

Ajay Bakliwal Vs. State and Another

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Court : Delhi

Decided On : Aug-07-2001

Reported in : 94(2001)DLT139; 2001(60)DRJ163; 2002(79)ECC447

Judge : Mr. K.S. Gupta, Adv.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 468(2), 469(1), 482 and 483; [Constitution of India](#) - Article 227; [Foreign Exchange Regulation Act, 1973](#) - Sections 40 and 56; [Indian Penal Code \(IPC\), 1860](#) - Sections 228

Appeal No. : Crl.M. (M) 229/95

Appellant : Ajay Bakliwal

Respondent : State and Another

Advocate for Def. : Sh. Navin Chawla, Adv.

Advocate for Pet/Ap. : Sh. D.C. Mathur, Sr. Adv. and; Ms. Shruti Chaudhary, Adv; S

Disposition : Petition Allowed

Judgement :

ORDER

K.S. Gupta, J.

1. In this petition filed under sections 482/483 Cr.P.C. and Article 227 of [Constitution of India](#) the petitioner seeks setting aside of the order dated 22nd December 1994 passed by Additional Chief Metropolitan Megistrate, New Delhi and quashment of proceedings pending before him.

2. Respondent No.2 A.K.Roy filed a complaint against the petitioner before A.C.M.M. New Delhi on 27th January 1993, interalia, alleging that on the basis of reliable information that Pardeep Chand was indulging in illegal sale and purchase of foreign exchange a search was conducted at his house bearing No.E-5, Jangpura Extension, New Delhi on 2nd Janaury 1992 and certain incriminating documents were recovered from there by the officers of Enforcement Directorate. Upon further investigation, involvement of Ajay Bakliwal, petitioner came to light and hence, his presence was considered necessary. The petitioner was summoned by the Enforcement Directorate under Section 40 of [Foreign Exchange Regulation Act, 1973](#) (for short 'the Act') vide summons/notices dated 9th November and 11th December, 1992 which were duly received by him. However, he deliberately failed to appear before the concerned officer of Directorate on one pretext or the other. The petitioner had thus rendered himself liable to be prosecuted under section 56 of the Act.

3. In terms of the order dated 27th January 1993 cognizance for the offence under said section 56 was taken by A.C.M.M. New Delhi and the petitioner was summoned for 8th July 1993. The petitioner thereafter filed application for discharge/dropping the proceedings. In terms of aforesaid order dated 22nd December 1994 cognizance was taken against him for an offence punishable under section 228 IPC also holding that he had not committed offence under said section 56. It is this part of the order which is being impugned by the petitioner in this petition.

4. Submission advanced by Sh.D.C.Mathur for petitioner was that the cognizance for the offence under section 228 IPC taken by the order dated 22nd December 1994 was barred by limitation. On the other hand, it was contended by Sh. Navin Chawla for respondent No.2 that the judgment in *Itty vs . Assistant Director : 1994ECR516(Kerala)* on the strength whereof offence under section 56 of the Act

was held to have not been committed in terms of said order was reversed by the Supreme Court in the decision in Enforcement Directorate and another vs . M. Samba Siva Rao and others, : 2000 CriLJ3170 . thereforee, this court in exercise of its power of superintendence over the subordinate courts under section 483 Cr.P.C. ought to set aside said part of the order dated 22nd december 1994. Reliance was placed on the decision in Krishnan and another vs . Krishnaveni and another, : 1997 CriLJ1519 . It was further urged by him that limitation for said offence under section 228 IPC would start running from the date the cognizance in the complaint was initially taken by A.C.M.M, New Delhi.

5. In M.Samba Siva Rao's case (supra) it was held that summons issued under section 40 of the Act, if not obeyed, would be a contravention of the provisions of the Act and at any rate, the contravention of direction issued under the Act and, thereforee, such contravention will squarely come within the ambit of section 56. Taking note of the ratio in Central Bureau of Investigation vs . State of Rajasthan and others, : 1996 CriLJ3480 it was further held that Foreign Exchange Regulation act being a self contained Code the disobedience of summons issued under section 40 would be punishable under section 56 and not under the provisions of Indian Penal Code. On the point of limitation, it may be noticed that offence under section 228 IPC is punishable with 6 months imprisonment or fine of Rs.1,000/- or both. Under section 468(2)(b) Cr.P.C. the period of limitation for taking cognizance of an offence punishable with imprisonment for a term not exceeding one year, is one year. Under section 469(1)(a) Cr.P.C. the period of limitation in relation to such an offence shall commence from the date on which offence was committed. Cognizance is taken of the offence and not the offender. Alleged offence under section 228 IPC was committed by the petitioner immediately on his failure to appear before the concerned officer of Enforcement Directorate on 9th November /11th December 1992 pursuant to the summons/notice issued under section 40 of the Act. Obviously, by the time the cognizance for the offence under section 228 IPC came to be taken by ACMM,New Delhi, by the order dated 22nd December 1994, it had become hopelessly barred by limitation. I am unable to accept the said contention advanced on behalf of respondent No.2 that limitation for the above offence would start running from the date the cognizance for the offence u/s 56 was initially taken by ACMM, New Delhi. Moreover, in view of said ratio in

M.Samba Shiva Rao's case (supra), the petitioner cannot be legally prosecuted for the offence under section 228 IPC for disobedience of summons/notices issued under Section 40 dated 9th November/11th December 1992.

6. As regards prayer seeking setting aside part of aforesaid order dated 22nd December 1994 whereby offence under section 56 was held to have not been committed by the petitioner, it is pertinent to note that respondent No.2 had filed Criminal Miscellaneous (Main) No.2378/98 for the above purpose which was dismissed in default. Said part of order thus having attained finality should not be disturbed in exercise of supervisory power u/s 483 Cr.P.C. Decision in Krishnan's case (supra) is of no assistance to respondent No.2. For the foregoing discussion, impugned order deserves to be set aside on both the aforesaid counts and complaint quashed.

7. Consequently; while allowing the petition the impugned part of the said order dated 22nd December, 1994 is set aside and complaint pending against the petitioner before A.C.M.M., New Delhi, is quashed.