
(1985) 07 CAL CK 0012
In the Calcutta High Court
Case No : Criminal Appeal No. 418 of 1975

Khirode Chandra Dhar

APPELLANT

Vs

P.B. Venkatasubramaniam and Others

RESPONDENT

Date of Decision : 21-07-1985

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 71, 8

Citation : (1987) 11 ECC 381 : (1987) 12 ECR 17

Hon'ble Judges : Manoj Kumar Mukherjee, J; Amal Kumar Chatterjee, J

Bench : Division Bench

Judgement

Manoj Kumar Mukherjee, J.—This appeal u/s 23EE of the Foreign Exchange Regulation Act, 1947 ("Act" for short) is directed against an order passed by the Foreign Exchange Regulation Appellate Board, confirming an order of the Director of Enforcement imposing a penalty of Rs. 40,000 on the appellant herein.

2. The case against the appellant was as follows. Acting on a secret information, some officers of the Enforcement Directorate searched the business premises of the appellant at 7/4, Watgunge Street, Calcutta on April 25, 1968. In course of the search currencies of different foreign countries including 1273 US dollars and 20,700 Japanese yen were recovered. When the search was in progress there was a telephone call for the appellant which was attended to by a search witness present there. The caller, who did not disclose his identity, enquired as to whether "the goods" were ready for delivery, and in reply thereto the search witness asked him to come to the spot. After sometime, a man came to the business premises of the appellant carrying a leather bag in his hand and disclosed his identity as Ramabatar Kabra of 12, Sikdarpara Street, Calcutta. In reply to questions put by the officers of Enforcement Branch conducting the search. Sri Kabra disclosed that he came with Indian currency to purchase dollars from the appellant, as per previous appointment. Sri Kabra was thereupon searched and a sum of Rs. 32,000 was found in the leather bag he was carrying.

3. After investigation into the case, adjudication proceedings in accordance with

the provisions of the Act were initiated against, amongst others, the appellant and he was asked to show cause why the foreign currencies seized from him should not be confiscated for his having acquired the same from different parties in Calcutta, who were not authorised dealers, in contravention of Section 4(1) of the Act. In showing cause and at the time of hearing of the adjudication proceeding the appellant denied the charge and claimed that nothing was recovered from his possession. On perusal of the materials placed before him the Director of Enforcement, who initiated the adjudication proceeding, found that the foreign currencies were recovered from the appellant and that the same were not acquired in a lawful manner. The Director also observed that from the circumstances relating to the presence of Sri Kabra in the shop of the appellant at the time of the search, it was crystal clear that the appellant was in the habit of illegally dealing in foreign currency. He, therefore, held the appellant guilty of contravening the provision of Section 4(1) of the Act and imposed a penalty of Rs. 40,000. In the appeal preferred by the appellant, the Foreign Exchange Regulation Appellate Board concurred with the finding of the Director that foreign currencies were found in possession of the appellant and that they were not planted, as was contended by the appellant. The Board, therefore, upheld the finding of the Director that the appellant had unlawfully kept foreign exchange of considerable value in his premises without obtaining necessary permission from the Reserve Bank and dismissed the appeal. No comment was however made by the Board regarding the finding of the Director that the appellant was in the habit of illegally dealing in foreign currency.

4. Mr. S.D. Banerjee, the learned Advocate appearing for the appellant, first contended that the finding of the authorities below that the appellant was in possession of foreign currencies was a perverse one as it was based on no material. We do not find any substance whatsoever in this contention. The Director of Enforcement as well as the Appellate Board considered the materials on record and on proper appreciation thereof found that the appellant was in possession of foreign currencies. This is a concurrent finding of fact and cannot be disturbed in view of the inhibitive provision of Section 23EE of the Act.

5. Mr. Banerjee next contended that even if it was assumed that the appellant was in possession of the foreign currencies it could not be said that he had "acquired" the same and therefore he could not have been found guilty for violation of Section 4(1) of the Act. According to Mr. Banerjee "possession" was not synonymous with "acquisition" and consequently from mere possession no inference of acquisition could be drawn so as to make the appellant liable for contravention of Section 4(1). In support of this contention Mr. Banerjee relied upon two decisions, one of the Madras High Court in the case of M. Kuppuswami Chettiar Vs. State, and the other of the Bombay High Court in the case of D.G. Mehta v. Director of Enforcement reported in 1982 CLJ page 588. To properly appreciate the contention of Mr. Banerjee, it will be necessary to refer to Section 4(1) of the Act which reads asunder :

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 authorised dealer, any foreign exchange.

6. In the facts of the instant case the only question which requires an answer, therefore, is whether from the factum of possession it can be concluded that the appellant otherwise "acquired" the foreign currencies for there is no specific material on record to prove that the appellant, in fact, bought or borrowed those foreign currencies.

7. According to Shorter Oxford Dictionary "to acquire" means to gain or to get as one's own (by one's own exertions or qualities). Its secondary meaning is to receive or to come into possession of. If the word "acquire" is assigned its more generic connotation, namely, that it means "to receive or to come into possession of", then the contention of Mr. Banerjee has to be negated. But if a narrower meaning is given to the word "acquire", namely, "to gain or to get as one's own" then in that case the prosecuting agency was required to further prove that the appellant got ownership of the property with all its component incidental rights. It has therefore to be ascertained whether the word "acquired" should be given the narrow or the broad meaning.

8. It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy it seeks to achieve. In construing therefore the meaning of the word "acquire" we have to determine the true scope of the Act and to have regard to all such factors as can legitimately be taken into account including the various other provisions of the Act. The Act was brought into the statute book to regulate the import and export of foreign exchange and to see that people may not deal with foreign exchange unauthorisedly. In that context, people should not be allowed to possess foreign exchange unauthorisedly and illegally, otherwise the purpose of the Act cannot be achieved. But if the word "acquire" is given the narrow meaning, a person even if found in unlawful possession of foreign exchange has to be exonerated from the rigours of the Act in case of failure of the enforcement authorities to prove that he was also the owner in respect thereof, a fact difficult to prove. This aspect assumes importance for, unlike other legislation such as Gold Control Order, unlawful possession ipso facto has not been made an offence under the Act. Section 19J(1) of the Act however provides that if any person is found or 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 should be on him. Obviously this provision has been enacted keeping in view the difficulty that the enforcement agencies may have to encounter to prove how a person got into possession of the foreign exchange. If unlawful possession is not equated with acquisition, there was no necessity of incorporating Section 19J(1), particularly where unlawful possession

is not by itself an offence. The fact that without making possession itself an offence, the onus of proof has been shifted to the offender clearly suggests the legislative intent that such unlawful and unexplained possession would amount to acquisition. We find no difficulty therefore in concluding that the word "acquire" in the Act has to be read in the generic sense to mean to receive or to come into possession of.

9. The case of D.G. Mehta 1982 CLJ 588 (supra) undoubtedly supports the contention of Mr. Benerjee, as there it was held, while dealing with Section 8(1) of the Foreign Exchange Regulation Act, 1973, which is *pari materia* with the provision of Section 4(1) of the Act (since repealed) that mere "possession" could not be said to be equivalent to or tantamount to acquisition, and for acquisition what must be shown was that either the accused had purchased the property or had taken it by way of mortgage or by way of similar kind of transfer contemplated by law relating to transfer of property. We regret our inability to agree with the above principle of law laid down by a learned Judge of the Bombay High Court, for two reasons: first, it is not always possible for the prosecuting agency to prove how the foreign exchange was transferred to the accused and secondly, if such proof was to be given Section 19J(1) was not at all required to be enacted. From the judgment it does not appear that the attention of the learned Judge was drawn to the provision of Section 71(3) of the 1973 Act which corresponds to Section 19J(1) of the Act.

10. The decision of the Madras High Court in the case of M. Kuppuswami Chettiar Vs. State, is not of much assistance as the same related to different legislations, namely, the Gold Control Order and Rules framed thereunder. In these legislations penal provisions have been made both for unauthorised acquisition and possession of gold and in that context, the Court accepted the narrow meaning of the word "acquire" and held that as the appellant was found in possession of gold and there was no evidence to show that he acquired the same, he could not be held liable for the former violation for which he was charged. In so deciding the Court further found that the materials on record indicated that the petitioner therein was carrying the gold as a carrier and on such a finding concluded that as a carrier it could not be said that he acquired the gold. For the foregoing discussion the second contention of Mr. Benerjee must also be negated.

11. As no other point was raised in support of the appeal, we dismiss the same.

Amal Kumar Chatterjee, J.

12. I agree.