

(1973) 07 CAL CK 0027
In the Calcutta High Court
Case No : Criminal Rev. No. 275 of 1972

A.K. Ghosh, Director Enforcement Directorate, Government of India APPELLANT

Vs

State RESPONDENT

Date of Decision : 24-07-1973

Acts Referred:

Adjudication Proceedings and Appeal Rules, 1957 — Rule 3(1), 5

Constitution of India, 1950 — Article 134, 134(1)

Foreign Exchange Regulation Act, 1973 — Section 23, 23F, 4(1), 5(1), 9

Citation : (1973) 1 CALLT 255 : (1973) 1 CALLT 111 : (1974) 1 ILR (Cal) 235

Hon'ble Judges : Chanda, J;Borooah, J

Bench : Division Bench

Advocate : Prasun Chandra Ghosh and Balai Chandra Roy, for the Appellant;J.M. Banerjee, for State, Tapas Banerjee and Benoy Krishna Rej, Advts, for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Chanda, J.—This is an application under Article 134(I)(c) of the Constitution of India for a certificate that It is a fit case for preferring an appeal before the Supreme Court.

2. A. K. Ghosh, Director, Enforcement Directorate, Government of India, prayed for setting aside the order No. 21 dated January 29, 1971, passed in case No. C/943 of 1970 by the Presidency Magistrate, Tenth Court, Calcutta. Opposite Party No, 2 Dharam Chand Jain was prosecuted u/s 23F of the Foreign Exchange Regulation Act. The learned Magistrate discharged him under s."255(1) of the Code of Criminal Procedure by order No. 21 dated January 29, 1972, holding that the proceeding was not maintainable and the materials on record were not sufficient to warrant any conviction.

3. Dharam Chand Jain, opposite party No. 2, was one of the Directors of Messrs. Missiralal Dharam Chand Pvt. Ltd. An adjudication proceeding was started

against the firm by the Director of Enforcement under Sections 23(l)(a) and 23(d) of the Foreign Exchange Regulation. Act after, issuing a show cause notice to Missiralal Jain," father of Dharam Chand Jain, as Director of Missiralal Dharam, Chand Pvt. Ltd. After Missiralal Jain entered appearance and had shown cause, Dharam Chand in his personal capacity appeared before the Director on September 30, 1968, pleaded guilty and alleged that the contraventions were due to ignorance, of law and agreed to abide by the decision taken by the Director, Enforcement. The Director found Dharam Chand (not the firm of Missiralal) guilty having contravened the provision of Section 4(1) read with Sections 9 and 5(1)(1) of the Act, and imposed a penalty and directed repatriation of the foreign currency within one month. Thereafter, Dharam Chand paid Rs. 20,000 in cash towards the penalty. As regards the balance of penalty it was satisfied by repatriation of a portion of the foreign exchange due to him. Dharam Chand, {thereafter, informed the Director that in spite of- his best efforts he could;, not repatriate the foreign-exchange. Thereafter; a complaint was filed before the learned G Kief Presidency Magistrate, Calcutta, by the Union of India through T. N. Kaul, the then Assistant-Director, Enforcement Directorate, against Dharam Chand for taking cognisance of the offence u/s 23(F) of the Foreign Exchange Regulation Act and the Presidency Magistrate passed "the order dated January 29, 1972.

4. We discharged the rule holding, inter alia, that no enquiry had been instituted by any show cause notice against L. Dharam Chand as contemplated by Rule 5 of the Adjudication Proceedings and Appeal Rules, 1957. In other words, we held that no accusation was made against Dharam Chand and notice under Rule 3(1) the service of which was condition precedent in assuming jurisdiction having not been served and no proceeding, in fact, having been started against Dharam Chand the order passed against Dharam Chand was without jurisdiction and, as such, null and void. In support was relied on the decisions in the cases of Taylor v. Taylor [1876] 1 Ch. 426 and the State of Uttar Pradesh v. Singliqra Singh AIR 1964 S.C. 361. It has been held in these two cases that if a statute has conferred a power to do an act and, has laid down the: method in which that power has to be exercise, if necessarily prohibits the doing., of the act in any. other manner than that which has been prescribed. We further hold that though Dharam Chand appeared before the Director and accepted the entire responsibility, question of acquiescence, Estoppel and admission could not arise as Dharam Chand was not a party to the proceeding and when the proceeding was hot legally started against him. In other words, we hold that the admission of a stranger could not confer jurisdiction to the Director to pass the order complained of without compliance with the mandatory provisions of the Act.

5. It was also contended before us that when no appeal was preferred against the order of the Director by D. Karam Chand he was bound by the order. We hold that an appeal could be preferred by a person against whom a proceeding was legally started and not by a stranger and, the order passed by the Director being void, no appeal was required to be filed.

6. Mr. Ghosh, learned Advocate appearing on behalf of the Petitioner, has admitted that the Petitioner proposes to appeal to the Supreme Court on the following grounds:

(1) Whether at a stage when prosecution has been started for-non-expatriation of the foreign exchange .holding the point that no adjudication proceeding was held in respect of person against whom the prosecution is launched u/s 26(F) of Foreign Exchange Regulation Act could be raised in the background of the fact that he did not himself appear in the- adjudication; proceeding itself and submitted that the foreign exchange holdings were not his; in other words, whether the Court was entitled to go into the question of validity of the adjudication proceeding" after its termination and after Dharam Chand was directed to repatriate foreign exchange he was holding and, in fact, he repatriated a portion of it.

(2) Where a notice has been issued against the delinquent company and one of its Directors or Proprietors comes before the authority, admits liability and on its basis the adjudication proceeding is concluded whether that can be quashed.

7. Article 134 of the Constitution constitutes the Supreme Court as a Court of criminal appeal in limited classes of cases. One of the classes specified is that a case is a fit one for appeal to the Supreme Court. This expression was interpreted to mean the case of great public or private importance. Certificate will not ordinarily be granted unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant review or decision. In the case of *Sidheswar Ganguly v. State of West Bengal* Anr. 1958 S C. 143 it has been observed by the Supreme Court that the legal position under Article 134(1)(c) of the Constitution is that it is not a case of "granting leave" but of "certifying" that the case is a fit one for appeal to the Supreme Court and "certifying" is a strong word. This power should be exercised sparingly and not. to convert the Supreme Court into an ordinary Court of criminal appeal. Reference may also be made to *Narsingh v. State of U.P.* [1958] S.C.R. 238 and *Kalabati* [1953] S C.R. 543 and *Haripada Dey v. State of West Bengal* [1956] SCR 639

8. In the instant case, the decision on the point on which certificate has been prayed for by Mr. Ghosh is interlinked with facts. We rely on the decision in *Taylor v. Taylor*(Supra) and *State of V.P. v. Singhara Singh* (Supra). In support of our view that no proceeding having been started against Dharam Chand and no notice under Rule 3(1) having been served the order passed against Dharam Chand was without jurisdiction and null and void. Dharam Chand did not enter any appearance in the proceeding before the Director either as Director or as Proprietor of the company but in his personal capacity. The doctrine of vicarious liability which makes a person guilty; of an offence actually committed by another could not be called in aid by the Petitioner. No difficult question of law" or principle is involved in this case which should require further consideration of

the Supreme Court. It is not a matter of great public or private importance, when the case does not involve any such question, the instant application must fail.

9. The application is rejected. The Petitioner is permitted to take back the certified copy of the judgment.

P.C. Borooah, J.

10. I agree.