

(1986) 07 MAD CK 0006
In the Madras High Court
Case No : CMA No. 768 of 1981

The Union of India (UOI)

APPELLANT

Vs

N. Annamalai

RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:

Essential Commodities Act, 1955 — Section 10

Citation : (1987) 11 ECC 240

Hon'ble Judges : Sathiadev, J; Maheswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sathiadev, J.—This appeal is preferred by the Union of India claiming that the appellate Court having found factually that there had been a

contravention of Section 5(1)(aa), 5(1)(c) and Section 5(1)(d) of the Foreign Exchange Regulation Act, 1947 yet it absolved the respondent from

liability mainly because u/s 23C the firm had not been proceeded against and action was confined only against the respondent in his individual

capacity. Hence, the substantial question of law raised is:

In spite of the firm or a company not being proceeded against u/s 23C of the Act, cannot a partner or a director respectively be proceeded against

for any contravention under the Act ?

2. Mr. Veeraraghavan, learned Counsel for the appellant would submit that when the respondent had taken active part in the conduct of the affairs

of Sri Venkateswara Bankers, a partnership firm; and but for his commissions and omissions, when the firm could not be held responsible, even

though by mistake, no action had been taken against the firm, still by virtue of

Section 23C the respondent could be proceeded against. He would rely on Section 23C(1) of the Act, and state that apart from the company, every person who was incharge at the time of the commission would as well be deemed to be guilty of the contravention and is liable to be proceeded against and punished accordingly and therefore when the respondent could have been independently proceeded against, failure to take action against the firm cannot be a ground to absolve the respondent of the consequences of contravention which he had committed. He would like to distinguish the decision of the Supreme Court in State of Madras Vs.

C.V. Parekh and Another, by stating that under the facts and circumstances of the said case there being no contravention committed by the company, the persons incharge of the company alone having been proceeded against it had been held as illegal, but in the instant case but for the offence committed by the respondent there was no scope for the firm committing any offence at all. The primary responsibility for the contravention being fastened on the respondent, he submits that this is not a fit case for absolving the respondent of the charge framed against him.

3. Section 10 of the Essential Commodities Act is in pari materia with Section 23C of the Foreign Exchange Regulation Act, 1947. It is in interpreting the said section in paragraph 5 of the judgment it has been held as follows:-

In fact, the company was not charged with the offence at all. The liability of the persons in charge of the company only arises when the contravention is by the company itself. Since, in this case, there is no evidence and no finding that the company contravened Clause 5 of the Iron & Steel (Control) Order, the two respondents could not be held responsible.

Hence in the instant matter the firm having not been proceeded against at all and the respondent having been proceeded against in his individual capacity the said decision applies to the facts and circumstances of this case. Therefore, this appeal is dismissed with costs.