(1962) 05 CAL CK 0003

In the Calcutta High Court

Case No : Criminal Appeal No. 219 of 1960

G. Subrahmanyam APPELLANT

Vs

H.D. Mundhra and Others RESPONDENT

Date of Decision : 16-05-1962

Acts Referred:
Foreign Exchange Regulation Act, 1947 — Section 23(1), 8(2)

Citation : 66 CWN 1036

Hon'ble Judges : S.K. Sen, J;Amaresh Roy, J

Bench : Division Bench

Advocate : G.P. Kar and Amiya Mukherjee, for the Appellant;A.K. Dutt and Prasun Ch. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sen, J.—This is an appeal by Shri G. Subramanyam, Officer on special duty, Enforcement, Foreign Exchange Regulation Act, against an order by the Chief Presidency Magistrate, Calcutta, acquitting the respondents Haridas Mundhra and others on three counts u/s 23(1) of the Foreign Exchange Regulation Act, 1947. The respondents are the Directors of Bhahmapootra Tea Co. Ltd Calcutta. Brahmapootra Tea Co. Ltd. Calcutta is a company registered in India, but there is a company with the identical name Brahmapootra Tea Co. Ltd. with a sterling capital registered in England, and the respondent No. 1 Haridas Mundhra is also a Director of that company. The Managing Agents of the Brahmapootra Tea Co. Ltd., Sterling Branch, in England are S. B. Industrial Development Company (U.K.) Ltd. The first charge is that the respondents on 24th December, 1955 sent out of India Foreign Exchange, to wit, a cheque for ?9000/- in contravention of section 8(2) of the Foreign Exchange Regulation Act and so committed an offence u/s 23(1) of that Act. Charge No. 2 is that on 25th December 1955 they sent out of India Foreign Exchange, namely a cheque for ?2500/- and so committed a similar offence, and charge No. 3 is that on 3rd January. 1956 they sent out of India Foreign Exchange, namely, a cheque for ?1500/- and so committed another similar offence. According to the prosecution case, two accounts were opened in the name of M/s. Brahmapootra Tea Co. Ltd. with the Eastern Bank Ltd. 2 & 3 Grosby Square, London, E.C.e. Respondent No. 1 Haridas Mundhra and respondent No. 2 G. D. Mundhra were the persons authorised to operate that account. A second account was opened on behalf of the company by S. B. Industrial Development Co. (U.K.) Ltd. According to the prosecution case, some cheques drawn by Haridas Mundhra on those London accounts were dishonoured for want of sufficient funds, and therefore Haridas Mundhra along with other Directors arranged to transfer credit to the London accounts of Brahmapootra Tea Co. Ltd., Sterling Branch particularly the second account opened by S. B. Industrial Development Co. (U.K.) Ltd. and it is in that connection that three sterling cheques which are the subject matter of the three charges, were sent from India to England. The accused all pleaded not guilty. Respondent No. 1 Haridas Mundhra admitted in connection with the second charge relating to the cheque for ?2500/- that he had sent out the cheque to England, but he gave the explanation that a loan was arranged by S. B. Industrial Development Co. (U.K.) Ltd. agents for the Brahmapootra Tea Co. (U.K.) Ltd., and a nonresident foreigner in India handed over a cheque for ?2500/- with the request that he should send it to England, and so Haridas Mundhra accepted the cheque and sent it to England and in doing so, he was merely acting as a post office, and did not actually send any currency out of India, as the account of the non-resident foreigner was in London. In connection with the other two cheques for ?9000/- and ?1500/- Haridas Mundhra stated that he did not remember sending such cheques. The other respondents all pleaded not guilty, and stated that they had nothing to do with the sending of the cheques to England.

2. In connection with the sending of the cheques, there were some letters- Exts. 3 series purporting to be signed by Haridas Mundhra addressed to the Eastern Bank Ltd., London, which were proved by P.W.3, John Henry Ghets, Accountant of the Eastern Bank, Calcutta Branch. This witness could not be tendered for cross examination, as at the time of cross examination which was taken up more than two years after the examination in chief the witness was in the U. K. and was not available for cross examination in India. The prosecution, therefore, applied to the learned Chief Presidency Magistrate for permission to examine another witness K. Conolley to prove the documents over again; but this prayer was rejected by the learned Chief Presidency Magistrate on the ground that the name of the witness was not in the original list of witnesses to be examined and the prosecution, therefore, had not right u/s 256 of the Cr. P. C. to examine a new witness in place of John Henry Ghets who had been examined originally. The learned Chief Presidency Magistrate then completed examination of the witnesses and examined the accused u/s 343 Cr. P. C. and proceeded to deliver his judgment. He held that the charges were not proved against any of the accused, and accordingly, he acquitted all the accused in respect of three charges.

3. In this appeal Mr. G. P. Kar, appearing on behalf of the appellant has urged that the learned Chief Presidency Magistrate was wrong in disallowing the prayer

for examination of K. Conolley as a witness in view of the fact that John Henry Ghets had gone out of India and was not available for cross examination when cross examination of witnesses was taken up. The learned Chief Presidency Magistrate relied on some decisions of this court belonging that the term ''any remaining witness'' used in section 256(1) of the Cr. P. C. does not include a new witness whose name did not appear in the list originally submitted by the prosecution under the provisions of section 252 of the Cr. P. C. In the present ease, however, the original list of witnesses for the prosecution named not John Henry Ghets particularly, but the Eastern Bank Ltd. so that any competent witness who could prove the signatures on the letters, could be examined on behalf of the prosecution as a representative of the Eastern Bank Ltd. In the circumstances, it must be held that the order of the learned Chief Presidency Magistrate refusing the examination of K. Conolley u/s 256(1) of the Cr. P. C. was not a correct order.

4. Further, even assuming that John Henry Ghets was the witness mentioned originally u/s 252of the Cr. P. C. and the prosecution could not as of right examine a new witness, namely, K. Conolley in the circumstances of the case, the learned Chief Presidency Magistrate might well have exercised his powers u/s 540 Cr. P. C, because examination of such a witness to prove the signatures purporting to be those of Haridas Mundhra was essential for a just decision of the case.

5. Apart from the letters Exts. 3 series, about the strict proof of which there was difficulty, the prosecution also relied on the admission made by Haridas Mundhra in respect of the cheque for ?2500/- and argued that on the basis of that admission, at least Haridas Mundhra could be convicted of the charge relating to the sending out of India, foreign currency namely a cheque for ?2500/-.The learned Chief Presidency Magistrate repelled this contention also by observing that the admission in the statement u/s 342Cr. P. C. had to be taken as a whole, and if the admission was taken as a whole, it would not support the prosecution case that Haridas Mundhra had sent foreign currency out of India. On this point, however, we must accept the contention of Mr. G. P. Kar that the learned Chief Presidency Magistrate had not properly applied the definition of ''foreign exchange'' as contained in section 2(d) of the Foreign Exchange Regulation Act to the hacks of the case. Section 2(d).of meaning Act defines foreign exchange'' as meaning foreign currency including certain things, like deposits; credits and balance payable, in any foreign currency etc ''Foreign Currency'' is defined in clause (c) of section 2 as meaning any currency other than Indian currency. ''Currency'' is denned in clause (b) of the same section as including all coins, currency notes, bank notes etc and also cheques. Accordingly, it is clear that a cheque for ?2500/- starling is foreign exchange within the meaning of the Foreign Exchange Regulation-Act, 1947. Section 8(2) of the Act provides that no person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorized in this behalf by the Reserve Bank, take or send out of India, any gold or precious stones or Indian currency

or foreign exchange other than foreign exchange obtained from an authorized dealer. Now, the cheque for ?2600/- sterling was not obtained from any authorized dealer. In his statement u/s 342 Cr. P. C. Haridas Mundhra stated that It had been obtained from a non-resident foreigner. In Ex. 7, however which is an explanation submitted in the form of a letter by Haridas Mundhra, to the Enforcement Officer of the Foreign Exchange Regulation Act, before the prosecution was started, it was stated that the proceeds. of the two cheques for ?2500/- and ?1500/- respectively were credited to the current account of the London Office of the Brahmapootra Tea Co. Ltd. to account No. 2 operated by S. B. Industrial Development Co. (U.K.) Ltd. and that the cheques were received by arrangement with S. B Industrial ''Development Co. (U.K;) Ltd. from Mr Drissen and Mr. Barnes both of India Cable Ltd. Calcutta. In other words, the cheque other ?25oo|- was received from one Mr. Drissen employed under the India Cable Ltd. at Calcutta at the particular time. Though; Mr Drissen might be a resident of U. K ordinarily at the particular time when the cheque was so obtained from him he was employed in Calcutta Moreover, the question Whether he was a resident or a non-resident is hardly of any importance because it is admitted by Haridas Mundhra that the cheque was obtained from him and it was sent out of India to the Eastern Bank London. The proceeds of the cheque were paid not to Mr. Drissen or to any family member of his, but to the account of the Brahmapootra Tea Co. Ltd operated by S. B. Industrial Development Co. (U.K.) Ltd. This supports the prosecution case that as the account of the Brahmapootra Tea Co. Ltd Sterling Branch in London was overdrawn Haridas Mundhra was arranging to send credit to the account of the Brahmapootra Tea Co. Ltd. in London. Mr. G. P. Kar has suggested that the cheque for ?2500/- must have been obtained from Mr. Drissen for consideration, that is, it was paid for in Indian currency at Calcutta. Mr. A. K. Dutt, appearing for the respondents, has objected that there is no evidence insupport of such purchase of the cheque for consideration. It is true that there is no such evidence of obtaining the cheque for consideration paid in Indian currency, but even if we leave out the question of inference which may be drawn from the fact that a Sterling cheque was obtained from Mr. Drissen in Calcutta and sent to the U. K. account of the Brahmapotrao Tea Co. Ltd. by Haridas Mundhra, the mere fact of sending out a sterling cheque which is foreign exchange, to London as already pointed out, is an offence u/s 23(1) of the Foreign Exchange Regulation Act, because, as required by section 8(2) no written or oral permission from the Reserve Bank of India was obtained for sending out the cheque to England, and the cheque was obtained from Mr. Drissen, an employee of the India Cable Co. at Calcutta who was not an authorized dealer in Foreign Exchange. Thus in respect of the cheque for ?2500/- the charge must be deemed to have been sufficiently proved. In respect of the other cheques, namely for ?9000/- and ?1500/- there is no such admission by Haridas Mundhra although regarding the cheque for ?1500/- there is an admission in the letter Ext. 7. As, however there was no admission made in court in respect of the cheque for ?1500/- we do not propose to hold Haridas Mundhra guilty in respect of that charge for ?1500/- and in respect of the charge for ?9000/- there is no admission anywhere.

6. As the case is a very old one, we do not think it is necessary for the ends of justice to remand the case for a further hearing after allowing K. Conolly or any other competent witness to be examined in order to prove the letters Exts. 3 series formally. As already pointed out, on the evidence on the record, without resorting to the letters Exts. 3 series, one of the charges namely, that in respect of the cheque for ?2500/- may be said to have been proved beyond reasonable doubt and it would meet the ends of justice if Haridas Mundhra is convicted of that charge only.

7. As regards the remaining respondents there is clearly no evidence. They were sent up as they were also the Directors along with Haridas Mundhra of the Brahmapootra Tea Co. Ltd., Calcutta, but there was no proof adduced that the sending of the sterling cheques to London was done in consequence of a resolution of the Board of Directors of which the other respondents were members. In the absence of that evidence, there is only the admission by Haridas Mundhra that he sent the cheque for ?2500/- out of India and he alone can be convicted thereof. Accordingly, this appeal is allowed in part and the order of acquittal in respect of the second charge relating to the cheque for ?2500/- is set aside so far as the respondent No. 1 Haridas Mundhra is concerned, and he is convicted of that charge u/s 23(1) of the Foreign Exchange Regulation Act, 1927 and sentenced to pay a fine of Rs. 2000/- (Rupees two thousand only) in default, to suffer rigorous imprisonment for six months. The appeal is dismissed so far as other charges against the respondent No. 1 Haridas Mundhra is concerned and so far as the three remaining respondents are concerned.

Amaresh Roy, J.

I agree.

