of the Criminal Courts, state that only the court within whose jurisdiction the crime has been committed has the competency to try the case, and no other. Thus, the proceeding before the Jaipur Court cannot operate as a bar to the proceeding before the Trial Court at Karera in this matter. Therefore, the petition warrants no interference.

19. Heard counsel for the parties and perused the record.

20. For ready reference, the term "Double Jeopardy" means: a fundamental legal protection that prevents a person from being tried or punished twice for the same crime after a legitimate acquittal or

conviction.

21. It is seen from the record that it is true that the petitioner has been acquitted from the charges which were levelled against him at the time of hearing by the Division Bench of Hon'ble Rajasthan High Court wherein, only two FIRs, namely FIR No. 128/02 and FIR No. 142/02 were registered at Police Station Vidyadhar Nagar, Jaipur City (North) for offence under Section 411 of IPC. These FIRs were not registered against the present petitioner; they were against other persons. While investigating these two FIRs, the police discovered that allegedly there was a gang of thieves operating in Rajasthan and Madhya Pradesh which was indulging in stealing antique sculptures and artifacts, and in exporting and selling them abroad. It was also discovered that Jaipur is the epicenter of their nefarious activities. In order to carry out an extensive investigation with regard to these activities, Mr. Anand Srivastava, the Superintendent of Police, Jaipur City (North), constituted a team of investigators. The team kept surveillance over the alleged offenders.

22. On 6.6.2003, Ram Singh (P.W.76), the SHO, P.S. Vidyadhar Nagar, received secret information that four persons were discussing the sale of antique statues at Ganesh Park, which fell under the jurisdiction of his police station. Immediately, a team of policemen reached the park. From

their search, the police not only recovered antique statues but also discovered photographs of antique sculptures. They seized the statues, the photographs, and a motorcycle belonging to one of the four persons, namely Banne Singh. Four persons were arrested.

23. After interrogating these four persons, the police realized that the petitioner, Vaman Narain Ghiya, was equally involved in stealing, receiving stolen properties, and exporting antique statues and artifacts. Therefore, on 7.6.2003, at 5:35 AM, a police team raided the petitioner's house situated at Plot No. 41, Everest Colony, Lalkothi Scheme, Jaipur. Before initiating the raid, the police collected two recovery witnesses, namely Duli Chand Sharma (P.W.47) and Kishanlal (not produced as a Prosecution Witness).

24. Since the main gate of the house was locked, the police rang the door bell repeatedly. After twenty minutes, a person came and opened the main gate, introducing himself as Vaman Narain Ghiya. Ram Singh (P.W.76) introduced himself and informed the petitioner about the purpose of the raid. Ram Singh (P.W.76) also had himself and the recovery witnesses searched before the petitioner.

25. Following the recovery of alleged antiques/sculptures/artifacts from the petitioner and other co-accused persons in the present case, it was

noted that the appellant was involved in, and is being tried in other courts for, the following FIRs relating to recoveries of different sculptures/antiques:

- (i) FIR No. 84/1989, P. S. Ataru, Dist. Baran (Sections 411, 413 IPC);
- (ii) FIR No. 55/90, P. S. Harnavda Shavji (Section 379 read with 34 IPC);
- (iii) FIR No. 41/98, P. S. Rawatbhatta, Dist. Chittorgargh (Sections 411, 413, 120B IPC);
- (iv) FIR No. 31/2000, P. S. Bhanpura, Dist. Mandsor, (M. P.);
- (v) FIR No. 36/2001, P. S. Bijolia, Dist. Bhilwara (Sections 379, 411 IPC);
- (vi) FIR No. 39/2001, P. S. Jigana, Dist. Shivpuri (M. P.) (Section 379 IPC);
- (vii) FIR No. 82/02, P. S. Mandar, Dist. Sirohi (Sections 411, 413, 120B IPC);
- (viii) FIR No. 49/2003, P. S. Pindawara, Dist. Sirohi (Sections 411, 413, 120B IPC);
- (ix) FIR No. 109/03, P. S. Harnavda Shavji (Sections 379, 411, 414, 120B IPC);

(x) FIR No. 33/06, P. S. Dholpur (Section 411 IPC);

(xi) FIR No. 113/06, P. S. Bayana, Dist. Bharatpur (Section 379 IPC);

26. From perusal of the judgment passed by Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in Criminal Appeal No. 70 of 2009, whereby, judgment dated 20.11.2008 passed by the Additional Sessions Judge, (Fast Track No.1), Jaipur City, Jaipur has been set aside whereby, learned Court has convicted and sentenced the petitioner as under:-

Sections (IPC)	Imprisonment (RI)
411	Three years' RI and imposed with a fine of Rs.10,000/-. In default of payment of fine, one month's further rigorous imprisonment.
413	Life Imprisonment and imposed with a fine of Rs.10,000/-
3/35 (1) of AAT Act	Three years' rigorous imprisonment and imposed with a fine of Rs. 50,000/-. In default of payment of fine, two months further rigorous imprisonment.
14/25(2) AAT Act	Four months rigorous imprisonment.

27. The learned Judge has, however, acquitted the petitioner for offences punishable under Sections 379/120-B, 413/120-B, 414, 447/120-B and 401 of the I.P.C. and Sections 5/25 of the Antiquities and Art Treasures Act, 1972. Thereafter, the Hon'ble Division Bench of the High Court of Judicature for Rajasthan did not grant a clean acquittal, but instead gave the petitioner the 'benefit of doubt' in its judgment vide order

dated 15.01.2014.

28. In view of the aforesaid, 13 FIRs have been registered with regard to stolen antiques/sculptures/ artifacts which have been seized from possession of the petitioner as well as other co-accused persons. In such circumstances, the registration of every FIR registered in another State apart from Rajasthan is a different cause of action, and the same must be decided in a different trial as territorial jurisdiction stands in the way. Therefore, the concept of double jeopardy is not made out on the present facts and circumstances of the case.

29. In The State of **Bombay v. S.L. Apte & Anr., 11961] 3 SCR 107**, the question that fell for consideration was that in view of earlier conviction and sentence under sec. 409, IPC a subsequent prosecution for an offence under sec. 105 of Insurance Act. 1935, was barred by sec. 26 of the General Clauses Act and Art. 20(2) of the Constitution. This Court observed:

"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 same⁷ i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts 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 .. "

"....Though section 26 in its opening words refer to 'the act or omission constituting an offence under two or more enactments', 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. This is made clear by the concluding portion of the section which refers to 'shall not be liable to be punished twice for the same offence'. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked"

30. In view of the aforesaid, this Court is of the considered view that this is not a fit case for interference in the proceedings pending before the trial Court. Hence, the findings given by the trial Court as well as the Revisional Court at Karera are conclusive, and the same are affirmed. The defense of double jeopardy is unavailable because the petitioner was acquitted in the case registered in Rajasthan, and the current matter is distinct, having been registered in Madhya Pradesh (M.P.). Consequently, the trial must necessarily continue and proceed further in accordance with law.

31. It is directed that the trial court shall conduct a speedy trial in the matter, if possible on a day-to-day basis, and conclude the same as expeditiously as possible.

32. It is made clear that this Court has not expressed any opinion on the merits of the case. The case shall be decided on its own merit without

being influenced by this order, and the trial is directed to be concluded as expeditiously as possible.

33. Let a copy of this order be sent to the concerned trial Court for necessary compliance.

34. With the aforesaid, petition sans merits and is hereby **dismissed**.

(RAJESH KUMAR GUPTA)
JUDGE

LJ*