

Shivnarayan Kabra

Vs

The State of Madras

Criminal Appeal No. 20 of 1964

(Raghuvar Dayal, V. Ramaswaami – I, V. Bhargava JJ)

23.08.1966

JUDGMENT

RAMASWAMI, J.

This appeal is brought, by special leave, from the judgment of the Madras High Court dated July 16, 1963 in Criminal Revision Case No. 1139 of 1961.

The appellant was charged for having committed offences under s. 420, Indian Penal Code and s. 21(d) and (e) of the Forward Contracts (Regulation) Act, 1952 (Act 74 of 1952), hereinafter called the "Act", with regard to certain transactions between the appellant and P.W. 2, Rajam. The appellant was convicted of all the charges and was sentenced to rigorous imprisonment for one year and a fine of Rs. 1,000/- under s. 420, Indian Penal Code and a fine of Rs. 100/- under each of clauses (d) and (e) of s. 21 of the Act by the District Magistrate, Kumbakonam. He further directed that a sum of Rs. 1,000/- out of the said fine should be paid to P.W. 2. On appeal, the convictions and sentences were affirmed by the Sessions Judge, West Thanjavur. The appellant took the matter in revision to the Madras High Court but the revision application was dismissed.

The appellant was the proprietor of a firm in Bombay known as "Jawarmal Gulab Chand". He advertised that people could invest capital in cotton, oil-seeds and other commodities and that J.G. Market reports issued by him could help them in the matter. P.W. 2, a whole-sale merchant dealing in cotton seed, ground nut cakes etc. at Kumbakonam became a subscriber to the reports. P.W. 2 asked the appellant for his business terms. The appellant sent him Ex. P-30 wherein he stated that he undertook export, import, ready and forward business in various commodities in accordance with Pucca Adatia system and according to the usual practice and usage of the various associations concerned. Neither the appellant nor his firm was a member of any recognised association within the meaning of the Act. P.W. 2 placed orders with the appellant and correspondence and statements of accounts were exchanged between the appellant and P.W. 2 who paid a sum of Rs. 12,000/- as margin. Subsequent to the demand of P.W. 2 the appellant sent Rs. 1,000/- and also a final statement showing loss in the transaction and claiming that a sum of Rs. 398.52 P was due to the appellant. According to the prosecution case, the appellant induced P.W. 2 to send him Rs. 12,000/- between May 1, 1958 and June 15, 1958 for forward contract business in cotton, castorseeds and groundnut by a fraudulent representation that the appellant conducted such business even though he was not actually entitled to do any such business and thereby cheated P.W. 2. The case of the appellant was that he could do business under the Pucca Adatia system with members of recognised associations like the Bombay Oil-Seeds and Oil Exchange, and the East India Cotton Association, Bombay, though he himself was not a member of either of these associations. The appellant denied that he made any false representation or that he induced P.W. 2 to part with his money. The case of the

appellant was rejected by the District Magistrate of Kumbakonam who accepted the prosecution case as true and convicted and sentenced the appellant on all the charges. The decision of the District Magistrate was affirmed by the Sessions Judge, West Thanjavur in appeal.

It was argued, in the first place, on behalf of the appellant that on admitted or proved facts no case of cheating has been made out against the appellant and therefore his conviction under s. 420, Indian Penal Code was illegal. We are unable to accept this argument as correct. It has been found that the appellant sent a letter, Ex. P-34 along with a copy of the business terms, Ex. 34(a) "on which we undertake business of our clients". In this document the appellant has made the representation that he could do business in forward contracts in cotton, grains, seeds, bullion, black pepper etc. in accordance with the pucca adatia system and "in accordance with the usual practice and usage of the various associations concerned". In Ex. P-33 the appellant sent a telegram to P.W. 2 intimating that "buying is advisable for quick profits". The appellant knew fully well that he had no right to do forward business and that he was not a member of any recognised association and that he could not lawfully advertise to P.W. 2 for investment in forward contracts. It is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property and in Ex. P-34(a) the appellant stated something which was not true and concealed from P.W. 2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business. It is clear that P.W. 2 would not have parted with the sum of Rs. 12,000/- but for the inducement contained in Ex. P-34 and the representation of the appellant that he could lawfully carry on forward contract business.

It was then submitted on behalf of the appellant that the forward contract in the present case was a wagering contract and fell outside the purview of the Act and the provisions of s. 15 of that Act were therefore not attracted to this case. In our opinion, there is no justification for this argument. Before setting out the statutory provisions it is desirable to indicate briefly the economic implications of forward trading in commodities, the need for the regulation of such trading and the mischief which the Act was intended to remedy. The expert committee to which the Bill which became the Act was referred, explained in their report the meaning of forward trading as follows :

"Forward trading involves speculation about the future, but not all forms of forwards trading could be considered as either unnecessary or undesirable for the efficient functioning of anything but the most primitive economy..... To the extent to which forward trading enables producers, manufacturers and traders to protect themselves against the uncertainties of the future, and enables all the relevant factors, whether actual or anticipated, local or international, to exercise their due influence on prices, it confers a definite boon on the community, because, to that extent, it minimises the risks of production and distribution and makes for greater stability of prices and supplies. It thus plays a useful role in modern business. At the same time, it must be admitted that this is an activity in which a great many individuals with small means and inadequate knowledge of the market often participate, in the hope of quick or easy gains and consequently, forward trading often assumes unhealthy dimensions, thereby increasing, instead of minimising the risks of business. There are forms of forward trading for example, options, which facilitate participation by persons with small means and inadequate knowledge.....It is, therefore, necessary to eliminate certain forms of forward trading, and permit others under carefully regulated conditions, in order to ensure that, while producers, manufacturers and traders will have the facilities they need for the satisfactory conduct of their business

the wider interests of the community, and particularly, the interests of consumers, will be adequately safeguarded against any abuse of such facilities by others."

It was with these objects that the provisions of the Act were enacted.

It is necessary at this stage to set out the relevant provisions of the Act. The object of the Act as stated in the preamble is 'to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith'. Section 2(c) of the Act defines a "forward contract" as a contract for the delivery of goods at a future date and which is not a ready delivery contract. Section 2(i) defines a "ready delivery contract" as a contract which provides for the delivery of goods and the payment of a price therefore, either immediately or within such period not exceeding eleven days after the date of the contract. The statute therefore makes a distinction between "ready delivery contracts" and "forward contracts". Forward contracts are again divided into two categories 'specific delivery contracts' and 'non transferable specific delivery contracts'. 'Specific delivery contracts' mean forward contracts which provide for actual delivery of specific goods at the price fixed during specified future period. Non-transferable specific delivery contracts' are specific delivery contracts the rights or liabilities under which are not transferable. Section 15 of the Act confers power on the Government to issue notifications declaring illegal forward contracts with reference to such goods or class of goods and in such areas as may be specified. Section 15 states :

"15. (1) The Central Government may by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognized association or through or with any such member shall be illegal.

(2) Any forward contract in goods entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void -

(i) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law, and also

(ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

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Section 17 authorises the Government to prohibit by notification any forward contract for the sale or purchase of any goods or class of goods to which the provisions of s. 15 have not been made applicable. Section 18 exempts non-transferable specific delivery contracts from the operation of these sections. Section 21 relates to penalties and reads as follows :

"21. Any person who -

(a).....

(b).....

(c).....

(d) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or

(e) not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association, canvasses, advertises or touts in any manner, either for himself or on behalf of any other persons, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

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shall, on conviction, be punishable -

(i) for a first offence, with imprisonment which may extend to two years, or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence, with imprisonment which may extend to two years and also with fine; provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not less than one month and the fine shall be not less than one thousand rupees."

It was argued on behalf of the appellant that the contracts in this case were not really meant for delivery of goods but were speculative in character. It was contended that to a contract of this description the Act has no application. Mr. Naunit Lal argued that the words of s. 2(c) must be literally construed and must be taken to cover only those contracts in which the parties intended actual delivery of goods at a future date. In our opinion, the interpretation for which Mr. Naunit Lal contends is against the whole scheme and purpose of the Act. If the expression "forward contracts" in s. 2(c) is not construed so as to include speculative contracts which ostensibly are for delivery of goods the provisions of the Act would be rendered nugatory. It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance remedy according to the true intention of the makers of the statute. In construing therefore s. 2(c) of the Act and in determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the statute, the reason which led to its being passed, the mischief which it intended to suppress and the remedy provided by the statute for curing the mischief. That was the rule laid down in Heydon's case ([1584] 3 W. Rep, 16 : 76 E.R. 637) which was accepted by this Court in *The Bengal Immunity Company Limited v. The State of Bihar and others* ([1955] 2 S.C.R. 603.).

As we have already pointed out, the Act was passed in order to put a stop of undesirable forms of speculation in forward trading and to correct the abuses of certain forms of forward trading in the wide interests of the community and, in particular, the interests of the consumers for whom adequate safeguards were essential. In our opinion, speculative contracts of the type covered in the present case are included within the purview of the Act. One of the contracts in the present case is Ex. P-42 in which P.W. 2 placed an order for supply of 100 bales of cotton Jarilla to be delivered in

August, 1958 at Rs. 654/- per Candy. We think that a contract of this description falls within the definition of "forward contract" within the meaning of this Act and the provisions of that Act are therefore applicable to this case. We consider that Mr. Naunit Lal has been unable to make good his submission on this aspect of the case.

It was then contended for the appellant that even if the Act was applicable there is no breach of the provisions of s. 15 because the appellant placed his order for the goods covered by the contract through "a member of the recognised association" as contemplated in s. 15 of the Act. The argument was stressed that the appellant was merely acting as an agent of P.W. 2 and had placed an order for the notified goods through a member of the recognised association and there was no breach of any of the provisions of the Act. We are unable to accept this argument as correct. In the first place, there is no evidence on the record of the case to show that the appellant placed the order for the notified goods with a member of the recognised association. But even on the assumption that the appellant placed an order for the notified goods through a member of the recognised association there is, in our opinion, a breach of the provisions of the Act. The reason is that the appellant was doing forward contract business as a Pucca adatia. It is well-established that the pucca adatia has no authority to pledge the credit of the upcountry constituent to the Bombay merchant and there is no privity of contract as between the upcountry constituent and the Bombay merchant. The pucca adatia is entitled to substitute his own goods towards the contract made for the principal and buy the principal's goods on his personal accounts. In other words, the pucca adatia is not the agent of his constituent but he is acting as a principal as regards his constituent and not as a disinterested middleman to bring two principals together. The legal position has been explained by the Bombay High Court in Bhagwandas Narotamdas v. Kanji Deoji (I.L.R. 30 Bom. 205.) and affirmed by the Judicial Committee in Bhagwandas Parasram v. Burjorji Ruttonji Bomanji (45 I.A. 29.). In the present case, therefore, the appellant was acting as principal to principal, so far as P.W. 2 was concerned and the contracts are hit by the provisions of s. 15 of the Act.

We pass on to consider the next contention of the appellant that there was a breach of s. 361, Criminal Procedure Code which states :

"361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

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It was said that the evidence of the prosecution witnesses was given either in Tamil or in the English language and the appellant did not know either of the languages and so he was not able to take part in the trial. Mr. Naunit Lal contended that there was a breach of the requirement of s. 361(1), Criminal Procedure Code and the trial was vitiated. We do not think there is any substance in this argument. Even if it is assumed that the appellant did not know English or Tamil the violation, if any of s. 361(1), Criminal Procedure Code was merely an irregularity and it is not shown in this case that there is any prejudice caused to the appellant on this account. It is pointed out by the Sessions Judge that the appellant did not make any objection at the time the evidence was given and it appears that he was represented by two eminent advocates - Sri V.T. Rangaswami Iyenger and Sri

R. Krishnamoorthy Iyer - in the trial court who knew both these languages and who would not have allowed the interest of the appellant to be jeopardised even to the smallest extent. In our opinion, the irregularity has not resulted in any injustice and the provisions of s. 537, Criminal Procedure Code are applicable to cure the defect.

Lastly, it was submitted that the 6 items of alleged cheating were combined together in one charge and the conviction of the appellant is therefore illegal. There is no merit in this argument because the lower courts have found that all the six items of cheating were part and parcel of one transaction and the trial of the appellant on a single charge was therefore permissible under s. 239, Criminal Procedure Code.

For the reasons expressed we hold that the decision of the High Court should be affirmed and this appeal should be dismissed.

G.C.

Appeal dismissed.

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