SUPREME COURT OF INDIA

The Institute of Chartered Accountants of India

Vs.

Vimal Kumar Surana

Crl.A.Nos. _____of 2010

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

01.12.2010

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted.

2. The question which arises for consideration in these appeals is whether the provisions contained in Sections 24, 24A and 26 of the Chartered Accountants Act, 1949 (for short, `the Act') operate as a bar against the prosecution of a person who is charged with the allegations which constitute an offence or offences under other laws including the Indian Penal Code (IPC).

3. Respondent, Vimal Kumar Surana, who is a graduate in Commerce and has passed the examination of Chartered Accountant but is not a member of the appellant-Institute is alleged to have represented himself before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act on the basis of power of attorney or as legal representative and submitted documents such as audit reports and certificates required to be issued by the Chartered Accountants by preparing forged seals. He is also said to have impersonated himself as Chartered Accountant and prepared audit reports for monetary consideration.

4. Shri Brij Kishor Saxena, who was authorised by the appellant-Institute to do so, submitted complaint dated 18.3.2001 to the Station House Officer, Police Station, Betul with following allegations:

"1) That the said Shri Vimal Kumar Surana is not registered with the Institute of Chartered Accountants of India as Chartered Accountants, but he being not a Chartered Accountant impersonated in the public as such, and performed such functions which are being performed by a Chartered Accountant. Whereas without being registered as Chartered Accountant, he is not legally authorized to perform the said functions before the Income Tax Department, under the provisions of Income Tax Act, 1961, he represented himself as legal representative. Similarly under Section 31 of the M.P. Trade Tax Act, 1995 he worked on the basis of Power of Attorney or as legal representative. In this manner he has worked contrary to the provision of Section 24 of the Chartered Accountants Act, 1949, which is punishable offence under section 24 of the Act.

2) That in the manner above mentioned, the said Shri Vimal Kumar Surana not being a Chartered

Accountant, personated to the public as Chartered Accountant and in the same manner unauthorisedly worked, which is an offence under Section 419 of the Indian Penal Code.

3) That the said Shri Vimal Kumar Surana impersonated himself as the Chartered Accountant, prepared the audit reports; which are required to be issued under different provisions of law and obtained monitory consideration which is an offence under Section 420 of the Indian Penal Code.

4) That the said Shri Vimal Kumar Surana with the intention of cheating with a view to extract money by playing fraud upon the general public, prepared valuable documents such as audit reports, certificates required to be issued by Chartered Accountants for being used, which is punishable offence under Section 468 of the Indian Penal Code.

5) The said Shri Vimal Kumar Surana with a view to perform aforesaid acts prepared forged seals and used the same, which is an offence punishable under Section 472 of the Indian Penal Code. He is in possession of the seal which he uses as Chartered Accountant. Therefore, this act is punishable offence under Section 473 of the Indian Penal code."

5. After conducting investigation, the police filed challan in the Court of Chief Judicial Magistrate, Betul (hereinafter referred to as `the trial Court'), who passed order dated 10.3.2003 for framing charges against the respondent under Sections 419, 468, 471 and 472 IPC. The respondent challenged that order by filing revision under Section 397 of the Code of Criminal Procedure (Cr.P.C.). 1st Additional Sessions Judge, Betul allowed the revision, set aside order dated 10.3.2003 and remitted the case to the trial Court with the direction to decide whether there are sufficient grounds for framing charges under Sections 419, 420, 465, 467 and 473 IPC read with Sections 24 and 26 of the Act. After remand, the trial Court passed order dated 8.12.2003 and held that there was no basis for framing any charge against respondent under the IPC. It further held that cognizance of offences under Sections 24 and 26 of the Act cannot be taken because no complaint had been filed by or under the order of the Council before the Magistrate.

6. The appellant questioned the correctness of orders dated 29.10.2003 and 8.12.2003 passed by 1st Additional Sessions Judge, Betul and the trial Court respectively by filing two separate revisions. The learned Single Judge of the High Court dismissed both the revisions. He held that even though prima facie case was made out against the respondent under Sections 24, 24A and 26 of the Act, the Magistrate could not have taken cognizance because no complaint was filed under Section 28 and the report submitted by the police could not be made basis for punishing him on the allegation of contravention of any of those provisions. The learned Single Judge also referred to Sections 2(d), 4, 5 and Section 195(1)(b)(ii) Cr.P.C. and held that in the absence of a complaint filed by the concerned Court, the Magistrate was not competent to frame charges against the respondent. The learned Single Judge also held that in view of the special mechanism contained in the Act for prosecution of a person violating Sections 24, 24A and 26 of the Act, he cannot be prosecuted under the IPC.

7. Shri U.U. Lalit, learned senior counsel appearing for the appellant argued that even though the provisions contained in Chapter VII of the Act 5 specify penalties for certain acts committed by a member of the Institute or a non member or a company, there is no bar against prosecution of such member, non member or company if he/it commits an offence under the IPC. Learned senior counsel invited our attention to the expression `without prejudice to any other proceedings, which may be taken against him' used in sub-section (2) of Sections 24A, 25 and 26 of the Act and argued

that any person who contravenes these provisions can be punished by levy of fine and/or imprisonment and also prosecuted for offence(s) under the IPC. Learned senior counsel emphasized that while enacting Chapter VII of the Act, the legislature has designedly not excluded the applicability of the provisions contained in the IPC and argued that the learned Single Judge committed serious error by approving the orders of the trial Court and 1st Additional Sessions Judge, Betul.

8. Shri R.P. Gupta, learned senior counsel appearing for the respondent argued that the Act is a special legislation and as specific penalties have been provided for contravention of Section 24 and sub-section (1) of Sections 24A, 25 and 26, the provisions contained in the IPC and Cr.P.C. cannot be invoked for prosecuting and punishing such person. Learned senior counsel further argued that the respondent could not have been prosecuted for the alleged contravention of sub-section (1) of Sections 24A and 26 of the Act because no complaint was filed against him under Section 28 of the Act. In support of this argument, the learned senior counsel relied upon the judgments of this Court in Jeewan Kumar Raut v. CBI (2009) 7 SCC 526 and Jamiruddin Ansari v. CBI (2009) 6 SCC 316. Learned counsel then submitted that this Court may not interfere with the impugned order because the allegations levelled against the respondent do not constitute any offence under the IPC.

9. Ms. Vibha Datta Makhija, learned counsel for the State of Madhya Pradesh relied upon the judgment of this Court in Maqbool Hussain v. The State of Bombay (1953) 4 SCR 730 and T.S. Baliah v. T.S. Rangachari (1969) 3 SCR 65 and argued that the offences specified in Sections 24 to 26 are distinct from the offences defined under Sections 419, 420, 465, 467, 468, 472 and 473 IPC and even if the complaint submitted by Brij Kishor Saxena cannot be treated as a complaint filed under Section 28 of the Act, his prosecution for offences defined under the IPC cannot be treated as barred.

10. The Chartered Accountants Act was enacted by Parliament to make provision for regulation of the profession of Chartered Accountants. Chapter I of the Act contains definitions of various terms. Chapter II contains provisions relating to incorporation of the Institute, entry of names in the Register, categorisation of the members of the Institute and certificate of practice. Section 7 which also finds place in this Chapter declares that every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor. Section 8 enumerates the disabilities which disentitles a person to have his name entered in the Register. Section 9(1) which finds place in Chapter III postulates that there shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it. The other provisions contained in Chapter III regulate constitution of the Council of the Institute, establishment of Tribunal and their functions, etc. The provisions contained in Chapter IV mandates the Council to maintain a Register of the members of the Institute, inclusion of the particulars of the members and removal of the name of any member of the Institute from the Register. Chapter V consists of thirteen sections i.e. Sections 21 to 22G. Section 21(1) postulates establishment of a Disciplinary Directorate by the Council headed by an officer of the Institute designated as Director (Discipline). The main function of the Director (Discipline) is to scrutinize any information or complaint received against any member and place the same before the Disciplinary Committee. Sections 21A, 21B and 22A provide for constitution of a Board of Discipline, a Disciplinary Committee and an Appellate Authority. The main function of these bodies is to ensure that expeditious action is taken against the members against whom allegations of misconduct are levelled and he gets fair opportunity to contest those allegations. An order passed by

the Disciplinary Committee can be appealed against under Section 22G. Section 23 which finds place in Chapter VI provides for constitution and functions of Regional Councils. Chapter VII specifies the penalties, which can be imposed on a member, a non member and a company. Chapter VIIA contains provisions for establishment of Quality Review Board, functions of the Board, etc. and Chapter VIII contains miscellaneous provisions. Schedules I and II appended to the Act specify various acts of misconduct of a chartered accountant in practice.

These Schedules obviously do not enumerate the wrong doings of a person who is not a member of the Institute.

11. Sections 2(1) (b), 24, 24A, 25, 26 and 28 of the Act, which have bearing on this case, read as under:

"2. Interpretation

(1) In this Act, unless there is anything repugnant in the subject or context,-

(b) "chartered accountant" means a person who is a member of the Institute.

24. Penalty for falsely claiming to be a member, etc.

Any person who -

(i) not being a member of the Institute -

(a) represents that he is a member of the Institute; or

(b) uses the designation Chartered Accountant; or

(ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a chartered accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.

24A. Penalty for using name of the Council, awarding degree of chartered accountancy, etc.

(1) Save as otherwise provided in this Act, no person shall-

(i) use a name or the common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute; or

(iii) seek to regulate in any manner whatsoever the profession of chartered accountants.

(2) Any person contravening the provisions of subsection (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

25. Companies not to engage in accountancy

(1) No company, whether incorporated in India or elsewhere, shall practise as chartered accountants.

(2) If any company contravenes the provisions of sub-section (i), then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.

26. Unqualified persons not to sign documents

(1) No person other than a member of the Institute shall sign any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity.

(2) Any person who contravenes the provisions of sub- section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less ten thousand rupees but which may extend to two lakh rupees or with both.

28. Sanction to prosecute

No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government."

Sections 2(d), 4, 5 and 195 Cr.P.C. on which reliance has been placed by learned senior counsel for the respondent read as under:

"2(d). "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. - A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

4. Trial of offences under the Indian Penal Code and other laws. - (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into tried, and otherwise dealt with according to the provision hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force

regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving. - Nothing contained in this Code shall in the absence of a specific provision to the contrary, affect any special or local law any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.- (1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

12. An analysis of Section 24 shows that if a person who is not a member of the Institute represents himself as a member of the Institute or uses the designation of chartered accountant then he is liable to be punished on first conviction with fine which may extend to Rs.1,000/-. On any subsequent conviction, he can be punished with imprisonment up to 6 months or fine which may extend to Rs.5,000/- or with both. Similar punishment can be imposed on a member of the Institute who does not have a certificate of practice but represents that he is in practice or practises as a chartered accountant. Sub-section (2) of Sections 24A, 25 and 26 provide for imposition of different kinds of punishment for violation of the provisions contained in sub-section (1) of those sections. The punishment prescribed under Section 24A can be imposed if a person uses a name or the common seal which is identical with the name or the common seal of the Institute or is almost similar to such seal and the use of such seal has the effect of deceiving or is likely to deceive the public. A person can also be punished if he awards any degree, diploma or certificate or bestow any designation which indicates or purports to indicate position or attainment of any qualification or competence at par with a member of the Institute or if he seeks to regulate the profession of chartered accountants. Section 26 provides for imposition of punishment if a person other than a member of the Institute signs any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity. Section 28 which is couched in negative form declares that no person shall be prosecuted under the Act except on a complaint made by or under the order of the Council or of the Central Government.

13. What is most significant to note is that prohibition contained in Section 28 against prosecution of a person except on a complaint made by or under the order of the Council or of the Central Government is attracted only when such person is sought to be prosecuted for contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24A, 25 or 26 and not for any act or omission which constitutes an offence under the IPC. The use of expression `without prejudice to any other proceedings which may be taken against him' in sub-section (2) of Sections 24A and 26 and somewhat similar expression in sub-section (2) of Section 25 show that contravention of the provisions contained in sub-section (1) of those sections can lead to filing of complaint under Section 28 of the Act and if the particular act also amounts an offence under the IPC or any other law, then a complaint can also be filed under Section 200 Cr.P.C. or a first information report lodged with the police under Section 156 Cr.P.C. The said expression cannot be given a restricted meaning in the context of professional and other misconducts which may be committed by a member of the Institute and for which he may be punished under Section 21B(3) because the violation of Sections 24 to 26 can be committed by a person who may or may not be a chartered accountant as defined in Section 2(b). In other words, if the particular act of a member of the Institute or a non member or a company results in contravention of the provisions contained in Section 24 or sub- section (1) of Sections 24A, 25 or 26 and such act also amounts criminal misconduct which is defined as an offence under the IPC, then a complaint can be filed by or under the order of the Council or of the Central Government under Section 28, which may ultimately result in imposition of the punishment

prescribed under Section 24 or sub-section (2) of Sections 24A, 25 or 26 and such member or non member or company can also be prosecuted for any identified offence under the IPC. The object underlying the prohibition contained in Section 28 is to protect the persons engaged in profession of chartered accountants against false and untenable complaints from dissatisfied litigants and others. However, there is nothing in the language of the provisions contained in Chapter VII from which it can be inferred that Parliament wanted to confer immunity upon the members and non members from prosecution and punishment if the action of such member or non member amounts to an offence under the IPC or any other law.

14. The issue deserves to be considered from another angle. If a person cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is (Section 416 IPC), then he can be charged with the allegation of cheating by personation and punished under Section 419 for a term which may extend to 3 years or with fine or both. If a person makes any false document with the intent to cause damage or injury to the public or to any person, or to support any claim or title, then he can be prosecuted for an offence of forgery (Section 463) and can be punished under Section 465 with imprisonment which may extend to 2 years or with fine or with both. If a person commits forgery for the purpose of intending that the document forged by him shall be used for the purpose of cheating then he can be punished with imprisonment for a term which may extend to 7 years and fine (Section 468). If a person makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for committing any forgery which would be punishable under Section 467 or with such intent, in his possession any such seal, plate or other instrument, knowing the same to be counterfeit then he is liable to be punished with imprisonment for life or with imprisonment which may extend to 7 years. He shall also be liable to fine.

The provisions contained in Chapter VII of the Act neither define cheating by personation or forgery or counterfeiting of seal, etc. nor provide for punishment for such offences. If it is held that a person acting in violation of Section 24 or contravening sub-section (1) of Sections 24A and 26 of the Act can be punished only under the Act even though his act also amounts to one or more offence(s) defined under the IPC and that too on a complaint made in accordance with Section 28, then the provisions of Chapter VII will become discriminatory and may have to be struck down on the ground of violation of Article 14. Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the Court cannot interpret the provisions of the Act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrong doer by filing the first information report or complaint under the relevant provisions of Cr.P.C.

15. We may add that the respondent could have been simultaneously prosecuted for contravention of Sections 24, 24A and 26 of the Act and for the offences defined under the IPC but in view of the bar contained in Article 20(2) of the Constitution read with Section 26 of the General Clauses Act, 1897 and Section 300 Cr.P.C., he could not have been punished twice for the same offence. In Maqbool Hussain v. The State of Bombay (supra), the Court considered the question whether the appellant who had brought gold from Jeddah in contravention of notification dated 25.8.1948 could have been prosecuted under Section 8 of the Foreign Exchange Regulation Act, 1947 after the gold had been

confiscated by the authorities of the Customs Department under Section 167(8) of the Sea Customs Act, 1878. The appellant challenged his prosecution by contending that this amounted to infringement of his fundamental right under Article 20(2) of the Constitution. The Bombay High Court negatived his challenge. This Court upheld the order of the High Court and observed:

"There is no doubt that the act which constitutes an offence under the Sea Customs Act as also an offence under the Foreign Exchange Regulation Act was one and the same viz. importing the gold in contravention of the notification of the Government of India dated 25th August, 1948. The appellant could be proceeded against under Section 167(8) of the Sea Customs Act as also under Section 23 of the Foreign Exchange Regulation Act in respect of the said act.

The fundamental right which is guaranteed in Article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy". The roots of that principle are to be found in the well established rule of the common law of England "that where a person has been convicted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence". (Per Charles, J. in Reg v. Miles). To the same effect is the ancient maxim "Nemo bis debet puniri pro uno delicto", that is to say that no one ought to be twice punished for one offence or as it is sometimes written "pro eadem causa", that is, for the same cause.

This is the principle on which the party pursued has available to him the plea of "autrefois convict" or "autrefois acquit". "The plea of `autrefois convict' or `autrefois acquit' avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned.... 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, 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. A plea of `autrefois acquit' is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter." (Vide Halsbury's Laws of England, Hailsham Edition, Vol. 9, pp. 152 and 153, para 212).

This principle found recognition in Section 26 of the General Clauses Act, 1897,--

`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,' and also in Section 403(1) of the Criminal Procedure Code, 1898, --

`A person who has been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237'."

The Court then referred to the provisions of the Sea Customs Act, 1878 and held:

"We are of the opinion that the Sea Customs authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do

not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.

It therefore follows that when the Customs authorities confiscated the gold in question neither the proceedings taken before the Sea Customs authorities constituted a prosecution of the appellant nor did the order of confiscation constitute a punishment inflicted by a court or judicial tribunal on the appellant. The appellant could not be said by reason of these proceedings before the Sea Customs authorities to have been "prosecuted and punished" for the same offence with which he was charged before the Chief Presidency Magistrate, Bombay, in the complaint which was filed against him under Section 23 of the Foreign Exchange Regulation Act."

16. In T.S. Baliah's case, the Court considered the question whether the appellant could be simultaneously prosecuted under Section 177 IPC and for violation of Section 52 of the Income Tax Act, 1922. After noticing Section 26 of the General Clauses Act, the Court held:

"A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. We accordingly reject the argument of the appellant on this aspect of the case."

17. In State of Bombay v. S.L. Apte (1961) 3 SCR 107, the question that fell for consideration was whether in view of an earlier conviction and sentence under Section 409 IPC, a subsequent prosecution for an offence under Section 105 of Insurance Act, 1935, was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution. This Court answered the question in following words:

"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 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 refers 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."

18. In V.K. Agarwal v. Vasantraj B. Bhatia (1988) 3 SCC 467, this Court considered the question whether the acquittal of an accused charged with having committed an offence punishable under Section 111 read with Section 135 of the Customs Act, 1962 create a legal bar to the subsequent prosecution of the said accused under Section 85 of the Gold (Control) Act, 1968. The Gujarat High Court answered the question in affirmative. This Court reversed the order of the High Court and

observed:

"It is therefore evident that the ingredients required to be established in respect of the offence under the Customs Act are altogether different from the ones required to be established for an offence under the Gold (Control) Act. In respect of the former, the prosecution has to establish that there was a prohibition against the import into Indian sea waters of goods which were found to be in the possession of the offender. On the other hand in respect of the offence under the Gold (Control) Act, it is required to be established that the offender was in possession of primary gold meaning thereby gold of a purity of not less than 9 carats in any unfinished or semi-finished form. In regard to the latter offence it is not necessary to establish that there is any prohibition against the import of gold into Indian sea waters. Mere possession of gold of purity not less than 9 carats in any unfinished or semi-finished form would be an offence under the Gold Control Act. It is therefore stating the obvious to say that the ingredients of the two offences are altogether different. Such being the case the question arises whether the acquittal for the offences under the Customs Act which requires the prosecution to establish altogether different ingredients operates as a bar to the prosecution of the same person in connection with the charge of having committed the offence under the Gold (Control) Act.

.....In the present case the concerned Respondents could be found guilty of both the offences in the context of the possession of gold. If it was established that there was a prohibition against the import of gold and that he was found in possession of gold which he knew or had reason to believe was liable to confiscation he would be guilty of that offence. He would also be guilty of an offence under the Gold (Control) Act provided the gold is of a purity of at least 9 carats. He would have violated the provisions of "both" the Customs Act and the Gold (Control) Act if the aforesaid ingredients were established. It is not as if in case he was found guilty of an offence under the Customs Act, he could not have been found guilty under the Gold (Control) Act or vice versa. Upon being found guilty of both the offences the court may perhaps impose a concurrent sentence in respect of both the offences but the court has also the power to direct that the sentence shall run consecutively. There is therefore no question of framing of an alternative charge one, under the Customs Act, and the other, under the Gold (Control) Act. If the ingredients of both the offences are satisfied the same act of possession of the gold would constitute an offence both under the Customs Act as also under the Gold (Control) Act. Such being the position it cannot be said that they could have been tried on the same facts for an alternative charge in the context of Section 236 Cr.P.C. at the time of the former proceedings. The submission urged in the context of Section 403(1) cannot therefore succeed for it cannot be said that the persons who are sought to be tried in the subsequent proceedings could have been tried on the same facts at the former trial under Section 236."

19. In State of Bihar v. Murad Ali Khan (1988) 4 SCC 655, the question considered by the Court was whether the complaint lodged by the competent officer alleging commission of offence under Section 9(1) read with Section 51 for killing elephants and removing its husk was maintainable notwithstanding the pendency of police investigation for an offence under Sections 447, 429 and 479 read with Sections 54 and 39 of the Act. After adverting to the relevant provisions, this Court held:

"What emerges from a perusal of these provisions is that cognizance of an offence under the "Act" can be taken by a court only on the complaint of the officer mentioned in Section 55. The person who lodged complaint dated June 23, 1986 claimed to be such an officer. In these circumstances even if the jurisdictional police purported to register a case for an alleged offence against the Act,

Section 210(1) would not be attracted having regard to the position that cognizance of such an offence can only be taken on the complaint of the officer mentioned in that section. Even where a Magistrate takes cognizance of an offence instituted otherwise than on a police report and an investigation by the police is in progress in relation to same offence, the two cases do not lose their separate identity. The section seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once. But, where, as here, cognizance can be taken only in one way and that on the complaint of a particular statutory functionary, there is no scope or occasion for taking cognizance more than once and, accordingly, Section 210 has no role to play. The view taken by the High Court on the footing of Section 210 is unsupportable.

We are unable to accept the contention of Shri R.F. Nariman that the specific allegation in the present case concerns the specific act of killing of an elephant, and that such an offence, at all events, falls within the overlapping areas between of Section 429 IPC on the one hand and Section 9(1) read with Section 50(1) of the Act on the other and therefore constitutes the same offence. Apart from the fact that this argument does not serve to support the order of the High Court in the present case, this argument is, even on its theoretical possibilities, more attractive than sound. The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Act, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also.

The proviso to Section 56 has also a familiar ring and is a facet of the fundamental and salutary principles that permeate penology and reflected in analogous provisions of Section 26 of General Clauses Act, 1897; Section 71 IPC; Section 300 CrPC 1973, and constitutionally guaranteed under Article 20(2) of the Constitution. Section 26 of the General Clauses Act, 1897 provides:

"26. Provision 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."

Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re- prosecution after acquittal, a protection against re- prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:

"The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offences for double jeopardy purposes only if `each provision requires proof of an additional fact which the other does not' (Blockburger v. United States). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately. (Jeffers v. United States)"

The expression "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in Double Jeopardy (Oxford 1969) says at p. 108:

"The trouble with this approach is that it is vague and hazy and conceals the thought processes of the court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are `substantially the same' may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible...."

In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In Leo Roy Frey v. Superintendent, District Jail, the question arose whether a crime and the offence of conspiracy to commit it are different offences. This Court said: (SCR p. 827)

"The offence of conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences."

20. In State of Rajasthan v. Hat Singh (2003) 2 SCC 152, the Court considered the question whether the High Court was right in taking the view that the respondent could have been prosecuted either under Section 5 or Section 6(3) of the Rajasthan Sati (Prevention) Act, 1987 and not under both the sections. The High Court had ruled in favour of the respondent. This Court reversed the judgment of the High Court, referred to Article 20(2) of the Constitution, the judgments in Maqbool Hussain v. The State of Bombay (supra), State of Bombay v. S.L. Apte (supra) and observed:

"The rule against double jeopardy is stated in the maxim nemo debet bis vexari pro una et eadem causa. It is a significant basic rule of criminal law that no man shall be put in jeopardy twice for one and the same offence. The rule provides foundation for the pleas of autrefois acquit and autrefois convict. The manifestation of this rule is to be found contained in Section 26 of the General Clauses Act, 1897, Section 300 of the Code of Criminal Procedure, 1973 and Section 71 of the Indian Penal Code. Section 26 of the General Clauses Act provides:

"26. 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."

Section 300 CrPC provides, inter alia,--

"300. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for

which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub- section (2) thereof."

Both the provisions employ the expression "same offence"."

The Court then proceeded to analyze the relevant sections of the Act and held that the offences under Sections 5 and 6(3) of the Act were distinct and there was no bar against prosecution of the respondent under Section 5 even though his prosecution under Section 6(3) had failed.

21. In view of the above discussion, the argument of the learned senior counsel appearing for the respondent that the Act is a special legislation vis- `-vis IPC and a person who is said to have contravened the provisions of sub-section (1) of Sections 24, 24A, 25 and 26 cannot be prosecuted for an offence defined under the IPC, which found favour with the High Court does not commend acceptance.

22. The judgments on which the learned senior counsel appearing for the respondent has placed reliance are clearly distinguishable. In Jamiruddin Ansari v. C.B.I. (supra), this Court was called upon to consider whether an order for investigation could be passed under Section 156(3) Cr.P.C. in a case involving violation of the provisions contained in the Maharashtra Control of Organised Crime Act, 1999. This Court referred to the provisions of Sections 9 and 23 of the Maharashtra Act and held that the Special Judge cannot take cognizance of any offence under that Act unless sanction has been given by a police officer not below the rank of Additional Director General of Police. The Court further held that the provisions contained in the Maharashtra Act have overriding effect and Section 156(3) cannot be invoked for ordering special inquiry on a private complaint. Paragraphs 65 (part), 67 and 68 of the judgment, which contain this conclusion, reads as under:

"The wording of sub-section (2) of Section 23 leaves no room for doubt that the learned Special Judge cannot take cognizance of any offence under MCOCA unless sanction has been previously given by the police officer mentioned hereinabove. In such a situation, even as far as a private complaint is concerned, sanction has to be obtained from the police officer not below the rank of Additional Director General of Police, before the Special Judge can take cognizance of such complaint.

We are also inclined to hold that in view of the provisions of Section 25 of MCOCA, the provisions of the said Act would have an overriding effect over the provisions of the Criminal Procedure Code and the learned Special Judge would not, therefore, be entitled to invoke the provisions of Section 156(3) CrPC for ordering a special inquiry on a private complaint and taking cognizance thereupon, without traversing the route indicated in Section 23 of MCOCA. In other words, even on a private complaint about the commission of an offence of organised crime under MCOCA cognizance cannot be taken by the Special Judge without due compliance with sub-section (1) of Section 23, which starts with a non obstante clause.

As indicated hereinabove, the provisions of Section 23 are the safeguards provided against the invocation of the provisions of the Act which are extremely stringent and far removed from the provisions of the general criminal law. If, as submitted on behalf of some of the respondents, it is accepted that a private complaint under Section 9(1) is not subject to the rigours of Section 23, then the very purpose of introducing such safeguards lose their very raison d'jtre. At the same time, since the filing of a private complaint is also contemplated under Section 9(1) of MCOCA, for it to be

entertained it has also to be subject to the rigours of Section 23. Accordingly, in view of the bar imposed under sub-section (2) of Section 23 of the Act, the learned Special Judge is precluded from taking cognizance on a private complaint upon a separate inquiry under Section 156(3) CrPC. The bar of Section 23(2) continues to remain in respect of complaints, either of a private nature or on a police report."

The question which fell for consideration in Jeewan Kumar Raut v. C.B.I. (supra) was whether the Transplantation of Human Organs Act, 1994 (for short, `the 1994 Act') is a special law and has overriding effect qua the provisions of the IPC. This Court referred to Sections 18, 19 and 22 of the 1994 Act and observed:

"TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences.

TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge of Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted.

It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorisation under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; sub-section (2) of Section 167 of the Code may not be applicable."

23. The language of the provisions, which were interpreted in the above noted two judgments was not similar to sub-section (2) of Sections 24A, 25 and 26 of the Act which, as mentioned above, contain the expression `without prejudice to any other proceedings, which may be taken'. Therefore, the ratio of those judgments cannot be relied upon for sustaining the impugned order.

24. It is also apposite to mention that except the provision contained in Section 28 against the prosecution of a person, who is alleged to have acted in contravention of sub-section (1) of Sections 24, 24A, 25 or 26 otherwise then on a complaint made by or under the order of the Council or the Central Government, the Act does not specify the procedure to be followed for punishing such person. In the absence of any such provision, the procedure prescribed in Cr.P.C. has to be followed for inquiry, investigation and trial of the complaint which may be filed for contravention of any of the provisions contained in Chapter VII of the Act - Section 4 Cr.P.C.

25. The submission of Shri Gupta that the respondent cannot be prosecuted for offences defined under the IPC because no complaint had been filed against him by the concerned Court or authority as per the requirement of Section 195(1)(b)(ii) Cr.P.C. sounds attractive but lacks merit. The prohibition contained in Section 195 Cr.P.C. against taking of cognizance by the Court except on a complaint in writing made by the concerned Court before which the document is produced or given in a proceeding is not attracted in the case like the present one because the officers of the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act, 1995 before whom the respondent is alleged to have acted on the basis of power of attorney or as legal representative or produced audit report do not fall within the ambit of the term `Court' as defined in Section 195(3) Cr.P.C. Such officer/authorities were neither discharging the functions of a Civil, Revenue or Criminal Court nor they could be treated as tribunal constituted by or under the Central or State Act, which is declared to be a Court for the purpose of Section 195.

This provision was analysed and interpreted by the Constitution Bench in Iqbal Singh Marwah v. Meenakshi Marwah (2005) 4 SCC 370. The Constitution Bench referred to other provisions of Cr.P.C. and considered earlier judgments and observed:

"The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is -- "Of Contempts of the Lawful Authority of Public Servants". These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as -- "Of False Evidence and Offences Against Public Justice". The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its

production or giving in evidence in a proceeding in any court.

Section 195(1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is -- "Provisions as to Offences Affecting the Administration of Justice". Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See Craies on Statute Law, 7th Edn., pp.207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice."

The Court then referred to Section 195 of the Code of Criminal Procedure, 1898, the Full Bench judgment of the Allahabad High Court in Emperor v. Kushal Pal Singh AIR 1931 Allahabad 443 and observed:

"The Court clearly rejected any construction being placed on the provision by which a document forged before the commencement of the proceeding in which it may happen to be used in evidence later on, to come within the purview of Section 195, as that would unreasonably restrict the right to initiate prosecution possessed by a person and recognised by Section 190 CrPC.

The aforesaid decision was considered in Raghunath v. State of U.P. Here, the accused had obtained sale deed of the property of a widow by setting up of an impostor and thereafter filed a mutation application before the Tahsildar. The widow contested the mutation application on the ground that she had never executed the sale deed and thereafter filed a criminal complaint under Sections 465, 468 and 471 IPC in which the accused were convicted. In appeal, it was contended that the private complaint was barred by virtue of Section 195(1)(c) CrPC and the Revenue Court alone could have filed the complaint. The Court repelled the aforesaid contention after relying upon the ratio of Patel Laljibhai v. State of Gujarat and the private complaint was held to be maintainable. In Mohan Lal v. State of Rajasthan the abovenoted two decisions were relied upon for holding that provisions of Section 195(1)(c) (old Code) would not be applicable where mutation proceedings were commenced after a Will had been forged. In Legal Remembrancer, Govt. of W.B. v. Haridas Mundra, Bhagwati, J. (as His Lordship then was), speaking for a three-Judge Bench observed that earlier there was divergence of opinion in various High Courts, but the same was set at rest by this Court in Patel Laljibhai Somabhai and approved the view taken therein that the words of Section 195(1)(c) clearly meant the offence alleged to have been committed by a party to the proceeding in his character as such party i.e. after having become a party to the proceeding, and Sections 195(1)(c), 476 and 476-A (of the old Code) read together indicated beyond doubt that the legislature could not have intended to extend the prohibition contained in Section 195(1)(c) to the offences mentioned in the

said section when committed by a party to a proceeding prior to his becoming such party. Similar view has been taken in Mahadev Bapuji Mahajan v. State of Maharashtra where the contention that the absence of a complaint by the Revenue Court was a bar to taking cognizance by the criminal court in respect of offences under Sections 446, 468, 471 read with Section 120-B IPC which were committed even before the start of the proceedings before the Revenue Court, was not accepted.

An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large."

The attention of the High Court does not appear to have been invited to the aforesaid judgment of the Constitution Bench and this is the reason that the High Court declared that the complaint filed by Brij Kishor Saxena was not maintainable because the same was not filed in accordance with Section 195(1)(b)(ii) Cr.P.C.

26. Although, Shri Gupta argued that the allegations levelled against the respondent do not constitute any offence under Sections 419, 420, 465, 467, 468, 472 and 473 IPC, we do not consider it necessary to deal with this point because the High Court did not sustain the orders challenged before it on that ground.

27. In the result, the appeals are allowed. The impugned order is set aside and the matter is remitted to the trial Court for considering whether the allegations contained in the complaint lodged by Brij Kishor Saxena constitute any offence under the IPC. If the trial Court comes to the conclusion that the allegations do constitute one or more offence(s), then it shall proceed against the respondent in accordance with law. However, it is made clear that in the absence of a complaint having been filed under Section 28, no charges be framed against the respondent for the alleged contravention of Sections 24, 24A or 26 of the Act.