**(2017) 02 MP CK 0211**

**In the Madhya Pradesh High Court**

**Case No :** 4682 of 2015 (PIL)

Smt. Nasreen Khatoon APPELLANT

Vs

Santosh Thakur @ D.C.Malik & others RESPONDENT

**Date of Decision :** 16-02-2017

**Acts Referred:**

<a href=6728>Reserve Bank of India Act, 1934</a>, <a href=6728-39>Section 39</a>, <a href=6728-23>Section 23</a>, <a href=6728-24>Section 24</a>, <a href=6728-22>Section 22</a>, <a href=6728-26>Section 26</a> - Obligation to supply different forms of

**Citation :** (2017) 02 MP CK 0211

**Hon'ble Judges :** P. K. Jaiswal, Virender Singh

**Bench :** Single Bench

**Advocate :** Abhinav P. Dhanodkar, Rashmi Pandit, Bharat A. Chitle, Kamlesh Mandloi, Koustubh Pathak, Ajay Bagadiya, Vatsala Rai

## Judgement

2. The present writ petition has been filed under ''Pro Bono Publico'', by the petitioner, who is a Journalist and R.T.I. Activist has questioned the legality of the respondent Nos.3, 4 and 5''s alleged acts of enabling persons to offer for sale or to sell Indian rupee currency notes and bank notes bearing unusual or distinctive serial numbers at a premium, through their websites over the Internet. He has further prayed for a direction to the respondent No.1 and respondent No.2-Reserve Bank of India that the respondent Nos. 3 to 5 be restrained from carrying out the activity of online currency transactions over and above the value of that particular denomination through their websites and declare the sale and purchase of online currency transactions of unique digits, value other than real denomination to be illegal and to stop selling the currency notes.

3. According to the petitioner, the said action of the respondent Nos. 3 to 5 is illegal and arbitrary. The respondent No.2, while issuing a currency note of any denomination declares and promises to pay the bearer of that currency note equal to sum of that amount which means that the bearer, who is having that particular note can transfer such amount to other person or can exchange the

currency of other country for equal value or can purchase anything of that particular value, but in the present case, the respondent Nos. 3 to 5 giving option to various people to sell the currency of India of any amount by way of publishing such advertisement to sell the currency notes at an exorbitant price with a tantrum of unique number/digit. He has also drawn our attention to various provisions of Reserve Bank of India Act, 1934 and the judgment relied upon in the case of Bank Note Press Vs. Additional Assistant Commissioner of Commercial Tax & others reported in 2016 SCC OnLine 6284. Para -12 of the judgment is relevant which reads as under:-

"12. From the aforesaid Memorandum of Association of SPMCIL it is manifest that the main object of the company is to do the business of designing and printing of currency notes. When the company is engaged in the business as defined under Section 2(d) of the VAT Act, 2002 then it acts as a "dealer" also as per Section 2(i) of the Act because it is buying, selling and supplying of currency directly or otherwise and as the definition of the goods all kinds of movable property are goods. Though the word currency is not mentioned in the definition of ''goods'' but the currency printed by the petitioner becomes a currency by virtue of Section 22 of the RBI Act and becomes property of the Government of India, hence all the three ingredients are involved to brin g the petitioner within the purview of Entry Tax."

4. Learned Counsel for the petitioner has further submitted that the action of the respondent Nos. 3 to 5 is illegal and arbitrary, since the currency of India can only be transferred, exchanged but cannot be sold. He also submitted that the above mentioned act of respondent Nos. 3 to 5 is encouraging the public at large to collect and hold a particular unique digits currency and then sell the same on higher prices, which is violation of provisions of Sections 22 to 24 of Reserve Bank of India Act, 1934 and prays that the writ petition be allowed.

5. The respondents have filed their detailed reply and submitted that the writ petition is misconceived and bad in law. The circulation of banknotes is the responsibility of the Reserve Bank of India. The Reserve Bank of India is governed by the Note Issuing Regulation Act. The Government of India is not involved in operational issues of insurance and distribution of banknotes and prays for dismissal of the writ petition with heavy costs.

6. The Reserve Bank of India has been constituted under Section 3 of the Reserve Bank of India Act, 1934 to regulate the issue of bank notes and keeping of reserves to secure monetary stability in India and generally to operate the currency and credit system of the country to its advantage. The Reserve Bank of India regulates and controls the money supply and credit in the country.

7. The Reserve Bank of India is the sole note-issuing authority under Section 22 of the Reserve Bank of India, 1934 (for short "the RBI Act"). The issue of bank notes is conducted by the Reserve Bank of India in an Issue Department which is required under Section 23 of the RBI Act to be kept separate and wholly distinct

 

from the Banking Department. Section 24 of the RBI Act authorizes the bank to issue bank notes in denominational values of Rupees two, five, ten, twenty, one hundred, five hundred, one thousand, five thousand and ten thousand and such other denominational, not exceeding rupees ten thousand, as the Central Government may specify. The bank notes issued by the Reserve Bank of India are legal tender under Sections 26 and 39 of the Reserve Bank of India Act, 1934.

8. The character of notes as ''legal tender'' is governed by section 26 of the RBI Act, which reads as under:

" 26. Legal tender character of notes.--(1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government."

9. From perusal of the aforesaid provisions, it is very clear that every bank note is legal tender in payment or on account, only for the amount expressed therein, and is guaranteed by the Central Government subject to that limitation. Thus, even if a bank note were bought or sold by willing parties, imprudently or otherwise, at an amount higher than that expressed thereon, its character as legal tender will not vary, and no holder may lawfully expect or enforce in exchange of such note any other currency or bank note or goods or service or other thing of value exceeding the value expressed on the note, nor would the guarantee of the Central Government thereon vary according to the price at which it was bought or sold.

10. It will be seen on consideration of Sections 22, 23, 24 and 26 of the RBI Act that the trade practice of which the petitioner is aggrieved is not specifically prohibited under any of these provisions of law.

11. Sections 22, 23, 24 and 26 of the RBI Act relied upon by the petitioner only to narrate the manner, system of issue, management of currency and bank notes in the country by the respondent No.2 and nothing therein can be read as prohibiting the alleged activities.

12. Section 7 (2) of the RBI Act provides that subject to the directions of the Central Government in consultation of the Governor of the bank, the general superintendence and direction of the affairs of the Reserve Bank of India are entrusted to a Central Board of Directors. Section 58 of the RBI Act empowers the Central Board, with the previous sanction of the Central Government, to make regulations in respect of the matters enumerated therein, consistent with the provisions of the RBI Act, for all matters for which "provision is necessary or convenient for the purpose of giving effect to the provisions of the Act." A perusal of the aforesaid provision will show that the activities forming the subject matter of the present writ petition are not dealt with therein.

13. The Government of India has neither any role nor any power to prohibit the offer for sale or sale of India Currency notes and bank notes at a premium under

 

the provisions of any statute governing the issue and regulation of such currency in India.

14. The respondent No.4 is a subsidiary of OLX India B.V. A Dutch Limited liability company that is registered in Netherlands. The website ("Website") is owned and hosted by OLX India B.V. and Respondent No.4 is a service provider engaged in rendering certain marketing and ancillary services to OLX INDIA B.V. in connection with the Website. The Website is merely online service allowing users to post classified advertisement and is a platform which facilities interaction between buyers and sellers. By virtue of being an online market place, Respondent No.4 is an "intermediary" as defined under Section 2 (1) (w) of the Information Technology Act, 2000, as:

"intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;"

Being an intermediary, under Section 79 of information Technology Act, 2000, Respondent No.4 is not liable for any third party information, data made available or hosted by him, as it does not create, or cause to create content nor does it play any direct or indirect role in selection of content or the receiver of such content. Thus, the transaction impugned by the Petitioner is completely independent of Respondent No.4''s involvement and it has no role in facilitating the transaction.

15. The respondent No.4 in compliance with the IT Act and the rules made there under, the terms of use of website at clearly states that users are solely responsible for the Content posted on, transmitted through, or linked from the Website and the consequences of posting, transmitting, linking or publishing it.

16. All the currency notes and coins offered for sale by users on the Website are being offered by the user for the sake of antiquity or uniqueness attached to that particular note or coin which can be of interest for numismatics and collectors of such antique pieces.

17. On perusal of the provisions of the Reserve Bank of India Act, 1934, it is evident that the Petitioner has wrongly interpreted the Sections 20-26 and 28 of RBI Act, 1934 ("The RBI Act"). The above mentioned provisions under the RBI Act abstains any third parties from issuance of currency and does not in any way prohibits or penalizes any dealing in currency legally issued by the RBI. In absence of any provisions which prohibits dealing in currency legally issued by the RBI, it cannot be asserted that alleged transactions are illegal in nature.

18. The stand of respondent No.4 is that he is not floating advertisements for selling of currency note on his website. The currency notes are being offered by

User on the Website. Pertinently, the transaction between a seller and a purchaser is completely independent of the website''s involvement and the Website has no role in facilitating the transaction in relation to any advertisement published on the Website. Nor he is encouraging people to collect or to hold currency notes with a unique digits/numbers and sell them at a higher price and in anyway in violation of Sections 22 to 24 of Reserve Bank of India Act, 1934.

19. The respondent No.5 is a private limited company and an e-commerce pioneer in India. Being an online marketplace is an "intermediary" as defined under Information Technology Act 2000 ("IT Act"). As an intermediary, Respondent No.5 simply provides web portal (space/place) which can be used by a ''registered user'' desiring to sell a product and such registered user ''lists'' the product on Respondent No.5''s website. Such a ''listing'' merely provides information of the product to prospective buyers. The ''listing'' does not provide access to the product itself.

20. The respondent No.5 does not manufacture, generate, own, sell, transmit, store, procure or distribute in any manner the items/products whose description are listed by the registered users/sellers on its website or purchased by users/ buyers by accepting the sale offer made in the listings. He has no control over the outcome of the transactions. Therefore, if the sale of Bank Notes (for a value higher than the denomination mentioned on such Bank Note) tantamount to an offence, as alleged in the PIL, the same can be said to have been committed by the persons engaging in such transactions i.e., either the sellers or the purchasers (on Respondent No.5''s website) and not by Respondent No.5.

21. As per the petitioner''s submissions, he got knowledge of these listings while browsing/surfing Respondent No.5''s website (out of curiosity), however, as per the rules published on the sad website, a registered user or anybody else, who has a grievance that the listed products/articles on the website are objectionable, can notify the same to the grievance officer of Respondent No.4 ("Grievance Officer"). On receipt of such grievance, Respondent No.5 can then initiate necessary steps for redressing such grievance and also disable access of any such objectionable material if so required as provided under Section 79 of the IT Act and the Information Technology (Intermediaries Guidelines) Rules 2011 ("the Rules"). Hence, if the Petitioner found the listing of Bank Notes (for sale) as objectionable, he was required to first notify the Grievance Officer seeking redressal.

22. The respondent No.5 provides for web portal (space/place) which can be used by a registered user desiring to sell a product and such registered user ''lists'' their product/s on the Website. Such a ''listing'' merely provides information of the product to prospective buyers. The ''listing'' does not provide access to the product itself and no product is ever stored or generated or transmitted on the Website.

23. As per reply, respondent No.5 does not manufacture, generate, own, sell,

 

transmit, store, procure or distribute in any manner of the items/products whose descriptions are listed by the registered users/sellers on its website or purchased by users/buyers by accepting the sale offer made in the listings. The Company has no control over the outcome of the transactions and has no right, title or interest in any of the products/items being listed by third party users and all such listings are therefore "third party information" as defined in the Explanation to Section 79 of the IT Act. Section 79 of the IT Act is reproduced hereunder for ease of reference:

"For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention." Explanation.-- For the purposes of this section,--- (a) "network service provider" means an intermediary; (b) "third party information" means any information dealt with by a network service provider in his capacity as an intermediary;

24. Respondent No.5 performs functions only as an "intermediary" as defined in Section 2 (1) (w) of the IT Act and not as an "originator" as defined under Section 2 (1) (za) of the IT Act. Section 2 (1) (za) of the IT act defines an "originator" as:

"originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

25. The Hon''ble Supreme Court of India, by its order dated April3, 2013 passed in I.A. Nos. 136 and 137 in Civil Appeal No.5168 of 2000 (in connection with a case having similar allegations as in the present instance made against Respondent No.5 factual matrix) has held that eBay Inc. (group entity of Respondent No.5 and engaged in the same business as Respondent No.5, in a different geography) is only an intermediary within the definition of Section 2(w) of the IT Act. The Hon''ble Supreme Court has also confirmed the position in law that under Section 79 of the IT Act, an intermediary like Respondent No.5 is exempted from any liability arising out of any objectionable listing put up on the Website.

26. To use the Website for the purpose of listing/transacting, all users are mandatorily required to register themselves through an automated registration process and all users are mandatorily required to enter into a User Agreement. The User Agreement sets out the terms and conditions for use of the Website. Registration and acceptance of the User Agreement is a pre-requisite for any transaction on the Website. Any user, who does not accept the terms of and/or enter into the User Agreement will not be able to list any product/transact on the Website. Furthermore, the User Agreement also specifies that Respondent No.5,

 

being an intermediary, has published the same in accordance with the Rules. The User Agreement categorically provides that a seller shall not list items that are in any manner prohibited by law. The User Agreement has been published on the Website and is available at .

27. From the above, it is not in dispute that currency notes are not being offered for sale. What is being offered the uniqueness associated with such currency notes which may have value for certain individuals. The respondent No.5 is not encouraging the public at large to collect and hold a particular kind of currency and then sell the same for a higher price which is causing an imbalance in the circulation of currency in the market which will result in inflation and economic imbalance.

28. From the above mentioned reasons, we are of the view that the writ petition filed by the petitioner is devoid of substance and is liable to be dismissed.

Accordingly, it is dismissed with cost of Rs.5,000/-. Cost amount be deposited by the petitioner within a period of six weeks from today.