
(1975) 05 AHC CK 0002
In the Allahabad High Court

Firm Ramdeo Onkarmal and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 22-05-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 430

Forward Contracts (Regulation) Act, 1952 — Section 15, 16, 17, 18, 20

Negotiable Instruments Act, 1881 (NI) — Section 69

Citation : (1975) CriLJ 1777

Hon'ble Judges : N.D. Ojha, J;H.N. Seth, J

Bench : Division Bench

Judgement

N.D. Ojha, J.—The applicants are being prosecuted under Sections 20(e), 21(a) and 21(c) of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the Act). According to the prosecution case, the applicants entered into two transactions of purchase of Tur (Arhar) and one transaction of sale during the period between January, 1967 and March, 1967 and these transactions were forward contract transactions which were prohibited by virtue of notifications Nos. 1384-B, 1384-C and 1384-D all dated 17th July, 1958, issued by the Central Government prohibiting forward contract transactions in regard to Tur and thereby they committed the offences referred to above. After the evidence of the prosecution was over the applicants submitted before the Sub-Divisional Magistrate before whom the case had been pending that the prosecution was uncalled for inasmuch as the three notifications were ultra vires. The Sub-Divisional Magistrate recorded a finding that prima facie there appeared nothing wrong in the notifications. He, however, held that the matter would finally be decided after the defence evidence had also been recorded and the case was taken up for decision. The applicants preferred a revision against that order which was dismissed by the Sessions Judge who also took the view that it was premature to decide the question raised by the applicants at that stage. Thereafter they filed the present application in this Court u/s 551-A read with Section 430 of the Code of Criminal Procedure with a prayer that the proceedings

pending in the Court of the Sub-Divisional Magistrate, Gonda, against the applicants may be quashed. While issuing notice on the application on 29th July, 1971, a learned single Judge of this Court felt that in view of the importance of the points involved in the case it was desirable that the application be decided by a Bench of two Judges. It is thus that the case has come up before us.

2. It was urged by learned Counsel for the applicants that the three transactions in respect of which the applicants are being prosecuted were non-transferable specific delivery contracts and they could not be prosecuted in view of Section 18(1) of the Act which provides that nothing contained in Chapter III or Chapter IV of the Act shall apply to non-transferable specific delivery contracts for sale or purchase of any goods. According to him, the case was not covered by the proviso to Sub-section (1) of Section 18 and consequently there was an absolute bar against prosecution of the applicants under any of the three sections referred to above. According to the prosecution, on the other hand, the provisions of Sub-sections (1) and (2) of Section 17 of the said Act were made applicable even to non-transferable specific delivery contracts for the sale or purchase of Tur in virtue of the three notifications referred to above and consequently even if it is accepted that the three transactions were non-transferable specific delivery contracts, the prosecution was justified. We are not concerned with Sub-section (3) of Section 17 in this case. The relevant sub-sections of Section 17 which have been made applicable to non-transferable specific delivery contracts are Sub-sections (1) and (2) which read:

17. Power to prohibit forward contracts in certain cases- (1) The Central Government may, by notification in the Official Gazette, declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of Section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts in contravention of the provisions of Sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

It would be useful to give a resume of the three notifications referred to above at this very place. Copies of these notifications have been attached to the application. The first one namely S. O. 1284-B dated 17th July, 1958, bears No. 34 (21) : TMP/58-I. This number is to be found towards the end of the notification. By this notification in exercise of the powers conferred on it by Section 17 read with Section 16 of the Act the Central Government declared that no person shall, save with the permission of the Central Government, enter into any forward contracts for the sale or purchase of any of the goods specified in the Schedule hereto annexed and fixed under Clause (a) of Section 16. A provision was made about the rates also. In the schedule Tur (Arhar) is to be found at serial No. 6, The second notification S. O. 1384-C, dated 17th July, 1968

is to the following effect:

Whereas forward contracts for the purchase or sale of the goods specified in the Schedule hereto annexed have been prohibited under the notification of Government of India in the Ministry of Commerce and Industry No 34 (21) TMP/58-I dated the 17th July, 1968;

And whereas the Central Government is of the opinion that in the interest of the trade and in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in respect of these goods;

Now, therefore, in exercise of the powers conferred toy Sub-section (3) of Section 18 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) the Central Government hereby declare the Sub-sections (1) and (2) of Section 17 thereof shall apply to non-transferable specific delivery contracts in respect of the aforesaid goods.

SCHEDULE

...

(6)"Tur (Arhar)...

The last one in the series is the notification S. O. 1384-D dated 17th July, 1958. By this notification the Central Government, in exercise of the powers conferred by Sub-section (1) of Section 17 of the Act as applied to non-transferable specific delivery contracts by the earlier notification declared that no person shall, save with the permission of the Central Government, enter into any non-transferable specific delivery contracts for the sale or purchase of any of the goods specified in the schedule hereto annexed. Tur (Arhar) is to be found at serial No. 6 in the schedule of this notification too.

3. It was urged by learned Counsel for the applicants that it was notification S. O. 1384-C namely the second one in the series which made Sub-sections (1) and (2) of Section 17 of the Act applicable to non-transferable specific delivery contracts in respect of Tur. This notification had been issued in the exercise of the powers conferred by Sub-section (3) of Section 18 of the Act which is to the following effect:

Notwithstanding anything contained in Sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

According to learned Counsel, even though the class of goods in respect of which

the notification had been issued was specified which include Tur, the area in respect of which that notification had been issued had not been specified as contemplated by the said sub-sections. On this ground it was urged that the notification was invalid. It was pointed out that the notification constituted a subordinate legislation by the Central Government to whom the power to issue a notification had been delegated under Sub-section (3) of Section 18 aforesaid and consequently before a notification issued by the Central Government could be held to be valid it was necessary that it should have been issued in conformity with the requirements of Sub-section (3) of Section 18. Since the area in respect of which the notification had been issued was not specified therein it was a case in which the power had not been exercised by the Central Government in the manner in which it was required to be exercised by the said sub-section. In support of the submission that delegated power could be exercised in the manner in which it was required to be exercised and in no other manner, reliance was placed on the principles of interpretation of statutes and also on certain decided cases. In our opinion, it is not necessary to deal with this point in detail inasmuch as the principle is well accepted. The question which really falls for consideration is whether the power has been exercised in the manner in which it was required to be exercised namely whether it can be said that the area in respect of which the notification was issued has been specified therein.

4. Learned Counsel brought to our notice the meaning of the word "specify" as contained in the Shorter Oxford Dictionary, Webster's Dictionary and Stroud's Judicial Dictionary, He also referred to words and phrases Legally Defined to indicate as to what the word "specify" meant. In the supplement to words and phrases Legally Defined the following is to be found:

Specify New Zealand- "In my view persons can be specified without being named provided they are unambiguously identified." A v. B (1969) NZLR 534 per Roper, J., at p. 536.

Learned counsel placed reliance on the main volume of Words and Phrases Legally Defined where an extract from the decision of Greschuk, J. in Re Paddle River Construction Limited (1961) 35 W WR 605, Alta, has been quoted according to which specified contracts do not mean that the contracts are identifiable from some document recording the transaction. It was held that they must be unambiguously identifiable in the document itself. The substance of the various meanings of the word "specify" with reference to the various dictionaries and the decisions quoted in Words and Phrases Legally Defined seems to be that it should be stated in the document which is to contain the specification in such manner that it becomes unambiguously identifiable with reference to the said document.

5. It is true that normally provisions contained in Chapters III and IV of the Act are not to apply to non-transferable specific delivery contracts, But according to Section 18(3) of the Act, if the Central Government feels that it is necessary in the interest of the trade or in public interest to regulate non-transferable specific

delivery contracts also in any area, it can issue a notification in the Official Gazette declaring that some or all the provisions contained in Chapters III and IV would also apply to non-transferable specific delivery contracts in respect of such class or classes of goods and in such area as may be specified therein. However, the form in which the goods, and area are to be specified in the notification has not been laid down. Accordingly, if there is anything stated in the notification which makes the goods or the area intended to be covered by the notification clearly identifiable, it will amount to their being specified in the notification. This will be so not only in a case where the goods or the area intended to be covered by the notification become identifiable because they are clearly described therein but also in a case where the identity of the goods and area becomes explicit with reference to the material indicated therein.

6. It is in this light that we have to construe the relevant notifications. It is to be seen that all the three notifications are of the same date and are S O. Nos. 1384-B, 1384-C and 1384-D respectively, it is plain that all these notifications were issued simultaneously. The second one is in continuation of the first whereas the last is in continuation of the earlier two. They have been published simultaneously and in view of the fact that reference is to be found in one about the other all the three have necessarily to be read together to find out their real import. The first notification was issued in exercise of the power conferred on the Central Government by Section 17 read with Section 16. It was in respect of various goods including Tur. There is no requirement u/s 17 that a notification issued under the said section should specify the area in respect of which it was being issued. Such a notification if issued would obviously be in respect of the whole country. When in the second notification it is mentioned that by the earlier notification forward contracts for the purchases or sales of Tur have been prohibited and that the Central Government was of opinion that in the interest of trade and in the public interest it was expedient to regulate and control non-transferable specific delivery contracts in respect of Tur the Central Government was clearly communicating the information that it was in respect of the same area for which the prohibition in regard to entering into forward contracts for the sale or purchase of Tur without the permission of the Central Government had been imposed by the earlier notification. Thus we find that on a reading of the second notification along with the first notification (referred to in the second notification) the area and the goods sought to be covered by the notification become evident and clearly identifiable. In the circumstances it cannot be said that area within which the non-transferable specific delivery contracts were sought to be regulated had not been as contemplated by Section 18(3) of the Act, specified in the second notification. We must observe that it was desirable that the Central Government should have in the notification u/s 18(3) mentioned that the said notification was in respect of the whole country, but in our opinion the failure to do so in the context referred to above does not invalidate the said notification on the ground that the area in respect of which it had been issued had not been specified therein. In the context referred to above the three

notifications have to be treated as a single document and on being so treated it is apparent that the notification u/s 18(3) was in respect of the whole country.

7. On an earlier date when the case had been listed for hearing we required the standing counsel for the Union of India to file an affidavit giving material from which it could be ascertained as to whether the notification u/s 18(3) had been issued for the whole of the country. In pursuance of that order Sri U. S. Rana, Deputy Secretary, Ministry of Civil Supplies, Government of India, has filed a counter-affidavit. In the said counter-affidavit it has been stated that there was a lot of fluctuation in the prices of Arhar (Tur) amongst other pulses. In this situation the Forward Market Commission requested the Directorate of Economic and Statistics, Ministry of Food and Agriculture, Government of India, to consider prohibition of forward trading in pulses and to submit its recommendations. A note was prepared by the Directorate of Economics and Statistics, Ministry of Food and Agriculture, Government of India. Thereafter a letter dated 16th July, 1958, was sent by the Deputy Economic and Statistical Adviser to the Under Secretary, Ministry of Commerce and Industry, New Delhi, enclosing the note prepared by the Directorate, and keeping in view the facts stated therein the relevant notifications were issued. Copies of the note and the letter have been attached to the counter-affidavit. Their perusal indicates that a chart was prepared on an all-India basis indicating the rise in the prices of pulses and it was felt that even though a part of the rise in prices was due to a decline in the production of pulses, reckless speculation in forward contracts was pushing up their prices with its effect on the quotations in the spot market also. It was pointed out that instead of lending stability to the market, forward trading appeared to be making a bad situation worse.

8. In view of the facts stated in the said counter-affidavit and its annexures we are convinced that the notification including the notification u/s 18(3) had been issued with a view to control the rise in prices of pulses in the whole country. The notification u/s 18(3) in our opinion is not invalid on the ground that it does not specify the area of its applicability. It was in respect of and applied to the whole country.

9. On the basis of the counter-affidavit of Sri Rana referred to above which was required to be filed in order to indicate as to whether there was material on the basis of which it could be ascertained that the notification u/s 18(3) had been issued for the whole of the country, learned Counsel urged that there was no material on the basis of which the Central Government could be satisfied that a situation had reached which required a notification to be issued u/s 18(3). Learned Counsel referred to Annexure CA-2 to the aforesaid counter-affidavit and brought to our notice the following passage from it.

Representations have been received in this Ministry that reckless speculation in forward contracts is pushing up their prices with its effect on the quotations in the spot market also. Instead of lending stability to the market, forward trading appears to be making a bad situation worse. The only justification for forward

trading, then, is the hedging facilities that it provides. Hedging facilities are important in the case of commodities like cotton, where the manufacturers have to be given protection against inventory losses. But in the case of pulses, hedging is a far less important consideration than the question of containing the up trend in prices. The present situation, characterised as it is by short supply and a sharp rise in prices calls for immediate and total ban on forward trading in pulses.

On its basis it was urged that the main purpose of the notification was to do away with hedging facilities. We are unable to accept this submission. A fair reading of the aforesaid passage shows that there was material before the concerned Ministry that reckless speculation in forward contract was pushing up the prices of various commodities with effect on the quotations in the spot market as well. Such forward contracts instead of lending stability to the market were making the situation worse, in such circumstances the only justification for permitting forward trading would have been to provide hedging facilities. Provision for hedging facility was important in the case of commodities like cotton, where the manufacturers have to be given protection against inventory losses. But, it had no relevance in the case of pulses in which case hedging was far less important than the question of containing up trend in prices. It is obvious that the aforesaid material indicated that the respondents as a matter of fact did not aim at doing away with the hedging facilities as alleged by learned Counsel for the petitioner but they wanted to ban all forward trading which would include within its sweep forward trading in non-transferable specific delivery contract as well. The purpose of issuing the impugned notification was not to ban hedging contract. What was being emphasised in the aforementioned passage was that all forward trading (which includes within its ambit a non-transferable specific delivery contract as well) was having a tendency to push up the prices of various commodities. In the case of pulses forward trading could not be justified on the ground that it had been done by way of providing hedging facilities. Hedging facilities were relevant in the case of commodities like cotton where the manufacturers have to be given protection against inventory losses. But in the case of pulses seeking of hedging facilities is of much less importance than the consideration of up trend in prices. It is thus apparent that the non-transferable specific delivery contracts were sought to be regulated not because the Central Government wanted to control hedging contracts but because it thought that every type of forward trading was contributing to the rise in price of pulses and that the same had to be controlled. It cannot, therefore, be said that there was no material before the Central Government on the basis of which it could form an opinion that a notification u/s 18(3) of the Act was called for.

11. Lastly it was urged that area to be specified as contemplated by Section 18(3) of the Act could not be the whole of the country but it must mean a part of it. Reliance was placed on *Dungarmull Kissenlal Vs. Sambhu Charan Pandey and Another*, , where with reference to Section 69 of the Negotiable Instruments Act it was held that the said section presupposes that the place is defined with

sufficient particularity to enable the holder of the note to go to that place and to present it for payment. The phrase "specified place" cannot be used to cover a town or a city but it is a phrase intended to mean a place so described as would enable the holder of a note to go to it with a reasonable certainty for being able to find the drawer of the note to present the note to him. Where the note is payable in a large city presentation to the maker or drawer might be utterly impossible and therefore it could never be the intention of the legislature that a large city or town or area should be regarded as a specified place. In our opinion, the decision in *Dungarmull's* case has no application to the facts of the instant case. Specified place as contemplated by Section 69 of the Negotiable Instruments Act obviously has to be such place where the drawer of the note is to be found. Unless his full address is given it would not be possible for the holder of the note to trace him in a big city. It is in this context that the observations referred to above were made in *Dungarmull's* case. So is not the case with a notification u/s 18(3) of the Act.

12. In *Mt. Naziran Vs. Emperor* a Division Bench of this Court was construing the power of Municipal Boards conferred u/s 298-H (e) of the U. P. Municipalities Act for making a bye-law for the following purpose namely:

Prohibiting in any specified street or area the residing of public prostitutes and the keeping of a brothel or the letting or other disposal of a house or building to public prostitutes or for a brothel.

In exercise of that power the Municipal Board of Agra had framed a bye-law prohibiting public prostitutes from residing within the municipal limits except certain streets. The question of interpretation of "specified area" came up for consideration in this context and it was held:

It seems to us that the bye-law does specify the rest of the area within the municipal limits other than the excepted streets as the area in which public prostitutes shall not reside. We can see no force in the contention that the area in which residence is prohibited must be smaller area and not a larger area of the town, There is no such restriction. It is however not necessary in this case to decide whether the word "area" may not include the entire area within the municipal limits.

The question aforesaid which the Bench felt was not necessarily to be decided in that case, namely whether the word "area" may not include the entire area within the municipal limits, came up for consideration directly before another Division Bench of this Court in *Smt. Razia Vs. The State*, with reference to the same Section 298 of the U. P. Municipalities Act. After referring to the decision in *Mt. Naziran Vs. Emperor* referred to above, it was held:

The prohibited area can be specified otherwise also, so long as it is not open to doubt which area is meant to be the prohibited area. The Division Bench left it open whether the expression "area" would cover the entire area of the municipality or must refer to an area smaller than the entire area of the

municipality. It observed "it is however not necessary in this case to decide whether the word "area" may not include the entire area within the municipal limits". This is the specific point which has been raised before us for decision. We see no justification for restricting the extent of the word "area" in Clause (e), item H, List I of Sub-section (2) of Section 298 of the Municipalities Act, to a locality smaller in area than the entire limits of the municipality. The entire limits can come within the expression "area". The only requirement is that the municipality should specify the area where the public prostitutes were not to reside.

It is not provided that the area so specified should be smaller than the limits of the municipality or...

13. For the same reasons we are of opinion that it is not right to say that the area to be specified u/s 18(3) of the Act cannot be the whole of the country and must necessarily be a smaller part of it.

14. It would be seen that another counter-affidavit has been filed by Sheo Prasad Singh, Inspector, Crime Branch, C.I.D., U.P. Sector Gorakhpur wherein it has been stated that the transactions resulting in prosecution of the applicants did not follow by any specific delivery of the goods and that the description given to the aforesaid transactions was only to misguide and mislead the authorities. Since no arguments have been advanced by learned Counsel for the applicants on merits, we are not inclined to go into the question as to whether on the facts of the instant case the applicants are guilty of any of the offences for which they are being prosecuted. It will have to be decided by the Sub-Divisional Magistrate concerned before whom the prosecution is pending after taking into consideration the evidence produced by the parties.

15. No other point has been pressed. In the result, the application fails and is dismissed.