(1996) 09 MAD CK 0099

In the Madras High Court

Case No : Criminal O.P. No. 6477 of 1996

N. Sasikala — APPELLANT

Vs

The Enforcement Officer, Enforcement Directorate, Shastri Bhavan, Madras-600 006 — RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Citation : (1997) 1 LW(Cri) 17

Hon'ble Judges : Shivappa, J

Bench : Single Bench

Advocate : B. Kumar, for the Appellant; K. Kumar, Public Prosecutor (FERA), for the Respondent

Judgement

Shivappa, J.—Petitioner was arrested on 20.6.1996 and remanded to judicial custody in R.R. No. 76/96. She was granted compulsive bail u/s 167(2) Code of Criminal Procedure on 19.8.1996 and on the same day an application for modification was moved before this Court. It was heard on 21.8.1996 and order was passed on 22.8.1996. She was also granted bail in summons case, which was initiated for non-compliance of the summons to appear before the authority. On 21.8.1996 an application before the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Madras, was filed seeking permission to interrogate her and permission was granted ex parte and after interrogating between 2 P.M. and 2.20 P.M. on the same day permission was sought to serve arrest memo on the Petitioner and memo was given on 9.20 P.M. She was produced on 22.8.1996 before the Additional Chief Metropolitan Magistrate and remanded to custody in R.R. No. 9/96. Bail application in MP. No. 311 of 1996 was moved before the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Madras and it was dismissed. Hence this petition seeking bail inter alia contending that i) account in Cheyyar Branch and transaction pertaining to Indian Bank, Abiramapuram Branch form part of the same transaction and therefore, the repeated arrest is invalid; ii)the information and investigation concerned in respect of Cheyyar Branch started even in February 1996 and if for any reason, if investigation is not completed within 60 days from the date of original arrest, the bar u/s 167(2) Code of Criminal Procedure applies and the Petitioner is entitled for bail; and iii) a great judicial impropriety has occurred in not apprising this Court on 19.8.1996 and subsequently. Instead, the Respondent has filed a counter on 18.8.1996 stipulating the conditions on which bail may be granted.

2. The learned Counsel relied on a decision in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, in support of his contention that if there is knowledge about a distinct offence from the date of knowledge Police may make a formal arrest, but cannot keep aside one transaction and arrest later. That amounts to violation of Section 167(2) Code of Criminal Procedure. He also relied on a decision in State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, in support of his contention, what constitutes same transaction and urged the unity of purpose, source, design, continuity of action, etc. being the same; it connotes to "same transaction". Among all the circumstances, unity of purpose and design are the strong circumstances to show whether it constitutes same transaction. He urged, in the instant case, the source is common, proximity of time and unity of purpose being common and in support of the said contention he relied on decisions in Aftab Ahmad Khan Vs. The State of Hyderabad, , Banwari Lal Jhunjhunwala and Others Vs. Union of India (UOI) and Another, and State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, the Apex Court has held:

Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction.

In Aftab Ahmad Khan Vs. The State of Hyderabad, it has been held that as the series of facts attributed to the accused constituted one transaction in which the offences were committed the case fell squarely within the purview of Section 235. Sections 233 and 235 of the old Code of Criminal Procedure (1898) relate to joint charges and joint trials. P.V. Vijayaraghavan and Others Vs. C.B.I. and Another, is a decision, which makes a distinction between "case" and "offence" indicated u/s 173, wherein it has been held that Section 173 speaks of completion of investigation. It must ordinarily be taken to refer to completion of investigation of all facts and circumstances relating to the case whether it involves one offence or plurality of offences.

3. Repelling the contentions of the Petitioner the counsel for the Respondent contended that R.R. No. 76/96 pertains to J.J.T.V and the alleged offence is under Sections 8(1), 9(1)(a), 9(1)(c) read with Section 68(2) of the FERA. It is the case of the Respondent that the present arrest is in respect of a different purpose pertaining to 12,000 U.S. Dollars. He invited my attention to the averments in the pleading. In the written objection filed on behalf of the Respondent at para 2 it is stated that the Petitioner herein arranged to remit foreign exchange from Penang in the name of R. Suseela in the NR NR Rupee deposits for Rs. 3.29 crores with the Indian Bank, Abiramapuram Branch, Madras against which a loan of Rs. 3 crores was taken in the name of M/s. Bharani Beach Resorts. The loan taken by M/s. Bharani Beach Resorts (P) Limited has been lent out to ten companies in which the accused has interest and these companies in turn have lent Rs. 2.20 crores to the accused which was utilised for making payment of part of the purchase value in the Tea Estate purchased at Kothagiri. Therefore, the Department suspects that the funds remitted by Smt. R. Suseela are the funds of the accused. Otherwise, immediately after taking the loan the said deposits would not have been foreclosed.

4. The contention of the Petitioner in the bail application filed by her before the Sessions Court at Madras, is that the detention of the Petitioner has to be considered only in respect of the two violations mentioned in the arrest memo and further particulars gathered during investigation cannot be considered. In the arrest memo it is stated that the Enforcement Officers have reason to believe that the Petitioner has contravened the provisions of Sections 8(1), 9(1)(c) read with Section 68(2) of the FERA to the extent of U.S. $ 6,80,000/- and Section 9(1)(a) read with Section 68(2) of the FERA to the extent of U.S. $ 1,36,000/-. These are the two transactions shown in the arrest memo dt. 20.6.1996. In the bail petition filed before this Court in R.R. No. 76/96 at para 4 it is stated that the arrest memo given to the Petitioner mentions about these two factors only.

5. It is alleged at para 4 in the counter filed on behalf of the Respondent in Crl. O.P. No. 4996 of 1996 that the accusation against her is based on sound evidence on record. The other averments as stated in para 5 about the two transactions are purely in the realm of investigation which is going on. The allegations regarding vicarious liability are misconceived, as she is being charged u/s 68(2) of the FERA and not u/s 68(1). At para 7 it is alleged that the investigation is suffering as the persons so summoned did not appear and join the investigation. These things go to show that the investigation as against the Petitioner herein was not closed and it was still in reserve on certain aspects which are not covered under the arrest memo dated 20.6.1996.

6. The Petitioner admitted in her statement dated 21.8.1996 that she had received U.S. $ 12,000/- in foreign currency from Smt. Sucharita and handed it over to Jaya Prakash for crediting into Smt. R. Suseela''s account. After receiving the same Jaya Prakash accordingly credited the said foreign currencies in the NR NR account of Smt. Suseela. Further enquiries revealed that the aforesaid drafts

have emanated from various countries other than the country of residents of the non-resident Smt. R. Suseela in whose name the drafts were received. The Department suspects that these foreign bank drafts were arranged abroad and brought into India in the guise of NR NR deposits by Smt. N. Sasikala. From these circumstances, it is contended that the Department has not stated that (1) these deposits against which loans taken have not been utilised for purchase of that estate: 2) source also is not from Penang or Suseela, source of money also from various countries and deposit through Jaya Prakash or Sucharita and source of deposit is not Suseela as contended.

7. The object of utilisation is different, the source is different, period is different and the reasons shown in the arrest memo are not the same and the previous case was for J.J.T.V. and not in respect of money deposit in Indian Bank, Abiramapuram and unity of purpose is not there. In such a situation, it cannot be said, it is of same transaction. The earlier arrest was in respect of period between 30.7.1994 and 25.10.1994. The present arrest is in respect of period between 20.6.1994 and 30.1.1995.

8. When once it forms a different transaction, source being different, object of utilisation being different and the previous case altogether for a different cause and the date of deposit being different and there is no unity of purpose, in such a situation, a second arrest is always permissible u/s 35 and it cannot be subjected to judicial review since there is no illegality or impropriety. When a reasonable belief is formed with supporting material the sufficiency or otherwise need not be examined by this Court.

9. In the second arrest memo dated 21.8.1996 it is mentioned that there is reason to believe that she otherwise acquired foreign exchange to the tune of U.S. $ 12,000/- in currencies and arranged to get the same credited in the NR NR account of the said non-resident, thus contravened Section 8(1) of the FERA.

10. The points for consideration are:

i) Whether second arrest is permissible on the basis of the reasons shown in the second arrest memo dated 21.8.1996 and constitutes a separate offence or form part of the same transaction?

ii) Whether any impropriety committed by the Respondent in not disclosing this when bail was granted by this Court u/s 167(2) of the code?

11. In support of the first contention that the second arrest is permissible, the learned Counsel for Respondent invited my attention to Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, in which a question arose whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact came to light after the expiry of the period of first fifteen days of his arrest. The Apex Court held, if during the investigation his

complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted, then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. Having held so it is observed and clarified that this limitation shall not apply to a different occurrence in which complicity of the arrest is accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation, he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody. In the concluding portion it has been held that a re-arrest or second arrest in a different case is not necessarily beyond the ken of law. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Section 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. There is no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. In other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of Magistrate u/s 167(2) of the Code for investigating another offence, if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can remand him to such custody as mentioned therein for purpose of investigation.

12. The next aspect to be considered in this case is whether the act in respect of which a second arrest has been made can be treated as one connected with the earlier and construed as the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to be difficult task to undertake a definition of that which the Legislature has deliberately left undefined. But generally it is thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction.

13. In M.S. Sheshappa Vs. State of Karnataka, it has been held that every distinct offence cannot be treated as having the same meaning as "every offence". The only meaning that the word "distinct" can have in the context in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability.

14. The learned Counsel cited a decision in Writ Appeal No. 7679 of 1995 and connected cases of this Court wherein this Court following the decisions in State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another, (Indru Ramchand Bharvani and Ors. v. Union of India and Ors.), Pukhraj Vs. D.R. Kohli, Issardas Daulat Ram and Others Vs. The Union of India (UOI) and Others, and S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, held that the reasonable belief entertained need not be interfered when it is formed with supporting material.

15. The learned Counsel for the Petitioner contended that in the petition given on 21.8.1996 before the Magistrate it is stated that the accused deposited to the tune of U.S. $ 3,42,000/- inclusive of U.S. $ 12,000/- and also referred to the information furnished by the State Bank of India, Cheyyar vide letters dt. 13.2.1996, 16.7.1996, 30.7.1996 and 7.8.1996. The learned Counsel for the Department showed all these letters to me and in these letters nowhere it is mentioned about U.S. $ 12,000/- so also in the statement recorded on 14.8.1996, but only in further statement of Sucharita on 21.8.1996, it is stated that U.S. $ 12,000/- was deposited. Therefore, there is no material to conclude that Respondent had knowledge about this U.S. $ 12,000/- when earlier remand report was given or earlier arrest was made. Therefore, this constitutes a different transaction altogether.

16. The object of utilisation and source being different, period being different and reasons shown in the arrest memo are not the same, it cannot be taken as forming part of the same transaction. The Apex Court in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, in the concluding portion has held that re-arrest or second arrest in a different case is not necessarily beyond the ken of law. Investigation in one specific case cannot be the same as in the other. Therefore, the second arrest cannot be termed as illegal or without authority.

17. The next aspect is to be considered is any impropriety committed in not disclosing the second transaction when bail was granted by this Court u/s 167(2) Code of Criminal Procedure. The learned Counsel for the Respondent contended that on 19.8.1996 or 18.8.1996 the Respondent had no knowledge about this U.S. $ 12,000/-. Only on 21.8.1996 after 1.30 P.M. when Sucharita was examined alone it was disclosed and therefore there was no impropriety or no material was withheld from this Court and submitted that the decision cited has no bearing because 1983 S.C.C. (Cri.) 329. That was a case where a direction was there about the pendency of any case which was not disclosed when the direction was given, but that is not the same situation here, so also the other

judgment on facts is not applicable. Since the Respondent had no knowledge about U.S. $ 12,000/- when the order was passed by this Court, it is not proper to impute or hold that the Respondent did commit any impropriety in not bringing the second transaction to the notice of this Court.

18. For the aforesaid reasons, the Petitioner is not entitled for bail as sought for and the petition is dismissed.

