

Ashok Kumar, Vs. State

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SooperKanoon Citation : sooperkanoon.com/686464

Court : Delhi

Decided On : Apr-08-1982

Reported in : 21(1982)DLT62; 1982RLR677

Judge : Charanjit Talwar, J.

Acts : General Clauses Act - Sections 26

Appeal No. : Civil R. Appeal Nos. 311, 369 and 371 of 1981

Appellant : Ashok Kumar, ;omperkash, ;r.P. Bajaj and ;r.P. Oberoi

Respondent : State

Advocate for Pet/Ap. : Mr. D.C. Mathur

Judgement :

Charanjit Talwar, J.

(1) Since a common point of law arises in these revision petitions, I propose to dispose them of by this order.

(2) Ashok Kumar Nayar petitioner in Cr.R 311/81 is one of the accused in case bearing No. Rc 2 of 1972 pending in the court of Shri A.K. Garg Addl Cmm, Delhi for offences u/s 120B/420, 420/466, 467, 468, 466, 471 and 468/471 of the IPC. Om Parkash Oberoi petitioner in Cr R No. 369/81, Rajinder Pal Bajaj alias Kaka

petitioner in Cr.R. No. 371/81 and Rajinder Pal Oberoi petitioner in Cr.R. No. 371/81, are facing trial for similar offences in cases No. 3 and 4 of 1981 pending in the same Court.

(3) A preliminary objection was taken by the accused against the cognizance of the offences on the ground that as the offences mainly relate to infringement of Foreign Exchange Regulation Act ('the Act'), prior complaint was necessary as envisaged u/s 23 of the Act. In para 7 of the application moved by petitioner Ashok Kumar Nayar, challenge to the cognizance was as follows :

'THAT the totality of allegations made by prosecution in the charge sheet amounts to an offence U/J 23 of the Foreign Exchange Regulation Act & in filing of the charge sheet n/s 120-B Indian Penal Code etc. the prosecution has clearly attempted to and circumvent the mandatory provisions contained in S. 23 of the Act.'

(4) The trial Court dismissed the said plea. The petitioners while challenging the order have raised this very contention in this Court. Briefly stated the prosecution case in the reports filed u/s 173 of the Cr. Pc is that the accused entered into a Criminal conspiracy with some unknown persons to cheat the Reserve Bank of India and other banks dealing in foreign exchange by dishonestly and fraudulently inducing the Reserve Bank of India to issue bank demand drafts payable in foreign exchange on foreign banks on the basis of forged documents.

(5) At the preliminary hearing Mr. D.C. Mathur, learned counsel for the petitioner in Cr. R 311/81 had relied upon an unreported judgment of this Court in Cr. R. 90/78, Jagat Kumar vs. State, decided on 6.11.80. According to him, that decision on all fours was applicable to the instant case and as such the learned Magistrate ought to have followed it as it was brought to his notice. By the impugned order the Magistrate, however, following the law laid down by the Supreme Court in Chandrika v. State Air 1967 S.C.T 70, rejected the plea of the petitioners that prior complaint by the Enforcement Directorate was mandatory for taking cognizance of the Offences under the IPC. He was of the view that it was open to the prosecution u/s 26 of the General Clauses Act to file the present reports. In the last para of his order, the learned Magistrate has held as follow :

'INview of the above discussion I am unable to accept the contention that the prosecution has camouflaged offence merely in order to defeat the provisions of Section 23 of Foreign Exchange Regulation Act. The C.B.I. had unfettered discretion u/s 26 of General Clauses Act to make their choice. If they choose to try the accused for graver offence, the accused cannot be heard to complain about the procedure. I, thereforee, find no merits in the preliminary objections raised by the accused, and the application is, thereforee, rejected'.

(6) I may note here that similar contentions raised in this case have been rejected by this Court, after the decision in Jagat Kumar Sethia's case (Supra), in two other criminal revision petitions, namely Slate vs. Gopal Krishan, : 21(1982)DLT60 , D/ by J.D. Jain, J., on 16.10.81 and Cr. R. 25/79 (Leela Menon v. State), decided by me on 18.12.81.

(7) In Gopal Krishna's case J.D. Jain, J., has held that prosecution for Lesser offence should not be launched when facts alleged constitute a graver offence. In that case the graver offence was u/s 471 of the IPC. It was further held that the fact that no complaint had been filed with respect to the lesser offence under the Act could not restrict the right of the prosecution to file a report for the other offence which were graver. Distinguishing his earlier decision the learned Judge observed, 'my earlier decision in Jagat Kumar v. State, Cr. R No. 90/79, D./6.11.80, which was alluded to by the learned counsel for the respondants is of no help to them. In that case too, it was held that prosecution could not be launched for mere conspiracy even though the facts alleged unerringly disclosed actual commission of offence punishable under the Fera because of prohibition contained in S. 23(3) and S. 23-D of the Said Act. Thus, the decision in Jagat Kumar Sathia's case is not applicable to the facts of present case.

(8) In Leela Mohan's case after noticing the case-law, on the point I had held that where the same set of facts disclosed primarily and essentially two distinct offences, the prosecution was entitled to proceed against the accused for either of the offences notwith standing that one of the distinct offences required prior sanction. In my view, irrespective of the fact whether one offence is graver than the other, the prosecution against an accused can be launched for even lesser

offence if it is primarily disclosed from the same set of facts.

(9) In view of this settled position in law the contention of the petitioners that the prosecution has attempted to circumvent the the provisions of the Act does not hold good. The cognizance taken by the learned Magistrate for the offences under the Indian Penal Code is thus valid.

(10) Reliance by Mr. D.C. Mathur on an unreported decision of the Bombay High Court in Cr, R. No. 402/73 State v. R. Rajan, decided on 29.11.73, is also misplaced. In said case report u/s 173, of the Cr. Pc, had been filed u/s 4 and 5 of the Act and also for offences u/s 120-B read with S. 419, 420, 467, 471 and 468 the IPC. Admittedly, for offences u/s 4 and 5 of the Act no complaint had been filed u/s 23 of the Act. Congisance, thereforee, of the offences under those sections could not be taken. The observations in paragraph 16 of the judgment, from which Mr. Mathur sought to draw support, inter alia, to the effect, 'The details given in the chargesheets are entirely relating to those remittances and the modus operandi for those remittance. Mr. Jethmalani, the learned Counsel appearing for some of the accused, has rightly pointed out that the offences under the Indian Penal Code which are alleged in the chargesheets are all relating to the modus operandi of transmission of Indian currency outside India in contravention of the provisions of the Fera, are based on the peculiar facts of that case. In anycase it appears that the law laid down by Supreme Court in Chandrika Rao's case (Supra) was not brought to the notice of the Bombay High Court.

(11) In the present case, the petitioners are alleged to have also conspired to forge certain documents without which the alleged offences of obtaining bank demand drafts would not have been possible. Petitions have no meris and the same are hereby dismissed.