(1973) 11 MAD CK 0028

In the Madras High Court

Case No : Criminal R.C. No''s. 571 and 572 of 1970 and Criminal R.P. No''s. 570 and 571 of 1970

M.R. Pratap and another — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 23-11-1973

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439

Citation : (1973) 11 MAD CK 0028

Hon'ble Judges : K. Veeraswamy, C.J;Varadarajan, J

Bench : Division Bench

Advocate : A.K. Sen, for M/s. N.C. Raghavachari and N.S. Varadachari and Mr. C.K. Venkatanarasimhan, for the Appellant; G. Ramaswamy, Central Government Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Varadarajan, J.—These criminal revision petitions have been filed under Sections 435, 439 and 561(A) of the Code of Criminal Procedure, by Mr. M.R. Pratap and Lennart Schussler, accused 2 and 1 respectively in C.C. No. 5438 of 1969 on the file of the Chief Presidency Magistrate, Egmore, Madras, to set aside the order, d. 13th April 1970 passed by the Chief Presidency Magistrate, Madras, dismissing M.P. Nos. 61 and 62 of 1970 and thus quash the complaint filed by the Respondent, Director of Enforcement, New Delhi, u/s 120-B of the I.P.C., read with Sections 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act, 1947 in C.C. No. 5438 of 1969. M.P. Nos. 61 and 62 of 1970 were filed by Schussler and Pratap respectively for dismissing the said complaint in limine or alternatively for making a reference to this Court under Sections 432 and 439 of the Code of Criminal Procedure.

2. Messrs. Rayala Corporation (Private) Limited, Madras, is a concern manufacturing Halda Typewriters, for which certain raw material and components are being imported from Sweden. The firm with which initially the transactions of

that Corporation were entered into was known as AB Advidabergs, latterly called as Facit AB, of which Schussler, a Swedish national, was the Export Manager, Pratap is the Managing Director of the Rayala Corporation. Subsequently, Schussler became one of the Directors of that Corporation.

3. In a search of the Corporation''s premises at Madras made on 20th and 21st of December, 1966, certain documents including a letter d. 25th March 1960 in Swedish language from Messrs. Associated Swedish Steels, AB, Sweden (ASSAB) addressed to Schusssler with enclosures, were recovered. The said letter, d. 25th March 1965 purports to confirm the earlier deposit of Sw. Kr. 68,413.09 in the account of Pratap (accused 2) in a Swedish bank and refers to a further deposit of Sw. Kr. 20,500 on 25th March 1965, bringing total to Sw. Kr. 88913.09, being the amount by which 14 invoices for the import of materials from Sweden had been over-invoiced by 40 percent.

4. It is alleged that in August 1963, Pratap (accused 2) and Jagga Rao, the General Manager of the concern, went to Sweden and they and Schussler (accused 1) met at Stockholm and agreed to a plan regarding the purchase of certain raw materials directly from ASSAB instead of from the Atvidabergs firm. At that meeting, Pratap informed Schussler that thenceforth he would buy materials on behalf of the concern from ASSAB instead of from Atvidabergs and that the arrangement made between him and ASSAB was to over-invoice the value of the goods by 40 per cent of the true value, that the difference should be paid to him by crediting it to his personal account in the Swedish bank and that since under the laws of India this acquisition of foreign exchange was unlawful, it had to be kept secret and should not be mentioned in the official correspondence with the concern, Pratap requested Schussler to open an account in a Swedish bank in his name not only to transfer the money lying to his credit in Atvidabergs but also to make further deposits in his personal account from ASSAB on account of the difference between the over-invoice value and the true value of the goods. Schussler agreed to act as requested by Pratap who made arrangements with ASSAB to intimate to Schussler the various amounts credited to his account and asked Schussler to keep a watch over the correctness of the account and to farther intimate to him the position of the account from time to time through unofficial channels or whenever Schussler came to India. Schussler agreed to comply with the request of Pratap. Subsequently, in November 1965 Schussler brought the said letter dated 25th March 1965 when he came to India and he agreed at that time also with Pratap to continue to help Pratap to accumulate foreign exchange illegally in the same manner. Schussler came to Madras subsequently in September 1966 and he brought further details of the account then. The gravamen of the charge as set out in paragraph 9 of the complaint in C.C. No. 5438 of 1969 is as follows:

Thus it is clear that accused (Schussler) and accused 2 (Pratap) agreed to commit illegal acts, namely, acquisition by accused 2 of foreign exchange illicitly and retaining the same abroad without surrendering the same to the

Government of India and also to defraud the Government of India of foreign exchange, thereby contravening Section 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and Rule 132-A of the Defence of India (Amendment) Rules 1964, and further that between August 1963 and 1966 accused 1 and 2 in pursuance of the said agreement did commit acts in contravention of Section 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and Rule 132-A of the Defence of India (Amendment) Rules, 1964, and thereby committed offence punishable u/s 120-B of the I.PC. read with Sections 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and Rule 132-A of the Defence of India (Amendment) Rules 1964.

5. The Director of Enforcement, New Delhi, issued a notice dated 25th August 1967 to Pratap and the Rayala Corporation to show cause why adjudication proceedings as contemplated in Section 23D of the Foreign Exchange Regulation Act, 1947, should not be held against them. It is stated in that notice that it appears that Pratap, who is not an authorised dealer in foreign exchange, has been maintaining a foreign currency account with a bank in Stockholm without the previous general or special permission of the Reserve Bank of India, that it appears that a sum of Sw. Kr. 88,913.09 was deposited in the said account during March 1965 and that a total sum of Sw. Kr. 2,44,713.70 has been deposited in the said account, the amount being the excess amounts remitted in respect of the raw materials and components imported from Sweden by the Corporation during the years 1963 to 1966 as per the details attached. The gravamen of the charge according to that notice is that the said sum of Sw. Kr. 2,44,730.70 was not surrendered by sale to an authorised dealer in foreign exchange in India against payment in rupee within one month from the date of acquisition as per Notification No. Fl (67)-EC/57 dated 25th September 1958 as amended. In continuation of that notice, a notice dated 15th November 1967 was issued by the Director of Enforcement, New Delhi, u/s 23(3) of the Foreign Exchange Regulation Act to Schussler, a Director of the Rayala Corporation, to show cause why adjudication proceedings as contemplated in Section 23-D of the Foreign Exchange Regulation Act should not be held against him for the contraventions mentioned in the said notice dated 25th August 1967. That notice was issued to Schussler having regard to the provisions of Section 23-C of the Foreign Exchange Regulation Act, which says that if the person committing a contravention is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company for the conduct of the business of the company as well as the company, shall be proceeded against and punished accordingly. It appears that Schussler, who was originally the Export Manager of Atvidaburgs, now known as Facit AB, had become a Director of the Rayala Corporation before the relevant date. The notice dated 25th August 1967 issued to Pratap and the company has been superseded by a subsequent notice dated 16th March 1968 issued to the company and Pratap to show cause why adjudication proceedings as contemplated in Section 23-D of the Foreign Exchange Regulation Act should not be held against them. The facts

alleged in the notice dated 16th March 1968 are practically the same. It is stated that in 1965-66 the company imported raw materials and components from Sweden and submitted invoices to the banks fraudulently overpricing to the extent of Sw. Kr. 1,55,801.41 and obtained release of the foreign exchange for the full invoice amount and remitted the same to Messrs. Associated Swedish Steels AB., Sweden and Messrs. Alfred Westroms, Sweden and that the company and Pratap obtained the said excess amount from the said two companies, not being authorised dealers in foreign exchange, and deposited the said amount in a bank in Sweden in the account of Pratap and failed to surrender the same to an authorised dealer in foreign exchange in India within one month from the date of acquisition and thereby contravened the provisions of Sections 4(3), 4(1), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and rendered themselves liable to be proceeded against u/s 23(1) of the said Act. It is stated in that notice that it has since been decided to launch a prosecution in respect of Sw. Kr. 85,913.09 deposited in the account of Pratap in the Swedish bank in 1963-64 and that this amount of Sw. Kr. 88,913.09 is covered by the notices dated 4th November 1967 and 20th January 1968 to be referred to presently. The notice dated 15th November 1967 issued to Schussler has been superseded by the subsequent notice dated 15th January 1969 issued to him by the Director of Enforcement to show cause why adjudication proceedings as contemplated in Section 23-D of the Foreign Exchange Regulation Act should not be held against him in respect of sum of Sw. Kr. 1,53,801 41 mentioned in the earlier notice for contravening the provisions of Sections 4(3), 4(1), 5(1)(e) and 9 of the Foreign Exchange Regulation Act as mentioned in the earlier notice and thereby rendering himself liable to be proceeded against u/s 23(1) of the said Act. It is stated in that notice that it appears that the above violations were done with the consent and connivance of Schussler and is also attributable to neglect on his part as a Director.

6. The Director of Enforcement issued a notice dated 4th November 1967 u/s 23(3) of the Foreign Exchange Regulation Act to Pratap, the Managing Director of the Company, to show cause why he should not be proceeded against u/s 23 of that Act for contravening the provisions of Section 4(1) and 9 of that Act by Pratap not being an authorised dealer in foreign exchange, acquiring a sum of Sw. Kr. 88, 913.09 during the period 1963-65 in Stockholm without the previous general or special permission of the Reserve Bank of India and holding the same in a bank in Stockholm and not offering it to the Reserve Bank of India on behalf of the Central Government or selling to an authorised dealer in foreign exchange in India within a month from the date of acquisition. The Director of Enforcement issued a notice dated 20th January 1968 u/s 21(3) of the Foreign Exchange Regulation Act to the company to show cause why proceedings u/s 25 of the Act for contravention of the provisions of Section 4(1) and 9 of that Act in regard to a sum of Sw. Kr. 88,913.09 mentioned in the said notice dated 4th January 1967 should not be held for letting the sum to be held in the account abroad in the name of Pratap and thereby failing to offer the same by sale to an authorised

dealer in foreign exchange in India within a month from the date of acquisition. The Director of Enforcement laid a complaint dated 17th March 1968 in C.C. No. 8736 of 1968 in the court of the Chief Presidency Magistrate, Madras, u/s 23(1)(b) read with Sections 4(1), 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and Rule 132-A(2)of the Defence of India Rules against the Rayala Corporation and Pratap in respect of Sw. Kr. 88, 913.09. The allegation made in that complaint against Rayala Corporation is that the Company is guilty of (1) violation of Section 4(3) of the Foreign Exchange Regulation Act by utilising the foreign exchange for a purpose different from the one for which it was obtained, namely, for import of goods, (2) violation of Rule 132-A(2) of the Defence of India Rules and Section 4(1) of the Foreign Exchange Regulation Act by acquiring foreign exchange not being an authorised dealer in foreign exchange and depositing it in the name of Pratap and not offering it for sale to an authorised dealer in foreign exchange in India within one month from the date of acquisition, and (3) violation of Section 5(1)(e) of the Foreign Exchange Regulation Act by making a payment in consideration of payment to Pratap an equivalent amount in Swedish Kroner in Sweden. The allegation made in the Complaint against Pratap was that he was responsible for the conduct of the business of the company and was guilty of violation of Rule 132A(2) of the Defence of India Rules, 1964 and Sections 4(1), 5(1)(e) and 9 of the Foreign Exchange Regulation Act, punishable u/s 23(1)(b) of that Act. Pratap and the company filed Crl.M.P. Nos. 978 and 980 of 1968 in this Court for quashing the proceedings in the said C.C. No. 8736 of 1968. Krishnaswamy Reddy, J., who disposed of those petitions by an order dated 16th October 1968 held (1) that the enquiry u/s 4(1) of the Foreign Exchange Regulation Act against both the accused, namely, the company and Pratap, has to be dropped as acquisition of foreign exchange was made punishable only by the Amendment Act 55 of 1964, which came into force on 1st April, 1965, after the date of the alleged acquisition; and (2) that the Magistrate can proceed with the enquiry into C.C. No. 8736 of 1968 as regards the other offences alleged. The learned Judge observed in that order that the Director of Enforcement can file a complaint in a criminal court in three stages, namely, (1) before adjudication proceedings are initiated; (2) after adjudication proceedings are initiated, if, in the enquiry, he is of opinion that the penalty which he could levy would be inadequate; and (3) after the penalty is levied in adjudication proceedings when the person liable to pay the penalty fails to pay it. Leave was granted by the learned Judge by order dated 31st December, 1968 in S.C.P. Nos. 156 and 157 of 1968 to appeal to the Supreme Court on the ground that both the petitions involved a substantial question of law as to the interpretations of Article 132(1) of the Constitution. The Supreme Court quashed the proceedings for the prosecution of the company and Pratap by order dated 2nd May, 1969 in Criminal Appeals Nos. 18 and 19 of 1969 Rayala Corporation (P) Ltd. v. The Director of Enforcement AIR 1970 S.C. 494 in which it was said that the reasons for the order would be given subsequently. The reasons have been given subsequently in the judgment dated 23rd July, 1969, where it is observed:

The record before us, there, does not show that any material at all was available to the Respondent in the course of the enquiry u/s 23D(1) on the basis of which he could have formed an opinion that it was a fit case for making a complaint on the ground that he would not be able to impose adequate penalty. The complaint has, therefore, to be held to have been filed without satisfying the requirements and conditions of the proviso to Section 23D(1) of the Act and is in violation of the safeguard provided by the Legislature for such contingencies. The complaint, in so far as it related to the contravention by the accused of provisions of Sections 4(1), 5(1)(e) and 9 of the Act, punishable u/s 23(1)(b), is concerned, is invalid and proceedings being taken in pursuance of it must be quashed.... The arguments of Mr. Sen was that, even if there was a contravention of Rule 132A(2) by the accused when that rule was in force, the act of contravention cannot be held to be a ''thing done or omitted to be done under that rule'', so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted--Once the rule "was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force. We are inclined to agree with the submission of Mr. Sen that the language contained in Clause 2 of the Defence of India (Amendment) Rules, 1965, can only afford protection to action already taken while the rule was in force, but cannot justify initiation of a new proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a proceeding after the rule had ceased to exist. On this interpretation, the complaint made for the offence under Rule 132A(4) of the Defence of India Rules, after 1st April 1965, when the rule was omitted, has to be held invalid.

...It, however, appears that when Section 4(1) of the Act was amended, the Legislature did not make any provision that an offence previously committed under Rule 132A of the Defence of India Rules would continue to remain punishable as an offence of contravention of Section 4(1) of the Act, nor was any provision made permitting operation of Rule 132A itself so as to permit institution of prosecutions in respect of such offences. The consequence is that the present complaint is incompetent even in respect of the offence u/s 132A(4).

Subsequent to the above decision of the Supreme Court, the Director of Enforcement issued a notice dated 6th September 1969 to the company and Pratap to show cause why adjudication proceedings as contemplated in Section 23D of the Foreign Exchange Regulation Act should not be held against them for contravening the provisions of Section 4(3), 5(1)(e) and 9 of that Act in regard to Sw. Kr. 88,913.09 and thereby rendering themselves liable to be proceeded against u/s 23(1)(e) of the said Act. Reference is made in that notice to the facts of the case, issue of the show cause notice dated 25th August 1967, launching of the complaint in C.C. No. 8736 of 1968, institution of Crl. M.P. Nos. 978 and 980 of 1968 in this Court and dismissal thereof by Krishnaswamy Reddy, J., and the decision of the Supreme Court in Crl. App. Nos. 18 and 19 of 1969, quashing the proceedings in C.C. No. 8736 of 1968, and it is stated that this notice dated 6th

September 1969 was issued for initiating adjudication proceedings u/s 23-D of the Foreign Exchange Regulation Act in respect of the amounts mentioned in the complaint in C.C. No. 5438 of 1969, as the other amounts are already the subject matter of a separate adjudication proceeding, namely, the one in respect of which the notice dated 16th March 1968 aforesaid has been issued.

7. The Director of Enforcement filed a complaint in C.C. No. 5438 of 1969 before the Chief Presidency Magistrate, Madras, on 15th February 1969 against Schussler and Pratap u/s 120-B of the Indian Penal Code read with Sections 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and Rule 132-A of the Defence of India (Amendment) Rules, 1964. Necessary facts have been set out in that complaint, and it is also stated that only on the strength of the invoice dated 21st December, 1963 which had been procured by the company and Pratap by arrangement with the exporter and with the connivance of Schussler, the Canara Bank, Madras, the, authorised dealer, released foreign exchange which was more than what was required for the import of the goods. The excess foreign exchange so obtained was later deposited in the personal account of Pratap in the Swedish bank. Thus, a total sum of Sw. Kr. 88,913.09, which was released and secured for import, was not utilised for the purpose and Pratap acquired illegally the said foreign exchange by getting it credited in his personal account in Sweden. Pratap. without the previous general or special permission of the Reserve Bunk of India had acquired surreptitiously foreign exchange to the tune of Sw. Kr. 88,913 09 in the year 1964-65 and failed to offer the same for sale to the Reserve Bank of India or to any authorised dealer within one month from the date of such acquisition as required by the notification of the Government of India No. F1 (67) EC/57 dt. 25th September, 1958 as amended upto date made u/s 9 of the Foreign Exchange Regulation Act, Schussler brought the said letter dated 25th March 1965 and handed it over to Pratap and at that time also Schussler agreed with Pratap to continue to help and accordingly helped him to accumulate foreign exchange illegally in the game manner. Similar transactions were continued by Schussler and Pratap even later when Schussler became a Director of the Rayala Corporation. Schussler brought further details of accounts when he came to Madras in September 1966. Thus, Schussler and Pratap agreed to commit illegal acts in the acquisition by Pratap of Foreign Exchange illicitly and retaining the same abroad without surrendering the same to the Government of India and also to defraud the Government of India of foreign exchange and thereby contravened Section 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act and Rule 132-A of the Defence of India (Amendment) Rules, 1964. It is stated in that complaint that, that complaint may be tried along with C.C. No. 8736 of 1968 and that sanction of the State Government has been obtained for prosecution.

8. Schussler and Pratap filed Crl. M.P. Nos. 469 and 621 of 1969 in this Court for quashing the complaint in the said C.C. 5438 of 1969. Krishnaswamy Reddy, J., dismissed those petitions on 16th April 1969 rejecting the contention that Schussler being a foreigner, his acts outside India, alleged in the complaint,

would not amount to any offence, as neither the provisions of the Indian Penal Code nor the Foreign Exchange Regulation Act nor the Deferce of India (Amendment) Rules would apply to a foreigner for acts committed outside India. He found that Section 21 of the Foreign Exchange Regulation Act is not repugnant to Section 120-B of the Indian Penal Code and the prosecution under either of the two sections is competent and there cannot be a bar for a prosecution u/s 120-B of the I.P.C. which is a substantive offence for which no adjudication is provided. He held that prosecution u/s 120-B for the period between March 1965 and October 1966 is sustainable, but held that the alleged agreement in Sweden was in August 1963, whereas Rule 132-A of the Defence of India (Amendment) Rules came into force on 1st April 1963 and, therefore, the alleged agreement in 1963 by Schussler in Sweden cannot be in respect of an offence under Rule 132-A of the Defence of India (Amendment) Rules, which was not in force at that time. But he observed that the averment in the complaint was that there was a further agreement between Schussler and Pratap in India in November 1965 and in pursuance thereof Schussler continued to help Pratap and that if that averment is proved, there can be no objection to Rule 132-A being added to Section 120-B of the I.P.C., as that rule was in force at that time.

9. Schussler and Pratap took the matter to the Supreme Court in Criminal Appeals Nos. 113 and 163 of 1969 Lennart Schussler and Another Vs. The Director of Enforcement and Another, . Their Lordships of the Supreme Court, Mitter and Hegde, JJ., dissenting, dismissed those appeals on 14th October 1969 referring inter alia to their decision in Criminal Appeals Nos. 18 as19 of 1969. The main question argued before she Supreme Court in those appeals was whether Schussler can be charged in respect of acts alleged against him in the complaint with an offence u/s 120-B of the I.P.C. or with offences under several provisions of the Foreign Exchange Regulation Act and Rule 132-A of the Defence of India (Amendment) Rules, 1964 read with Section 120-B of the I.P.C. The majority of the learned Judges observed that at the time of the alleged original agreement between Schussler and Pratap at Stockholm in August 1963 neither the Defence of India (Amendment) Rules nor the Foreign Exchange Regulation Act contained any provision to make it an offence for a person resident in India to acquire foreign exchange abroad, that Rule 132-A, by which dealings in foreign exchange by persons other than an authorised person were prohibited, was added only on 21st January 1964 by the Defence of India (Amendment) Rules, 1964 and remained in force till 31st March 1965 when it was repealed and that Section 4 of the Foreign Exchange Regulation Act was amended as from 1st April 1965 so as to prohibit the buying or otherwise acquiring or in any manner dealing in foreign exchange with any person other than an authorised dealer without the previous general or special permission of the Reserve Bank of India. As regards Rule 132-A, their Lordships have observed:

In so far as any acts which may be considered to constitute an offence under Rule 137-A of the Defence of India Rules, it has been held by this Court in Criminal Appeal Nos. 18 and 19 of 1969, decided on 23rd July 1969 Rayala

Corporation v. Director of Enforcement AIR 1970 S.C. 494 that no prosecution can be launched for an offence under that provision subsequent to the repeal as there is no saving provision thereunder.

10. Regarding Sections 4(1) and 4(3) of the Foreign Exchange Regulation Act, their Lordships have referred to the contention that the agreement entered into in August 1963 continued to be effective even after the acquisition of foreign exchange became an offence after the amendment of the Act on 1st April 1965 and at any rate after that amendment, the agreement by Suchssler to assist Pratap was again said to have been arrived at in Madras in 1965, and have observed:

If these facts are established, they certainly amount to a contravention of Clause (1) and Clause (3) of Section 4 which provide that where any foreign exchange is acquired by any person other than by any authorised dealer for any particular purpose or where any person has been permitted conditionally to acquire foreign exchange the said person shall not use the foreign exchange so acquired otherwise than for that purpose or as the case may be fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used, or, as the case, may be, the condition cannot be complied with the said person shall without delay sell the foreign exchange to an authorised dealer. Now it is alleged that accused 2 Pratap has in breach of this condition on which foreign exchange was released to the Rayala Corporation to pay the actual cost of the goods has net only not complied with the conditions on which the permission was granted but has also committed default in not selling the foreign exchange so acquired by him without delay to an authorised dealer.

Before dealing with the question whether the agreement of accused 1 to help accused 2 amounts to criminal conspiracy punishable u/s 120-B, IPC, it will be convenient first to dispose of the submission that Section 120-B I.P.C. does not apply because Section 21(1) covers the same ground. It would appear that the alleged agreement between accused 1 and accused 2 is not one which transgresses Section 21(1) of the Act.... The combined effect of the several provisions of Section 21 does not incline us to the view that Sub-section (1) covers a case of criminal conspiracy similar to Section 120-B. Section 21 does not in terms deal with an agreement to commit an offence or a legal act in an illegal way but merely provides that an agreement or contract by itself ought not to evade or avoid the provisions of the Act. The agreement entered into between ASSAB and A-2, Pratap would, if proved come within the mischief of Section 21(1) but the agreement such as the one alleged to have been entered into between Accused 1 and accused 2 does not itself evade or avoid any of the provisions of the Act, rules or directions. The words ''directly or indirectly'' do not take in any agreement to do illegal acts in future.

It now remains to be seen whether the alleged agreement which accused 1 and accused 2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy.... The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an Act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the Conspiracy remain in agreement and as long as they are acting in accordance and in furtherance of the object for which they entered into the agreement.... It would, therefore, appear that on the allegations contained in the complaint accused 1 and accused 2 could be charged with an offence u/s 120-B.

11. After the Director of Enforcement issued separate notices dated 6th September 1969 to Pratap and the company asking them to show cause why adjudication proceedings should not be held against them, Pratap and the Company filed Writ Petitions Nos. 3004 and 3005 of 1969 Rayala Corporation (P.) Ltd., (sic) M.R. Pratap and Another Vs. The Director of Enforcement, New Delhi, challenging the validity of those notices and praying that they may be quashed on the ground that they are void, illegal and without jurisdiction. The following contentions were urged in those petitions; (1) The prosecution having been once launched, though it has been quashed there is no jurisdiction under the Act to hold adjudication proceedings for the same alleged violations; (2) the present Director of Enforcement Mr. Wagh filed the second complaint in C.C. No. 5438 of 1969 alleging commission of certain offences and has come to the definite conclusion that the Petitioners have violated certain provisions of the Act. He has already pre-judged the issue against the Petitioner and has thereby rendered himself incompetent to hold the adjudication proceedings and (3) the Director himself conducted or supervised the investigation and hence he is disentitled to hold the enquiry. Palaniswamy, J., who disposed of these petitions on 15th March 1971 has held thus:

The filing of the two complaints does not bar action being taken u/s 23-D. The impugned notices are not invalid on account of the filing of the two complaints. The order of the Supreme Court quashing one of the complaints also does not affect the validity of the impugned notices. Notwithstanding the quashing of the complaint in: C.C. No. 8736 of 1968 and notwithstanding the pendency of C.C. No. 5438 of 1969 action can be continued against the Petitioners in pursuance of the impugned notices. Mr. Wagh is, however, on account of the allegations made by him in his complaint, C.C. No. 5438 of 1969, disqualified to hold the enquiry against the Petitioners. This, however, does not preclude any other officer, who had no occasion to express any opinion against the Petitioners on the merits of the complaints, to continue the enquiry at the stage at which it stands at present. It is open to the Central Government to pass suitable orders to give effect to these directions by making suitable appointment if the enquiry against the Petitioners should be continued in pursuance of the impugned notices.

12. Pratap and the Company filed Writ Appeals Nos. 627 and 628 of 1971 against the decision in those Writ Petitions Nos. 3004 and 3005 of 1969. Those appeals

were disposed of by us on 12th September 1973 thus:

Our suggestion to the Department as well as the Appellants has been accepted by them and accordingly the following order is made. The director of Enforcement will proceed with the adjudication proceedings which he has commenced in pursuance of the notice dated 6th September 1969. The interim stay granted in C.M.P. Nos. 12621 and 12623 of 1971 is vacated.

Regarding C.C. No. 5438 of 1969, subject to the orders that may be passed in Crl. R.C. Nos. 571 of 1970 and 572 of 1970, and Crl. M.P. Nos. 1381 and 1382 of 1971, the Director of enforcement will not proceed with the said complaint, unless and until he reaches the stage of the proviso to Section 23-D of the Foreign Exchange Regulation Act in accordance with the provisions of the said Act. In view of this, the Appellant withdraws W.A. Nos. 627 and 628 of 1971.

It is open to the Appellants to raise all the points raised in these writ appeals W.A. Nos. 627 and 628 of 1971 in the adjudication proceedings and in any other appeals arising out of the same.

13. Mr. Ashok Sen, learned Counsel for the revision Petitioners, submitted that the judgment in Rayala Corporation (P) Ltd. v. The Director of Enforcement AIR 1970 S.C. 494 : 1970 L.W. (Cri.) 75 had not been delivered when Lennart Schussler and Another Vs. The Director of Enforcement and Another, was argued and that the question of applicability of Article 14 of the Constitution would arise for consideration only after the decision in Lennart Schussler and Another Vs. The Director of Enforcement and Another, and contended that the question of applicability of Article 14 was not raised before this Court and therefore, not argued before the Supreme Court in either Rayala Corporation (P) Ltd. v. The Director of Enforcement AIR 1970 S.C. 494 : 1970 L.W. (Cri.) 75 or Lennart Schussler and Another Vs. The Director of Enforcement and Another, . He submitted that there is therefore, no constructive res judicata and that it is open to the Petitioners to contend now that Article 14 is a bar. Out attention was drawn to the decision of the Supreme Court in T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, There it is observed:

The argument of the Appellants is that prior to the decision in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, it was not possible to challenge Chap. IV-A of the Act (Motor Vehicles Act, 1939) as violation of Article 19(1)(f) (of the Constitution) owing to the decision of this Court that Article 19(1)(f) could not be invoked when a case fell within Article 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chap. IV-A proceeded on an examination of the argument whether there was infringement of Article 19(1)(g) and Clause (f) of that Article could not possibly be invoked. We are unable to hold that there is much substance in this argument - The State of Bombay Vs. Bhanji Munji and Another, and other decisions which follows it were based mainly on an examination of the inter-relationship between Article 19(1)(f) and Article 31(2). There is no question of any acquisition or requisition in Chp. IV-A of the Act. The relevant decision for the purpose of these cases was only the one given in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, after which no doubt was left that the authority, of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Article 19(1)(f). It was, therefore, open to those affected by the provisions of Chp. IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Article 19(1)(f) which was never done. In this connection we may refer to the observations of this Court in Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, according to which even if certain aspects of a question were not brought to the notice of the court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. In Smt. Somavanti and Others Vs. The State of Punjab and Others, a contention was raised that in none of the decisions the argument advanced in that case that a law may be protected from an attack under Article 31(2) but it would be still open to challenge under Article 19(1)(f), had been examined or considered. Therefore, the decision of the court was invited in the light of that argument. This contention, however, was repealed by the following observations at page 794:

The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided.

It is common ground in the present cases that the validity of Chapter IV-A of the Act has been upheld on all previous occasions Merely because the aspect now presented based on the guarantee contained in Article 19(1)(f) was not expressly considered or a decision given thereon will not take away the binding effect of those decisions on us.

It must be noticed that, as observed at page 794 in Smt. Somavanti and Others Vs. The State of Punjab and Others, and rightly contended by Mr. Ashok Sen, the question of applicability of Article 14, about which argument has been advanced now, was not decided in any of the prior decisions. Rayala Corporation (P) Ltd. v. The Director of Enforcement AIR 1970 S.C. 494 : 1970 L.W. (Cri.) 75 and Lennart Schussler and Another Vs. The Director of Enforcement and Another, It is conceded by the learned Advocate General that on the previous occasion, the courts have not given any finding on the question of applicability of Article 14. That being so, it is open to the Petitioners to raise that question at present, We agree with Mr. Ashok Sen that there is no bar of res judicata.

14. Now, the Petitioners are sought to be prosecuted for criminal conspiracy u/s 120-B of the I.P.C. read with Sections 4(3), 5(1)(e) and 9 of the Foreign Exchange Regulation Act. Section 9 of that Act empowers the Central Government to order, by notification in the Official Gazette, every person in, or resident in India (a) who owns or holds such foreign exchange as may be

specified in the notification, to offer it, or cause it to be offered for sale to the Reserve Bank on behalf of the Central Govt. or to such person, as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price which is in the opinion of the Central Govt., not less than the market rate of the foreign exchange when it is offered for sale; (b) who is entitled to assign any right to receive such foreign exchange as may be specified in the notification, to transfer that right to the Reserve Bank on behalf of the Central Government on payment of such consideration therefor as the Central Government may fix. We are not concerned in this case with the two provisions to Section 9 of the Act. Section 4(3) says:

(3). Where any foreign exchange is acquired by any person other than an authorised dealer for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or, as the case may be, the conditions cannot be complied with, the said person shall without delay sell the foreign exchange to an authorised dealer.

Section 5(1)(e) lays down thus:

Save as may be provided in and in accordance with any general or special exemption from the provisions of this Sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in India shall...make any payment to or for the credit of any person as consideration for or in association with--

(i) the receipt by any person of a payment or the acquisition by any person of property outside India;

(ii) the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside India.

Section 23(1) of the Act, which prescribes punishments for the contravention of the provisions of Sections 4, 5 and 9 and certain other sections of the Act, and Section 23(3), read thus:

23(1) If any person contravenes the provisions of Section 4, Section 5, Section 9...of any rule, direction or order made thereunder, he shall--

(a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided, or

(b) upon conviction by a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

23(3). No court shall take cognizance--

(a) of any offence punishable under Sub-section (1) except upon complaint in writing made by the Director of Enforcement, or

(aa) of any offence punishable under Sub-section (2) of Section 191....

Section 23-D(1), which empowers the Director of Enforcement to hold an enquiry, reads:

23D.(1). For the purpose of adjudging under Clause (a) of Sub-section (1) of Section 23 whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in she prescribed manner after giving that person a reasonable opportunity pf being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of the said Section 23:

Provided that if, at any stage of the inquiry, the Director of Enforcement is of opinion that having regard to the circumstances of the case, the penalty which he is empowered to impose would not be adequate, he shall, instead of imposing any penalty himself, make a complaint in writing to the court.

Section 120-A of the I.P.C. which defines a criminal conspiracy reads:

Where two or more persons agree to do, or cause to be done--

(1) an illegal act or

(2) an act which is not illegal by

illegal means, such an agreement is designated Criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 21(1) of the F.E.R. Act, 1947, relates to contracts in evasion of the provisions of that Act and reads:

21(1), No person shell enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

Section 120-B of the Indian Penal Code, which prescribes punishment for the offence of criminal conspiracy, reads:

120-B(1). Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine, or with both.

15. Mr. Ashok Sen submitted that the facts sought to be relied on by the prosecution to show that there was a criminal conspiracy punishable u/s 120-B of the I.P.C., constitute offence under the Foreign Exchange Regulation Act, that the special law cannot be ignored and action taken under the general law and that Section 23-D(1) is violative of Article 14 of the Constitution as under that Sub-section it is open to the Director of Enforcement to deal with some cases himself and impose the penalty which he could impose under the provisions of that Act and in some other cases to make a complaint in writing to the court on a similar set of facts. He contended that the complaint in C.C. No. 5438 of 1969 on the file of the Chief Presidency Magistrate, Madras, should, therefore, be quashed. Mr. Ashok Sen relied upon the decisions in union of india (UOI) Vs. Sukumar Pyne, and Ram Kissen v. State AIR 1952 Cal. 679. In the short judgment in the first case, it is observed.

Before the High Court, at the time of the final hearing, the Petitioner was allowed to raise the point that Section 23(1)(a) as well as Section 23-D contravened Article 14 of the Constitution....

This Court held in Shanti Prasad Jain Vs. The Director of Enforcement, that Section 23(1) and Section 23-D of the Foreign Exchange Regulation Act did not violate Article 14 of the Constitution. Mr. P.K. Chatterjee, counsel for the Respondent properly concedes that he cannot press this point.

This decision is bereft of facts and does not help the Petitioners. In the second case, the question which arose for decision was whether or not Section 12(1) West Bengal Black Marketing Act, is ultra vires the Constitution in that it is discriminatory in its application. Under that Act the allotment of black marketing cases is made by Government under the provisions of Section 12(1) which opens with these words: "The provincial Government may, from time to time by notification in the official Gazette, allot cases for trial to each Special Tribunal." It is observed in that decision:

It is to be noted that the word used is ''may'' and not ''shall'' and therefore the question arises whether allotment to a special Tribunal is a matter left to the discretion of the State Government. If the Sub-section leaves the matter in the discretion of the executive then A and B both charged with similar black marketing of offences may be tried in different courts. A''s case being allotted to a Special Tribunal and triable by the latter, and B''s not being so allotted, triable in consequence by the ordinary courts of the land, and as I have stated B before the ordinary courts of the land would have many rights during the trial which A would not have.

Further, there appears to be indications in Sub-sections (1) and (2) of Section 12 that it was never the intention of the legislature that the State were bound to allot all black marketing cases to a Special Tribunal.... The Government could exercise its discretion and render an accused person liable to a maximum of seven years'' rigorous imprisonment or a maximum of three years'' rigorous imprisonment at their pleasure.... In other words, for like offences different punishments could be imposed depending entirely upon whether the Government charged the accused under the Black Marketing Act or under the Essential Supplies Act....

As there is nothing which compels Government to prosecute a person under the Black Marketing Act on facts which create not only an offence under the Black Marketing Act, but also under the Essential Supplies Act, two punishments are prescribed for like offences and a different or higher punishment can be imposed on one person than upon another guilty on the very same facts. This also appears to me to make Section 12 discriminatory, because there is nothing which compels Government to charge persons u/s 3, Black Marketing Act in all cases falling within that Section. It is open to Government to charge them under the Essential Supplies Act on the very same acts with very different results.

For these reasons, therefore, I hold that Section 12(1), West Bengal Black Marketing Act is ultra vires the Constitution and therefore the Special Tribunal has no jurisdiction to hear the case pending before it.

This decision would not apply to the facts of the present case, where the Petitioners are sought to be prosecuted for the offence of criminal conspiracy u/s 120-B of the I.P.C. read with Sections 4(3), 5(1)(e) and 9 of the F.E.R. Act, 1947. As a matter of fact, if the Director of Enforcement is of the opinion, as a result of adjudication proceedings held u/s 23-D of the Act, that the Petitioners are guilty of the offence u/s 4(3), 5(1)(e) and 9 of the Act and that the penalty which could be imposed by him upon them is inadequate having regard to the circumstances of the case, and lays a complaint before the Court for offences under those sections, of the Court, upon conviction, could, u/s 23(1)(b) of the Act, impose a punishment of imprisonment for a term which may extend to two years, or with fine, or with both, whereas in a complaint filed under similar circumstances for the offence u/s 120-B, I.P.C., read with those sections, imprisonment of either description for a term not exceeding six months, or with fine, or with both only can be imposed by the Court in the event of its finding that the Petitioners are guilty as charged, as the offence of conspiracy would fall only under the category mentioned in Section 120-B(2) of the I.P.C. and not under any of the categories mentioned in Section 120-B(1). Section 21(1) of the F.E.R. Act deals with only contracts, in evasion of the provisions of that Act and does not correspond to the provisions of Section 120-B of the I.P.C. It must be noted that it was conceded by Mr. Ashok Sen that there is no provision like Section 120-B, I.P.C. in the F.E.R. Act. The Supreme Court has observed in Lennart Schussler and Another Vs. The Director of Enforcement and Another, that on the allegations contained in the complaint in C. C. No. 5438 of 1969 on the file of the Chief Presidency

Magistrate, Madras, in which the Petitioners are sought to be prosecuted for the offence of conspiracy u/s 120-B, I.P.C., they couldl be charged with an offence u/s 120B, I.P.C. It was also conceded by Mr. Ashok Sen that for laying a complaint u/s 120-B, I.P.C., no proceedings u/s 23-D of the F.E.R. Act need be held by the Director of Enforcement. Therefore, we find that the Director of Enforcement has, on the allegations contained in the complaint, no option with reference to the offence of conspiracy but to lay the complaint before the Court.

16. In this connection, it is necessary to note the decision in Mohammad Ishaq Vs. State, to which our attention was drawn by learned Advocate General. Mohamed Ishac, the applicant in that case, was convicted u/s 7 of the Criminal Law Amendment Act, 1932 for having intimidated a Circle Inspector of Police, who went to execute a warrant of arrest against him. He challenged the conviction principally on the ground that Section 7 of the Criminal Law Amendment Act is ultra vires because it infringes Article 14 of the Constitution. Criminal intimidation is punishable u/s 506 of the I.P.C. with imprisonment of either description for a term which may extend to two years, or with fine, or with both, and if the threat be to cause death etc., with imprisonment which may extend to seven years. The offence punishable under that action is non-cognizable, bailable, compoundable and triable by a Magistrate of the first or second class; if the threat be to cause death etc., it is not compoundable and can be tried by a Magistrate of the first class only. Section 10 of the Criminal Law Amendment Act authorizes the State Government by notification in the gazette to declare that the offence be cognizable and non-bailable; such a notification which had been previously issued had been withdrawn in 1935, and at the time of the commission of the offence by the applicant, Mohamed Ishaq, the offence was bailable and non-cognizable. If he had been prosecuted u/s 506 I.P.C., ordinarily, there would have been no investigation by the police and he could not have been arrested without a warrant and he would have been entitled to be released on bail as a matter of right. He could have also compounded the offence with the Inspector. But, he was prosecuted u/s 7, Criminal Law Amendment Act for intimidating a person with intent to cause him to abstain from doing any act which he has a right to do. The offence is cognizable, non-bailable non-compoundable and triable by a Magistrate of first class and no Court can take cognizance of it except upon a report in writing by a police officer of a particular status. It is punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to Rs. 500, or with both. The applicant was arrested without a warrant and bail was refused. The act of the applicant punishable u/s 7 is equally punishable u/s 506, I.P.C. The other acts made punishable by Section 7 may not be punishable u/s 506. There is no provision laying down which person doing the act of intimidating another person with intent to cause him to abstain from doing an act should be prosecuted u/s 506, I.P.C. and which person u/s 7, Criminal Law Amendment Act, and the matter has been left at the absolute and un-controlled discretion of the prosecutor. The contention advanced in that ease on behalf of the applicant that

this division of the persons who do this act into two Clauses (1) of those who are prosecuted and punished u/s 506 and (2) of those who are prosecuted and punished u/s 7, infringes the guarantee of equality before the law and the equal protection of the law contained in Article 14, has been rejected by Desai, J. The learned Judge has observed thus:

It cannot be disputed that there are some differences between the trials for the two offences and the punishments prescribed for them....

Though the procedure in a trial for the offence of Section 7(1)(a) is more unfavourable to the accused and though it has not been laid down which person should be prosecuted u/s 7(1)(a) and which u/s 506, the State cannot be said to have denied to the applicant equality before the law or the equal protection of the laws. A law creating an additional offence with different incidents can never be said to deny equality before the law. There are many acts which are offences punishable under two or more laws and having different incidents.

The reason is that the different laws punishing an act are cumulative and no alternatives: a person doing the act is liable to be punished under all the laws and not under only one of them. When the laws do not operate as alternative laws there is no division of the persons doing the act into two or more classes....

The question of infringement arises when a person is put in one class governed by one provision while others are arbitrarily put in another class governed by another provision, but not when he is put in both the classes, and is governed by both the provisions. There can be no question of classification when he is dealt with in both the ways. If the police instead of mentioning both the offences in the report, and thereby avoid the charge of infringing Article 14, mention only the offence of Section 7(1)(a) in it they may be said to divide the doers of this (sic) into two Clauses (1) of those who are reported for both the offences and (2) of those who are reported for only the offence of Section 7(1)(a), but not to divide them into two Clauses (1) of those reported for the offence of Section 506 and (2) of those reported for the offence of Section 7(1)(a).

The applicant could have been prosecuted by the police not only for the offence of Section 7(1)(a) but also for that of Section 506, in which case he would have no occasion of arguing that Article 14 was infringed when instead he was prosecuted only u/s 7(1)(a) it was an act done in his favour and I am astonished at his argument that he has been denied the equality before the law. Instead of being tried for both the offences he was tried for only one.

Even though the police reported him only for the offence of Section 7(1)(a) it was competent to the Magistrate to take cognizance of the offence of Section 506 as well there were absolutely no limitations on his power to take cognizance of this offence. The facts contained in the report made out both the offences and the Magistrate could take cognizance of both and could charge him with and convict him for both. Thus even the failure of the police to include in the report the offence of Section 506 did not matter, he was still liable to be tried and convicted for it as well.

...The courts are expected to take cognizance of all offences made out of the facts stated in the police report and to frame charges in respect of all offences prima facie made out and to record conviction on all such charges as are proved by evidence.

The State has not given arbitrary freedom to the police also to select offences to be included in their reports, they are expected to include all offences in respect of which they have discovered evidence during the investigation. If the police or the Courts fail to report some offences or to lake cognizance of some offences, not only does this failure not cause prejudice to the accused but also the State cannot be accused of having infringed Article 14.

In the present case also, if, after the adjudication proceedings, the Director of Enforcement is of the opinion that the Petitioners are guilty of the offences punishable under Sections 4(3), 5(1)(e) and 9 of the F.E.R. Act and that the penalty which he could impose upon them is not adequate in the circumstance of the case, and lays a complaint before the Courts mentioning all the facts without any specific reference to Section 120-B, I.P.C., the Court may, by itself, frame a charge against the Petitioners u/s 120-B, I.P.C., and find the Petitioners guilty if that charge is made out on the evidence which may be adduced by the prosecution. Under the circumstances, we are unable to accept the argument of Mr. Ashok Sen that complaint in this case is discriminatory and that there is any contravention of Article 14 of the Constitution.

17. Having regard to the allegations in the complaint that initial agreement which contravened some of the provisions of the F.E.R. Act was extended into in Sweden in August 1963 and the fact that Pratap is sought to be prosecuted u/s 120.B, I.P.C., read with those Sections of the F.E.R. Act, Mr. Ashok Sen contended that the sanction of the Political Agent, namely, the Ambassador of this country in Sweden, is essential before any enquiry could be made regarding Pratap for the offence u/s 210-B, I P.C., having regard to the provisions of Section 3(43) of the General Clauses Act, according to which "Political Agent" means in relation to any territory outside India, the Principal Officer, by whatever name called, representing the Central Government in such territory. Section 23(4) of the F.E.R. Act says that nothing in the first proviso to Section 188 of the Code of Criminal Procedure 1898, shall apply to any offence punishable u/s 23. Section 188, Code of Criminal Procedure lays down:

When an offence is committed by--

(a) any citizen of India in any place without and beyond India; or

(b) any person on any ship or aircraft registered in India, wherever it may be:

he may be dealt with in respect of such offences as if it had been committed at any place within India at which he may be found:

Provided that notwithstanding anything in any of the preceding sections of this chapter (Chapter XV) no charge as to any such offence shall be inquired into in India unless the Political Agent, if there is one for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in India, and where there is no Political agent, the sanction of the State Government shall be required.

Mr. Ashok Sen invited our attention to the decisions in AIR 1933 659 (Lahore) , Fakhrualla Khan v. Emperor AIR 1935 Mad. 526, Mohamed Zaman v. Emperor AIR 1945 Oudh 231, In Re: M.L. Verghese, , Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and The State v. Om Prakash AIR 1964 P&H. 330. In AIR 1933 659 (Lahore) , case the Petitioners are alleged to have been arrested in the act of illicit distillation of liquor on 17th June 1930. They were sent up for trial on 3rd July, 1930, but were discharged by a Magistrate on 25th July 1930 on the ground that the offence was committed in the old Patiala State territory and the accused could not be tried without a certificate from the Agent to the Governor General, Punjab States, u/s 188 of the Code of Criminal Procedure. The certificate was obtained subsequently on 16th April 1931. But the District Magistrate did not pass any order till 30th July 1931 that the Magistrate concerned should proceed with the case. The case was actually presented before the Magistrate on 4th August 1971 more than one year after the date of the offence. Section 75 of the Excise Act of 1914 says that except with the sanction of the local Government, no court shall take cognizance of such an offence after the expiry of one year from the date of the commission of the offence. No. sanction of the local Government had been obtained. Production of the certificate after the order of discharge had been passed has been found not to amount to a revival or continuation of the original proceedings, and it has been held that the conviction was bad as the trial had commenced after one year from the date of the commission of the offence. This decision does not appear to be very material. In Fakhrulla Khan''s AIR 1935 Mad. 526 case it was agreed by both the sides that under the terms of Section 188, Code of Criminal Procedure, as it stands after the amendment in 1923, a court in British India cannot try an offence by virtue of the terms of Section 179. Code of Criminal Procedure merely because part of the consequences have ensued within its jurisdiction if some part of the offence has been committed in a Native State and that Section renders the certificate of the Political Agent (in that case the Resident in Mysore) necessary even in such cases. There is no discussion in that case and it is not very useful to the Petitioners. In Mohamed Zama''s AIR 1945 Oudh 231 case it has been observed by Thomas C.J. thus.

The provisions of Section 188, Code of Criminal Procedure, are mandatory and the absence of the certificate of the political Agent or the British Envoy at Nepal, required by Section 188 is in my opinion an absolute bar to the trial of a case to which the provisions of that section apply. The question of certificate goes to the root of the case, and Section 537, Code of Criminal Procedure, cannot be used to cure a clear illegality or a clear transgression of the mandatory provisions of law.

Section 179, Code of Criminal Procedure also has no bearing to such cases.

In Re: M.L. Verghese, the Petitioner was running a bank with its head office at Chowghat and a branch office at Orumanayur, both situated in British India. The charge against him was that he received gold ornaments from different persons by way of pledge and after doing so, sub-pledged them for higher amounts to other banks. According to the prosecution, these amounted to acts of criminal breach of trust. At the appellate stage, an objection was raised to the convictions on the ground that since the Sub-pledging had been done at Trichur situated in the then State of Cochin, the British Indian courts had no jurisdiction to try the accused. Yahaya Ali, J., who decided that case has observed:

On a consideration of the judicial precedents as they stood before the amendment introduced in the proviso to Section 188 of the Code and the scope of the amendment Which was enacted expressly for the purpose of overcoming the effect of those decisions and the decisions that have been given after the amendment, I am of opinion that the objections as to want of jurisdiction in the trial Court to try the accused in this matter must be upheld.

In Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, reference has been made to Section 188, and it is observed that the power of the Vindhya Pradesh Courts to hold trials for extra territorial offences which was interrupted by ordinance No. 15 of 1948, dated 31st December 1948 has been revived with retrospective effect by Ordinance No. 27 of 1949 dated 3rd May, 1949 as from 31st December, 1948. This decision does not appear to be useful to the Petitioners. In Om Prakash''s ILR 1964 P&H. 370 case Om Prakash was alleged to have undergone a second marriage in the then State of Jammu during the lifetime of his first wife Parkasho and thus committed an offence of bigami. He was convicted by the trial Magistrate on 11th September, 1962. But his conviction was set aside by the Sessions Judge, Gurdaspur, on the ground that the Court of Gurdaspur had no jurisdiction to try the complaint, the second marriage having been soleminised in Jammu. It is observed in that case:

In our view there is clear preponderance of authority in favour of the proposition that the prior sanction of the political Agent or the State Government is necessary for prosecution of the complaint which was lodged against the Respondent. ...The requirement of Section 188 being mandatory, we do not think that the curative provisions of Section 537 of the Code of Criminal Procedure can be pressed into service.... The initiation of proceedings without sanction vitiates the proceedings ab initio and is not an irregularity curable u/s 537 Code of Criminal Procedure.

18. The decision of Pheroze Jehangir Dastoor Vs. The State, to which our attention was drawn by the learned Advocate General, is helpful for the prosecution, as in that case Naik, J. had left the question of applicability of Section 188, CPC for consideration by the trial Magistrate. The learned Judge, however, observed:

But my object in referring to the proviso to Section 188 CPC was to point out the trial Magistrate''s action in taking cognizance of the complaint would not be vitiated merely for the absence of sanction from the competent authority. If sanction is necessary ''it could be taken at a later stage and in any case before the charge is inquired into. It would be open to the complainant to secure sanction of the State Government. It would be equally open to him to urge that no sanction in necessary under proviso to Section 188 CPC and the trial Magistrate is free to decide the question on its own merits.

In Purushottamdas Dalmia Vs. The State of West Bengal, it is observed.

It is true that the legislature treats with importance the jurisdiction of Courts for the trial of offences. Jurisdiction of Courts is of two kinds. One type of jurisdiction deals with respect to the power of the courts to try particular kinds of offences. That in a jurisdiction which goes to the root of the matter and if a court not empowered to try it is the entire trial is void. The other jurisdiction is what may be called territorial jurisdiction. Similar importance is not attached to it. This is clear from the provisions of Section 172, 188, 197(2) and 531, Code of Civil Procedure.

The reason for such a difference in the result of a case being tried by a Court not competent to try the offence but having no territorial jurisdiction over the area where the offence was committed is understandable. The power to try offences is conferred on all Courts according to the view the Legislature holds with respect to the capability and responsibility of those Courts. The higher the capability and the sense of responsibility the larger is the jurisdiction of those courts over the various offences. Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view respect to the work of a particular Court the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the court. It is, therefore, that it is provided in Section 177 that an offence would ordinarily be tried by a court within the local limits of whose jurisdiction it is committed.

19. It was said in Assistant S.J. North Arcot v. Ramaswami Asati 38 Mad. 779 at 782 : 1 L.W. (914) 302

The scheme of Chap, IV, Sub Chp. (A) in which Sections 177 to 189 appear seams to me to be intended to enlarge as much as possible the ambit of the sites in which the trial of an offence might be held and to minimise as much as possible the inconvenience which would be caused to the prosecution by the success of a technical plea that the offence was not committed within the local limits of the jurisdiction of the trying courts.

It is further significant to notice the difference in the language of Section 177 and Section 233. Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court except in the cases mentioned in Section 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open, Its provisions are not peremptory.

It may be stated in this connection that Mr. Ashok Sen submitted that objection as regards Section 188 was not raised before this Court when the matter came up first, as the trial had not started and that will arise only when the trial commences. The learned Advocate General pointed out that according to the allegations in the complaint the conspiracy has taken place even in this country in 1965-66 and that no sanction of our Ambassador in Sweden is necessary. If the prosecution could prove its case that after the original agreement in Sweden in August 1963, Schusseler came to India and agreed to comply with the request of Pratap and subsequently in November 1965 he brought the letter d. 25th March 1965, when he came to India and agreed at the time also with Pratap to continue to help Pratap to accumulate foreign exchange illegally in the same manner and that Schussler came to Madras subsequently in September 1966 and be brought other details of the account then, no sanction of our Ambassador in Sweden u/s 188 would be necessary. Even if the sanction is necessary it can be obtained before the trial commences, and it is a matter for consideration by the trial Magistrate, and not a reason for quashing the complaint. It may be stated that there may be no difficulty for the prosecution in obtaining the sanction of our Ambassador in Sweden as he is an officer of the Central Government and the complaint has been lodged by the Director of Enforcement who is also an officer of the same Government. We are, therefore, unable to agree with Mr. Ashok Sen that the complaint should be quashed for want of sanction of our Ambassador in Sweden. In this view, the revision cases fail and are dismissed.