
(1976) 12 AHC CK 0035
In the Allahabad High Court
Case No : Criminal Revision No. 477 of 1973

Trilok Chand

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-12-1976

Acts Referred:

Forward Contracts (Regulation) Act, 1952 — Section 20, 21, 22B, 22B(1), 22B(2)

Citation : (1977) ACR 137

Hon'ble Judges : K.G. Agrawal, J

Bench : Single Bench

Advocate : Palok Basu, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This revision has been filed by Trilok Chand challenging his conviction u/s 20(e) of the Forward Contracts (Regulation) Act, 1952. The charge which was framed against him was as under :

That on 14-4-1967 at about 4 P.M. in Panna Bhawan, Neel ki Gali, Meerut you were arrested indulging in illegal Satta of silver and papers recovered from your possession revealed that you indulged in illegal Satta of silver on the said date". It, however, appears that 14-4-1967 was written by mistake in the charge-sheet. The correct date should have been 7-4-1967. This mistake had been subsequently corrected.

2. The case of the prosecution was that on information being received by the Forward Market Commission, Bombay a raid was organised by one of its officers and a number of persons including the applicant was arrested from a house situated in Mohalla Neel ki Gali. The arrested persons were also searched and various articles were recovered from their possession including a note-book (Ex. 1). This note book contained entries of various transactions. The same was thereafter examined by one Sri S S. Kulkarni, Senior Research Assistant, Forward Market Commission, Bombay. After scrutinizing the papers of Ex. 1 he submitted

a report to the effect that Ex. 1 indicated that the same contained entries relating to non-transferable specific delivery contract in silver/silver coins and option in all commodities. As the forward contract in silver/silver coins and option in all commodities had been prohibited by a notification issued under the Forward Contracts (Regulation) Act, 1952, therefore, the applicant was prosecuted for the offence u/s 20(e) of the said Act.

3. In support of its case the prosecution examined Shri H. S. Shahi, PW 1, Sri S.S. Kulkarni, PW 2, Gulab Rai Sharma, PW 3, Dwarka Prasad, PW 4, Dhoom Singh, PW 5, Brahm Prakash, PW 6, Ram Narain Sharma, PW 7, Ved Pal Singh, PW 8, Jambhu Singh, PW 9 and Dal Chand, PW 10.

4. The applicant pleaded not guilty. He, however, did not lead any evidence.

5. After examining the evidence brought by the prosecution on the record, the Magistrate found the applicant guilty of the offence charged. He, therefore, convicted the applicant under that section and sentenced him to undergo rigorous imprisonment for one month. Aggrieved by the order of conviction the applicant preferred an appeal before the Sessions Judge. In appeal his conviction was maintained but his sentence of one month's rigorous imprisonment was altered to a fine of Rs. 1000/-. Dissatisfied with the judgment of the learned Sessions Judge the present revision has been filed.

6. Shri Palok Basu, the learned Counsel for the applicant argued that the two Courts below committed an error in convicting the applicant on the basis of the presumption required to be drawn by Section 22B of the Forward Contracts (Regulation) Act, 1952. He urged that the presumptions mentioned in sub-Sections (1) and (2) of Section 22B are applicable only to a case where a person is being prosecuted for the offence u/s 21, namely, that he is either maintaining a place for the purposes of conducting forward contracts or otherwise is guilty of any such offence which is mentioned u/s 21. His contention was that as the applicant was not prosecuted for the offence u/s 21 but u/s 20(e), the Courts below committed an error in convicting the applicant on the basis of the presumptions available under that provision. The submission made by the learned Counsel for the applicant appears to be well founded. A plain reading of Section 22B shows that it is attracted only when a person is being prosecuted for the offence u/s 21. I, however, do not feel to express a concluded opinion on this controversy as, in my opinion, the conviction of the applicant can be upheld on the ground that the same has been found proved irrespective of the presumption. As stated above, the prosecution witnesses have established that the applicant was arrested from the premises which was raided on the 14th April, 1967. He was arrested along with many other persons and Ex. 1. A recovery memo was also prepared about the recovery of Ex. 1 on that date. This Ex. 1 was examined by S. S. Kulkarni, PW 2, who found it to be one containing entries relating to forward contracts. The other witnesses produced by the prosecution also established that the applicant was arrested on that date along with Ex. 1. It is indisputable that a person U liable to be convicted not only on the basis of

direct evidence but also on the consideration of the circumstances emerging from the record against him. The statements of the PWs. as well as the circumstances in which he was arrested leave no room for doubt that the applicant was indulging in forward contracts and that he was thus guilty of the offence contemplated by Section 20(e) of the Act. It is true that the two Courts below substantially based their decisions on Section 22B, but a close reading of their judgments would indicate that they had also otherwise found the applicant to be guilty of Section 20(e) on the basis of evidence produced by the prosecution. Accordingly, the conviction of the applicant cannot be set aside.

7. In the result, the revision fails and is dismissed.