
(1967) 11 KL CK 0020
In the High Court Of Kerala

Krishnan Sukumaran

APPELLANT

Vs

Enforcement Officer

RESPONDENT

Date of Decision : 14-11-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Foreign Exchange Regulation Act, 1973 — Section 19, 51
General Clauses Act, 1897 — Section 3

Citation : (1968) CriLJ 936

Hon'ble Judges : T.C. Raghavan, J;M.U. Isaac, J

Bench : Division Bench

Judgement

M.U. Isaac, J.—This is a petition u/s 439 of the Criminal Procedure Code for revising an order which the First Class Magistrate, Varkala passed on 30.5.1966 on an application filed before him by the Enforcement Officer, Enforcement Directorate, Ministry of Finance, Government of India, Cochin. He is the sole respondent in this case. The application was not numbered; but it was made in Crime No. 83 of 1966 of the Varkala Police Station, which it had reported to the Court of the above Magistrate on 27.5.1966.

2. The petitioner before us is one Krishnan Sukumaran, a resident of Varkala Village in Quilon District. The records of the Magistrate's Court, which have been called for, disclose the following facts. At 4 A.M. on 27.5.1966, while the Sub-Inspector of Police, Varkala and party were returning to their station in two motor cars with a few accused persons arrested by them, the Sub-Inspector saw a person standing by the side of the public road near the Mission Hospital, with a filled cloth bag. The Sub-Inspector stopped his car, when the above person went to the car with the bag. Apparently, he was waiting for somebody to come in a car. But when he saw the police, he tried to escape. He was stopped and the bag was searched. It contained 789 Indian currency notes of one hundred rupees denomination, bundled into several lots and slips of papers attached thereto. He was arrested on the spot, and the whole currency notes were seized by the Sub-Inspector. The person thus arrested is the petitioner before us. He told the police

that these currency notes were entrusted to him by one kesavan Madhavan, that they were amounts remitted from foreign countries through secret agencies to be distributed to persons in India, and that he was waiting there for Kesavan Madhavan, who had promised to come in a car and meet him. The arrest and seizure were made on the reasonable belief that the petitioner along with others were guilty of offences under the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the Act) and that the currency notes were involved in the crime. The police produced the petitioner and the notes in the court of the First Class Magistrate on 27.5.1966. The petitioner was remanded to custody. Krishnan Madhavan was arrested u/s 19B of the Act by the respondent, and produced before the court on 30.5.1966. On the same day, both the petitioner and Madhavan were released on bail by the First Class Magistrate.

3. On 28.5.1966, the Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India, Madras passed an order u/s 19(2) of the Act. On 29.5.1966, the sub-Inspector of Police submitted a report in the First Class Magistrate's Court praying that as the offences in respect of which he took action fell under the Act, and as the respondent was the competent authority to investigate into them, all the records and material objects taken into custody and produced in court may be handed over to the respondent. On 30.5.1966, the respondent made the application, in which the order sought to be revised in this case was passed. Along with this application, the respondent also produced in the Court, the order of the Assistant Director of the Enforcement Directorate. This order reads as follows:

ENFORCEMENT DIRECTORATE MINISTRY OF FINANCE DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA.

Telephone: 82080 5/6, Mount Road, Telegram: "DIRFERA" (Round Tana) Madras?
2. NO. MF. FNF. MA. /INT/52/66(c)/66.

Whereas for the purpose of the Foreign Exchange Regulation Act, 1947 (VII of 1947), the Central Government considers it necessary or expedient to obtain and examine the information and documents seized from Sri Krishnan Sukumaran, and now in the possession of the Sub-Inspector of Police, Varkala, Trivandrurn District, Kerala State or which in the opinion of the Central Government it is possible for the said Sub-Inspector of Police, Varkala to obtain and furnish.

Now therefore in exercise of the powers conferred by Sub-section (2) of Section 19 of the said Act the Central Government hereby requires the said Sub-Inspector of Police, Varkala, to furnish or to obtain and furnish to the Central Government with the said information and documents forthwith through Sri M. D. Gopinath, Enforcement Officer, Cochin.

Particulars of information and documents required:

- (1) Indian currency notes to the value of Rs. 78,900/-.
- (2) all other documents found in the possession of Sri Krishnan Sukumaran.

Dated at Madras this 28th day of May, 1966.

Sd/- K.A. Ganapathy Asst. Director, Enforcement Directorate Ministry of Finance,
Dept. of Rev. Govt. of India, Madras.

To

The Sub-Inspector of Police, Varkala, Trivandrum District, Kerala State

In the light of the contentions advanced in this case it is necessary to read also
the application made by the respondent,

IN THE HON"BLE COURT OF THE MAGISTRATE, VARKALA

M.P. No. Nil of 1966 in Crime No. 83/66 of Varkala Police Station.

The petitioner herein is the enforcement officer, Enforcement Directorate,
Ministry of Finance Government of India, Cochin authorised by the Central
Government to obtain the documents in connection with Crime No. 83/66 of
Varkala Police Station.

The case under reference has been found by the police, falling under the
provisions of the Foreign Exchange Regulation Act (Act 7 of 1947) and they have
transferred the case records to the petitioner for further action in the matter, A
report to that effect has also been submitted to the Court by the Sub-Inspector
of Police.

The documents seized from the custody of the accused by the police and
produced before the Court are very important documents which will be evidence
of the contravention of the provisions of the Foreign Exchange Regulation Act.

It may be seen that the term "document" includes Indian Currency as defined in
Section 19A(7) of the said Act.

It may also be seen that the officers of the Enforcement Directorate are
competent to the custody of these documents as authorised u/s 19G of the Act.
Hence the petitioner prays that the Honourable Court may be pleased to order
the delivery of these documents to me.

Signed and dated the 30th day of May 1966 at Varkala.

Sd/- (M.P. Gopinathan)

The Magistrate passed the order on the margin of the application on the same
date; and it is in these terms:

Entrust the documents as required on getting proper receipt.

Accordingly, the records and the currency notes amounting to Rs. 78,900/- were
handed over to the respondent on 30.5.1966 itself.

4. The following are the grounds taken in the petition for revising the order:

(i) The application made by the respondents for handing over the currency notes purports to be u/s 19(2) of the Act. This Section has no application to this case, and at any rate, currency notes do not come within its ambit.

(ii) Only the Reserve Bank of India or the Central Government is entitled to pass any order u/s 19(2) of the Act. In this case, the order was passed by an Assistant Director of the Enforcement Directorate; and, therefore, the order is bad on the face of it.

(iii) The police has no power to seize the currency notes for any offence under the Act. The seizure is, therefore, illegal; and the notes should not have been handed over to the respondent.

It is interesting to note in this case that the petitioner does not claim that the currency notes belong to him, nor does he even admit that the notes were seized from his possession. The prayer in the petition is only to quash the impugned order, and direct the respondent to surrender the currency notes back to the court of the First Class Magistrate. As the petitioner does not claim any interest in this amount, he is not entitled to question an order passed regarding the disposal of the same. This is enough to dispose of this case; but as such a contention was not raised before us; and as the case has been referred to a Division Bench stating that it involves important questions of law, we do not propose to dispose of it on such a preliminary ground.

5. The application made by the respondent for the custody of the currency notes has been sought to be supported by the Central Government Pleader u/s 19(2) of the Act. If this is the only ground on which the claim can be supported, he must fail. Section 19 of the Act reads as follows:

19(1) The Central Government may, at any time by notification in the Official Gazette, direct owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities as may be so specified, to make a return thereof to the Reserve Bank within such period, and giving such particulars, as may be so specified.

(2) Where for the purposes of this Act the Central Government or the Reserve Bank considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank it is possible for such person to obtain and furnish, the Central Government or, as the case may be, the Reserve Bank may, by order in writing, require any such person (whose name shall be specified in the order) to furnish, or to obtain and furnish to the Central Government, or the Reserve Bank or any person specified in the order with such information, book or other document.

This section has been amended from time to time; and the last amendment was made by the Foreign Exchange Regulation (Amendment) Act 1964. which came into force with effect from 1.4.1965. It is clear from Sub-section (2) of Section

19 that the Reserve Bank of India and the Central Government alone have got the power to pass an order under this section. Our attention has not also been invited to any statutory provision, empowering the above authorities to delegate the power u/s 19(2) to any other officer. The order passed by the Assistant Director does not state that it was being passed by virtue of any delegation of power, nor does it even purport to be one passed on behalf of the Reserve Bank or the Central Government.

6. We also agree with the petitioner's learned Counsel that Section 19(2) of the Act has no application to this case. What it empowers the Central Government and the Reserve Bank is to require by an order in writing-

- (i) any person in possession of any information, book or other document to furnish the same to them or any person specified in the order, for examination; or
- (ii) any such person, for whom it is possible in the opinion of the Central Government or Reserve Bank to obtain and furnish any information, book or other document, to obtain and furnish the same to the aforesaid authorities for examination.

On 28.5.1966, when the Assistant Director of the Enforcement Directorate passed the order u/s 19(2), which is addressed to the Sub-Inspector of Police, he was not in possession of the currency notes or any documents. He had produced everything in court on 27.5.1966. The Sub-Inspector has no manner of right to get them from the court. We do not think that it is within the power of the Central Government or the Reserve Bank to require a person to obtain and furnish to them an information, book or document, which is in the possession of a court or a third person, and in respect of which the person so ordered has no manner of right to possession or custody. The above order was obviously passed for getting into the custody of the Enforcement Directorate, the currency notes seized by the police and produced before court, for the purpose of investigation of a case under the Act. We do not think that Section 19 is a provision intended for this purpose, nor can it be pressed into service for the same.

7. The petitioner's learned Counsel is also right in his contention that currency notes are not "documents", and that an order u/s 19(2) cannot direct any person to furnish currency notes. The Act does not contain a definition of the word "document". The learned Central Government Pleader referred to the definition contained in Section 3(18) of the General Clauses Act, 1897, and contended that document includes currency note. This section reads-

3(18) - "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter.

A reading of the section refutes the above contention. Sub-section (7) of Section 19-A of the Act provides as follows:

19-A. (7) - In this section and in Sections 19C to 19G, the expression "document" includes Indian currency, foreign exchange and books of account.

The above provision indicates that, but for this special provision, document does not include Indian Currency, and that the expression document would include Indian Currency only in the sections mentioned therein, and not in any other section. This means that, in Section 19(2), document will not include Indian Currency.

8. The question whether the seizure of the currency notes by the Sub-Inspector is illegal or not has no relevancy to the consideration whether the order passed by the Magistrate handing over them to the respondent was valid or not. Offences under the Act are not cognisable by the police. They are to be investigated by the officers of Enforcement, and prosecuted by them. Large powers are vested in them for this purpose. They have got the power to arrest any person, and search any person and premises for the purposes provided in the Act, and subject to the conditions mentioned therein, Section 25A of the Act empowers and requires officers of Police, among others to assist officers of Enforcement in the enforcement, of the Act. Section 550 of the Criminal Procedure Code also empowers a police officer to seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. So, in any view of the matter, the seizure of the currency notes by the Sub-Inspector from the possession of the petitioner was lawful. The only question for consideration is whether the respondent is entitled to get them from the court. The respondent has not stated in his application for releasing the currency notes to him under which provision of the law he has made the said application. But it is stated that Crime No. 83 of 1966, registered by the police, pursuant to seizure of the currency notes and the arrest of the petitioner, involves offences under the Act and that the police has handed over the matter to the respondent for further action. It is also stated that currency note is document as denned in Section 19A(7) of the Act, that the currency notes in the custody of the court are very important documents for evidence of the contravention of the Act, and that the officers of Enforcement are competent to the custody of these documents u/s 19G of the Act. This application was drawn up in a very clumsy manner. It is also evident from the order passed by the Assistant Director u/s 19(2) of the Act, and the averments in the above application made by the respondent, that neither of these officers were aware of the relevant provisions of the Act under which they could get the currency notes from the custody of the court for the purpose of investigation of the case under the Act. But this cannot stand in the way of the respondent getting custody of the same, if he is entitled to them under any provision of law.

9. Section 19A empowers any officer of Enforcement authorised in this behalf by the Central Government to search any person and seize documents, if he has reason to believe that such a person has secreted any document which will be

useful for or relevant to any proceeding under the Act. Section 19D empowers an officer of Enforcement, not below the rank of Assistant Director to authorise any officer of Enforcement to search for and seize any documents for the above purpose. Section 19G, among other things, authorises any officer of Enforcement to retain documents seized u/s 19A or 19D for such periods and such purposes as are mentioned therein, if he has reason to believe that the said documents would be evidence of the contravention of any of the provisions of the Act. It is not, therefore, disputed that, if the currency notes were not seized by the police and produced in court, and they were in the possession of the petitioner or secreted in any place, the respondent could have seized them; and that, if it were done so, they could be retained with the respondent for the purpose of the case under the Act. It is conceded, that if the currency notes were returned by the court to the petitioner, the respondent can seize them from the petitioner, as soon as he gets it from the court. But the contention is that, so long as the currency notes are in the custody of the Court, the respondent is helpless, as there is no provision of law entitling him to get them from the Court. The contention cannot stand in the light of the provision contained in Section 523 of the Criminal Procedure Code. It reads as follows:

523. Procedure by police upon seizure of property taken u/s 51 or stolen-

(1) The seizure by any police-officer of property taken u/s 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown-

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

10. The learned Counsel for the petitioner contended that the above section does not apply to such a case. We can find no warranty for this contention in the language of the section. It certainly applies to property seized by a police officer under circumstances which create suspicion of the commission of any offence; and that is precisely the circumstance which leads to the seizure of the currency notes concerned in this case. In *Suraj Mohan Babu Mishra Vs. State of Gujarat*, Shelat, J. said:

There are three stages in a matter in which the Magistrate may be required to pass orders regarding custody or disposal of any such property. The first is

before the charge-sheet in any criminal case is received by the Court, and such a matter may well be covered u/s 523 of the Criminal Procedure Code. Then the court may have to pass orders relating thereto during the pendency of the inquiry or trial and that can be done u/s 516A of the Code. Then comes Section 517 which requires the Court to pass orders in that respect when the trial is concluded.

Speaking about the scope of Section 523. of the Criminal Procedure Code, Anna Chandy, J. observed in *Alikunju Vs. Alikunju and Others*, that the section was wide enough to include the disposal of a property seized by the police in the course of investigation of a crime, in respect of which the police had not yet filed any charge-sheet. This view has been followed by a Division Bench of the Calcutta High Court in *Ajoy Raj Singh Vs. Baj Bahadur Singh and Others*, wherein there is a more detailed discussion of the question.

11. The very question, which has been raised in this case, arose for decision in *Bavajee v. State of Kerala* 1966 Ker LT 977 : AIR 1967 Ker 282. In this case, the police seized from the petitioners currency notes of the value of Rs. 36,000 and produced the same before the Magistrate. After investigation, the police reported that the case involved contravention of the Act, and not any offence which it could take cognisance of. The petitioners moved the Magistrate for return of the currency notes. The respondent intervened, and moved for the delivery of the currency notes to him stating that they were required as evidence of contravention of the provisions of the Act. The Magistrate ordered the delivery of the currency notes to the respondent. In revision before this Court, it was contended among other things, that the Magistrate had no jurisdiction u/s 523 of the Criminal Procedure Code to order the delivery of the currency notes to the respondent. This contention was rejected by Madhavan Nair, J. stating:

Under Section 523 of the Code of Criminal Procedure, property seized by the police on suspicion and produced before a Magistrate has to be returned to the person entitled to the possession thereof. Normally, when no offence is found by the Magistrate the person entitled may be the person from whom the property was seized. But if the enforcement Officer is entitled to seize the property immediately from such person, he may be the person entitled to the present possession thereof. It would be an empty formality, in the face of the application moved by the Enforcement Officer, to have the property delivered to the petitioners u/s 523 CrI.P.C. and then seized by the Enforcement Officer from the hands of the petitioners at the Sate of the Magistrate's Court.

In *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, , the appellants were detained under Rule 30 of the Defence of India Rules, 1962 by an order dated 7.11.1962. While they were in jail, the above order was cancelled on 10.11.1962, and another order under the same rule for their detention was passed and served on them on the same date. It was contended in that case, among other things, that the second order of detention was bad, as it was served on the appellants, while they were in jail. Rejecting this contention, the Supreme

Court said:

In these circumstances, it would be in our opinion an empty formality to allow the appellants to go out of jail on the revocation of the order of November 7, and to serve them with the order dated November 10, 1962, as soon as they were out of jail.

The same principle applies to the case before us.

12. If a property which an officer is entitled to seize or otherwise take possession of under any provision of law is in the possession or custody of a court or any other authority, it is plain common sense that what that officer has to do under such circumstances is to move the court or the authority, as the case may be, for handing over possession of the said property to the officer. And if the court or authority does not require to have possession of the property for any lawful purpose it is its duty to hand over the property to the officer, for being dealt with according to law. In the instant case, the currency notes were seized by the police, as they appeared to be involved in the commission of offences under the Act; and the police handed over the matter to the Enforcement Directorate, as the case was not cognisable by the police; and as it had to be investigated by the respondent. These notes were not, therefore, required for any purpose in the court, but the respondent was entitled to have them for the investigation. In these circumstances, the order passed by the First Class Magistrate handing over the currency notes to the respondent is correct. We, therefore, dismiss this revision petition.