

State, By Nilratan Sircar, Enforcement Officer

Vs

Lakshmi Narain Ram Niwas

Criminal Appeal No. 83 of 1961

(M. Hidayatullah, Raghubar Dayal JJ)

14.04.1964

JUDGMENT

RAGHUBAR DAYAL, J. –

This appeal, on certificate granted by the Calcutta High Court, is directed against an order of the High Court dated June 20, 1960 reversing the Order of the Chief Presidency Magistrate directing return of certain documents to the respondent, and has arisen in the following circumstances :

On April 6, 1959, the Chief Presidency Magistrate, Calcutta, ordered the issue of search warrants on the application of the Enforcement Officer, Enforcement Directorate, Ministry of Finance, under sub-s. (3) of s. 19 of the Foreign Exchange Regulation Act, 1947 (Act VII of 1947). The search warrant was issued on May 6, 1959. It required the production of documents seized, before the Magistrate. In execution of the search warrant, a number of documents were seized from the possession of the respondent on May 14, 1959. The Enforcement Officer reported that day that a certain room could not be searched and therefore further action on the search warrant was to be taken. He also noted in his application, for the Chief Presidency Magistrate's information :

"that the seized documents as per enclosed Seizure Memo have been kept with us for scrutiny and those will be retained till the completion of the enquiry or the adjudication proceedings as the case may be and a report will be submitted to Your Honour thereafter."

On May 28, 1959, the Enforcement Officer applied to the Chief Presidency Magistrate for permission for the retention of the seized documents for a period of two months for the submission of further report in the matter. The Chief Presidency Magistrate granted the necessary permission. Similar permission was again granted on applications, by the Chief Presidency Magistrate, on July 28 and September 28, 1959.

On October 5, 1959, the respondent applied to the Chief Presidency Magistrate for an order of return of the said documents as the statutory period of 4 months during which the Director of Enforcement could keep the documents had expired, and no proceedings had been commenced against him under s. 23 of the Act. The claim for the return of the documents was based on the provisions of s. 19-A. On October 20, 1959 the Chief Presidency Magistrate ordered the return of the seized files to the respondent. He, however, modified this order the same day, when his attention was drawn to his earlier order dated September 28, 1959 permitting the Enforcement Officer to

retain the documents till November 28, 1959. He directed the matter to be heard on October 26, 1959 and on that day, in view of the Investigating Officer being on leave, adjourned the matter for decision to November 10, 1959.

In his application presented on November 10, 1959 the Enforcement Officer stated that the Director of Enforcement had started adjudication proceedings against the respondent for alleged violation of s. 4(1) of the Act and had issued notice to him to show cause and that in connection with the adjudication proceedings seized files items Nos. 2 and 7 on the Seizure Memo would be required and that he had no objection to the return of the remaining seized files though they might have some distant bearings on those proceedings.

The Chief Presidency Magistrate ordered, on November 10, 1959, the return of all the documents except those mentioned at items 2 and 7 of the search list. The respondent went up in revision against this order for the continued retention of the two documents, and the High Court allowed the revision and ordered the return of these documents also to the respondent. It is against this order that this appeal has been filed.

We may first refer to the relevant provisions of ss. 19 and 19-A of the Act, and later to certain provisions of the Code of Criminal Procedure, hereinafter called the Code, to appreciate the contention for the parties.

"19(1). The Central Government may, at any time by notification in the Official Gazette, direct owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities as may be so specified, to make a return thereof to the Reserve Bank within such period, and giving such particulars, as may be so specified.

Chapter VII of the Code provides for processes to compel the production of documents etc. Section 94 empowers the Court to issue a summons to a person in possession of the document or whose production is considered necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the Code to produce the same before it. In certain circumstances mentioned in s. 96 it may issue a search warrant, for conducting the search for such documents or articles as are mentioned in s. 94. The combined effect of the two sections is that the articles seized in execution of the search warrant have to be produced before the Magistrate and the Magistrate thereafter passes suitable orders about the custody or return of those documents. Form 8, Schedule V, of the Code gives the form of the search warrant and contains a direction that the articles seized be produced forthwith before the Court. Sections 98 and 99-A deal with search warrants in special circumstances and ss. 101 to 103 come under the general provisions relating to searches.

The appellant's main contentions are :

1. The provisions of s. 19-A limit the period for retaining the documents seized in execution of a search warrant issued under s. 19 to 4 months by the Director of Enforcement but does not limit the power of the Court issuing the search warrant to pass any orders for the retention of the seized documents or with respect to the disposal of those documents.
2. In the absence of any prescribed procedure for the issue of a search warrant under

s. 19, the provisions of ss. 96, 98 and Form 8 of Schedule V of the Code would be applicable to the search warrants issued under s. 19.

3. The Court has inherent power to pass proper orders with respect to the retention of the documents seized for the purposes of investigation and proceedings following it.

The respondent contends :

1. Section 19 and 19-A are special provisions which provide for special procedure for investigation of the several offences created by the statute and were enacted in order to remove certain difficulties in investigation which led to the keeping of documents of citizens unduly long and thus causing them inconvenience and harassment, and to relieve the Magistrate of his repeatedly dealing with police reports for permission to retain the documents and that therefore when s. 19-A fixes the maximum duration for the retention of the documents by the Director of Enforcement at 4 months and thus prohibits further detention except in certain circumstances by the officer concerned, the Magistrate cannot allow the Director of Enforcement to keep the documents beyond four months.

2. There is no provision in the Act empowering the Court to extend the period for the detention of documents and any such power in the Magistrate will defeat the very object of the Act.

3. The provisions of the Code relating to searches under the Code apply so far as the same be applicable to searches under sub-s. (3) of s. 19 of the Act and therefore the provision of the Code giving jurisdiction to the Magistrate over the property seized in execution of a search warrant issued by him will not fully apply to property seized in execution of the search warrant issued under sub-s. (3) of s. 19.

The first question to determine is whether Magistrate issuing the search warrant has control over the disposal of the articles seized in execution of the warrant. The provisions of the Code relating to searches apply to search warrants issued under sub-s. (3) of s. 19 but only in so far as they be applicable. The provisions dealing with the circumstances in which, and the authorities by which, search warrants can be issued cannot apply, in view of the specific provision for the issue of a search warrant under the Act in sub-s. (3) of s. 19. Section 96, 98 and Form 8 of Schedule V, do not therefore operate in connection with searches under sub-s. 19. It is therefore the provisions which deal with what is done after the issue of a search warrant which have been made applicable to searches under the Act and such provisions therefore would be the provisions relating to the mode of conducting searches. The object of the aforesaid provision in sub-s. (3) of s. 19 is to provide how the searches are to be conducted as it deals with the issue of search warrant in sub-s. (3) of s. 19. It is only with respect to the intervening stage, that is the stage of actual search that no specific provision is made in the Act. We are therefore of opinion that the provisions relating to searches under the Code which apply to searches under sub-s. (3) of s. 19 are the provisions relating to the conduct of searches and that these provisions are ss. 101, 102 and 103 of the Code. What is to be done with the articles seized does not strictly come within the expression 'searches'. It is dealt with in s. 19-A. It is therefore not correct for the appellant to say that the Magistrate can exercise his power under the Code in connection with property seized under sub-s. (3) of s. 19 of the Act.

It follows that any further reference to the Magistrate, as made by the Enforcement Officer in this

case, for permission to retain the documents seized was not necessary. The Enforcement Officer has a right under s. 19-A to retain the articles seized in accordance with its provision. What course is to be adopted by the person aggrieved when the Enforcement Officer contravenes the provisions of s. 19-A, in a different matter. The fact that such a contingency may arise does not mean that it is the Magistrate issuing the search warrant who is to be approached and who is competent to deal with the grievance. Any way, such a contingency is insufficient to warrant the finding that the Magistrate issuing the warrant has control and possession over the documents seized and that therefore he can pass any orders with respect to their disposal. He has no such power, in any case, till the period mentioned in s. 19-A has expired. There is no provision in the Act which gives him any power to deal with the situation arising after the expiry of that period. One should, however, presume that the Director of Enforcement will not by his order act against the provisions of s. 19.

Section 19-A deals with the custody of documents which come into the possession of the Director of Enforcement in two ways. Documents are furnished to the Director of Enforcement in pursuance of an order made under sub s. (2) of s. 19 under the directions of the Central Government or the Reserve Bank. No Magistrate as such has jurisdiction over the disposal of such documents which come into the possession of the Director of Enforcement in pursuance of orders under sub-s. (2) of s. 19. The Director of Enforcement also gets possession of documents in execution of search warrants under sub-s. (3) of s. 19. The provisions with respect to his retaining in his possession the documents which come in his possession are the same, whether they come so one way or the other. It follows that, in the latter case too, the Magistrate issuing the search warrant has nothing to do with the retention or disposal of the documents seized in execution of the search warrant.

It was also urged for the appellant that the provisions of s. 5(2) of the Code apply to the present case in matters which are not provided by the Act. This contention too has no basis. Section 5 provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Act is a special Act and it provides under s. 19-A for the necessary investigation into the alleged suspected-commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigation by him, assuming that the expression 'investigation' includes the retaining of the documents for the purposes of the investigation.

Reliance has also been placed for the appellant on the case reported as *Mohammad Serajuddin v. R. C. Mishra* [[1962] 1 Suppl. S.C.R. 545] in support of the contention that the Magistrate retains control over the disposal of the articles seized in connection with the search warrant issued by him. In that case the Court was considering the question of the disposal of the documents seized in execution of a search warrant under s. 172 of the Sea Customs Act. The provisions of that section are different from those of sub-s. (3) of s. 19 of the Act. A search warrant issued by a Magistrate under s. 172 of the Sea Customs Act has the same effect as a search warrant issued under the Code of Criminal Procedure and thus assumes the character of a search warrant issued under the Code of Criminal Procedure. The same is not the case with respect to the search warrant issued under sub-s. (3) of s. 19. Further, there is no section corresponding to s. 19-A of the Act in the Sea Customs Act. This case, therefore, is not of help to the appellant.

In this view of the matter, the order of the Magistrate with respect to the disposal of the documents was beyond his jurisdiction and the High Court was right in setting aside his order directing the

retaining of certain documents by the Director of Enforcement.

The question however remains whether the order of the High Court directing the return of the two documents to the respondent is a correct order.

It has been urged for the appellant that there is no provision under s. 19-A or any other section of the Act that the documents be returned to the party from whose custody they were seized, without an order from the Magistrate and that therefore no order for their return can be made by any authority. No such express provision is necessary. Documents seized have to be returned if the law provides that they are not to be retained after a certain period of time. Such a direction under the statute is sufficient justification and authority for the person in possession of the documents to return them to the person from whose possession they had been seized. Provisions are necessary for retaining documents of others and not for returning them to the persons entitled.

Section 19-A authorises the Director of Enforcement to retain a document for a period of not exceeding 4 months, or, if before the expiry of the said period of 4 months, any proceedings under s. 23(i) have been commenced before him, until the disposal of those proceedings, including the proceedings before the Appellate Board, if any, or (ii) if such proceedings have been commenced before a Court, until the document has been filed in that Court. This means that the Director of Enforcement can justifiably retain with himself the document seized till the final disposal of the proceedings taken under s. 23 of the Act if the proceedings had commenced before the period of 4 months, during which he could keep the documents. In the present case such proceedings had not been commenced within the period of 4 months of the Director of Enforcement getting possession of the documents. He could not have therefore, on his own, retained those documents after the expiry of the fourth month. He could have taken legal steps for the retention of those documents. He did not keep those documents with himself on his own. He had been obtaining the permission of the Chief Presidency Magistrate for retaining the documents from the time of their seizure under the impression that the Magistrate could legally order the retention of the documents, presumably as the warrant had directed the production of documents seized, before him.

Proceedings under s. 23 did start prior to the order for the return of the documents. Considering the real intention of s. 19-A to be that the Director of Enforcement can retain the documents seized till the final disposal of proceedings under s. 23 of the Act, the Magistrate's order, even if he had not the authority to pass orders for the retention of the documents by the Director of Enforcement, till the final disposal of the proceedings under s. 23, was an order giving effect to the spirit behind the provisions of s. 19-A. The order of the High Court directing the return of the documents to the respondent therefore appears to us to be unjustified in the special circumstances of the case.

It is not necessary for us to consider in this case what legal steps the Director of Enforcement could take for retaining possession of the documents seized on the expiry of the 4 months' period in case his investigation in connection with those documents is not complete within that period. One of the methods possibly can be his applying to the Central Government to make an order under sub-s. (2) of s. 19 directing the owner of those documents to furnish them to the Director of Enforcement. Such an order will be legal justification for the Director of Enforcement to retain in possession any of the documents which notionally he would be deemed to have returned to the owner on the expiry of the four months and to have got fresh possession over those documents not by virtue of a search warrant but by virtue of an order of the Central Government under sub-s. (2) of s. 19.

We therefore hold that the Magistrate has no jurisdiction over the articles seized in execution of the

search warrant issued under s. 19(3) of the Act and that he cannot permit the retention of such documents by the Director of Enforcement after the expiry of the period he is entitled to keep them in accordance with the provisions of s. 19-A. In the special circumstances of the case, we allow the appeal, set aside the order of the High Court and order that the documents mentioned at items Nos. 2 and 7 of the Seizure Memo can be retained by the Director of Enforcement till the final conclusion of the proceedings commenced under s. 23 of the Act.

Appeal allowed.

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