

G. Jyothemany Nagar Vs. Union of India (Uoi), Represented by the Director of Enforcement

G. Jyothemany Nagar Vs. Union of India (Uoi), Represented by the Director of Enforcement

SooperKanoon Citation : sooperkanoon.com/810296

Court : Chennai

Decided On : Sep-27-1978

Reported in : 1979CENCUS68D

Judge : T. Rama Prasad Rao, C.J. and ;Varadarajan, J.

Appeal No. : Appeal against Order No. 758 of 1976

Appellant : G. Jyothemany Nagar

Respondent : Union of India (Uoi), Represented by the Director of Enforcement

Disposition : Appeal dismissed

Judgement :

ORDER

T. Rama Prasad Rao, C.J.

1. This Appeal coming on for hearing on Tuesday, the 26th day of September, 1978 and on this day upon perusing the petition of Appeal, the order of the Lower Court, and the material papers in the case, and upon hearing the arguments of M/s T.V. Natarajan and A.K. Lakshminarayan, Advocates for the Appellant, and of Mr. T. Chandalvarayan, the Central Government Senior Standing Counsel on behalf of the Respondent, the Court made the following order:

(The Judgment of the Court was delivered by the Hon'ble the Chief Justice).

2. This appeal is preferred under Section 23EE of the Foreign Exchange Regulation Act, 1947, (hereinafter referred to as the Act). The appellant is one Jyothmany Nadar. His premises was raided on 10.12.1966 and various incriminating documents involving violation of the Act were recovered on that date. The recovery also related to a sum of Rs. 29,900/- with which amount we are concerned in this appeal. On a scrutiny of the documents and on investigation it was found that during the period 1.4.1965 to 2.11.1966, the appellant, who was a resident of India, without the general or special exemption from the Reserve Bank of India, received a sum of Rs. 35,24,530/- which was characterised as a violation or contravention of the provisions of Section 5(1)(aa) of the Act. Consequent upon such materials which were available to the department, a show cause notice was issued by the Enforcement Directorate firstly on 5.12.1967. In this show cause notice, while referring to the contravention about the receipt of the above sum of Rs. 35,24,530/- and notifying to the appellant that there was contravention under Section 5(1)(aa) of the Act, it was proposed to initiate action against him under Section 23(1B) of the Act. While doing so, they added in the first show cause notice:

Why the Indian currency of Rs. 29,900/- seized from him being the amount involved in the contravention should not be confiscated under Section 23(1B) of the Act.

3. It is common ground that the sum of Rs. 29,900/- seized from the appellant did not form part of the receipt of Rs. 35,24,530/- which was the amount referred to in the first show cause notice and in connection with which the notice was given as indicated above. Thereafter, an adjudication admittedly took place with reference to the receipt of the sum of Rs. 35,24,530/- and the appellant was duly penalised. The order of adjudication resulted in the imposition of a fine of Rs. 50,000/- on the appellant. Questioning this, the appellant came up before us in A.A.O. No. 36 of 1975. When that case was taken up for hearing, after going through the appeal for some time, learned Counsel for the appellant withdraw the same, and we dismissed it as having been withdrawn. After the issuance of the first show cause

notice with particular reference to the amount of Rs. 29,900/- which was detained by the department ever since the date of the raid, a second show cause notice dated 13.1.1969 was issued. In this notice, the appellant was notified that under similar circumstances and without the general or special exemption from the Reserve Bank of India, the appellant received two payments amounting to Rs. 70,000/- from a local person otherwise than through an authorised dealer in foreign exchange, and therefore, the appellant contravened the provisions of Section 5(1)(aa) of the Act with reference to the aforesaid sum of Rs. 70,000/-. The second show cause notice substantively relates to this. Again in this second show cause notice a reference was made to the sum of Rs. 29,900/-, which was cursorily referred to in the first show cause notice and towards which no further proceedings were taken pursuant to the first show cause notice. In the second show cause notice, after adverting to the contravention as regards the receipt of Rs. 70,000/- the Enforcement Director stated as follows: why the Indian currency of Rs. 29,900/- which was seized from him and which represents a part of Rs. 70,000/- received by him unauthorisedly as stated in foregoing paragraphs, should not be confiscated to the Central Government under Section 23(1B) of the Act.

4. It was only in the second show cause notice the nexus between the sum of Rs. 29,900/-, which was detained by the department ever since the date of seizure, and the sum of Rs. 70,000/- which was the subject matter of an independent proceeding and adjudication, according to the second show cause notice, was brought out on record. Pursuant to the second show cause notice an order dated 10.7.1970 was passed by the Director of Enforcement, who upheld the contravention as proposed and also directed the confiscation of the sum of Rs. 29,900/-. The matter was taken up by the appellant to the Foreign Exchange Regulation Appellate Board, New Delhi, which again, by its order dated 17.12.1974, confirmed the order of the Director of Enforcement and directed the confiscation of the sum of Rs. 29,900/-. The appeal is against this order.

5. It is seen that an appeal shall lie to the High Court under Section 23EE of the Act only on questions of law from any decision or order of the Appellate Board as provided in the Act. The primary question, therefore, that arises for consideration is whether any question of law arises in the decision of the Appellate Board

challenged before us. The question of law taken by the learned Counsel for the appellant is that the first show cause notice was given, in which a reference is made to the sum of Rs. 29,900/- and a threat of confiscation was also indicated therein & as there has been an adjudication with reference to the first show cause notice may be in relation to the contravention of the Act in the matter of receipt of the sum of Rs. 35,24,530/-, yet there has been an exhaustion of the power by the resultant adjudication on the first show cause notice, and, therefore, the second show cause notice on the subject of confiscation of a sum of Rs. 29,900/-, though it formed part of an independent amount, which was the subject-matter of the separate contravention, cannot be again adjudicated upon and finally the said amount cannot be confiscated under the provisions of the Act. We are not here concerned with the main order of adjudication which has an impact on the two receipts amounting to a sum of Rs. 70,000/- and which the appellant received in India. There is no appeal against the order of adjudication in relation to the above contravention. The matter has become final, and even otherwise we are not inclined to interfere with the part of the order, as no question of law arises therein.

6. As regards the sum of Rs. 29,900/-, the argument is that as a proceeding has been initiated under the first show cause notice and as the first show cause notice ended in an adjudication in accordance with law and the provisions of the Act, there cannot be a double adjudication in relation to the matter which formed part of the first show cause notice, to wit, the sum of Rs. 29,900/- which, under the first show cause notice itself, was threatened to be confiscated under Section 23(1B) of the Act. In cases where economic offences; are involved a brute invocation of technicalities and a wooden adherence to technical objections ought not to prevail. Economic offences ought to be nipped in the bud having regard to the interest of our country and as it has a great impact on foreign exchange. With this background, we have to consider whether the first show cause notice, in which a cursory reference was also made to the sum of Rs. 29,900/- with an added threat that it would be confiscated, did have any relation at all to the contravention which was the subject-matter of the first show cause notice. In the first show cause notice, the contravention related to the receipt of a sum of Rs. 35,24,530/- as per the list annexed to that show cause notice. Obviously, therefore, the adjudication related to such a contravention. Confiscation, no doubt, is provided for under the

Act under Section 23(1B). The said section runs as follows:

Any court trying a contravention under Sub-Section (1) or Sub-section (1A) and the authority adjudging any contravention under Clause (a) of Sub-section (1) may, if it thinks fit, and in addition to any sentence or penalty which it may impose for such contravention, direct that any currency, security, gold or silver, or goods or any other money or property, in respect of which the contravention has taken place, shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the person committing the contravention or any part thereof shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

The section provides that any Court trying a contravention under Section 23(1) or Section 23(1A) and the authority adjudging any contravention under Clause (a) of Sub-section (1) of Section 23 may, if it thinks fit, and in addition to any sentence of penalty which it may impose for such contravention, direct that the currency etc., in respect of which the contravention has taken place, shall be confiscated to the Central Government. It is thus seen that confiscation could be ordered only if the confiscated document has a connection or nexus to the contravention complained of. In the first show cause notice no doubt a mention is made about the sum of Rs. 29,900/- as being liable for confiscation. But it is admitted before us that the said sum of Rs. 29,900/- has no relation whatsoever to the contravention complained of in that notice, which centered round the receipt of a sum of Rs. 35,24,530/-. For what purpose a reference was made to the impending idea to confiscate the sum of Rs. 29,900/- is not clear. But on a reference to Section 19G of the Act which refers to custody of documents, we are of the view that by way of abundant caution the statutory authorities included the sum of Rs. 29,900/- in the first show cause notice, though not for purposes of adjudicating upon it pursuant to the said notice, but apparently to retain the same in accordance with law. Section 19G runs as follows:

19G. Custody of documents. Where in pursuance of an order made under Sub-section (2) of Section 19 or of the provisions of Sections 19A, 19C or 19D or of a requisition or summons under Section 19E or 19F, any document is furnished or

seized and the director of Enforcement or any other Officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding one year or if, before the expiry of the said period of one year, any proceedings under Section 23--

(a) have been commenced before him, until the disposal of those proceedings, including the proceedings, if any, before the Appellate Board and the High Court, or

(b) have been commenced before a Court, until the document has been filed in that Court,

The expression 'document' appearing in Sections 19C to 19G includes Indian Currency, foreign exchange and books of account. Having this in view and in order to sub serve the intendment of Section 19G which prescribed a time limit for the retention of the said documents by the appropriate authority, possibly the authority thought that a reference to the proposed action in relation to the sum of Rs. 29,900/- could also be made in the first show cause notice, though there was no direct nexus as between receipted amount of Rs. 35,24,530/- and the sum of Rs. 29,900/-, which was threatened to be confiscated under it. Though this section provides for the retention of the document for a period of one year, yet the authority can so retain the document for a period beyond the expiry of a period of one year if any proceedings under Section 23 have been commenced before him, and in such circumstances he would legally be entitled to retain such document until the disposal of those proceedings. Presumably therefore, in order to gain the privilege of such retention under Section 19G, of the document in question (Indian Currency to the tune of Rs. 29,900/-)? they included in the first show cause notice that amount, so as to make it appear to the delinquent that proceeding have been commenced in relation to the sum of Rs. 29,900/- which was recovered at the time of the raid on 10.12.1966. It is seen that the first show cause notice is dated 5.12.1967. The date of raid was 10.12.1966. Action, therefore, was taken within a

period of one year from 10.12.1966, so that matters-could be clear and beyond any objection by the person who was the owner of the document, which was seized at the time of the raid. Beyond this, a reference to the sum of Rs. 29,900/- in the first show cause notice does not serve any purpose.

7. The contention, however, is that, as a reference is made to the said sum of Rs. 29,900/- in the first show cause notice, no more action is possible except by pursuing the same and passing an order thereon. In this light, the second show cause notice issued on 13.1.1969 is objected to as a proceeding undertaken by the department without jurisdiction. We are unable to agree. We have already expressed the view that the reference to the sum of Rs. 29,900/- made in the first show cause notice presumably was for the purpose of indicating in clear and unambiguous terms to the appellant that proceedings were being initiated even as against such document (the said sum of Rs. 29,900/-) so recovered on 10.12.1966. But the real notice which sets forth in detail as to why the sum of Rs. 29,900/- has to be confiscated is the second show cause notice. In the second show cause notice dated 13.1.1969 reference is made to the receipt by the appellant of two amounts amounting to Rs. 70,000/- which receipt also was characterised as a contravention of the provisions of Section 5(1)(aa) of the Act. Pursuant to this notice proceedings were initiated in the last paragraph and as per the excerpt already made, it was made clear to the appellant that the sum of Rs. 29,900/- which was seized on 10.12.1966 which formed part of the sum of Rs. 70,000/- would be confiscated and the appellant was asked to show cause against it. We are, therefore, unable to agree with the learned Counsel for the appellant that the second show cause notice was in the nature of a fresh adjudication over the matter, and in the absence of any provision in the Act enabling the statutory functionary to issue a second show cause notice, for which a first show cause notice is said to have been given already, the resultant order of confiscation is without jurisdiction. This is an extreme contention. As we said the second show cause memo explained in full and elucidated the circumstances under which the sum of Rs. 29,900/- was sought to be confiscated. It is only on a reading of the second show cause notice we find that this is relatable to the sum of Rs. 70,000/-. Confiscation as already indicated by us, is possible only if it is established that the document or the currency in question relates to a contravention in respect of which

action has been proposed under Section 23(1A) et seq of the Act. The nexus having been proved in the second show cause notice, the first show cause notice can only be interpreted as a step in aid for the issuance of the second show cause notice, which is full and complete and exhaustive in the description of the contravention and in setting out the reason for the proposed confiscation. In this sense, therefore, we are unable to agree with the contention of the learned Counsel. No other question of law was urged before us nor does it arise from the order in question.

The appeal fails and it is dismissed. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com