

(1999) 07 KL CK 0073
In the High Court Of Kerala
Case No : W.A. No. 424/95

Samaruddin

APPELLANT

Vs

Assistant Director of Enforcement

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 177, 179, 180
Foreign Exchange Regulation Act, 1973 — Section 63, 9
Penal Code, 1860 (IPC) — Section 3, 4, 4(1), 420

Citation : (1999) 07 KL CK 0073

Hon'ble Judges : A.R. Lakshmanan, Acting C.J.; S. Sankarasubban, J; C.S. Rajan, J

Bench : Full Bench

Advocate : T.M. Abdul Latiff, for the Appellant; P.S. Baiju, for 1st Respondent, K. Jayakumar, Govt. Pleader for Respondents 2 and 3 and A.N. Rajan Babu, for 4th Respondent, for the Respondent

Judgement

A.R. Lakshmanan, Ag. C.J.

1. The unsuccessful Petitioner is the Appellant in this appeal. The Original Petition was filed for the following reliefs:

(a) to direct the first Respondent to conduct investigation, enquiry and such other proceeding under the provisions of Foreign Exchange Regulation Act and to charge and prosecute Respondents 4 and 5 for violation of the Foreign Exchange Regulation Act;

(b) to direct the first Respondent to recover the illegally converted 95,000 Riyals which had arrived in India through unknown sources and reached the bank accounts of 5th Respondent and to give the same to the Petitioner and also to initiate prosecution and adjudication proceedings as provided under the Foreign Exchange Regulation Act against Respondents 4 and 5;

(c) to direct Respondents 1 and 2 to conduct investigation to complete the same

and to file the charge report before the concerned Magistrate Court on the basis of the complaint filed by the Petitioner, against Respondents 4 and 5 and also to arrest them and also to recover the amounts including the converted properties from Respondents 4 and 5 under the provisions of the Code of Criminal Procedure and also to make arrangements for giving the same to the Petitioner; and

(d) to compel the first Respondent to consider and dispose of Ext. P-5 petition.

2. The facts, in brief, are as follows: The Appellant and Respondents 4 and 5 are related to each other. The Appellant was working as a Salesman at Damam in Saudi Arabia in a firm drawing attractive salary and other perks. The Appellant took the fourth Respondent to Damam by arranging a free visa. During his stay in Damam, the fourth Respondent was living under the care and protection at the expense of the Appellant. The fourth Respondent was having access to all the personal belongings, of the Appellant. On 1st April 1992, the Appellant found that the outer door of the flat, where he was residing, found open and that the lock of the table drawer was broken and amounts kept in it were missing. The Appellant was sure that the fourth Respondent had committed theft of 95,000 Saudi Riyals kept in the table drawer. Anticipating criminal action, the fourth Respondent escaped to India, The fourth Respondent came to his native place one week after the arrival of the Appellant. He brought two bags of foreign articles and 40 sovereigns of gold. The enquiries made by the Appellant revealed that the entire amount stolen from him was arranged to reach India through improper channels.

3. The Appellant filed complaints before Respondents 2 and 3 against the fourth Respondent to recover the theft articles and to release the same to the Appellant. When the Police started investigation the fourth Respondent approached this Court. The Police authorities submitted before A is Court that no case had been registered against the fourth Respondent. Based on that submission, the petition was closed. In order to prevent the Police from conducting further investigation and trying to recover the stolen amount, Respondents 4 and 5 filed O.P. No. 2338 of 1994 before this Court. This Court passed an interim order directing Respondents 1 and 2 not to compel Respondents 4 and 5 to pay the amount claimed. However, at the instance of the Appellant, that order was modified. The Original Petition was disposed of by this Court on 10th August 1994 directing the second Respondent to proceed with the investigation of the crime, if any, registered against Respondents 4 and 5. However, it is contended by the Appellant that no steps for completing the investigation have been taken by Respondents 1 and 2 and that Respondents 4 and 5 are at large and they are conducting business using the money stolen from the Appellant.

4. The illegal conversion of the theft foreign currency and arranging its entry into India, the Appellant contends, is an offence attracting section-9 of the Foreign Exchange Regulation Act (FERA) and, therefore, the first Respondent is competent to conduct an enquiry and to recover the property illegally brought

from a foreign country. Section 63 of the FERA also gives such a power to the first Respondent. It was against the inaction on the part of the first Respondent, the Appellant filed the Original Petition for the reliefs extracted supra. Along with the Original Petition, the Appellant produced Exts. P-1 to P-6.

5. The first Respondent filed a counter affidavit stating that since the theft of Saudi Riyals by the fourth Respondent was outside the country, the department could not make any enquiry based on the complaint without any documentary evidence. However, it was stated that the first Respondent would be taking appropriate action as per law when credible and valuable informations regarding the violation of FERA are furnished.

6. The third Respondent, after explaining the steps taken, stated that he took charge only recently and yet to commence the enquiry and that the enquiry would be completed within a short time and if there is scope, he would register a case.

7. Respondents 4 and 5 filed separate counter affidavit stating that the petition is not maintainable either in law or on facts. As per Section 156 of the Code of Criminal Procedure, police has got statutory power for investigation only in respect of an offence which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. They denied of having committed theft of 95,000 Saudi Riyals kept by the Appellant.

8. The Original Petition was heard by Jagannadha Raju, J. before whom the decisions reported in *Remla v. S.P.* 1993 (1) KLT 412, which was delivered by Thomas, J., and *Muhammed v. State of Kerala* 1994 (1) KLT 464 which was delivered by M. Jagannadha Rao, C.J. and K.G. Balakrishnan, J. were cited. The learned Judge, after considering the two decisions, observed that the law enunciated by the Bench in the decisions cannot be accepted as correct and that the learned Judge gave no importance to the scheme of the Code of Criminal Procedure and various other provisions in the Code. In regard to the decision in *Muhammed's* case 1994 (1) KLT 464 (supra), the learned Single Judge observe thus:

I am afraid this statement is too much of generalisation. On the basis of the allegations in the present Original Petition, if Respondents 4 and 5 are to be tried and convicted in India, they are certainly subject to the double-jeopardy, because the Saudi Arabia Penal laws would be applicable to the fourth Respondent and Saudi Arabia Government would be entitled to prosecute the fourth Respondent and convict him as the offence took place at Damam in Saudi Arabia.

In para 14, the learned Judge observed as under:

With utmost respect to the Judges of the Division Bench, the conclusion arrived at is bas-d upon a cursory examination of only a few provisions of the Code of

Criminal Procedure and overlooking the provisions of Code of Criminal Procedure. in Chapter 12 and the definition of "local jurisdiction" in Section 2(j) and "investigation" in Section 2(a) Code of Criminal Procedure. It should also be remembered that the Code of Criminal Procedure contains several sections which provide for the Court "dealing with" people for various types of actions. It does not mean that the pre-enquiry- stage necessarily means investigation. The court failed to see that Section 188 does not have overriding effect over the provisions of Chapter 12. In spite of the Court's attention being specifically drawn to the fact that Section 188 does not cover investigation envisaged in Section 2(a) the court did not go into Chapter 12 which alone deals with investigation. With utmost respect of the learned Judges, the interpretation of law that the main part of Section 188 does not require sanction of the Central Government and only for the purpose of inquiry and trial mentioned in the proviso, the previous sanction of the Central Government is required, is an erroneous view, ignoring several vital provisions of the Code of Criminal Procedure.

The learned Judge, without referring to the various provisions of the Code of Criminal Procedure, further observed that this decision does not have the effect of binding precedent and that it looked as if the learned Judges were more influenced by the law propounded by a learned Single Judge of this Court in Remla's case 1993 (1) KLT 412 (supra) and they did not bother to examine the matter in proper perspective and in depth.

9. The observations made in para 16 of the judgment for not following the Division Bench decision are rather interesting. Para 16 reads thus:

Considering the fact that this Division Bench decision dealt with the matter without referring to various other provisions of the Code of Criminal Procedure as pointed out supra, I am of the view that this decision does not have the effect of binding precedent; hence I steer clear of it. It looks as if the learned Judges were more influenced by the law propounded by a learned Single Judge of this Court in Remla v. S.P. 1993 (1) KLT 412 and they did not bother to examine the matter in proper perspective and in depth. May be the .relevance of Chapter 12 Code of Criminal Procedure. and its provisions were not brought to the notice of their Lordships. With utmost respect to the learned Judges who dealt with the decisions in Remla v. S.P. 1993 (1) KLT 412 and Muhammed v. State of Kerala 1994 (1) KLT 464, I am of the view that they are not binding precedents, and they are not applicable to the facts of the present case. I am conscious of the fact that a Single Judge of this Court is bound by a decision of the Division Bench; and still I am deviating from "the Division Bench decision as a decision rendered without reference to all the relevant provisions of the statute does not have the legal effect of a binding precedent.

Holding so, the learned Single Judge held that this Court does not have jurisdiction to issue "the writ as prayed for, both on the ground of want of jurisdiction as the offence was committed outside the territorial limits of this Court and also on the ground that Section 188 Code of Criminal Procedure does

not clothe the local police to investigate the crime. The Original Petition was dismissed accordingly.

10. The present Writ Appeal is filed against the said Judgment. When the Writ Appeal came up for consideration before a Division Bench consisting of M.M. Pareed Pillay, C.J. and P. Shanmugam, J., in view of the apparent conflict between the judgment under appeal on one side and Muhammed's case 1994 (1) KLT 464 (supra) and Remla's case 1993 (1) KLT 412 (supra) on the other, it referred the matter to be heard by a Full Bench for an authoritative decision. That is how the matter came up before us.

11. We heard counsel for the Appellant Mr. T.M. Abdul Latiff, Mr. K. Jayakumar for Respondents 2 and 3, Mr. P.S. Biju, Additional Central Government Standing Counsel for the first Respondent and Mr. A.N. Rajan Babu for Respondents 4 and 5.

12. As stated earlier, the learned Single Judge dismissed the Original Petition holding that this Court does not have jurisdiction to issue the writ as prayed for and also on the ground that permission of the Central Government was not obtained u/s 188 Code of Criminal Procedure. In our opinion, the learned Single Judge has erred in holding so. Before considering the matter, it would be appropriate on our part to refer to some of the provisions in the Code of Criminal Procedure and also the grounds raised by the Appellant in support of his contentions.

13. Section 4 of the Code of Criminal Procedure reads thus:

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offerees under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment of the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

A reading of the above section makes it clear that the Code contemplates two kinds of offences, one under the Indian Penal Code and the other under any other laws. Sub-section (1) of Section 4 provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained therein. The words "otherwise dealt with" referred to in the section deal with offences included in the provisions of the Code apart from the provisions for investigation, inquiry or trial.

14. Section 156 Code of Criminal Procedure reads as under:

156. Police officer's power to investigate cognizable case.-

(1) Any, officer in charge of a Police Station may, without the order of a

Magistrate investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above mentioned.

Under Section 157, the officer in-charge of the Police Station may make a preliminary report to the Magistrate. Ordinarily, when a cognizable offence is reported to the Police, it will be their duty to investigate into the circumstances of such cognizable offence. Mere fact that a private; complaint is filed in a court and is taken cognizance of it by the Magistrate does not. and cannot deter the Police from enquiring into the alleged offence which came to their knowledge in the course of their duty or information from other sources.

15. Section 179 Code of Criminal Procedure deals with the offence triable where act is done or consequence ensues. It reads:

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.

The section applies when the act is an offence by reason of anything which has been done and of any consequence which has ensued.

16. Section 181 Code of Criminal Procedure. provides for alternative, jurisdiction as to certain offences as Section 180 provides for related offences. The section is applicable only to the scope of relative jurisdiction of courts in India and cannot be applied to offences committed in a country outside India. Its object is to regulate the jurisdiction of courts in India in respect of offences committed in India and cannot vary or abrogate the ordinary rule that no foreign subject can be tried in India for an offence committed outside India. Section 181(4) applies only when the offences referred to therein are committed within India. It has no application to an offence committed outside India.

17. Section 188 is the relevant section with regard to the case in hand. It reads thus:

188. Offence committed outside India.-When an offence is committed outside India

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence 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, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Clause (a) of Section 188 makes it clear that, the section applies if the offence has been committed by a citizen of India outside India whether on the high seas or elsewhere. Clause (4) makes it clear that if the offence is committed by a person who is not an Indian citizen on any ship or aircraft registered in India, then also the section applies. In the proviso to the section, sanction of the Central Government is made necessary for inquiry or trial of such offences. Section 188 Code of Criminal Procedure. only deals with the procedure and nothing else. In the instant case, the act alleged is said to have been committed outside India and, therefore, it amounts to an offence punishable under the Indian Penal Code. The proviso to the section is prohibitive. Sanction of the Central Government is a preliminary requisite for the institution of criminal proceedings in India in respect of the offences committed outside India. Proceedings taken without such sanction are without jurisdiction and void.

18. In the light of the above provisions and the decisions cited on either side, we shall now proceed to consider the rival contentions of the parties.

19. In this context, the first case to be referred to is the decision reported in *Shadili v. Uthaman* 1988 (2) KLT 191 In this case, the Petitioner sought to quash the complaint filed by the first Respondent on the ground (i) that no sanction from the Central Government was obtained for the investigation of the alleged offence since the entire transaction took place outside Indian territory; and (ii) that the allegations made by the first Respondent do not make out an offence under the Indian Penal Code and hence the criminal court cannot proceed with the same. Sreedharan, J., as he then was, held that the materials placed before the Court did not disclose any offence and in such a situation, no investigation could be allowed to be carried out. The learned Judge came to that conclusion on the basis that the petitioner had only an expectation to make available sufficient funds for the bank to honour the cheque on a future date when it is presented and if he fails to raise sufficient fund to honour the cheque, it would amount to a failure to fulfil the promise and such failure cannot result in the commission of an offence under the Penal Code. The failure on the part of the person issuing post-dated cheques to raise sufficient fund with the bank to pay the amount covered by the cheque will not constitute an offence under section 420 I.P.C. In this context, the learned Judge referred to the decision reported in *State of Kerala Vs. A. Pareed Pillai and Another*, wherein it was observed thus:

To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.

The learned Judge was, therefore, of the view that the failure can give rise only to civil liability and not to a criminal offence. The action of the Petitioner in the above circumstances cannot constitute an offence u/s 420 I.P.C. Since the acts done by the Petitioner if committed in India could not constitute an offence under the Penal Code, these acts carried out in a foreign country cannot constitute an offence for the Code to apply. In this view of the matter, the learned Judge quashed the proceedings initiated pursuant to Annexure A-1 .

20. The next decision in the series is the one cited supra Remla,s case 1993 KLT 412. The case was regarding the death of one Sulaiman. A complaint was filed by his mother, widow and brother before the Police stating that they suspect one Ali to have murdered Sulaiman on 21st June 1992 at Sharjah. The complaint was not accepted by the Police on the ground that the alleged offence was committed outside India. The Petitioners filed an Original Petition for directing the Police to prepare an F.I.R. and register the crime on the basis of the complaint and to commence investigation. The Government Pleader justified the Police because no Police in this State can enquire into the offence committed beyond the territories of India. Thomas, J., as he then was, after referring to Section 3 I.P.C. and Sections 177 and 188 Code of Criminal Procedure. and the decisions reported in State of West Bengal Vs. Jugal Kishore More and Another, , Nikka Singh Vs. The State, and Narumal Vs. State of Bombay, held that the proviso to Section 188 casts and obligation to obtain previous sanction of the Central Government to enquire into and try such person and that Section 188 has a message that for the pre-inquiry stage, no such sanction is needed. The observations made by the learned Judge can be usefully extracted hereunder:

Section 3 of the Penal Code helps the authorities in India to proceed by treating the offence as one committed within India. No doubt, it is by a fiction that such an assumption is made. But such a fiction was found necessary for practical purposes. Section 3 of the Penal Code was found insufficient for Police authorities to investigate into the offence. It was in the aforesaid context that Section 188 has been incorporated in the Procedure Code. No doubt, Section 188 concerns as to how to deal with a person who has committed an offence outside India. Since the proviso casts an obligation to obtain previous sanction of the Central Government to inquire into and try such person, the section has a message that for the pre-inquiry stage, no such sanction is needed. The pre-inquiry stage substantially relates to investigation of the crime. If there is any stage in which an offender can be dealt with before commencement of inquiry, it must be the investigation stage. During such investigation stage, if the person (known or reasonably suspected to be the offender having committed the offence outside India) is not available in India, extradition proceedings may have to be resorted to.

The learned Judge, therefore, directed the Police to conduct an investigation into the offence notwithstanding the place of occurrence, being Sharjah because the person on whom the focus of suspicion turns is said to be a citizen of India

21. In the decision reported in Muhammed's case 1994 (1) KLT 464 (supra), the question posed for consideration before the Division Bench was whether the Kerala Police can conduct investigation into offences committed abroad. The complaint was that the Petitioner, while working as Manager in the shop of the fifth Respondent in UAE, had diverted to his own accounts a sum of 7,82,737 Dhs., which is said to be about Rs. 90 lakhs. The fifth Respondent lodged a complaint with the All in Civil Court and by the time the court passed a prohibitory order preventing the Petitioner from leaving UAE, he escaped to India via Jordan. It was alleged that the money acquired by the above said misappropriation had been sent to India through various banks to his accounts and some money was allegedly smuggled into India through clandestine methods. These acts amounted to dishonest misappropriation, criminal breach of trust and cheating. The Petitioner contended that inasmuch as the offence took place in a foreign country, the Police in India had no power of investigation. But the Government Pleader contended that u/s 188 Code of Criminal Procedure Police can deal with the offender and the said words include "investigation" also, and such investigation does not require sanction of the Central Government. Jagannadha Rao, C.J. as he then was, speaking for the Bench: formulated 2 points for consideration. In point No. 1, the aspects regarding the territorial principle, protective or security principle, nationality or citizenship principle and Section 4 I.P.C. had been dealt with in extenso. Point No. 2 dealt with the scope and effect of Section 4 I.P.C. read with Sections 4, 188, 2(g) and 2(h) of the Code of Criminal Procedure. The decisions reported in *Empress v. Manganlal* ILR 6 Bom. 622, *Narayan v. Emperor* AIR 1935 Bom. 437, *Central Bank of India Vs. Ram Narain*, , *Ajay Aggarwal v. Union of India* 1993 S.C.C. 961 , *Delhi Administration Vs. Ram Singh*, ; *Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co.*, *Bombay*, *M/s Frick India Ltd. v. Union of India* AIR 1990 S.C. 689 and AIR 1948 251 (Nagpur) were also relied on. The Division Bench agreeing with the view taken by Thomas, J. in *Remla's case* 1993 (1) KLT 412 (supra), held that the Kerala Police can conduct investigation into offences committed abroad and no sanction of the Central Government is necessary for the said purpose. The Division Bench also dealt with the words dealt with in the main part and said that it cannot be restricted to inquiry and trial used in the proviso. While referring to Section 4 Code of Criminal Procedure. and the words "deal with the Division Bench has opined that the words "deal with as amounting to something other than "investigation", "inquiry" and "trial falls to the ground. Therefore, the words "dealt with" in Section 188 Code of Criminal Procedure must be held to include "investigation" also, apart from "inquiry" and "trial and for the purpose of "investigation" into offences committed abroad, sanction of the Central Government is not necessary. It also held that Section 188 Code of Criminal Procedure is complementary to Section 4 I.P.C. and must cover the procedure relating to investigation also and the scope and ambit of the main part of Section 188 Code of Criminal Procedure cannot be controlled by the proviso. Holding so, the Division Bench concurred With the view taken in *Remla's* 1993 (1) KLT 412 (supra).

22. The decision reported in *Muhammed Sajeed v. State of Kerala* 1995 (1) KLT 748 was rendered by K.P. Balanarayana Marar, J. That was a case of an offence committed outside India by an Indian citizen. Following the decisions in *Remla's case* 1993 (1) KLT 412 and *Muhammed's case* 1994 (1) KLT 464 (supra) and relying on the decisions in *Ajay Aggarwal's case* 1993 S.C.C. 961 and *Delhi Administration Vs. Ram Singh*, , the learned Judge dissented from the view taken by Jagannadha Raju, J. in the decision reported in 1995(1) KLT 468. The learned Judge also relied on *Shri Bhagwan and Another Vs. Ram Chand and Another*, and few other decisions in the context of precedents and held that it is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. It was also observed that this is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety and that the decision under appeal was rendered without adverting to these principles laid down by the Supreme Court in various decisions and, therefore, the decision in *Samarudeen's case*-the decision under appeal-is not a binding precedent or a binding authority. Rejecting the request to refer the matter to a larger Bench, the learned Judge observed that it was not a case of one co-ordinate Bench disagreeing with another on a question of law and since the Division Bench decision in *Muhammed's case* 1994 (1) KLT 464 (supra) is binding on a Single Judge of this Court, the question of disagreeing with that decision does not arise. Therefore, the learned Judge held that the decision in *Samarudeeri's case* (supra) had been rendered per incuriam.

23. Learned Senior Government Pleader argued that the decision under appeal rendered by Jagannadha Raju, J. cannot stand and that the decisions referred to therein- *Election Commission, India Vs. Saka Venkata Subba Rao and, and Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, have no application to the facts and circumstances of the case and are distinguishable on facts. We find force in that contention.

24. Learned Central Government-Standing Counsel invited our attention to Section 9 of the Foreign Exchange Regulation Act and submitted that since the amount outright by higher courts. The following principles can be culled out from the myriad of case law: (a) A Single Judge is bound by the decision of a Division Bench and if he does not agree with it, he shall refer the matter to a larger Bench; (b) A fortiori he is bound by the Judgment of a Full Bench, and if he does not agree with its ratio, he shall place the papers before the Chief Justice to consider whether a larger Bench should be constituted for considering the question; (c) A Division Bench is bound by the decision of another Division Bench and if it wants to differ from same, it shall get the matter referred to a Full Bench; (d) A fortiori

a Division Bench is bound by the decision of a Full Bench and if it wants to differ, it shall place the papers before the Chief Justice to consider whether a larger Bench should be constituted for reconsidering the question; (e) The decision of a Full Bench is binding on the court, including a subsequent Full Bench, until it is overruled by a higher Court or a larger Bench; (f) A decision of a Full Bench can be reconsidered only by a larger Bench specially constituted by the Chief Justice for deciding the question; (g) Even the obiter dictum of a Full Bench is entitled to great weight; (h) The binding effect of a prior 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; (1) The decision of the Supreme Court is binding on the High Court and the latter cannot ignore it on the ground that some relevant provisions of law were not brought to the notice of the Supreme Court or some aspects of the matter in question were not considered by the Supreme Court."

In the decision reported in *Manickam Chettiar Vs. Ramanatha Devar*, , AP. Lakshmanan, J. has observed thus:

There are innumerable number of cases wherein the Apex Court itself has expressed its regret about a latter co-ordinate Bench of the same court sitting on a judgment over a decision of an earlier Bench. It is well settled principle of judicial discipline that if a Single Judge disagrees with a decision of another Single Judge, it is proper to refer the matter to a larger Bench for an authoritative pronouncement.

alleged to have been brought to India were deposited in the banks in India, it cannot be said that the amount has been brought through improper channels. We do not express any opinion on the merits of the case and we are concerned only whether u/s 188 Code of Criminal Procedure the Police has jurisdiction to investigate a crime alleged to have been committed outside India by an Indian citizen, from the counter-affidavit, the first Respondent assured that appropriate action as per law would be taken when credible and valuable informations regarding the violation of FERA are furnished.

25. Before parting with this case, we would like to express our dissatisfaction in the way in which the learned Single Judge has disposed of the matter without referring to a binding precedent rendered by a Division Bench in *Muhammed's case* 1994 (1) KLT 464 (supra), which, in turn, has approved *Hie* decision in *Remla's case* 1993 (1) KLT 412 (supra,). The language employed by the learned Single Judge while considering the judgment of the Division Bench and also of the learned Single Judge is not proper. The remarks made by the learned Single Judge against the Hon'ble Judges are most uncharitable. If he entertains doubts about the correctness of the decisions, he ought to have, in all fairness, referred the matter to a larger Bench for an authoritative pronouncement, which was done by *Pareed Pillay, C.J.* and *Shanmugam, J.* in the order of reference.

26. A Full Bench of the Madras High Court, in the decision reported in *Philip*

Jeyasingh v. Jt. Registrar of Co-op. Societies 1992 (1) L.W. 216 had dealt with the law of precedents. Sriivasan, J. as he then was, speaking for the Full Bench, observed as follows:

The law of precedents has been uniform throughout the country for ever a century. Occasional aberrations by Judges sitting singly or In Division Benches have not only been frowned upon, but condemned

27. The learned Judge also dismissed the petition on the ground that since the offence is committed outside India, this Court cannot exercise its jurisdiction under Article 226 of the Constitution of India. This was on the ground that the offence is committed outside India, which is beyond the territorial jurisdiction of this Court. Section 188 of the Code of Criminal Procedure states that the offender may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. In this case, admittedly the Accused are living within the jurisdiction of Kerala State. The authorities relied on by the learned Judge are not relevant for the purpose of this case. Further, the directions are sought to be issued to Respondents 1, 2 and 3 who are living within the territorial jurisdiction of this Court. Hence, we set aside the findings of the learned Single Judge, i.e.,- the Court has no territorial jurisdiction and hold that this Court has got territorial jurisdiction under Article 226 of the Constitution of India.

28. As already stated, in this case, the Appellant has only prayed for a direction to the Assistant Director of Enforcement to conduct investigation and inquiry and to complete the same by filing a report before the concerned Court. The consequential prayers asked for by the Appellant will depend upon the investigation to be conducted by Respondents 1 to 3. The decisions cited *Supra* categorically held that u/s 188 of the Code of Criminal Procedure, the Kerala Police can conduct investigation into offences committed abroad and no sanction therefore of the Central Government is necessary. In view of the above decisions, we hold that the judgment under appeal rendered by Jagannad Raju, in O.P. No. 15432 of 1994 dated 9th February 1995, reported in 1995 (1) KLT 468 does not stand and is set aside. The writ appeal is allowed. The reference answered accordingly. We make it clear that Respondents 1 to 3 shall conduct and complete the investigation within four months from the date of receipt of a copy of this judgment and proceed further in accordance with law.

No costs.