(1997) 02 GUJ CK 0035

In the Gujarat High Court

P.K. Suman APPELLANT

Vs

Jayantilal Satyadev Patel RESPONDENT

Date of Decision : 15-02-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 2(y), 397
Foreign Exchange Regulation Act, 1973 — Section 56, 6, 7, 8, 9
General Clauses Act, 1897 — Section 3
Penal Code, 1860 (IPC) — Section 32, 33

Citation : (1997) 3 GLR 1931

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Judgement

N.N. Mathur, J.—This Criminal Revision Application u/s 397 of the Code of Criminal Procedure is directed against the order of the Additional Chief Metropolitan Magistrate, Ahmedabad dated 25th March, 1996, whereby the learned Magistrate returned the complaint filed by the Enforcement Officer (F.E.R.A.) to be produced before the Court, at Surat.

2. The necessary facts giving rise to the present Criminal Revision are as follows :

Accused No. 1 - Jayantilal Satyadev Patel, resident of Surat was serving as an Assistant Engineer in the Irrigation Department, at Surat at the relevant time. Accused No. 2 M/s. Kakadia Builders Pvt. Ltd. is a private limited company registered under the Companies Act having its registered office at Surat. Accused No. 3 - Shri Manharbhai Muljibhai Kakadia is the Director and In-charge of the accused No. 2 company. He is also a resident of Surat and a builder by profession.

Accused No. 1 Jayantilal is the nephew of one Shri Narottambhai Jagabhai Patel who is the N.R.I, residing at Chigaco, U.S.A. since 1975. It is alleged that said N.R.I. Shri Narottambhai Patel came to India and contacted accused No. 3 and discussed his plans to invest his money in flats in Deepa Housing Society, Deepa Complex, Surat, the construction of which was undertaken by the accused No. 2.

It was discussed between the said N.R.I. Mr. Patel and accused Nos. 1 and 3 that the accused No. 1 should contact few of his reliable friends and relatives, on whose names the booking of the flats could be made to avoid the requirement of obtaining prior permission of the Reserve Bank of India under the Foreign Exchange Regulations Act, 1973 (F.E.R.A.), in respect of the N.R.I, investment in the property. It was thus agreed by accused No. 1 Jayantibhai to book flats in the names of his relatives and friends in presence of Narottambhai and accused No. 3 and thus, 44 flats were booked in Building A-1, Anant Vila, Deepa Complex Co-operative Housing Society at the cost of Rs. 4,66,000/- per flat. It was further agreed at the time that Shri Narottambhai would send money to accused No. 1 Jayantibhai Patel towards the purchase of 44 flats and the accused No. 1 Jayantilal Patel would effect the payment. Thus, 44 flats though booked in the name of persons given by the accused No. 1 Jayantilal Patel, the actual investor was the N.R.I. Narottambhai Patel. In the course of transaction, accused No. 1 had given drafts, pay orders and cash from time to time during 1990-91 to 1993 to the extent of Rs. 1,52,50,000/- to accused No. 3 on the instructions of Narottambhai Patel. Thus, the accused No. 1 alongwith accused No. 3 in his individual capacity as well as Director of the accused No. 2, held a conspiracy in association with Narottambhai, the N.R.I, residing in U.S.A. to enter into a Havala payment and thereby, received huge amount of Havala payment amounting to Rs. 1,52,50,000/- and after receiving the same, accused No. 1 effected the payment of the said amount. The said amount was received from unauthorised dealer and without any general or special exemption or permission from the Reserve Bank of India and thereby, committed the offence u/s 9(1)(b) and u/s 9(1)(d) punishable u/s 56 of the Foreign Exchange Regulations Act, 1973.

On this facts, a complaint was filed by the Enforcement Officer (F.E.R.A.) in the Court of the Additional Chief Metropolitan Magistrate, Ahmedabad.

3. The accused respondents challenged the jurisdiction of the said Court on the ground that the offence was committed at Surat, within the jurisdiction of the Judicial Magistrate, at Sural and as such, the said Court has no jurisdiction to try the offence. The learned Additional Chief Metropolitan Magistrate by the impugned order, accepted the contention and gave direction to return the complaint for presentation before the Judicial Magistrate, at Surat.

4. Mr. M.R. Gehani learned Counsel appearing for the Department submits that the learned Magistrate has failed to consider that the essential ingredients of the offence u/s 9 of the Foreign Exchange Regulations Act is - omission to take permission for payment from the Reserve Bank of India for the State of Gujarat, which is situated at Ahmedabad. It is further submitted that the permission was not sought for in pursuance of the conspiracy of the payment made by Narottambhai, residing in U.S.A. and as such, the office of the Reserve Bank of India being at Ahmedabad, the part of the offence has been committed within the jurisdiction of the Chief Metropolitan Magistrate, Ahmedabad. Thus,

according to the learned Counsel Mr. Gehani, in view of the provisions of Section 179 of the Code of Criminal Procedure, both the Courts at Ahmedabad as well as at Surat have the jurisdiction to hold an inquiry or the trial for the alleged offence under the Foreign Exchange Regulations Act.

5. On the other hand, Mr. M.B. Ahuja, learned Counsel appearing for the respondents submits that the flats were registered at Surat, accused company is situated at Surat, accused Nos. 1, 2 and 3 are alleged to have received payment at Surat, the entire alleged conspiracy was entered at Surat and in view of this, the alleged offence can be said to have been committed only within the jurisdiction of Judicial Magistrate, at Surat and none else. He further submits that simply because the permission has not been taken from the Reserve Bank of India for the State of Gujarat, which is situated at Ahmedabad, it cannot be said that the part of the offence has been committed at Ahmedabad.

6. In order to appreciate the controversy raised, it would be convenient to get acquaintance with the relevant provisions of the Foreign Exchange Regulations Act, 1973.

Section - 9 : Restrictions of payments:

(1) 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 -

(a) make any payment to or for the credit of any person resident outside India;

(b) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India.

(c)...

(d)...

7. It may not be lost sight that the Foreign Exchange Regulations Act of 1973 has been enacted with a view to regulate certain payments dealings in foreign exchange of securities, transactions indirectly affecting foreign exchange and the import and export of currency for the conservation of foreign exchange reservation of the country and the proper utilisation thereof in the interest of the economic development of the country. Section 6 of the Act provides for the authorised dealer in foreign exchange. Section 7 provides for the money changers. Section 8 provides for the restrictions on dealing in foreign exchange. A reading of Section 9 clearly shows that no person in or resident in India can receive otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India except in accordance with the general or special exemption by the Reserve Bank of India. Similarly, there is a restriction on making any payments to or for the credit of any person resident outside India, without the general or special exemption from the provisions of

sub-section which may be granted conditionally or unconditionally by the Reserve Bank of India. It clearly shows that the omission to take permission from the Reserve Bank of India is an essential ingredient of offence u/s 9 of the Foreign Exchange Regulations Act, 1973.

8. Chapter XIII of the Code of Criminal Procedure provides for the jurisdiction of the criminal Courts in enquiries or trial. Section 177 says that ordinarily, every offence would be tried by a Court within whose local jurisdiction, it was committed. The use of word "ordinarily" indicates that the general rule of Section 177 should be read subject to special provisions of the succeeding section. Section 178 provides, place of inquiry when it is uncertain in which local area the offence is committed. Section 179 provides that the offence is triable where the act is done or consequences ensues.

Section 179 of the Cr. P.C. reads as follows :

179. Offence triable where act is done or consequence ensues: When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

A reading of Section 179 shows that the section contemplates (i) an act (or illegal omission) and (ii) consequence that has ensued from such act which is a part and parcel of the offence. It cannot be disputed that expression "act" employed in Section 179 includes "omission". In view of Section 2(y) Cr. P.C, the definition of word "act" given under the I.P.C. is attracted. Section 32 of the I.P.C. provides that words referred to acts includes "illegal omission". Section 33 says that word "act" denotes as well as series of acts as a single act. The word "omission" denotes as well as series of omissions as a single omission. Sub-clause (2) of Section 3 of the General Clauses Act, 1897 says that the word "act" is used with reference to offence or civil wrong shall include a series of acts and any words which referred to acts done extend also to illegal omissions. Thus, the word "act" employed in Section 179 includes "illegal omissions". Thus, it is not only the act, but also the "omission" and its consequence which is the ingredient of an offence, conferring the jurisdiction on the Court, within whose jurisdiction such omission has been done or such consequence has ensued.

9. In the present case, omission to take permission u/s 9 of the Foreign Exchange Regulations Act from the Reserve Bank of India for the State of Gujarat, at Ahmedabad with a view to derive benefit with a criminal intention constitutes an offence under the Foreign Exchange Regulations Act, 1973 and therefore, the provisions of Section 179 (of the Code) are attracted.

Thus, in my view, both the Courts at Surat and at Ahmedabad will have the jurisdiction 10 enquire and try the offence.

10. In view of the aforesaid discussion, this Criminal Revision Application is allowed. The order of the learned Additional Metropolitan Magistrate, Ahmedabad

dated 25-3-1996 is quashed and set aside. The learned Magistrate is directed to proceed with the complaint filed by the Enforcement Officer (F.E.R.A.) in accordance with the law Rule made absolute.

