

Shyam Sunder Sharma Vs. State

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Court : Delhi

Decided On : Sep-30-1996

Reported in : 70(1997)DLT401

Judge : S.K. Mahajan, J.

Acts : Wild Life (Protection) Act, 1972 - Sections 49B

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1352 of 1995

Appellant : Shyam Sunder Sharma

Respondent : State

Advocate for Pet/Ap. : N.N. Agarwal,; R.D. Jolly and; Mukta Gupta, Advs

Judgement :

S.K. Mahajan, J.

(1) Petitioner No. 3 was trading in ivory articles made of ivory imported into India at a time when it was a free trade. In 1986, the trade in ivory imported into India was brought under the provisions of the Wild Life (Protection) Act, 1972 (in short referred to as 'the Act') and in accordance with the provisions of Section 44 of the Act, no person could carry on or commence business in articles made of ivory imported into India unless a license in accordance with the provisions of the said Section was obtained by him. Petitioners 1 and 2 are the partners of petitioner No.

3 and a license is stated to have been obtained the petitioners from the Chief Wild Life Warden, Department of Environment, Forest and Wild Life, Delhi. Regular returns were required to be filed in accordance with the provisions of the Act. In 1991, the Government decided to ban the trade in imported ivory as well and, accordingly, the Parliament passed the Wild Life (Protection) Amendment Bill, 1991 which received the assent of the President of India on 20th September, 1991 and is known as the Wild Life (Protection) Amendment Act, 1991. In accordance of the provisions of Section 49B of the said Act, subject to other provisions of that section, on or after the specified date', no person could commence or carry on business as a dealer in ivory imported into India. The 'specified date' in accordance with Section 49A of the Act in relation to ivory imported in India or articles made there from, was the date of expiry of six months from the commencement of the Wild Life (Protection) Amendment Act, 1991.

(2) With a view to bring into force the various provisions of the Act, the Central Government issued a notification dated 27th September, 1991, published in the Gazette of India dated 30th September, 1991, appointing the second day of October, 1991 as the date on which all the provisions of the said Act, except Sections 33A, 44(ii)(o), 55C, Chapter IIIa and Chapter Va as the date on which the Amendment Act would come into force. Section 49B prohibiting the trader to carry on business as a dealer in ivory imported into India was contained in Chapter Va and by a notification dated 27th September, 1991 this chapter did not come into force. It appears that exception of the said Section in the notification was only byway of printing mistake and the Government, therefore, issued another notification on 1st January, 1992 published in the Gazette of India dated 7th January, 1992 amending the earlier notification so as to read except Sections 13,22,26 30(ii) and 39 insofar as its provisions relate to Clause C of new Section 55 substituted in Wild Life (Protection) Amendment Act, 1972 (53) 1972' in place of the words 'except Sections 33A, 44(ii)(o), 55C, Chapter IIIa and Chapter VA'. The effect of the issue of corrigenda us notification on 1st January, 1992 was that no person could carryon trade as a dealer in ivory imported into India or articles made there from.

(3) After the Government had started implementing various provisions of the Act, the Association of traders who were dealing in ivory and ivory articles i.e. M/s. Ivory Traders and Manufacturers Association, filed a writ petition in this Court. A Division Bench of this Court after hearing the parties, passed the following order on 26th March, 1992 :

'READING the Notifications dated 27th September, 1991 and 1st January, 1992, published in the Gazette of 7th January, 1992, prima facie it appears to us that the provisions of Chapter V-A will become applicable only w.e.f. 17th July, 1992 insofar as the trade of imported ivory is concerned. thereforee, no action should be taken against the petitioners in this respect viz., dealing in imported ivory till that date.'

(4) On 22nd May, 1992 another order was passed in the following terms :

'WE have seen the Hindi version of the notification published on 30th September, 1991 and found that Chapter V-A of the Wild Life (Protection) Act, 1972, as amended up to 2nd October, 1991, came into force with effect from 2nd October, 1991 and the business in imported ivory can be carried only till the expiry of six months from 2nd October, 1991. The English version of the aforesaid notification contains Chapter 5-A instead of 4-A, and for this and other points raised in the writ petition, we have issued Rule DB. However, we find no ground to allow the interim order to continue and, thereforee, vacate it. Henceforth, the petitioners will not be entitled to deal in the imported ivory. The benefits of the provisions of Section 49(c) can be availed by the petitioners from today onwards i.e. in making an application under Section 49(c) within a period of thirty days from today.'

(5) In terms of the original notification dated 27th September, 1991 by which the Amendment Act had come into force w.e.f. 2nd October, 1991, no trader could carry on business in imported ivory after 2nd April, 1992. The petitioner, however, had sold various articles of ivory on 27th April, 1992; 29th April, 1992 and 30th April, 1992 and as required by law, they had filed the returns with the respondents wherein they disclosed the sales and also the stocks held by them. After the last sale made on 30th April, 1992 the stock shown by the petitioners was nil. The respondents having come to know from the said returns that the petitioners had

sold ivory articles after 2nd April, 1992 filed a complaint under Section 55 of the Act for prosecution of the petitioners for their having violated the provisions of Section 49B of the Act by selling ivory articles on three different dates in the month of April, 1992. The petitioners have challenged the filing of the said complaint against them and have filed this petition for quashing the same and the proceedings pending in the Court of the Metropolitan Magistrate.

(6) The main contention of the petitioners is that the second notification having been issued by the Government on 1st January, 1992, the specified date as mentioned in Section 49A will be the date of publication of the said notification and it is on the expiry of the period of six months from this date that the petitioners could have stopped their business as a dealer in ivory imported in India and the respondents according to the petitioners, cannot take benefit of the earlier notification of September, 1991 so as to make the specified date as 2nd April, 1992. In this regard, reliance has also been placed upon an interim order of this Court dated 26th March, 1992 whereby it was held by this Court that prima-facie it appeared that the provisions of Chapter Va would become applicable only w.e.f. 7th July, 1992. The petitioners, therefore, contend that the filing of the complaint is an abuse of the process of Court and it should be quashed.

(7) Mr. Jolly, however, contends that by order dated 22nd May, 1995 a Division Bench of this Court had made it clear that Chapter Va which contains Sections 49A and 49B came into force from 2nd October, 1991 and the trade in imported ivory could be carried on till the expiry of six months from 2nd October, 1991. It is, therefore, his submission that the petitioners having carried on trade in ivory in the month of April, 1992, have violated the provisions of the Act and are liable to be prosecuted. According to Mr. Jolly, as the petitioners were not parties to the writ petition, they could not take advantage of the order of stay passed on 24th March, 1992.

(8) It is no doubt true that the Division Bench of this Court by order dated 22nd May, 1992 had held that the Hindi version of the notification dated 30th September, 1991 did not exclude the applicability of Chapter Va w.e.f. 2nd October, 1991 and the business of imported ivory, therefore, could be carried on

till the expiry of six months from 2nd October, 1991 and for that reason vacated the interim order which had been passed by the Court on 4th May, 1992. However, the point of exclusion of Chapter Va instead of Iv A in the English version of the notification dated 30th September, 1991 and other points raised in the writ petition were left to be decided by the Division Bench. The question is whether there was any violation of the provisions of the Act by the petitioners when they had sold ivory articles on three different occasions in the month of April, 1992 and even if there is a violation of the provisions of the said Act, can the complaint be still quashed in exercise of the inherent powers of this Court under Section 482 of the Code of Criminal Procedure

(9) The Division Bench of this Court while dealing with the writ petition filed by M/s. Ivory Traders and Manufacturers Association, had prima facie found that the provisions of Chapter Va would become applicable only w.e.f. 7th July, 1992. Though, the petitioners were not parties to the writ petition filed by M/s. Ivory Traders and Manufacturers Association, however, claiming themselves to be members of the said Association, they had continued to carry on business by virtue of the stay granted by the Court in the aforesaid writ petition and it is their contention that the stay would be applicable to them as well. I find from a telegram issued by the Government of India to the Chief Wild Life Warden to the Government of the States, informing them that 'Ivory traders have filed a writ in Delhi High Court. Next date of hearing is on 4th May, 1992. It has been directed by the Court that the Government should not implement ban on trade in imported ivory till 4th May, 1992', that even the Government had interpreted the order dated 26th March, 1992 to mean that the ivory traders could continue their business up to 4th May, 1992. I am not holding that the interpretation by the Government was correct, however, in case even the Government had been interpreting the order of the Court to mean that the ivory traders could carry on business till 4th May, 1992, I do not find any reason as to why the petitioners who are members of M/s. Ivory Traders and Manufacturers Association, could not interpret the said order to mean that they were also entitled to carry in their business in imported ivory up to the said date. It is nobody's case that even after 4th May, 1992 the petitioners have continued to deal in imported ivory. It is also not the case of any of the parties that the petitioners had been clandestinely carrying on such business. They have

voluntarily disclosed their sales of the month of April, 1992 in the monthly returns. If a party has been misled by a notification of the Government which has also been prima facie interpreted in the same manner in which the petitioners are interpreting, in my view, it could not be said that the petitioners have willfully or deliberately violated any of the provisions of the Act by making three sales in the month of April, 1992. Though the words 'willfully and deliberately' are absent in Section 55 of the Act, however, it will not mean that in case a person had been bonafide misled by the Government's own notification he must face prosecution for violation of the provisions of Section 49 of the Act. Even assuming that petitioners were not members of the Association, I feel there cannot be two sets of guidelines for two different trades dealing in the same trade. A trader who was a member of the Association could not be prosecuted because of the stay granted by this Court, while the petitioners are being prosecuted for the same action.

(10) Without going into the question whether the State was justified in the first instance to file a complaint for violation of the provisions of the Act, I feel that in the circumstances of this case, interest of justice requires that it should not be proceeded any further. In a case of this nature, interest of justice will be served better by quashing the complaint rather than to allow the petitioners to be prosecuted. Proceedings against the petitioners, in my view, are wholly oppressive in nature.

(11) In view of the foregoing, I allow this petition and quash the Criminal Complaint No. 116/1 against the petitioners pending in the Court of the Metropolitan Magistrate, Delhi and all resultant proceedings are directed to be dropped.

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