(1989) 09 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 430 of 1989

State through Asstt.Director, Enforcemnet, Jalandhar APPELLANT

Vs

Paramjeet RESPONDENT

Date of Decision : 20-09-1989

Acts Referred:

Citation : (1989) 2 AICLR 901 : (1990) 1 CurLJ 606 : (1989) 2 RCR(Criminal) 685

Hon'ble Judges : A.P.Chowdhri, J

Advocate : Sukhbir Singh, H.S. Mattewal, Jayshree Anand, Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. The factual background necessary for the disposal of this criminal revision is as under :

2. One Subhash Chander worked as Salesman of the shop of one Mehnga Ram and was thus known to him. On 16.7.1987 Mehnga Ram sent Subhash Chander to Delhi to bring a sum of Rs. 3,30,000/ from one Brij Mohan, Subhash Chander collected the amount and was bringing it in a cloth bag. He was travelling on the night between 16th and 17th July, 1987, by Shane Punjab train. When he reached Ambala Cantt he found the bag missing. He raised alarm and came out of the compartment and found that the police had apprehended two persons, namely, Paramjit Singh and Jagjit Singh sons of Diwan Chand and the bag containing the money was in the hand of the SubInspector. Case FIR No. 103 dated 17.7.1987 was registered. The accused were tried. They initially pleaded not guilty. After a number of adjournments, they made an application that they wanted to make a confession. Their plea was recorded and they were convicted by the Special Railway Magistrate, Ambala, under Section 379 of the Indian Penal Code was sentenced to simple imprisonment for one year and a fine of Rs. 100/ each. During the pendency of the aforesaid trial, an application dated 21.7.1987 was made by Mehnga Ram for return of the amount on superdari under Section

451 of the Code of Criminal Procedure. The learned Magistrate directed vide order dated 3.8.1987 that the amount shall be deposited in Treasury during the trial. One other application which is undated was made before 11.1.1988 by the Assistant Director, Enforcement Directorate, Jalandhar for giving the amount to that department in connection with proceedings under Foreign Exchange Regulations Act against Mehnga Ram and Subhash Chander. A perusal of the original record of the trial Court shows that the Public Prosecutor/representative of the Enforcement Directorate kept attending various dates of hearing in connection with consideration of the said application and the last date on which attendance was made on behalf of the department was 2.11.1988. The learned Magistrate, however, passed no order on the said application. Ultimately, the accused in that case were convicted and sentenced as already stated but no order with regard to disposal of the case property i.e. the aforesaid amount was passed. The convicts preferred an appeal which was disposed of by the learned Additional Sessions Judge, Ambala, by order dated 4.4.1989. Only sentence was assailed in the appeal. The sentence was set aside and instead the accused were directed to be released on probation. Learned Additional Sessions Judge took up the application of Mehnga Ram and noted that the amount had been recovered from the possession of Subhash Chander, that Subhash Chander had no objection to the amount being returned to the real owner Mehnga Ram. Statement of Mehnga Ram was also recorded. He claimed the amount to be his own and he added that the amount had been sent by him from Dubai through Bank drafts. He also produced photostat copies of the bank drafts. The lower appellate Court directed the amount to be returned to Mehnga Ram on his undertaking to produce the same in the Court in case any better claimant came forward and established his claim. Aggrieved by the orders with regard to return of the amount, the Enforcement Directorate under the Foreign Exchange Regulations Act, 1973, has preferred this revision. It has been opposed by Mehnga Ram.

3. In the grounds of revision, it has been stated by the Enforcement Directorate that Mehnga Ram who has been residing at Dubai had been indulging in violation of Foreign Exchange Regulations. He had been making compensatory payments at the instance of several persons at Dubai where he was collecting foreign exchange and in lieu thereof he was paying Indian currency to persons or their relatives or friends from who he collected the foreign exchange. In this connection, the Directorate had recorded statements of Subhash Chander, Mehnga Ram and a large number of other persons and had seized several documents. Prima facie the authority under the Act was satisfied that the amount in question had been used for violation of Foreign Exchange Regulations and was liable to be seized in connection with the proceedings against Mehnga Ram and Subhash Chander. The grievance of the department is that even though an application was made and followed up in all seriousness no order was passed by the learned trial Magistrate nor was the department heard by the learned lower appellate Court before passing the impugned order.

4. It was submitted that in view of the material already collected by the Enforcement agency as detailed in paragraph 2 of the grounds of revision, there was a clear prima facie case for seizure of the money in question. The Enforcement Officer had the power of seizure under the Act and viewed from this angle even if money were handed over to the rival claimant Mehnga Ram, it would be open to the proper officer to seize the money from the hands of Mehnga Ram as soon as he came out of the Court. In such a situation, it would be an empty formality that the money should be in the first instance handed over to Mehnga Ram instead of its being straight away handed over to the Enforcement Directorate for their investigation and further action according to law. Learned Counsel pressed into service observations made in similar circumstances in an unreported judgment of Kerala High Court in Jos Abraham, Enforcement Officer v. Sub Inspector of Police and another, Criminal Revision No. 407 of 1970, decided on January 29, 1971, and also in Fakkir Muhammed v. State, AIR 1967 Kerala page 282 and Krishnan Sukumaran v. Enforcement Officer, AIR 1968 Kerala 208. Reference was also made to Smt. Godavari Shawrao Parulekar v. State of Maharashtra, AIR 1964 SC 1128 where in the context of service of a fresh detention order on the detenu it was observed by the Supreme Court that it would be an empty formality if on the revocation of the previous order of detention the detenu was allowed to go out of the jail and he was served with a fresh detention order at the gate of the jail and brought in custody back into the jail.

5. A perusal of the record of the trial Court shows that the application was made by the department towards the end of 1987 or beginning of 1988 and on every date of hearing either the Public Prosecutor on behalf of the department or the Inspector Enforcement regularly attended the Court until 2.11.1988. The case was adjourned from time to time. It cannot, therefore, be said that the department had merely filed an application and had taken no steps to follow it up. When the trial Court passed the order on the application of Mehnga Ram, it did not think it necessary to call upon the department to appear and be heard with respect to its claim. No such hearing was afforded by the appellate Court either. In other words in a very broad sense the order in favour of Mehnga Ram was passed without hearing the rival claimant, namely, the Enforcement Directorate which had put forward its claim to receive the money for purposes of investigation etc.

6. Learned Counsel appearing for Mehnga Ram referred to the application filed by the department during the trial and emphasised that the facts mentioned therein were inconsistent with the facts set out in the grounds of revision. In the application, it was stated that Subhash Chander was arrested alongwith two other persons on 26.8.1987 in connection with the contravention of Foreign Exchange Regulations. The investigations revealed that on 17.7.1987 Subhash Chander accused was carrying Rs. 3,30,000/ from Delhi to Bhogpur and at Ambala Cantt, he was apprehended and the said amount was seized from him. It was further stated that the seized amount appeared to be in violation and

contravention of Section 9 of the Foreign Exchange Regulations Act, 1973. This was followed by the prayer that the seized amount be handed over to the Enforcement Directorate, Jalandhar, for investigation into the case. The point sought to be made is that Subhash Chander was a complainant in respect of the incident of 17.7.1987; that the amount was recovered from Paramjit Singh and Jagjit Singh who had ultimately been convicted under Section 379 of the Indian Penal Code and the applicant only made a vague statement that the amount appeared to have been used for violation of Secttion 9 of the Foreign Exchange Regulations Act, 1973. No doubt, the application contains a wrong statement that the amount was seized from three persons on 17.7.1987. There is, however, no doubt that the persons referred to in the context is Subhash Chander, besides that two accused. The application also referred to the recovery of the same amount namely, Rs. 3,30,000/. It was undeniably "seized" though by the police and there is nothing on the record to controvert that Subhash Chander along with some other persons was not arrest subsequently on 26.8.1987. There is also nothing to controvert the averments made in paragraph 2 of the grounds of revision and, therefore, in substance I do not find any material inconsistency in the stand taken in the application made before the trial Magistrate and that in the grounds of revision in this Court. It has already been stated that it is factually wrong that the department merely put in application and did not follow it up. The next contention of learned Counsel was that the admitted case of Mehnga Ram was that he had sent money from Dubai by bank drafts and it was not the case of the department that the currency notes which were recovered by the Police from Paramjit Singh and Jagjit Singh were the ones which had been brought from Dubai in contravention of the provisions of Foreign Exchange Regulations Act, 1973. According to the learned Counsel, there was thus no case for handing over the said money to the department. They could carry on their investigation and take action against Mehnga Ram and others according to law. The reply of the learned Counsel for the department is that violation of Foreign Exchange Regulations Act, 1973, was being committed by Mehnga Ram by making compensatory payments in foreign exchange against payment of certain amount in India. The money used for such purpose was also liable to be confiscated, apart from furnishing necessary evidence in proceedings under the Act. This was supported by the material collected by the department including certain confessional statements. After hearing the learned Counsel for both the parties, I cannot say that the department has not been able to make out a prima facie case. It may be made clear that the department is not laying claim to the ownership of the money in question. All it wants is that the money be seized in connection with the proceedings against Mehnga Ram etc. to be dealt with according to law. It would be unfair to refer the parties to the learned Sessions Judge for hearing them, especially the department and passing a fresh order. The revision petition has remained pending in this Court for sometime.

7. For the reasons discussed above, the revision petition is allowed. The order of the learned Additional Sessions Judge is set aside. It is directed that the amount

in question shall be handed over to a duly authorised officer of the Enforcement Directorate, Jalandhar, against a receipt in writing. It will, however, be open to Mehnga Ram to claim the amount according to law. The discussion made here is in the context of disposal of the revision petition and it is not intended to cause any prejudice to the parties with regard to their respective rights or pleas.

