(1978) 05 AHC CK 0034

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4954 of 1976

Jagdish Prasad and Others — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 19-05-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Forward Contracts (Regulation) Act, 1952 — Section 15, 16, 17, 17(1), 18
Penal Code, 1860 (IPC) — Section 120B

Citation : (1978) AWC 564

Hon'ble Judges : M.B. Farooqui, J

Bench : Single Bench

Advocate : Vishnu Sahai and B. Dayal, for the Appellant;

Judgement

M.B. Farooqui, J.—In the year 1966, applicants 1 to 16 and 18 to 23 and four others, who are no more, were the office bearers and members of an association called Bullion and Agricultural Produce Exchange Limited, Agra, (shortly ''Bullion Exchange''). Applicants 17 and 24 to 26 were its brokers. On 18-6-1966, the C.I.D., Crime Branch, Agra, raided the premises of the Bullion Exchange and its members and workers and took charge of a number of documents. As a result of the investigation, which followed, the police submitted a charge-sheet u/s 120B, IPC and Sections 20(e), 21(a), 21(b) and 21(c) of the Forward Contracts (Regulation) Act, 1952 against the applicants and four others, now deceased, in the court of Magistrate 1st Class, Agra. The learned Magistrate took cognizance of the offence and summoned the accused. Before the learned Magistrate, the accused pleaded that even on the allegations made in the charge-sheet no offence was made out against them and claimed to be discharged. The learned Magistrate took the view that the question could be decided only after the parties had adduced their evidence. Accordingly, on 22-6-1976, he rejected the claim and directed the framing of the charge against them. By means of this application u/s 482, Code of Criminal Procedure, the applicants have prayed that the pending proceedings against them be quashed.

2. It has been alleged in the charge-sheet that in between the months of January and April, 1966, in district Agra, the applicants and some unknown persons entered into a criminal conspiracy, the object of which was to own or keep a place other than that of a recognised association to be used for the purposes of entering into, making or performing, whether wholly or in part, forward contracts or option transactions; to organise and conduct illegal forward trading in linseed oil in the guise of non-transferable specific delivery contracts, without having to make or receive actual delivery of the commodity or by way of option transaction. More particularly, the object of the conspiracy was to so arrange things that non-transferable specific delivery contract in linseed oil could be entered into and worked out by payment of differences and not by actual delivery.

3. It has been further alleged that in furtherance of the aforesaid conspriacy, between 27-1-1966 and 27-6-1966, the applicants 1 to 16 and 17 to 23 organised, assisted in organizing and became members and office bearers of an association other than a recognised association, being the Bullion Exchange Agra, in order to carry on trade and actually traded in linseed oil in the guise of non-transferable specific delivery contracts without making or receiving actual delivery and even kept and assisted in keeping a place for this purpose and thereby committed offences under Sections 20(e), 21(a), (b) and (c) read with Section 17 of the Act.

4. It has been also alleged that in pursuance of the aforesaid conspiracy, between 27-1-1966 and 27-6-1966, the applicants 17 and 24 to 26 entered into ''Tezmandi'' option transactions in linseed oil and Mustard oil and thereby committed an offence u/s 20(e) read with Section 19 of the Act.

5. The question to be considered is whether on the allegations made in the charge-sheet any offence is made out against the applicants. In order to appreciate and determine this question it will be necessary to read the relevant provisions of the Act as in force at the relevent time. Section 2(i) defines which provides the delivery of goods and the payment of a price therefore either immediately or within such period not exceeding 11 days after the date of the contract. "Section 2(c) defines the ''forward contract'' to mean a contract "for the delivery of goods at a further date and which is not a ready delivery contract." Section 2(m) defines specific delivery contract as meaning a forward contract, which provides for the actual delivery of specific qualities, or type of goods during specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyers and sellers are mentioned." Section 2(f) defines a non-transferable specific delivery contract as meaning "a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lending, warehouse receipt or any other document of title relating thereto are not transferable." A ''transferable specific delivery contract'' is defined u/s 2(m) as meaning "a specific delivery contract which is not a non-transferable specific delivery contract."

6. Thus, the Act contemplates two categories of contracts of sale of goods:

firstly, ''ready delivery contracts'' and secondly, ''forward contract.'' Forward contracts are classified into those which are specified delivery contracts and those which are not. Then again specific delivery contracts are divided into ''transferable specific delivery contracts'' and ''non-transferable specific delivery contracts''. But one thing is noteworthy. In every case the definition take care of the form of contract only. Performance the manner provided is no part thereof. Thus, if the parties are named in a contract and there is a provision for actual delivery during a specified future period but the contract is performed otherwise than by actual delivery, still it will not lose the character of a specific delivery contract.

7. The Act then proceeds to make provision under Chapter II for the establishment and constitution of forward market''s commission, which is not relevant in the present case. Chapter III contains provisions regarding recognised associations. The Bullion Exchange was admittedly not a recognised institution. Therefore, it will not be necessary to consider the provisions of this Chapter. Chapter III-A makes provision for registered association. It is conceded in the learned Magistrate''s order that the Bullion Exchange was a registered association under this Chapter. Therefore, I need not refer to the provisions of this Chapter. It may however be stated that all association carrying on forward trading are requested to be registered with Forward Markets Commission. Chapter IV deals with forward contracts and option in goods. Section 15(1) empowers the Central Government, by notification, to declare illegal forward contracts in the notified goods and on the notification so issuing every forward contract entered into in respect of such goods otherwise than between the members of a recognized association or through or with any such member becomes illegal. It provides:

15(1) The Central Government may, by notification, in the official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in Section 18, every forward contract for the sale or purchase of any goods specified in the notification which Is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

8. Section 16 is not relevant and may be omitted from consideration. Section 17 empowers the Central Government, by notification, to prohibit forward contracts in any commodity to which Section 15 does not apply and on the notification so issuing every forward contract in the notified commodity becomes illegal It says:

17(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 of 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.

(3) Where a notification has been issued under Sub-section (1), the provisions of Section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification u/s 15.

9. Such a notification was issued by the Central Government vide S.R.O. 242 dated 25th January, 19SS. The notification reads:

S.R.O. 242:- In exercise of the powers conferred by Section 17 of the Forward Contracts (Regulation) Act, 1952 (LXXIV of, 1952), the Central Government hereby declare that no person shall, save with the permission of the Central Government enter into any forward contracts in any place in India for the sale or purchase of any of the goods specified below in the schedule.

Provided that this notification in so far as it relates to coconut oil shall not apply in the State of Travancore-Cochin.

Schedule

i. Groundnut oil,

ii. Linseed oil,

iii. Mustardseed oil,

iv. Rapeseed oil,

v. Coconut oil,

vi. Sesamum oil,

vii. Cottonseed oil,

viii. Caster oil.

Sd/- Jt. Scy. to Govt. of India.

10. Section 19(1) exempts non-transferable specific delivery contracts from the provisions of Chapters III and IV including Sections 15 - 17 of the Act. It says:

18(1) Nothing contained in Chapters III and IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods:

Provided that no person shall organise or assist in organising or be a member of any association in any area to which the provisions of Section 15 have been made applicable (other than a recognised association) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or to receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

Section 19 prohibits option transactions. It reads:

19(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal.

(2) Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date, shall, to that extent, become void.

11. Admittedly this Section has come into force with effect from 24th August, 1965, vide S.R.O. 1618 dated August 24, 1965.

12. Sections 17 and 19 read with Section 20(e) and Section 21(a)(b) and (c) are the foundation of the charges. Section 20(e) reads:

20. Any person who

(a) to (d)....

(e) enters into any forward contract or any option in goods in contravention of any of the provisions contained in Sub-section (1) or Sub-section (3-A) or Sub-section (4) of Section 15, Section 17 or Section 19,

shall, on conviction be punishable-

(i) for a first offence, with imprisonment which may extend to one year, or with a fine of not less than one thousand rupees, or with both;

(ii) ....

Section 21(a), (b) and (c) provides:

21. Any person who-

(a) owns or keeps a place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

(b) Without permission of the Central Government, organises, or assists in organising, or becomes a member of, any association, other than a recognised association, for the purpose of assisting in entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(c) Manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purposes of entering into or making or performing, whether wholly or in part, any forward contract in contravention of any of the provisions of this Act or at which such forward contracts are recorded or adjusted, or right or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or

(d) ....

shall, on conviction, be punishable-

(i) for a first offence, with imprisonment which may extend to two years, or with fine of not less than one thousand rupees, or with both;

13. Let me first consider the case of applicants Nos. 1 to 16 and 18 to 23. The principal charge against these applicants is under Sections 20(e), 21(a), (b) and (c) of the Act. If this charge goes then the allied charge for conspiracy also collapses. The charge is founded upon Section 17 of the Act. It is alleged that forward contracts in linseed oil were prohibited by the Government u/s 17 of the Act and still these applicants organized and became members and office bearers of an association other than a recognised association, being the Bullion Exchange, which provided facilities for entering into and performing non-transferable specific delivery contracts for the sale and purchase of linseed oil without actual delivery and thereby contravened Section 17 of the Act. Admittedly, linseed oil was a notified commodity u/s 17 of the Act. Even so, argued the learned Counsel for the applicants, in the given circumstances, no offence can be said to have been committed by the aforesaid applicants. He urged that their case squarely falls within the exemption provided by Section 18(1) of the Act. On the other hand, the Government Counsel contended that the true legal position was otherwise and relied on a decision of the Supreme Court in State of Gujarat Vs. Manilal Joitaram and Co., .

14. Turning now to Section 18(1), the operative part provides that nothing contained in Chapter III or Chapter IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods. In other words, it provides that non-transferable specific delivery contracts shall not be subject to the restrictions and limitations imposed on the forward contracts generally by or under the provisions of Chapters III and IV of the Act. Judged in the context of these provisions, the effect of this Section is that every non-transferable specific delivery contract for the sale and purchase of any goods which is entered into between the members of an unrecognised association or through or with any member of such association, would be valid & legal. That would be so, even if the association provides facilities for the performance of such contracts otherwise than by actual delivery of goods. For the definition of a non-transferable specific delivery contract, as given in the Act, simply requires that there should be a provision for actual delivery during a specified future period. It does not require that the actual delivery should necessarily follow the contract. Thus the true meaning and effect of Section 18(1) is that a persons can organise or assist in organising or be a member of an un-recognised association concerned with the

business relating to non-transferable specific delivery contracts for the sale and purchase of any goods even if the association provides facilities for the performance of such contracts otherwise than by actual delivery.

15. This interpretation draws also support from the proviso appended to the Section. The proviso is an exception to the operative part of the Section. It enacts that no person shall organise or assist in organising or be member of any association (otherwise than a recognised association) which provides facilities for the performance of non-transferable specific delivery contracts in goods notified u/s without having to make or to receive actual delivery. It is a cardinal principle of interpretation that the operative part should be given such a construction which would make the exception carved out by the proviso necessary and a construction which would make the exception unnecessary and redundant should be avoided. On this principle, the general rule enacted by operative part of Section 18(1) to which the proviso is an exception must be held to be that a person can organise or assist in organising or be member of an association other than a recognised association, which provides facilities for the performance of nontransferable specific delivery contract, for the sale and purchase of any goods without having to make or to receive actual delivery. Thus, the proviso too lends support to the interpretation that I have placed on Section 18(1) above.

16. In the view expressed above, it is clear that Section 18(1) makes it legal for a person to organise or assist in organising or be a member of an unrecognised association, trading in nontransferable specific delivery contracts in goods notified u/s 17, even if the association provides facilities for performance of such contracts otherwise than by actual delivery of goods. This view is not in conflict with that adopted by the Supreme Court in the case Manni Lal (supra). In that case the Court was concerned with the question as to whether Section 18(1) makes it legal for a person to organise or assist in organising or be a member of an unrecognised association which provides facilities for performance of non-transferable specific delivery contracts in goods notified u/s 15 otherwise than by actual delivery of goods and it was ruled that in view of the proviso it does not. The Court did not consider the implication of Section 18(1) in relation to Section 17 and even said so expressly in paragraph 5 of the judgment observing,

We are not concerned with Sections 16 and 17 and may omit them from consideration.

In this background, even if the allegations made against applicants Nos. 1 to 16 and 18 to 23 are assumed to be correct, their conduct does not hit Section 17 of the Act. It is fully protected by Section 18(1) of the Act. That being so, the charge levelled against them under Sections 20(e), 21(a), (b) and (c) fails, even prima facie. With that also disappears the allied charge for conspiracy. In that view the proceedings taken against them are not sustainable in law or rather constitute an abuse of the process of the court and are liable to be quashed.

17. This brings me to the case of applicants Nos. 17 and 24 to 26. The main

charge against them is u/s 20(e) read with Section 19 of the Act. The allegations against them is that they entered into ''Tezmandi'' option transactions in linseed oil and Mustard oil. Turning to the provisions of Section 19, it is amply clear that option transactions entered into after the date this section came into force are illegal. There is no dispute that this section came into force on August 24, 1953 vide notification SRO No. 1618 dated 24-8-1953. Therefore, on the aforesaid allegations, there can be hardly any doubt that they have committed an offence u/s 20(e) read with Section 19.

18. In the result, the proceedings taken against the applicants Nos. 1 to 16 and 18 to 23 in the trial court are quashed and those taken against applicants 17 and 24 to 26 are maintained. The application is disposed of accordingly. The stay order dated 4-8-1976 is vacated.