

(1975) 03 DEL CK 0030

In the Delhi High Court

Case No : Criminal Appeal No. 95 of 1971

Director of Enforcement

APPELLANT

Vs

Ravinder Aggarwal

RESPONDENT

Date of Decision : 10-03-1975

Acts Referred:

Citation : (1975) ILR Delhi 335

Hon'ble Judges : M.S. Joshi, J; Jagjit Singh, J

Bench : Division Bench

Advocate : S.L. Watel, D.C. Mathur and Ghanshyam Das, for the Appellant;

Judgement

M.S. Joshi, J.

(1) The facts of the case as revealed by the prosecution succinctly stated are that Ravinder Aggarwal was present outside the Central Telegraph Office Building, Eastern Court, New Delhi on 12-9-1966. Shri K. L. Thukral, Enforcement Officer of the Directorate of Enforcement, Ministry of Finance, apprehended him and searched his person. The search yielded United States currency notes of various denominations amounting to 1080 dollars. Shri Thukral prepared a Panchnama (Ex. PWI/A) evidencing this recovery and it was attested apart from Shri K. Vijayan, Chief Enforcement Officer, by Gurmej Singh and R. R. Sharma. The Panchnama was signed by Ravinder Aggarwal as well and a copy thereof was given to him. Ravinder Aggarwal then accompanied the officers of the Enforcement Directorate to their office situated nearby and there he was interrogated by Shri Vijayan. In reply to the questions put to him he made a detailed statement in his own handwriting (Exhibit PW1/B) intimating how he had acquired 1080 U.S. dollar currency notes and in what circumstances the same were recovered from him along with a slip embodying calculations concerned with his previous dealings in foreign exchange. On the same day Shri A. J. Rana, Deputy Director, Enforcement Directorate, issued a memorandum (Ex. PW1/E) to Ravinder Aggarwal u/s 19(2) of the Foreign Exchange Regulations Act, 1947 (hereinafter referred to as "the Act") to supply information and documents

bearing, inter alias on the recovery of 1080 Us dollars and a slip containing calculations recovered from the pocket of his pant at 10.15 A.M. on 12-9-1966. Ravinder Aggarwal sent a reply to this directive in his own hand through registered post (Exhibit PWI/F) submitting that he had made a confessional statement before the officers of the Enforcement Directorate voluntarily on 12-9-66 and as the facts stated therein were true and correct the same be treated as reply to the said directive. Perhaps taking this reply to be too cryptic and inadequate he made another reply (Exhibit PW1/C) to that very directive on 26th September, 1966 wherein it was alleged that the currency notes of 1080 Us dollars recovered from him on 12-9-66 were brought by him from M/s. Krishna & Sons, Jewellers, Connaught Place. New Delhi, that he had neither purchased this currency nor was it meant for sale by him and that he had gone to the Eastern Court with these notes under the orders of his master. The Director of Enforcement issued a notice to Ravinder Aggarwal on May 9, 1967 u/s 23D of the Act requiring him to show cause in writing within 14 days why adjudication proceedings as contemplated by the said section be not held against him for contravention of Section 4(1) of the Act and why the amount involved in the contravention should not be confiscated u/s 23(l)(b) of the Act (Exhibit PW1/C). Replying to this letter Ravinder Aggarwal stated (Exhibit PW1/D) that he had already given his Explanation regarding possession of 1080 Us dollars in his letter dated 26th September, 1966 and denied that he had acquired and sold any foreign exchange in the manner stated in the notice otherwise. He appeared before the Director in the course of the adjudication proceedings and pleaded guilty. He was then afforded opportunity through memo dated February 5, 1968 (Exhibit PW1/H) to show whether he had previous general or special permission of the Reserve Bank of India for buying otherwise acquiring or selling the relevant foreign exchange and this notice was followed by another notice to the same effect dated July 15, 1968 (Exhibit PWI/L). No such permission was, however, claimed to have been obtained and consequently a complaint was filed by the Director of Enforcement for his prosecution u/s 23(l)(b) read with Section 4(1) of the Act.

(2) The case was tried by Shri A. S. Dhugga, Magistrate 1st Class, New Delhi. He found at the end of the proceedings that out of the four witnesses of the recovery on (R. R. Sharma) was not produced, another (Gurmej Singh) did not support the prosecution and the third (Vijayan) did not say that the recovery was made in his presence and then the currency alleged to have been recovered from the possession of the accused was not produced in Court and it was not shown to be legal tender. In view of these findings he gave the accused the benefit of doubt and acquitted him. The appeal under consideration has been filed by the Director of Enforcement.

(3) K. L. Thukral, Enforcement Officer, appeared as Public Witness . 1 and deposed that he had apprehended Ravinder Aggarwal in front of the Central Telegraph Office on 12th September, 1966 and searched his person in the presence of Gurmej Singh and R. R. Sharma and 1080 Us currency dollars were

recovered from him. Public Witness .1 stated further that he had prepared Panchnama Public Witness .I/A giving details of the recovered foreign currency, it was attested by the witnesses, and one copy of it was given to the accused on his signing the Panchnama at PW1/A4. The witness went on to say that the place where the accused was apprehended was road side and it was not feasible to make inquiries from him at the spot, he was, Therefore, asked by him (the witness) to accompany him to the office and there the accused made his statement in his presence to Shri Vijayan (Public Witness 1/B) in his own hand. He has also testified that Ravinder Aggarwal had sent his the reply Public Witness 1/D signed by him at Public Witness 1/D 1 to notice Public Witness 1/C and he had made replies Public Witness 1/F and Public Witness 1/G signed by him at Public Witness 1/F 1 and PW1/G1 respectively to the directive PW1/E.

(4) Shri K. Vijayan, Chief Enforcement Officer Public Witness .3, swore to the fact that he was a member of the party which apprehended the accused in front of Central Telegraph Office and the accused was searched by K. L. Thukral, Enforcement Officer, in his presence and the presence of two witnesses from the public. The Panchnama was prepared by Thukral, he has sai

(5) Gurmej Singh, admitted his signature on the Panchnama as a witness to the recovery but turned hostile in the cross-examination. He affirmed that the recovery had been effected outside the Eastern Court but tried to make out that it had already taken place by the time he reached the scene of the search. By way of Explanation of his signatures on the Panchnama, he stated that he had made them under the orders of his officers and that the same were taken only with regard to deposition (description) of the currency. Gurmej Singh was examined about three years after the occurrence and he did not complain to anybody about the circumstances in which his attestation of the Panchnama was procured and the reason for the omission given was that he had just forgotten the thing. His officers unconcerned with the Enforcement Directorate could possibly have no interest to force him to be a witness to any recovery beyond his personal knowledge. He was obviously telling lies to favor the accused. Anyway he is an unreliable person and his statement has to be ignored.

(6) The defense could not point out any infirmities in the evidence of K. L. Thukral to the trial magistrate and none has been brought to our notice. The law would not stand in the way of our founding a conviction on the statement of this witness alone and the quality of his testimony provides ample justification for it. As a matter of fact deposition of Shri Thukral, unimpeachable-is fully supported by Shri K. Vijayan, Chief Enforcement Officer, and by the accused himself. Ravinder Aggarwal admitted everything attributed to him by the prosecution in his statement in PW1/B and confirmed the correctness of this statement through his subsequent statements in Pw 1/F, Public Witness 1/G and Public Witness 1/D.

(7) When examined u/s 342 Cr. P.C. he pleaded that the aforesaid admissions were made by him under pressure. But Thukral assured the Court that the statement of the accused in PW1/B was made voluntarily of his free will and

without any threat, undue influence or inducement. Vijayan, in the same manner said that the accused had made his statement voluntarily, without any undue influence, threat or coercion. The defense counsel did not cross-examine the witnesses on this point and thus their averment as to absence of any sort of pressure was accepted by implication. No evidence was produced by the accused to substantiate his plea. Though the disclosures in PW1/B were made in reply to the queries put by Vijayan but it was written by the accused himself. His reply PW1/G was sent 14 days after the occurrence and it is unthinkable that any fear put into his mind by the officers of the Enforcement Directorate on the day of Ms apprehension was still operative: Through this document written after protracted thinking the correctness of the contents of PW1/B was vindicated.

(8) The conclusion is irresistible that the admissions of the accused referred to above are free from the taint of extraneous compulsion and uphold the veracity of the prosecution version. Vide Section 19J of the Act:

"If any person is found or is proved to have been in possession of any foreign exchange exceeding in value two hundred and fifty rupees, the burden of proving that the foreign exchange came into his possession lawfully shall be on him."

According to Section 24(1) of the Act:

"Where any person is prosecuted or proceeded against for contravening any provisions of this Act or of any rule, direction or order made there under which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him." Ravinder Aggarwal did not make the slightest effort to discharge the burden cast on him by these two provisions.

(9) Section 4(1) of the Foreign Exchange Regulation Act, 1947 provides that:

"Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India and no person resident in India other than an authorised dealer shall outside India, buy or otherwise acquire or borrow from, or sell or otherwise transfer or lend to, or exchange with, any person not being an authorized. dealer, any foreign exchange." and by the evidence discussed above it has been proved beyond a shadow of doubt that the accused had acquired 1080 United States dollars and that he did it without previous general or special permission of the Reserve Bank.

(10) The learned magistrate observed in his order that there was no sufficient evidence on the file to support the allegations of the prosecution that the currency alleged to have been recovered from the possession of the accused was legal tender. It is, however, in the statement of Thukral, Public Witness 1 that on search of Ravinder Aggarwal's person foreign currency in Us dollars totalling 1080 Us dollars was recovered. Vijayan, Public Witness .3 was subjected to a lengthy cross-examination and the accused's own questions got it made plain that what was recovered from him was foreign exchange. In Public Witness .1/B

the accused gave in his own hand details of the property recovered and described it as "US dollars" and "foreign currency". In PW1/G again he said that he had brought 1080 "US dollars" from M/s. Krishna & Sons, and he was only an agent of that firm to carry the "currency" recovered from him. It was put to him in question No. 3 u/s 342 Cr. P.C. that as a result of the personal search, foreign exchange, to wit, United States currency notes of the total value of \$ 1080 as listed in the recovery memo EX. PW1/A, was recovered from his person and the property recovered was referred to as foreign exchange in question No. 6 as well and he did not controvert the prosecution allegations as to the character of that property.

(11) Vide definition provided by clause (b) of Section 2 of the Act "Currency" includes all coins, currency notes, bank notes, postal notes, postal orders, money orders, cheques, drafts, traveller's cheques, letters of credit, bills of exchange and promissory notes, and "foreign currency" according to clause (c) "means any currency other than Indian currency" clause (d) goes on to say that "foreign exchange" means "foreign currency and includes all deposits, credits and balances payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency". When we read the statements of Public Witness s. Thukral and Vijayan along with the recovery memo PW1/A in the light of the definitions of "currency", "foreign currency" and "foreign exchange", no doubt is left as to the property recovered from the possession of the accused being "foreign exchange within the meaning of section 4(1) of the Act.

(12) There was adequate description of the currency seized from the accused in the statements of Thukral and Vijayan and the documents produced by the prosecution and it made no difference if the dollar notes in question were not made a part of the case file. If the learned magistrate needed further assurance by way of inspection of the relevant currency notes, the proper course was to order their production rather than to use the circumstance for acquitting the accused. It has not been explained to us how any prejudice could possibly be caused to the accused by the simple fact that the relevant notes were not before the magistrate during the trial.

(13) The counsel for the respondent has urged that only the Director of Enforcement is empowered by clause (b) of Section 19E to examine any person acquainted with the facts and circumstances of the case during the course of the inquiry in connection with an offence under the Act, whereas the statement of the accused, PW1/B, was recorded by a Chief Enforcement Officer. It has been conceded on behalf of the appellant that on the date Ravinder Aggarwal was examined by Vijayan, the Chief Enforcement Officer was not invested with the powers of the Director u/s 19E but it is submitted that if Vijayan did not have the competence to examine Ravinder Aggarwal under the abovementioned provision it was open to him to refuse to answer the questions addressed by the former but if in spite of this want of competence a statement was made voluntarily it

must have its effect. The Chief Enforcement Officer was not a police officer and it was held by the Supreme Court in *Balkrishna Chhaganlal Soni Vs. State of West Bengal*, a case u/s 107 of the Customs Act which is equivalent in its import to Section 19E (b) of the Foreign Exchange Regulation Act, that "any person" referred to in that section covers every person including a suspect and potential accused and there is no difficulty on account of Article 20(3) of the Constitution since the examination is not of an accused person.

(14) Moreover, when Shri Rana issued a directive u/s 19 (2) of the Act to elicit certain information from the accused vide Pw 1/C, the accused replied that he had already made a confessional statement before the officers of Enforcement Directorate voluntarily on 12-9-66 and the facts stated in that statement were true and correct. He requested that that statement be treated as his reply to the directive. In this manner the statement Ex. Public Witness 1/B became information furnished in response to a notice u/s 19 (2) and this notice was admittedly issued by a competent officer. So even if it is assumed for a while, for the sake of argument, that the evidence in Public Witness 1/B was defective because of the statement having been made to a person who did not have the authority to examine the accused that defect was cured when the accused reiterated that statement in response to a directive u/s 19 (2).

(15) Shri Mathur, the accused's counsel has contended that a directive under sub-section (2) of Section 19 can be issued only if the Central Government considers it necessary or expedient to obtain the relevant information and the term "consider it necessary" used by the Legislature implies that the officer who passed the requisite order in this behalf applied his mind to the matter before he decided upon issue of a directive. He has relied in this behalf on *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, . There the Supreme Court observed that the words "consider it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has found necessary as a result of such thinking to pass the order. This condition was held in that particular case not to have been satisfied because the order requiring production of documents mentioned specifically only 6 communication and lumped up in the last item "other books, papers and other documents relating to Shri P. N. Balasubramaniam. Transworld Trades and The Barium Chemicals Ltd., in the possession of the Registrar of the Supreme Court of India under, and order, dated May 6, 1966 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 381 of 1966 (*Barium Chemicals Ltd. v. Company Law Board and other*)". The Court found that some of the documents referred to in this omnibus item had not even the remotest bearing on the matter covered by the Act and the impugned order having not been made in conformity with sub-section (2) of Section 19 was liable to be quashed. On the contrary the information and documents required from Ravinder Aggarwal were described in Pw 1/E with all the necessary exactitude and this circumstance provides sure testimony that the order in question was passed after due deliberation. The contention of the defense as to the invalidity of the directive in

Public Witness 1/E has, Therefore, to be repelled.

(16) It has been urged next that the Director of Enforcement could file a complaint under clause (b) of sub-section (1) of Section 23 after holding an enquiry u/s 23D(1) and forming an opinion that having regard to the circumstances of the case, the penalty which he was empowered to impose would not be adequate and there is nothing on the record to suggest that such an opinion was formed and consequently the complaint filed without complying with the proviso to Section 23D (1) was invalid. Reliance has been placed to sustain this argument on M/s Rayala Corpn. v. Director of Enforcement, Air 1970 S.C. 494. We have perused the judgment in the aforesaid case very carefully and noticed that their Lordships did not hold that it was necessary for the Director to put it in black and white that he had come to the opinion that the penalty which it was within his power to impose would not be adequate. Their Lordships scanned the entire proceedings held by the Director and came to the conclusion that the record did not show that any material at all was available to the respondent (the Director) in the course of the inquiry u/s 23D (1) on the basis of which he could have formed an opinion that it was a fit case for making a complaint on the ground that he would not be able to impose adequate penalty and the necessary consequence was that the complaint filed without satisfying the requirements and conditions of Section 23D (1) and in violation of the safeguard provided by the Legislature for such contingencies had to be declared invalid. In this Ravinder Aggarwal's matter the Director issued a notice to the accused why adjudication proceedings should not be held against him through PW1/C. The replies received from the accused PW1/D, PW1/F and PW1/G referred to the confessional statement already made by him (PW 1/B) and read together these documents made out not only that the accused had in his possession foreign exchange worth thousands of rupees without any permission on the crucial date but that he had been acting as a broker in illegal transactions of foreign exchange involving substantial amounts. He was given another notice u/s 23D (1) and the accused stuck to the position already taken by him. It is shown by the statement of PW1 that the accused appeared before the Director and in his presence he pleaded guilty. (The file comprising the proceedings of the Director was produced before the learned trial magistrate and it was returned to the Director after inspection). When the Director was satisfied in this manner that it was a fit case for prosecution of the accused u/s 23(1)(h) he issued another notice to the accused to give him an opportunity to show that he had permission to acquire the foreign exchange recovered from him through notices PW1./H and PW1/L but no reply to these notices was filed. There was, thus, abundant material with the Director to justify his instituting a complaint u/s 23 (1) (b) of the Act and the fact that he had formed the opinion that the penalty which he was empowered to impose would not be adequate can be gathered from the record without any difficulty.

(17) It will be pertinent to refer here to Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . u/s 68C of the

Motor Vehicles Act, 1939 (as amended by Act No. 100 of 1956), the State Transport Authority can frame a scheme only if it is of opinion that it is in public interest that the road transport service should be run or operated by the Road Transport Undertaking. On a contention similar to the one urged here having been raised before the Supreme Court their Lordships held that an express recital of the formation of the opinion by the Undertaking in the scheme is not made a condition of the validity of the scheme.

(18) Again, Section 3 of the U.P. Industrial Disputes Act, 1947 gave power to the State Government to make certain provisions by general or special order, if, in its opinion, it was necessary or expedient so to do for securing public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment. On such an order having been passed by the State Government u/s 3 question arose before the Supreme Court in *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, whether the non-recital of the formation of the opinion in the order made it invalid. Their Lordships negatived the suggestion and held that the validity of the order did not depend on the recital of the formation of that opinion. According to their Lordships if by inadvertence or otherwise the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in the proceedings that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course, their Lordships laid down, would be where the statute requires that there should be a recital in the order itself before it can be validly made. As has been seen the proviso to Section 23D(1) does not require that the Director of Enforcement must record in writing the fact of his having formed the opinion that the penalty which he is empowered to impose would not be adequate and it can be safely presumed from the facts and circumstances of this case that the Director did form the requisite opinion on the strength of the evidence produced by the officers of the Directorate of Enforcement and the admissions of the accused himself.

(19) Shri Mathur, submitted in the end that if found guilty of the crime charged, the accused be given benefit of the provisions of the Probation of Offenders Act. But we are constrained not to grant this request because such leniency would seem, in view of the atrocious at which economic crimes like racketeering in foreign exchange are being committed in the country, to be absolutely misplaced. A deal in 1080 U.S. dollars would mean a profit of thousands of rupees and the circumstance suggests severe punishment.

(20) In the light of the facts found established in the case we accept the appeal and setting aside his acquittal, convict Ravinder Aggarwal accused u/s 23(I)(b) read with Section 4(1) of the Foreign Exchange Regulation Act, 1947. He shall undergo six months" rigorous imprisonment and pay a fine of Rs. 5000.00 . In the event of non-payment of fine he shall suffer 3 months" rigorous

imprisonment more. The Chief Metropolitan Magistrate is hereby directed to issue non-bailable warrants for the arrest of the respondent so that the punishment awarded to him can be given effect.