
(1970) 06 MAD CK 0013
In the Madras High Court

Bheru Manufacturing Co.

APPELLANT

Vs

The Collector of Customs and Others

RESPONDENT

Date of Decision : 17-06-1970

Acts Referred:

Imports and Exports (Control) Act, 1947 — Section 5
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (1971) ILR (Mad) 603 : (1970) 2 MLJ 709

Hon'ble Judges : K. Veeraswami, C.J

Bench : Single Bench

Judgement

K. Veeraswami, C.J.—The two questions common to these matters are: (1) as to the validity of adjudication proceedings initiated u/s 23(1)(a) of the Foreign Exchange Regulation Act, 1947 ; and (2) as to the jurisdiction of the Delhi Special Police Establishment, to investigate into contravention of the provisions mentioned in Section 23(1), more particularly offences u/s 120-B of the Indian Penal Code, read with such contravention, as well as u/s 420 of the Indian Penal Code, read with Section 511 of the same Code. Kailasam, J., decided them against the parties affected in two of these cases from which the writ appeals arise. The learned Judge, however, confined the jurisdiction of the Special Police Establishment to investigate into the alleged offence u/s 420 of the Indian Penal Code, but appeared to think that the fact that while they investigated into a cognizable offence, certain facts amounting to an offence under special Acts emerged, did not deprive them of the jurisdiction to investigate into such facts.... It is not clear, as far as we can find, from the order of Kailasam, J., whether he thought that the Special Police Establishment had powers to investigate into an offence u/s 120-B of the Indian Penal Code, read with Sections 4, 5 and 23 of the Foreign Exchange Regulation Act. We have come to the conclusion that the learned Judge was right in the view he took, but we are inclined to go further and uphold the powers, subject to certain qualifications, of the Special Police Establishment to investigate into contraventions mentioned in Section 23(1) of the Foreign Exchange Regulation Act, as well.

2. The Director, Enforcement Directorate of the Ministry of Finance, by two separate notices in December, 1967, called upon S. Alim and M. Mangilal, partners of M/s. Bheru Stainless Steel Warehouse, Madras, to show cause within the specified time why adjudication proceedings u/s 23(1)(a) of the Foreign Exchange Regulation Act, should not be taken, firstly, for contravention of Section 5(1)(a) by both of them making a payment of Rs. 30,000 or on about April, 1967, to M/s. Naina Mohamed & Co., Singapore, a person resident outside India, without the general or special exemption from the Reserve Bank of India, and secondly, for contravention of Section 5(1)(b) of the Act, by their acknowledgement of a debt of Rs. 50,000 due or payable to a non-resident, without similar exemption. On 6th September, 1968, an Inspector of Police attached to the Special Police Establishment, sent a notice u/s 160 of the Code of Criminal Procedure, to M. Mangilal, to appear before him on a certain date, for the purpose of answering certain questions relating to a case which he was investigating under Chapter IV of the Code. The particulars of the case were stated to be:

R.C. No. 9 of 1968/EOW/MAD. u/s 120-B, Indian Penal Code, R/W-4, 5 and 23 of the Foreign Exchange Regulation Act, Section 5 of the Import and Export (Control) Act and Section 420, Indian Penal Code, R/W Section 511. Indian Penal Code--against M/s. Bheru Manufacturing Co., and others.

Bheru Manufacturing Company then applied in one case for a direction restraining the Enforcement Directorate from taking any action u/s 23(1)(a), and in the other for a writ of quo warranto, calling upon the Superintendent of Police, Central Bureau of Investigation, Madras, to show the validity of his appointment and his exercising powers in Madras State. Ibrahim Kutti, Ismail and Syed Abdul Khadir, petitioners respectively in the three writ petitions before us, asked for similar reliefs against adjudication proceedings u/s 23(1)(a), and also investigation by the Special Police Establishment, into an offence u/s 120-B read with Section 4(1) of the Foreign Exchange Regulation Act, and Sections 123, 135(a) and 135(i) of the Customs Act, 1962. The record shows that R.C. No. 4 of 1969 was registered on 20th March, 1969, under those sections, and that after obtaining on application to the Chief Presidency Magistrate, Madras, his permission to investigate into the offences mentioned in the First Information Report, since they were non-cognizable, they have started investigation.

3. The invalidity of the proceedings u/s 23(1)(a) of the Foreign Exchange Regulation Act, is said to arise because in view of the proviso to Section 23-D(1), Section 23(1) conferred upon the Director unguided and arbitrary power of choice to proceed under Clause (a) or Clause (b), and, therefore, to that extent, violates Article 14. This ground is now fully covered by M/s. Rayala Corporation (P.) Ltd. and M.R. Pratap v. The Director of Enforcement, New Delhi AIR 1970 S.C. 494. The Supreme Court held:

In our opinion, these two Sections 23(1) and 23-D(1) must be read together, so that the procedure laid down in Section 23-D(1) is to be followed in all cases in

which proceedings are intended to be taken u/s 23(1). The effect of this interpretation is that, whenever there is any contravention of any section or rule mentioned in Section 23(1), the Director of Enforcement must first proceed under the principal clause of Section 23-D(1) and initiate proceedings for adjudication of penalty. He cannot, at that stage, at his discretion, choose to file, a complaint in a Court for prosecution of the person concerned for the offence u/s 23(b). The Director of Enforcement can only file a complaint by acting in accordance with the proviso to Section 23-D(1), which clearly lays down that the complaint is only to be filed in those cases where, at any stage of the inquiry, the Director of Enforcement comes to the opinion that having regard to the circumstances of the case, the penalty which he is empowered to impose, would not be adequate.

The Criminal Appeals arose from a common order of Krishnaswamy Reddy, J., declining to quash a complaint, which the Supreme Court set aside. It allowed the appeals on the ground that the complaints against the accused were premature. In view of this decision, the said ground of attack on the validity of Section 23(1) cannot be sustained.

4. The other ground for invalidating adjudication proceedings u/s 23(1)(a) is based on the consequence of the interaction of Section 23-F on Section 23(1)(a), read with Section 23-D(1). u/s 23(1)(a), the Director of Enforcement is empowered to adjudge after an inquiry, as contemplated by Section 23-D(1), the contravention of any of the provisions mentioned in the body of Sub-section (1) and the penalty leviable in respect of it, subject to the limit imposed. If the Director, in the course of such inquiry, is of opinion that the penalty which he could impose u/s 23(1)(a) would be inadequate in the circumstances, he should instead of imposing any penalty himself, make a complaint in writing to the Court. That is what the proviso to Section 23-D(1) enacts. Section 23-F enjoins that

if any person fails to pay the penalty imposed by the Director of Enforcement or the Appellate Board, or the High Court, or fails to comply with any of their directions or orders, he shall, on conviction before a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

The argument is that if adjudication thus led directly to conviction, the provision for adjudication itself would be invalid. In absolute liability cases, the criminal Court adjudges criminal liability with reference to the Criminal Procedure Code and the evidence recorded. The steps that precede a conviction u/s 23-F are, collection of evidence, inquiry and adjudication u/s 23(1)(a) read with Section 23-D(1) followed by levy of penalty, default in payment of penalty, and lastly the conviction based on such default. The proceeding u/s 23(1)(a) read with Section 23-D(1) are of a civil character, and that being the case, some of the evidence collected or recorded in the course of such proceedings, might possibly be compelled evidence. Such evidence eventually forms the basis of adjudication u/s

23(1)(a), and also a conviction u/s 23-F. Further, in a conviction u/s 23-F, the Court has no opportunity to test such evidence. Also, the evidence in the course of an inquiry contemplated by Section 23-D is not according to the rules, and not recorded by judicial authority. The quality and effect of such evidence in such a proceeding is essentially different from those of evidence recorded in a criminal proceeding, but the basis of a conviction u/s 23-F is evidence, recorded in that manner in a proceeding u/s 23-D which is of a civil nature. In conviction for revenue offences as Income Tax, it is not based on absolute liability, but on evasion and the like. The effect of reading Sections 23(1)(a), 23-D(1) and 23-F is that the nature of the proceeding u/s 23(1)(a) is a criminal proceeding, the validity of which cannot be maintained in view of the manner of the collection of evidence, its intrinsic quality, value and infirmities, as well as especially the liability to conviction u/s 23-F automatically arises from a default in payment of the penalty adjudged u/s 23(1)(a). Thus proceeds the reasoning of the learned Counsel in inviting us to hold Section 23(1)(a) to be invalid along with Section 23(1)(b). But we are unable to accept it as a sound or tenable contention.

5. The crux of the above reasoning is, that adjudication leads directly to conviction, and the provision for adjudication itself will, therefore, be invalid. We are not persuaded that Section 23-F leads to any such consequence. The adjudication u/s 23-D(1) is a separate proceeding, and complete in itself. At the inquiry, the issues are, whether there is any contravention of any of the provisions mentioned in Section 23(1), and if so, how much penalty should be levied in the circumstances. Those issues are not relevant to proceedings u/s 23-F. The gist of the offence is, failure to pay the penalty imposed by the Director, and the Court is not called upon to go behind the levy of penalty. That is a matter within the purview of an appeal u/s 23-E and a further appeal on a question of law, to the High Court. The object of Section 23-F is merely to provide for enforcement of the collection of penalty, and of disobedience to the directions or orders of the Director, Appellate Board and High Court, as for instance, Section 19-E empowers the Director of Enforcement, during the course of any inquiry in connection with any offence under the Act, to require any person to produce or deliver any document relevant to the inquiry, or to examine any person acquainted with the facts and circumstances of the case. u/s 19-F(1), he has the power to summon any person whose attendance he considers necessary either to give evidence on or to produce a document in any such inquiry. Disobedience to any of these directions is an offence liable to conviction u/s 23-F. We may also note that in Fiscal Statutes, it is usual to provide for Revenue offences, one of which would be default in payment of tax assessed. The fact that evasion or an element like that, is made an ingredient of the offence does not, in our opinion make any difference. Section 23-F provides for an absolute liability. Mr. V. K. Thiruvengkatachari, who addressed the main argument, clearly told us that he was not questioning the validity of Section 23-F in these proceedings, and did not invite us to decide the question. In *M. R. Pratap and The Rayala Corporation (Private) Ltd. v. The Director of Enforcement, New Delhi*

(1969) L.W. 98, Krishnaswamy Reddy, J., was of the view that the nature and the characteristic of proceedings provided under Sections 23(1)(a) and 23-D were civil proceedings, and that their nature and character were not changed by virtue of the introduction of Section 23-F of the Act, and Section 23(1)(a) did not become a criminal proceeding. Kailasam, J., accepted this view, and we agree with them. But in our opinion, the point is not whether Section 23-F by its interaction on Section 23(1)(a) read with Section 23-D converted the adjudication proceedings into those of a criminal nature. We are of the view that Section 23-F operates only after the adjudication proceedings has ended in levy of penalty, and the two sections operate in exclusive fields without any interaction, so that Section 23-F is not intended to qualify or affect in any way, the character and nature of the proceedings. The second ground of attack on the validity of adjudication proceedings u/s 23(1)(a) read with Section 23-D(1) also fails.

6. Next we pass on to the jurisdiction of the Special Police Establishment, to investigate into the offences under the Foreign Exchange Regulation Act. Section 5 (2) of the Criminal Procedure Code, provides that all offences under any special law, other than the Indian Penal Code, shall be inquired into, tried, and otherwise dealt with according to the provisions of the Code, 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. It is manifest that this provision invests the local police with the powers of investigation in accordance with the Code, into offences under special enactments, unless such powers are excluded by the relative special law. The Delhi Special Police Establishment Act, 1946, by Section 2 authorises the Central Government to constitute a Special Police Force to be called the Delhi Special Police Establishment for the investigation in any Union Territory, of offences notified u/s 3. In making such investigation, the police establishment shall have throughout any Union Territory, all the powers, duties, privileges and liabilities which police officers of such territory have in connection with the investigation of offences committed therein. Any member of the establishment of or above the rank of Sub-Inspector, may exercise in any Union Territory, any of the powers of the officer-in-charge of a police station in the area in, which he is for the time being, and when so exercising such powers, such officer shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station. These powers of the Special Police Establishment are capable of extension u/s 5(1) by orders of Central Government to any area in a State, not being a Union Territory. When such extension is made to any area, a member of the Special Police Establishment will be capable of discharging the functions of a police officer in that area, and while he so discharges his functions, he is deemed to be a member of the police force of that area and he is vested with the powers, functions and privileges, and he is also subject to the liabilities of a police officer belonging to that police force. More specifically, under any such extension to any area, a member of the Delhi Police Establishment, of or above

the rank of a Sub-Inspector may, subject to any orders of the Central Government, exercise the powers of the officer-in-charge of a police station in that area, and when he does so, he shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his Station. But the Central Government can extend the powers of the Delhi Special Police to any area in a State only with the consent of the Government of that State. It is not disputed that the powers of the Delhi Police Establishment have been extended to the State of Madras with the consent of its Government. The consent of the State Government was conveyed to the Government of India by a letter dated 23rd January, 1957. The notification dated 6th November, 1956, of the Government of India, Ministry of Home Affairs, a copy of which was sent to all Ministries and State Governments, specified in exercise of the powers u/s 3, the offences or classes of offences which were to be investigated by the Delhi Special Police Establishment. These offences include Section 418 of the Indian Penal Code, offences punishable under the Foreign Exchange Regulation Act, 1947, and attempts, abetments and conspiracies in relation to or in connection with the offences specified which include Section 420 of the Indian Penal Code, and the offences punishable under the Foreign Exchange Regulations Act, 1947. It follows, therefore, that the Special Police Establishment will be within its powers to investigate into, offences u/s 120-B of the Indian Penal Code, read with any of the offences mentioned in Section 23(1), and more so into the offence u/s 420 of the Indian Penal Code, which is a cognizable offence. Their competence to investigate extends to the offences punishable under the Foreign Exchange Regulation Act, 1947, though they were all non-cognizable. But Kailasam, J., held that the sections in Chapter XIV of the Criminal Procedure Code, which specify the report to be submitted to the Magistrate empowered to take cognizance on a police report, would not be applicable to cases where the law prohibits taking of cognizance by a Magistrate except on a complaint, and that since the proviso to Section 23-D(1) provides for a complaint to be filed by the Director of Enforcement to the Court, the powers of the police to investigate into the offences under the Foreign Exchange Regulation Act, are confined to those conferred u/s 19-J (2). The learned Judge said:

If the police in this case were investigating an offence under any of the sections of the Foreign Exchange Regulation Act, except that covered by Section 19-J (2), the petitioner would be right in his contention that the police are not empowered to investigate under Chapter XIV of the Criminal Procedure Code.

But so far as the offence u/s 420 of the Indian Penal Code was concerned, he observed that as it was a cognizable offence, the right of the police to investigate could not be questioned, and that if in the course of investigating into that offence, the police, came by facts and circumstances which amounted to an offence under the Special Act, that did not deprive them of the power to investigate. On that view, he also found that the notice issued by the Inspector of Police belonging to the Special Police Establishment, u/s 160 of the Criminal Procedure Code, was competent for him while investigating into a cognizable

offence. We are unable to share the view of Kailasam, J., that because the Magistrate cannot take cognizance of any of the offences mentioned in Section 23(1)(a) of the Foreign Exchange Regulation Act, except on a complaint by the Director of Enforcement, its necessary consequence is to deprive the police of their powers of investigation under Chapter XIV of the Criminal Procedure Code. It is true that the investigation under Chapter XIV is directed towards the end of the officer-in-charge of the concerned police station to forward to a Magistrate empowered to take cognizance of an offence on a police report, a report in the prescribed form of the required particulars, and that except as otherwise provided thereafter, the Magistrate having jurisdiction may take cognizance of an offence upon a report made by any police officer. But Section 190 also enables a Magistrate to take cognizance of an offence upon receiving a complaint of facts which constitute such offence. In fact, the Magistrate can take such cognizance of an offence upon information received from any person other than a police officer, or upon his own knowledge or suspicion, of the commission of that offence. We have been referred to some of the sections in Chapter XIV of the Code and told that the entire investigation under the Chapter is to culminate in a police report to the Magistrate, who on receipt of it takes cognizance of an offence, and therefore, where the police on the completion of investigation cannot make a report to the Magistrate so that he can take cognizance of an offence investigated and reported, it followed that the police in such a case were deprived of their powers of investigation under the Chapter. There is nothing to indicate in that Chapter that the powers of investigation can be exercised only if the police exercising the same are entitled to file a report on which the Magistrate can take cognizance of the offence. We are not shown any provision in Chapter XIV or any other Chapter of the Criminal Procedure Code, or any Scheme therein, which directs expressly or impliedly that it is only where a Magistrate can take cognizance of an offence u/s 190, on a police report u/s 173, that they can exercise their powers of investigation. We are also unable to find any such bar forged by any of the provisions of the Foreign Exchange Regulation Act, which will detract from the powers of the police u/s 5(2) of the Criminal Procedure Code. In our opinion, filing of a report to the Magistrate having jurisdiction on completion of the investigation, is not a condition precedent to the exercise of powers of investigation by the police under Chapter XIV. The only result of the proviso to Section 23-D(1) is, that the Magistrate concerned cannot take cognizance u/s 190 of the relative offence without a complaint by the Director of Enforcement himself. We would also add that there is no prohibition under Chapter XIV of the Code, of filing report at the completion of the investigation by the Police, though the Magistrate cannot take cognizance of the offence on such a report, if the special law requires that he can do so only on a complaint from the competent officer. In our opinion, therefore, investigation made, or to be made, by the Special Police Establishment in respect of the offences registered by them, is within their powers.

7. It is argued that if the Special Police Establishment is an Investigation force

anywhere, there will then be two parallel authorities for investigation, and that further no correlation has been attempted between the investigating powers of the Special Police Establishment, and the officers functioning under the Foreign Exchange Regulation Act. We see the force of this perspective which points to the desirability of defining jurisdictions to avoid parallel investigations, but on that account, we are unable to hold that there is anything illegal about it.

8. Though the constitutional validity of the Special Police Establishment Act, had been argued before Kailasam, J., it has not been seriously reiterated before us. In any case, we were not persuaded to differ from his view on it. We may also mention that the learned Advocate-General assured us that the notice of the Inspector of Police attached to the Special Police Establishment, which was dated 6th September, 1968, and issued by him u/s 160 of the Criminal Procedure Code, would not be enforced, which we record.

9. The appeals and the writ petitions fail, and are dismissed, but in the circumstances, with no costs.