

itty Vs. Assistant Director

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Court : Kerala

Decided On : Aug-18-1990

Reported in : 1994LC516(Kerala); 1992(58)ELT172(Ker)

Judge : B.M. Thulasidas, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 174, 193 and 228; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 132; Foreign Exchange Regulation Act - Sections 13, 18(1), 19(1), 40, 40(4), 44(2), 56, 56(1), 57 and 58

Appeal No. : Crl. R.P. No. 246 of 1989

Appellant : itty

Respondent : Assistant Director

Advocate for Def. : K. Prabhakaran, Addl. C.G.S.C.

Advocate for Pet/Ap. : D. Peethambaran, Adv.

Disposition : Petition Allowed

Judgement :

ORDER

B.M. Thulasidas, J.

1. Petitioner, the accused in C.C. No. 129 of 1986 of the Additional Chief Judicial Magistrate, Economic Offences, Ernakulam was found guilty under Section 56(1)(ii) read with Section 40(1) of the Foreign Exchange Regulation Act, convicted and sentenced to suffer rigorous imprisonment for four months and to pay a fine of Rs. 3000/- in default to rigorous imprisonment for two months. The conviction and sentence were confirmed by the Illrd Addl. Sessions Judge, Ernakulam by judgment in CrI. Appeal No. 176 of 1988 which is challenged in this revision.

2. The allegation against the petitioner was that he failed to appear and to produce the documents summoned by the Enforcement Director, Trivandrum, which was in contravention of Section 40(3) made punishable under Section 56 of the Foreign Exchange Regulation Act (for short the Act).

3. Under Section 40(1) of the Act, 'any Gazetted Officer of Enforcement shall have power to summon any person whose attendance be considered necessary either to give evidence or to produce a document during the course of any investigation or proceeding under the Act'. Under Sub-section (3) of Section 40:

'all persons so summoned shall be bound to attend either in person or by authorised agents, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required:

Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5/1908) shall be applicable to any requisition for attendance under this section'.

Sub-section (4) reads:-

'Every such investigation or proceeding as aforesaid shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860)'.

4. It is not in dispute that the petitioner had accepted summons from the Enforcement Officer and failed to appear and produce the documents summoned.

By virtue of Sub-section (4) of Section 40 of the Act, the investigation or proceeding before an Enforcement Officer is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 I.P.C. The question for decision is as to what shall be the consequence if a person summoned to appear under Section 40(1) of the Act fails to do so? Can it be said, as held by the Courts below, that he has committed an offence punishable under Section 56 of the Act?

5. Section 56 read as follows :-

'56. Offences and prosecution. - (i) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act [other than Section 13, Clause (a) of Sub-section (1) of Section 18, Clause (a) of Sub-section (1) of Section 19, Sub-section (2) of Section 44 and Sections 57 and 58] or any rule, direction or order made thereunder, he shall upon conviction by Court, be punishable,

(i) in the case of an offence the amount or value involved in which exceeds one Lakh of Rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both. [Sub-sections (2) to (6) are not referred to being irrelevant for the purpose of this revision].

It is clear that contravention of any of the provisions of the Act or any rule, direction, or order made thereunder has been punishable. The question for consideration is whether there had been contravention of the provisions of the Act to attract Section 56 of the Act.

6. According to Webster's Dictionary, 'contravention' is:

'The act of contravening, violating or transgressing violation; opposition'.

In Random House Dictionary of the English language, College Edition, 'contravention' means :-

'an act of contravening, action counter to something, violation'.

In Black's Law Dictionary, the word 'contravention' is explained as:-

'an act which violates the law, a treaty or an agreement which the party has made'.

When a person has been summoned to appear by a competent authority, it means that he has been directed/ordered to appear before him. Summons has to be obeyed but disobedience is not contravention which is a matter coming under Section 174 I.P.C. In my view, it is a legal fallacy to say that the failure to obey the summons as per Section 40(1) of the Act is a contravention of the provisions of the Act, Rule, direction or order. This is also clear from the fact that Section 56 of the Act mentions about offences with particular reference to amount or value involved in them. It may not be possible to say that the offences committed by the petitioner could be computed in terms of value or amount, to attract Section 56 of the Act. In terms Section 56 could not apply to a case coming under Section 40 of the Act. Indeed, if it is held otherwise, there is no doubt that the consequences would be serious. It will be possible for over zealous officers to institute ill-motivated and vindictive prosecutions to harass innocent persons.

7. It is one of the cardinal principles of interpretation that an intention to produce an unreasonable result is not to be imputed to a statute if there was some other construction available. Penal statutes must receive strict construction and as stated by Maxwell on Interpretation of Statutes:

'The court must always see that the person to be penalised comes fairly and squarely within the plain words of the enactment. It is not enough that what he has done comes substantially within the mischief aimed at by the statutes : 'the sooner this misunderstanding is dispelled and the supposed doctrine given its quietus the better it will be for all concerned, for the doctrine seems to involve substituting' the uncertain and crooked cord of discretion for 'the golden and straight metwand' of the law'.

In my view, there was no contravention of the provisions of the Act by the petitioner by refusing to attend before the Enforcement Officer as per summons he received. The prosecution for an offence under Section 56 of the Act was certainly misconceived. I am unable to sustain the conviction and sentence and they are hence set aside. Petitioner is acquitted. CrI. R.P. is allowed.

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