

(1999) 09 DEL CK 0137

In the Delhi High Court

Case No : Criminal M (M) 1125/96 and Criminal M. 1987/96 and Criminal M (M) 1833/87

M. Kurian Chief Functionary of The Comprehensive Rural Operations Services Society (Cross)

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Foreign Contribution (Regulation) Act, 1976 — Section 23, 25, 6

Citation : (2000) 1 AD 837 : (2000) CriLJ 2347 : (2000) 83 DLT 343 : (2000) 52 DRJ 346 : (1999) 2 ILR Delhi 514

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. M.P. Raju, for the Appellant; Mr. A.K. Dutta, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By two separate petitions u/s 482 Cr. P.C., the petitioner seeks quashing of the criminal proceedings arising out of the FIR R.C. 1/87-CIU(E) I and R.C. No. 10/87/SIU (VIII) and pending on the file of the Chief Metropolitan Magistrate, Tis Hazari, Delhi. I propose to dispose of both the petitions by this order.

2. M/s. Comprehensive Rural Operation Service Society (for short the "Society") is an association registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act. Petitioner Mr. M. Kurian is the Executive Director of the Society. By the application dated 27.11.1984, the Society submitted an application in the prescribed form PC-8 for registra- corporation u/s 6 of the Foreign Contribution (Regulation) Act (for short "the Act") to the Secretary Govt. of India, Ministry of Home Affairs New Delhi, for receiving foreign contribution. By the said application, the Society agreed to receive/accept foreign contribution only through the main branch of the State Bank of India, Hyderabad, where a separate bank A/c No. 288 was opened for the said purpose. By the Notification No. 11/21011/61(27)/85-FCRA-III, dated 23.1.1985, the Society was allotted

registration No. 010220003 by the Central Govt. in terms of Section 6(1)(a) of the Act.

3. M/s. HILFESWERIC DER EVANGELISCHEN KIRCHEN DER SCHNEIZ (for short M/s. HEKS) is the executive agency of the Federation of Protestant Churches in Switzerland. Some of the relief and development activities of M/s. HEKS are funded by the Swiss Govt. M/s. HEKS are having their delegate office at Bangalore. On 1.9.1981, the Society entered into an agreement with M/s. HEKS for financing the project "teaching aid non formal education" and it was stipulated in the agreement that the Society shall be accountable to the Govt. of India for the disbursement of funds provided by M/s. HEKS as laid down in the Act and Rules made thereunder. Pursuant to this agreement, the Canara Bank, Cantonment Branch, Bangalore, under the instructions of M/s. HEKS, issued D.D. No. 62/85 dated 1.1.1985 for Rs. 2 lacs and D.D. No. 7268 dated 26.6.85 for Rs. 1.65 lacs in favor of the Society. Instead of depositing the aforesaid two DDs in the A/c. No. SB-288 of the main branch of the State Bank of India, Hyderabad, the Society deposited them into its account of the Canara Bank, M.G. Road, Secunderabad. As per prosecution case, the Society also failed to intimate the Central Government about receipt of contribution from M/s. HEKS in the returns filed on 7.1.1986 in respect of the receipt of foreign contribution for the period from January, 1985 to June, 1985. The Society was required to intimate to the Central Govt. about the receipt of the aforesaid foreign contribution within the period prescribed u/s 6(1)(b) of the Act. However, while submitting the audited accounts regarding the receipt of foreign contribution, the Society disclosed the receipt of the aforesaid foreign contribution vide letter dated 17.3.1986. Thereupon, on 8.5.1986, the Central Govt. in the purported exercise of power vested u/s 10(b) of the Act issued a notification requiring the Society to obtain prior permission of the Govt. before accepting any foreign contribution. The Society challenged the validity of the said notification by filing the writ petition No. 9677/86 before the High Court of Andhra Pradesh, which was allowed and the notification dated 8.5.1986 was quashed. Thereafter, the Central Govt. got the accounts of the Society inspected by Mr. K.E.B. Rangarajan, Asstt. Director (F.C.R.A.), Ministry of Home Affairs, Govt. of India. Mr. K.E.B. Rangarajan submitted his report dated 17.7.1986 to the Govt. of India, on the basis of which two first information reports being FIR No. R.C. 1/87- CIU(K) and FIR No. 10/87/ SIU (VIII) were registered against the Society. Investigation pursuant to the said FIR culminated into submission of a chargesheet u/s 6 read with Section 25/23 of the Act against the petitioner.

4. The petitioner seeks quashment of the criminal proceedings on the ground that the material collected by the Investigative Agency does not constitute any offence against the Society. It is alleged that the petitioner's prosecution is a vindictive operation mounted by the Central Govt. as the petitioner had challenged the validity of the notification dated 8.5.1986 by filing the W.P. No. 9677/86, which was allowed by the High Court of Andhra Pradesh.

5. The respondent resisted the petition contending that the petitioner contravened the provisions of Section 6(1)(b) of the Act by the following acts and omissions :-

(i) the Society, instead of depositing the foreign contribution received from M/s. HEKS in its Account No. 288, State Bank of India (main branch) Hyderabad as per undertaking given u/s 6 of the Act, deposited it in the Canara Bank, Secunderabad;

(ii) the Society failed to intimate the Govt. of India about receipt of the said foreign contribution within the period prescribed u/s 6(1)(b) of the Act.

6. It is alleged that the said contravention of the provisions of Section 6(1)(b) of the Act is punishable u/s 23 of the Act.

7. Learned counsel for the petitioner contended that on true construction of Sections 6 and 23 of the Act and on true interpretation of the petitioner's act in depositing the contribution received from M/s. HEKS in the Canara Bank, Secunderabad, does not fall within the ambit of Section 23 of the Act and thus the criminal proceedings launched against the petitioner is an abuse of the process of the Court. He further contended that the petitioner's prosecution is also bad for want of valid sanction u/s 27 of the Act. On the other hand, learned counsel for the respondent submitted that admittedly the petitioner accepted foreign contribution through a bank other than the specified in the undertaking given by it under Sections 6(1) of the Act and thereby committed a breach of the undertaking amounting to contravention of Section 6 within the meaning of Section 23 of the Act. In other words, the contention of the learned counsel is that the contravention of the terms of the undertaking given u/s 6(1) is contravention of Section 6 itself within the meaning of Section 23 of the Act and is punishable.

8. It is undisputed that the Society was registered with the Central Government as required by Section 6(1) of the Act. As per declaration made by the Society u/s 6(1)(b) of the Act any foreign contribution received by it was to be credited into its account No. SB-288 of the State Bank of India Hyderabad, which was exclusively opened for accepting the foreign contribution; that the DD No. 62/85 for 2 lakhs and the DD No. 7268 dated 26.6.1985 for Rs. 1.65 lakhs issued by the Canara Bank Cantonment Branch, Bangalore from the Account No. 19569 maintained by M/s. HEKS with the Canara Bank Cantonment Branch 88-M.G. Road, Bangalore were credited into the account of the Society in Canara Bank, M.G. Road, Secunderabad on 7.1.1985 and 1.7.1985 respectively.

9. The question is whether the action of the Society in depositing the DD No. 62/85 dated 1.1.1985 for Rs. 2 lakh and the DD No. 7268 dated 26.6.1985 for Rs. 1.65 lakhs in the Canara Bank M.G. Road, Secunderabad instead of depositing them into account No. SB-288 maintained by the Society with the State Bank of India Hyderabad amounted to contravention of the provision of Sections 6(1)(b) of the Act. Inevitably the issue here has to run around the

language of the statute and, Therefore, the provisions of the relevant parts of Section 6, 10 and Section 23 of the Act may be read at the outset.

Section 6 : Certain associations and persons receiving foreign contribution to give intimation to the Central Government (1) "No association (other than an organisation referred to in subsection (1) of section 5) having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association _

(a) register itself with the Central Government in accordance with the rules made under this Act; and

(b) agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration, and every association so registered shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it :

Provided that where such association obtains any foreign contribution through any branch other than the branch of the bank through which it has agreed to receive foreign contribution as fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

(1A) Every association referred to in subsection (1) may, if it is not registered with the Central Government under that subsection, accept any foreign contribution only after obtaining the prior permission of the Central Government and shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which such and the manner in which foreign contribution was utilised by it.

(2) Every candidate for election, who had received any foreign contribution, at any time within one hundred and eight days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by him, the source from which and the manner in which such foreign contribution was received and the purposes for which, and the manner in which, such foreign contribution was utilised by him."

12. Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases _ The Central Government may _

(a) prohibit any association, not specified in Section 4, or any person, from

accepting any foreign contribution;

(b) (without prejudice to the provisions of subsection (1) of section 6, require any association, specified in that subsection), to obtain prior permission of the Central Government before accepting any foreign contribution;

(c) require any person or class of persons or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised.

(d) require any person or class of persons, not specified in Section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(e) require any person or class of persons, not specified in Section 9, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or person or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially _

(i) the sovereignty and integrity of India; or

(ii) the public interest; or

(iii) freedom or fairness of election to any Legislature; or

(iv) friendly relations with any foreign State; or

(v) harmony between religious, racial, linguistic or regional groups, castes or communities.

23. Punishment for the contravention of any provision of the Act- (1) Whoever accepts or assist any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) Whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made there under shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

10. The Act was enacted to regulate the acceptance and utilisation of foreign

contribution of foreign hospitality by certain categories of persons or organisations. Section 10(a) of the Act authorises the Central Government to prohibit any association, not specified in Section 4, or any person, from accepting any foreign contribution. Section 10(b) provides that the Central Government, may without prejudice to the provisions of subsection (1) of Section 6, require any association specified in that section, to obtain prior permission of the Central Government before accepting any foreign contribution. Subsection (1) of Section 6 of the Act provides that every association having a definite cultural, economic, educational, religious or social programmes, may receive foreign contribution subject to the following conditions :

- (i) that it is registered with the Central Government specifically for the purpose;
- (ii) that it agrees to accept such contribution only through a specified branch of a bank and to give, within such time and in such manner as may be prescribed, intimation to the Central Government as to the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received by it and the purposes for which and the manner in which such foreign contribution was utilised by it.

11. Rule 3-A of the Rules framed under the Act prescribes format of the application for registration of an association referred to in subsection (1) of Section 6 for acceptance of foreign contribution. Under the proviso to Section 6, where any registered association does not accept foreign contribution through the specified bank or does not submit intimation in accordance with subsection (1)(b) of Section 6, the Central Government has been empowered to issue a notification restraining it from accepting foreign contribution without the prior permission of the Central Government. Thus, the scheme of the Act shows that the Central Government can grant license to any association registered u/s 6(1) of Act to receive foreign contribution subject to the conditions enumerated in Section 6(1) (b) of the Act. If a condition inserted in such a license or in the undertaking given by the Association u/s 6(1)(b) of the Act is subsequently infringed by the Association, proviso to Section 6 enables the Central Government to issue a notification restraining such Association from accepting any foreign contribution without the prior permission of the Central Govt. Thus, there is an inbuilt provision in Section 6 itself specifying the action to be taken by the Central Govt. in the event of any violation of the undertaking given u/s 6(1) (b) of the Act. Section 10(a) of the Act empowers the Central Govt. to prohibit any association or any person from accepting any foreign contribution. Section 10(b) provides that the Central Govt. may, without prejudice to provision of subsec.(1) of Section 6, require any association specified in that subsection, to obtain prior permission of the Central Govt. before accepting foreign contribution. After issuance of a notification u/s 6 read with Section 10 of the Act, an association registered u/s 6(1) cannot receive foreign contribution without the prior permission of the Central Govt. and if it receives any foreign contribution in contravention of the said notification it is liable to be punished u/s

23 of the Act. It follows that the act which constitutes, a contravention of Section 6 is the acceptance of foreign contribution in violation of a notification issued by the Central Govt. u/s 6 read with Section 10(b) of the Act. Thus, in such a case, the essence of the offence is a contravention of the notification issued under proviso to Section 6 read with Section 10 of the Act. In other words, the contravention of only the notification issued u/s 6 read with Section 10 attracts the penal provisions of Section 23. The construction I am placing on Sections 6, 10 and 23 of the Act is borne out by the proviso to Section 6. It may be remarked here that the general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. (Government of the Province of Bombay Vs. Hormusji Manekji AIR 1947 P.C. 200: Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories, ; Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, ; Abhoy Pada Saha Vs. Sudhir Kumar Mondal, : Damodar Valley Corporation Vs. State of Bihar and Others AIR 1976 SC 1956). Section 23 of the Act does not expressly or by necessary implication make any contravention of the agreement or undertaking given by an association u/s 6(1) (b) punishable. Thus, Section 23 of the Act does not make acceptance of foreign contribution by an Association registered u/s 6(1) in contravention of an undertaking given u/s 6(1)(b) punishable. On the other hand it only makes acceptance of foreign contribution or any currency from a foreign source, in contravention of any provisions of the Act, punishable. Keeping in view the proviso to Section 6, the ambit of Section 23 cannot be enlarged by stretching the language employed by the Legislature to include any inf of the undertaking given u/s 6(1)(b) as a contravention of the provision of Section 6 of the Act. In Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , it was held that when a law visits a person with serious penal consequence extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of this Statute are not dropped in by stretching the language of the law.

12. Reference may, in this context, be made to the decisions of the Supreme Court in East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, , Calcutta (1963) (8) SCR 338 and Boothalinga Agencies Vs. V.T.C. Poriaswami Nadar, .

13. In East India Commercial Co. Ltd. (supra), the facts were that on October 8, 1948, the company was granted license to import from USA a large quantity of fluorescent tubes and fixtures. The licences were issued subject to the condition that goods would be utilised only for consumption as raw material or accessories in the license holder's factory and that no portion thereof would be sold to any party. After the goods arrived in India in February March, 1949, the company took delivery of them on payment of customs duty. On information alleged to have been received by the authorities concerned that the goods were being sold in the market in breach of the conditions of the licence, the Police seized a large stock of the goods from the company's godown. On January 12, 1951, the

Customs Department filed a complaint before the Magistrate u/s 5 of the Imports and Exports (Control) Act, 1947, against the company and its directors, on the allegation that the accused persons had, in violation of the conditions of the licence, disposed of portions of the goods covered by it. The Magistrate discharged the accused and his order was confirmed by the High Court on March 3, 1955, on the ground that Section 5 of the Act penalised only a contravention of an order made or deemed to have been made under the said Act, but did not penalise the contravention of the conditions of license issued under the Act or issued under a statutory order made under the Act.

14. During pendency of the revision before the High Court, on January 8, 1952, the company filed an application before the Magistrate for the release of seized goods on the ground that they were deteriorating, but that was dismissed. However, in the revision against that order, the High Court on January 16, 1953 directed the goods to be sold by the Magistrate and the sale proceeds to be kept in his custody. The goods were sold accordingly and the money was deposited in the Court. After disposal of the revision by the High Court, against the order of discharge, the company filed an application before the Magistrate for making over the sale proceeds to them. Thereupon the Magistrate issued show cause notices to the Assistant Collector of Customs and also to the Delhi Special Police Establishment. The Superintendent, Special Police Establishment did not show cause but the Assistant Collector of Customs took adjournments of the hearing of the application on the ground that the departmental proceedings were pending against the company. On May 9, 1955, the company filed a revision against the order adjourning the application. On May 28, 1955, the Collector of Customs started a proceeding purported to be u/s 167(8) of the Sea Customs Act read with Section 3(2) of the Act and issued a show cause notice to the company. It was stated in the notice that the special license was issued on the express condition that the goods covered by the said license should be utilised for consumption as raw material or accessories in the factor of the license holder and that no part thereof should be sold or permitted to be utilised by any other party, that the company sold a portion of the goods imported under the said license to others in breach of the said condition and that, as the company infringed the said condition, the goods or the money substituted in its place, were liable to be confiscated. On June 3, 1955, the company filed a Writ of Prohibition before the High Court of Calcutta restraining the Collector of Customs, Calcutta from proceeding with the inquiry on the ground that it was without jurisdiction. The writ was dismissed by the High Court. Aggrieved by the dismissal of the said writ, the company filed SLP before the Supreme Court. One of the contentions raised before the Supreme Court was that a contravention of a condition imposed by the license issued under Sea Customs Act would attract Section 167(8) of the Sea Customs Act. Repelling the said contention, their Lordships of the Supreme Court held that u/s 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947, only the goods imported in contravention of the order under the latter Act were liable to

be confiscated, but the Section did not expressly or by necessary implication empower the authority concerned to confiscate the goods imported under a valid license on the ground that a condition of the license not imposed by the order was infringed or violated. The infringement of a condition in the license was not an infringement of the order and did not, Therefore, attract Section 167(8) of the Sea Customs Act.

15. In *Boothalinga Agencies (supra)*, the agency entered into a contract to sell certain goods to the respondent V.T.C. Poriaswami Nadar which he was importing under actual users' licence. Under the terms of the license the sale of the goods was prohibited and was to be utilised for consumption by the Importer. The goods arrived, and were cleared by the Boothalinga Agencies. The respondent filed a suit which was decreed by the trial court holding that the contravention of the terms of the license entailed only an administrative penalty, the sale could not be held to be prohibited by law and the contract was a legal contract. The High Court upheld the decree. In appeal against the said order of the High Court, their Lordships of the Supreme Court held that if the agency contravenes the conditions imposed by the license it is merely a contravention of the conditions of a license and not a contravention of the provisions of Section 5 of the Imports and Exports (Control) Act, 1947.

16. Taking a cue from the said decisions of the Supreme Court and on strict construction of the penal provisions of Sections 6, 10 and 23 of the Act, it must be held that a breach of the undertaking given by an association u/s 6(1)(b) would not amount to contravention of any provision of the Act within the meaning of Section 23 of the Act. I am, Therefore, of the opinion that the action of the Society in depositing the amount received from M/s. HEKS in the Canara Bank, Secundrabad, instead of depositing it in the Account No. 288, State Bank of India (Main Branch, Hyderabad) and the late submission of the information to the Central Government about the receipt of the said amount from M/s. HEKS does not fall within the mischief of Section 23 of the Act. That being so, there is no prospect of the case in ending in conviction and valuable time of the trial court would be wasted for holding the trial only for the purpose of formally completing the procedure to pronounce its conclusion on a future date. In this view of the matter, allowing the criminal proceedings to continue and thereby forcing the petitioner to face ordeal of a criminal trial would be an abuse of the process of the court.

17. Consequently, the petition is allowed and the criminal proceedings arising out of the FIR No. 1/87/CIU(E)1 and RC. 10/87-SIU(VIII) and pending on the file of the Chief Metropolitan Magistrate, Delhi are quashed.