Messrs Rayala Corporation (P) Ltd. and M. R. Pratap

Vs

Director of Enforcement, New Delhi

Criminal Appeal Nos. 18 and 19 of 1969

(J. M. Shelat, V. Bhargava, C. A. Vaidialingam JJ)

02.05.1969

JUDGMENT

BHARGAVA J.

1. These appeals, by certificate, challenge a common order of the High Court of Madras dismissing applications under Section 561-A of the Code of Criminal Procedure presented by the appellants in the two appeals for quashing proceedings being taken against them in the Court of the Chief Presidency Magistrate, Madras, on the basis of a complaint filed on 17th March, 1958, by the respondent, the Director of Enforcement, New Delhi. The Rayala Corporation Private Ltd., appellant in Criminal Appeal No. 18 of 1969, was accused No. 1 in the complaint, while one M. R. Pratap, Managing Director of accused No. 1, appellant in Criminal Appeal No. 19/1969, was accused No. 2. The circumstances under which the complaint was filed may be briefly stated.

2. The premises of accused No. 1 were raided by the Enforcement Directorate on the 20th and 21st December, 1966 and certain records were seized from the control of the Manager. Some enquiries were made subsequently and, thereafter, on the 25th August, 1967, a notice was issued by the respondent to the two accused to show cause why adjudication proceedings should not be instituted against them for violation of Sections 4 and 9 of the Foreign Exchange Regulation Act VII of 1947 (hereinafter referred to as "the Act") on the allegation that a total sum of Rs. 2,44,713.70 Swedish Kronars had been deposited in a Bank account in Sweden in the name of accused No. 2 at the instance of accused No. 1 which had acquired the foreign exchange and had failed to surrender it to an authorised dealer as required under the provisions of the Act. They were called upon to show cause in writing within 14 days of the receipt of the notice. Thereafter, some correspondence went on between the respondent and the two accused and, later, on 4th November, 1967, another notice was issued by the respondent addressed to accused No. 2 alone stating that accused No. 2 had acquired a sum of Sw. Krs. 88,913.09 during the period 1963 to 1965 in Stockholm, was holding that sum in a bank account, and did not offer or cause it to be offered to the Reserve Bank of India on behalf of the Central Government, so that he had contravened the provisions of Section 4(1) and Section 9 of the Act, and affording to him an opportunity under Section 23(3) of the Act of showing, within 15 days from the receipt of the notice, that he had permission or special exemption from the Reserve Bank of India in his favour for acquiring this amount of foreign exchange and for not surrendering the amount in accordance with law. A similar show cause notice was issued to accused No. 1 in respect of the same amount on 20th January, 1968, mentioning the deposit in favour of accused No. 2 and failure of accused No. 1 to surrender the amount, and giving an opportunity to accused No. 1 to produce the permission or special exemption from the Reserve Bank of India. On the 16th March, 1968, another notice was issued addressed to both the accused to show cause in writing within 14 days of the receipt of the notice why adjudication proceedings as

contemplated in Section 23-D of the Act should not be held against them in respect of a sum of Sw. Krs. 1,55,801.41 which were held in a bank account in stockholm in the name of accused No. 2 and in respect of which both the accused had contravened the provisions of Sections 4(3), 4(1), 5(1)(e) and 9 of the Act. The notice mentioned that it was being issued in supersession of the first show cause notice, dated 25th August, 1967, and added that it had since been decided to launch a prosecution in respect of Sw. Krs. 88,913.09. The latter amount was the amount in respect of which the two notices of 4th November, 1967 and 20th January, 1968, were issued to the two accused, while this notice of 16th March, 1968, for adjudication proceedings related to the balance of the amount arrived at by deducting this sum from the original total sum of Sw. Krs. 2,44,713.70. The next day, on 17th March, 1968, a complaint was filed against both the accused in the Court of the Chief Presidency Magistrate, Madras, for contravention of the provisions of Sections 4(1), 5(1)(e) and 9 of the Act punishable under Section 23(1)(b) of the Act. In addition, the complaint also charged both the accused with violation of Rule 132-A(2) of the Defence of India Rules (hereinafter referred to as "the D.I. Rs.") which was punishable under Rule 132-A(4) of the said Rules. Thereupon, both the accused moved the High Court for quashing the proceedings sought to be taken against them on the basis of this complaint. Those applications having been dismissed, the appellants have come up in these appeals challenging the order of the High Court dismissing their applications and praying for quashing of the proceedings being taken on the basis of that complaint.

3. In these appeals, Mr. A. K. Sen, appearing on behalf of the appellants, has raised three points. In respect of the prosecution for violation of Sections 4(1), 5(1)(e) and 9 of the Act punishable under Section 23(1)(b) of the Act, the principal ground raised is that Section 23(1)(b) of the Act is ultra vires Article 14 of the Constitution inasmuch as it provides for a punishment heavier and severer than the punishment or penalty provided for the same acts under Section 23(1)(a) of the Act. In the alternative, the second point taken is that, even if Section 23(1)(b) is not void, the complaint in respect of the offences punishable under that section has not been filed properly in accordance with the proviso to Section 23-D(1) of the Act, so that proceedings cannot be competently taken on the basis of that complaint. The third point raised relates to the charge of violation of Rule 132-A(2) of the D.I. Rs. punishable under Rule 132-A(4) of those Rules, and is to the effect that Rule 132-A of the D.I. Rs. was omitted by a notification of the Ministry of Home Affairs, dated 30th March, 1965, and consequently, a prosecution in respect of an offence punishable under that Rule could not be instituted on 17th March, 1968, when that Rule had ceased to exist. On these three grounds, the order quashing the proceedings being taken on the complaint in respect of all the offences mentioned in it has been sought in these appeals.

4. To appreciate the first point raised before us and to deal with it properly, we may reproduce below the provisions of Section 23 and Section 23-D(1) of the Act :

> "23. Penalty and procedure. - (1) If any person contravenes the provisions of Section 4, Section 5, Section 9, Section 10, sub-section (2) of Section 12, Section 18, Section 18-A or Section 18-B or of any rule, direction or order made thereunder, he shall -
>
> (a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided, or
>
> (b) upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(1-A) If any person contravenes any of the provisions of this Act or of any rule, direction or order made thereunder, for the contravention of which no penalty is expressly provided, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(1-B) Any Court trying a contravention under sub-section (1) or sub-section (1-A) 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.

Explanation. - For the purposes of this sub-section, property in respect of which contravention has taken place shall include deposits in a bank, where the said property is converted into such deposits.

(2) Notwithstanding anything contained in Section 32 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), it shall be lawful for any magistrate of the first class, specially empowered in this behalf by the State Government, and for any presidency magistrate to pass a sentence of fine exceeding two thousand rupees on any person convicted of an offence punishable under this section.

(3) No Court shall take cognisance -

(a) of any offence punishable under sub-section (1) except upon complaint in writing made by the Director of Enforcement, or

(aa) of any offence punishable under sub-section (2) of Section 191, -

(i) where the offence is alleged to have been committed by an officer of Enforcement not lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Central Government;

(ii) where the offence is alleged to have been committed by an officer of Enforcement lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Director of Enforcement, or;

(b) of any offence punishable under sub-section (1-A) of this section or Section 23-F, except upon complaint in writing made by the Director of Enforcement or any officer authorised in this behalf by the Central Government or the Reserve Bank by a general or special order :

Provided that where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

(4) Nothing in the first proviso to Section 188 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), shall apply to any offence punishable under this section."

X X X X##

23-D. Power to adjudicate. - (1) For the purpose of adjudging under clause (a) of sub-section (1) of Section 23 whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of the said Section 23 :

Provided that if, at any stage of the inquiry, the Director of Enforcement is of opinion that having regard to the circumstances of the case, the penalty which he is empowered to impose would not be adequate, he shall, instead of imposing any penalty himself, make a complaint in writing to the Court."

5. A plaint reading of Section 23(1) of the Act shows that under this sub-section provision is made for action being taken against any person who contravenes the provisions of Sections 4, 5, 9, 10, 12(2), 18, 18-A or 18-B or of any rule, direction or order made thereunder; and clauses (a) and (b) indicate the two different proceedings that can be taken for such contravention. Under clause (a), the person is liable to a penalty only, and that penalty cannot exceed three times the value of the foreign exchange in respect of which the contravention has taken place, or Rs. 5,000/-, whichever is more. This penalty can be imposed by an adjudication made by the Director of Enforcement in the manner provided in Section 23-D of the Act. The alternative punishment that is provided in clause (b) is to be imposed upon conviction by a Court when the Court can sentence the person to imprisonment for a term which may extend to two years, or with fine, or with both. Clearly, the punishment provided under Section 23(1)(b) is more severer and heavier than the penalty to which the person is made liable if proceedings are taken under Section 23(1)(a) instead of prosecuting him in a Court under Section 23(1)(b). The argument of Mr. Sen is that this section lays down no principles at all for determining when the person concerned should be proceeded against under Section 23(1)(a) and when under Section 23(1)(b), and it would appear that it is left to the arbitrary discretion of the Director of Enforcement to decide which proceedings should be taken. The liability of a person for more or less severe punishment for the same act at the sole discretion and arbitrary choice of the Director of Enforcement, it is urged, denies equality before law guaranteed under Article 14 of the Constitution.

6. The submission made would have carried great force with us but for our view that the effect of Section 23-D of the Act is that the choice in respect of the proceeding to be taken under Section 23(1)(a) or Section 23(1)(b) has not been left to the unguided and arbitrary discretion of the Director of Enforcement, but is governed by principles indicated by that section. In this connection, it is pertinent to note that Section 23(1) of the Act as originally enacted in 1947 did not provide for alternative punishment for the same contravention and contained only one single provision under which any person contravening any of the provisions of the Act or of any rule, direction or order made thereunder was punishable with imprisonment for a term which could extend to two years or with fine or with both, with the additional clause that any Court trying any such contravention might, if it though fit and in addition to any sentence which it might impose for such contravention, direct that any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place shall be confiscated. No question of the applicability of Article 14 of

the Constitution could, therefore, arise while the provision stood as originally enacted.

7. Parliament, by Foreign Exchange Regulation (Amendment) Act XXXIX of 1957, amended Section 23(1) and, at the same time, also introduced Section 23-D in the Act. It was by this amendment that two alternative proceedings for the same contravention were provided in Section 23(1). In thus introducing two different proceedings, Parliament put in the forefront proceedings for penalty to be taken by the Director of Enforcement by taking up adjudication, while the punishment to be awarded by the Court, upon conviction, was mentioned as the second type of proceeding that could be resorted to. Section 23-D(1) is also divisible into two parts. The first part lays down what the Director of Enforcement has to do in order to adjudge penalty under Section 23(1)(a), and the second part, contained in the proviso, gives the power to the Director of Enforcement to file a complaint instead of imposing a penalty himself. In our opinion, these two Sections 23(1) and 23-D(1) must be read together, so that the procedure laid down in Section 23-D(1) is to be followed in all cases in which proceedings are intended to be taken under Section 23(1). The effect of this interpretation is that, whenever there is any contravention of any section or rule mentioned in Section 23(1), the Director of Enforcement must first proceed under the principal clause of Section 23-D(1) and initiate proceedings for adjudication of penalty. He cannot, at that stage, at his discretion, choose to file a complaint in a Court for prosecution of the person concerned for the offence under Section 23(1)(b). The Director of Enforcement can only file a complaint by acting in accordance with the proviso to Section 23-D(1) which clearly lays down that the complaint is only to be filed in those cases where, at any stage of the inquiry, the Director of Enforcement comes to the opinion that, having regard to the circumstances of the case, the penalty which he is empowered to impose would not be adequate. Until this requirement is satisfied, he cannot make a complaint to the Court for prosecution of the person concerned under Section 23(1)(b). The choice of the proceeding to be taken against the person, who is liable for action for contravention under Section 23(1), is, thus, not left entirely to the discretion of the Director of Enforcement, but the criterion for asking the choice is laid down in the proviso to Section 23-D(1). It cannot possibly be contended, and no attempt was made by Mr. Sen to contend, that, if we accept this interpretation that the right of the Director of Enforcement to make a complaint to the Court for the offence under Section 23(1)(b) can be exercised only in those cases where, in accordance with the proviso, he comes to the opinion that the penalty which he is empowered to impose would not be adequate, the validity of Section 23(1)(b) of the Act can still be challenged.

8. In this connection, it was urged before us that the language of the principal clause of Section 23-D(1) taken together with the language of the proviso does not justify an interpretation that a complaint for an offence under Section 23(1)(b) cannot be made by the Director of Enforcement except in accordance with the proviso, particularly because the principal clause of Section 23-D(1) merely lays down the procedure that has to be adopted by the Director of Enforcement when proceeding under Section 23(1)(a), and contains no words indicating that such a proceeding must invariably be resorted to by him whenever he gets information of a contravention mentioned in Section 23(1). The language does not contain any words creating a bar to his proceeding to file a complaint straightaway instead of taking proceedings for adjudication under Section 23-D(1). It is true that neither in Section 23(1) itself nor in Section 23-D(1) has the Legislature used specific words excluding the filing of a complaint before proceedings for adjudication are taken under Section 23-D(1). If any such words had been used, no such controversy could have been raised as has been put forward before us in these appeals. We have, however, to gather the intention of the Legislature from the enactment as a whole. In this connection, significance attaches to the fact that Section 23-D(1) was introduced simultaneously with the provision made for alternative proceedings under Section 23(1) in its two clauses (a) and (b). It appears to be obvious that the Legislature

adopted this course so as to ensure that all proceedings under Section 23(1) are taken in the manner laid down in Section 23-D(1). Parliament must be credited with the knowledge that, if provision is made for two alternative punishments for the same act one differing from the other without any limitations, such a provision would be void under Article 14 of the Constitution; and that is the reason why Parliament simultaneously introduced the procedure to be adopted under Section 23-D(1) in the course of which the Director of Enforcement is to decide whether a complaint is to be made in Court and under what circumstances he can do so. We have also to keep in view the general principle of interpretation that, if a particular interpretation will enure to the validity of a law, that interpretation must be preferred. In these circumstances, we have no hesitation in holding that, whenever there is a contravention by any person which is made punishable under either clause (a) or clause (b) of Section 23(1), the Director of Enforcement must first initiate proceedings under the principal clause of Section 23-D(1) and he is empowered to file a complaint in Court only when he finds that he is required to do so in accordance with the proviso. It is by resorting to the proviso only that he can place that person in greater jeopardy of being liable to a more severe punishment under Section 23(1)(b) of the Act.

9. The view we have taken is in line with the decision of this Court in Shanti Prasad Jain v. The Director of Enforcement, ((1963) 2 SCR 297) where this Court considered the validity of Section 23(1)(a) and Section 23-D which were challenged on the ground of two alternative procedures being applicable for awarding punishment for the same act. The Court noticed the position in the following words :

> "It will be seen that when there is a contravention of Section 4(1), action with respect to it is to be taken in the first instance by the Director of Enforcement. He may either adjudge the matter himself in accordance with Section 23(1)(a), or he may send it on to a Court if he considers that a more severe penalty than he can impose is called for. Now, the contention of the appellant is that when the case is transferred to a Court, it will be tried in accordance with the procedure prescribed by the Criminal Procedure Code, but that when the Director himself tries it, he will follow the procedure prescribed therefor under the Rules framed under the Act, and that when the law provides for the same offence being tried under two procedures, which are substantially different, and it is left to the discretion of an executive officer whether the trial should take place under the one or the other of them, there is clear discrimination, and Article 14 is contravened. Therefore, Section 23(1)(a) must, it is argued, be struck down as unconstitutional and the imposition of fine on the appellant under that section set aside as illegal."

The Court then distinguished the provisions of the Act with the law considered in the case of State of West Bengal v. Anwar Ali (1952 SCR 284) and held :

> "Section 23-D confers authority on the very officer who has power to try and dispose of a case to send it on for trial to a Court, and that too only when he considers that a more severe punishment than what he is authorised to impose should be awarded."

10. In this view about the effect of Section 23-D, the Court gave the decision that the power conferred on the Director of Enforcement under Section 23-D to transfer cases to a Court is not unguided and arbitrary, and does not offend Article 14 of the Constitution; and Section 23(1)(a) cannot be assailed as unconstitutional. In that case, the argument was that Section 23(1)(a) should be struck down, because the procedure prescribed by it permitted proceedings to be taken by the

Director of Enforcement himself which procedure did not confer the same rights on the defence as the procedure prescribed for trial if the Director of Enforcement filed a complaint for the offence under Section 23(1)(b). In the case before us, it is Section 23(1)(b) which is challenged and on a slightly different ground that it provides for a higher punishment than that provided by Section 23(1)(a). The answer to both the questions is found in the view taken by us in the present case as well as by this Court in the case of Shanti Prasad Jain (supra) that the Director of Enforcement, though he has power to try the case under Section 23(1)(a), can only send the case to the Court if he considers that a more severe punishment than what he is authorised to impose should be awarded. The Court in that case also thus accepted the principle that Section 23-D limits entirely the procedure the Director of Enforcement has to observe when deciding whether the punishment should be under Section 23(1)(a) or under Section 23(1)(b).

11. However, we consider that, in this case, there is considerable force in the second point urged by Mr. Sen on behalf of the appellants that the respondent, in filing the complaint on 17th March, 1968, did not act in accordance with the requirements of the proviso to Section 23-D(1). We have held above that the proviso to Section 23-D(1) lays down the only manner in which the Director of Enforcement can make a complaint and this provision has been laid down as a safeguard to ensure that a person, who is being proceeded against for a contravention under Section 23(1), is not put in danger of higher and severer punishment at the choice and sweet-will of the Director of Enforcement. When such a safeguard is provided by Legislature, it is necessary that the authority, which takes the step of instituting against that person proceedings in which severer punishment can be awarded, complies strictly with all the conditions laid down by law to be satisfied by him before instituting that proceeding. In the present case, therefore, we have to see whether the requirements of the proviso to Section 23-D(1) were satisfied at the stage when the respondent filed the impugned complaint on 17th March, 1968.

12. The proviso to Section 23-D(1) lays down that the complaint may be made at any stage of the enquiry but only if, having regard to the circumstances of the case, the Director of Enforcement finds that the penalty which he is empowered to impose would not be adequate. It was urged by Mr. Sen that, in this case, the complaint was not filed as a result of the enquiry under the principal clause of Section 23-D(1) at all and, in any case, there was no material before the respondent on which he could have formed the opinion that the penalty which he was empowered to imposed would not be adequate in respect of the sum of Sw. Krs. 88,913.09 which, it was alleged, had been acquired by the two accused during the period 1963 to 1965 and kept in deposit against law. Arguments at some length were advanced before us on the question as to what should be the stage of the enquiry at which the Director of Enforcement should form his opinion and will be entitled to file the complaint in Court. It appears to us that it is not necessary in this case to go into that question. It is true that the enquiry in this case under Section 23-D(1) had been instituted by the issue of the show cause notice, dated 25th August, 1967, that being the notice mentioned in Rule 3(1) of the Adjudication Proceedings and Appeal Rules, 1957. On the record, however, it does not appear that, even after the issue of that notice, any such material came before the respondent which could be relevant for forming an opinion that the penalty which he was empowered to impose for the contravention in respect of the sum of Sw. Krs. 88,913.09 would not be adequate. The respondent, in the case of accused No. 2, appears to have formed a prima facie opinion that a complaint should be made against him in Court when he issued the notice on 4th November, 1967, under the proviso to Section 23(3) of the Act, and a similar opinion in respect of accused No. 1 when he issued the notice on 20th January, 1968, under the same proviso. There is, however, no information on the record to indicate that, by the time these notices were issued, any material had appeared before the respondent in the course of the enquiry initiated by him through the notice,

dated 25th August, 1967, which could lead to the opinion being formed by the respondent that he will not be in a position to impose adequate penalty by continuing the adjudication proceedings. Even subsequently, when one of the accused replied to the notice, there does not appear to have been brought before the respondent any such relevant material.

13. Mr. C.T. Desai on behalf of the respondent drew our attention to Para 3(E) of the petition presented by accused No. 1 for certificate under Article 132(1) and Article 134(1)(c) of the Constitution in this case which contains the following pleading :

> "In this case, having issued show cause notice, dated 25-8-67, in respect of the subject-matter of the pending prosecution and having taken various acts, taking statements, taking recorded statements, investigations, the respondent did not hold an enquiry for the purpose of his forming an opinion that the accused is guilty of violations and that the penalty is not adequate and as such, the prosecution filed in C.C. 8756 of 62 is liable to be quashed on this ground."

Relying on this pleading, Mr. Desai urges that it amounts to an admission by accused No. 1 that, during enquiry, various statements were taken and recorded and investigations made, so that we should not hold that there was no material on the basis of which the respondent could have formed the opinion that it was a fit case for making a complaint. The pleading does not show that any statements were taken or recorded during the course of the enquiry held under Section 23-D(1) of the Act in the manner laid down by the Adjudication Proceedings and Appeal Rules, 1957. Under these Rules, after a notice is issued, the Director of Enforcement is required to consider the cause shown by such person in response to the notice and, if he is of the opinion that adjudication proceedings should be held, he has to fix a date for the appearance of that person either personally or through his lawyer or other authorised representative. Subsequently, he has to explain to the person proceeded against or his lawyer or authorised representative the offence alleged to have been committed by such person indicating the provisions of the Act or of the rules, directions or orders made thereunder in respect of which contravention is alleged to have taken place, and then he has to give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry. It is on the conclusion of such an inquiry that the Director can impose a penalty under Section 23(1)(a). In the present case, there is no material at all to show that any proceedings were taken in the manner indicated by the Rules referred to above. There does not appear to have been any cause shown by either of the two accused, or consideration of such cause by the respondent to decide whether adjudication proceedings should be held. It is true that there is some material to indicate that, after the issue of notice, dated 25-8-1967, some investigations were carried on by the respondent; but those investigations would not be part of the inquiry which had to be held in accordance with Adjudication Proceedings and Appeal Rules, 1957. It appears that, at one stage, before the complaint was filed, a writ petition was moved under Article 226 of the Constitution in the High Court of Madras praying for the quashing of the notice, dated 25th August, 1967. The order made by the High Court on one of the interim applications in connection with that notice shows that, while that writ petition was pending, some investigations were permitted by the Court, but further penal proceedings in pursuance of that notice were restrained. This clearly indicates that whatever statements were recorded by the respondent as mentioned in the petition of accused No. 1 referred to above must have been in the course of investigation and not in the course of the inquiry under Section 23-D(1) of the Act. The record before us, therefore, does not show that any material at all was available to the respondent in the course of the enquiry under Section 23-D(1) on the basis of which he could have formed an opinion that it was a fit case for making a complaint on the ground that he would not be able to impose adequate penalty. The complaint has,

therefore, to be held to have been filed without satisfying the requirements and conditions of the proviso to Section 23-D(1) of the Act and is in violation of the safeguard provided by the Legislature for such contingencies. The complaint, insofar as it related to the contravention by the accused of provisions of Sections 4(1), 5(1)(a) and 9 of the Act punishable under Section 23(1)(b) is concerned, is invalid and proceedings being taken in pursuance of it must be quashed.

14. There remains for consideration the question whether proceedings could be validly continued on the complaint in respect of the charge under Rule 132-A(4) of the D.I. Rs. against the two accused. The two relevant clauses of Rule 132-A are as follows :

> "132-A. (2) No person other than an authorised dealer shall buy or otherwise acquire or borrow from, or sell or otherwise transfer or lend to, or exchange with, any person not being an authorised dealer, any foreign exchange.
>
> # X X X X##
>
> (4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both; and any court trying such contravention may direct that the foreign exchange in respect of which the court is satisfied that this rule has been contravened, shall be forfeited to the Central Government."

The charge in the complaint against the two accused was that they had acquired foreign exchange to the extent of Sw. Krs. 88,913-09 in violation of the prohibition contained in Rule 132-A(2) during the period when this Rule was in force, so that they became liable to punishment under Rule 132-A(4). Rule 132-A as a whole ceased to be in existence as a result of the notification issued by the Ministry of Home Affairs on 30th March, 1966, by which the Defence of India (Amendment) Rules, 1965, were promulgated. Clause 2 of these Amendment Rules reads as under :

> "In the Defence of India Rules, 1962, Rule 132-A (relating to prohibition of dealings in foreign exchange) shall be omitted except as respects things done or omitted to be done under that rule."

The argument of Mr. Sen was that, even if there was a contravention of Rule 132-A(2) by the accused when that rule was in force, the act of contravention cannot be held to be a "thing done or omitted to be done under that rule", so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted. He conceded the possibility that, if a prosecution had already been started while Rule 132-A was in force, that prosecution might have been competently continued. Once the rule was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force. We are inclined to agree with the submission of Mr. Sen that the language contained in Clause 2 of the Defence of India (Amendment) Rules, 1965, can only afford protection to action already taken while the rule was in force, but cannot justify initiation of a new proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a proceeding after the rule had ceased to exist. On this interpretation, the complaint made for the offence under Rule 132-A(4) of the D.I. Rs., after 1st April, 1965, when the rule was omitted, has to be held invalid.

15. This view of ours is in line with the general principle enunciated by this Court in the case of S.

Krishnan and Others v. The State of Madras, (1951 SCR 621) relating to temporary enactments, in the following words :

> "The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires."

Mention may also be made to a decision of a learned Single Judge of the Allahabad High Court in Seth Jugmendar Das and Others v. State, (AIR 1951 All 703) where a similar view was taken when considering the effect of the repeal of the Defence of India Act, 1939, and the Ordinance No. XII of 1946, which had amended Section 1(4) of that Act.

16. On the other hand, Mr. Desai on behalf of the respondent relied on a decision of the Privy Council in Wicks v. Director of Public Prosecution. (1947 AC 362). In that case, the appellant, whose case came up before the Privy Council, was convicted for contravention of Regulation 2-A of the Defence (General) Regulations framed under the Emergency Powers (Defence) Act, 1939 as applied to British subjects abroad by Section 3(1)(b) of the said Act. It was held that, at the date when the acts, which were the subject-matter of the charge, were committed, the regulation in question was in force, so that, if the appellant had been prosecuted immediately afterwards, the validity of his conviction could not be open to any challenge at all. But the Act of 1939 was a temporary Act, and after various extensions it expired on February 24, 1946. The trial of the accused took place only in May, 1946, and he was convicted and sentenced to four years' penal servitude on May 28. In these circumstances, the question raised in the appeal was : "Is a man entitled to be acquitted when he is proved to have broken a Defence Regulation at a time when that regulation was in operation, because his trial and conviction take place after the regulation has expired ?" The Privy Council took notice of sub-section (3) of Section 11 of the Emergency Powers (Defence) Act, 1939, which laid down that "the expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done". It was argued before the Privy Council that the phrase "things previously done" does not cover offences previously committed. This argument was rejected by Viscount Simon on behalf of the Privy Council and it was held that the appellant in that case could be convicted in respect of the offence which he had committed when the regulation was in force. That case, however, is distinguishable from the case before us inasmuch as, in that case, the saving provision laid down that the operation of that Act itself was not to be affected by the expiry as respects things previously done or omitted to be done. The Act could, therefore, be held to be in operation in respect of acts already committed, so that the conviction could be validly made even after the expiry of the Act in respect of an offence committed before the expiry. In the case before us, the operation of Rule 132-A of the D.I. Rs. has not been continued after its omission. The language used in the notification only affords protection to things already done under the rule, so that it cannot permit further application of that rule by instituting a new prosecution in respect of something already done. The offence alleged against the accused in the present case is in respect of acts done by them which cannot be held to be acts under that rule. The difference in the language thus makes it clear that the principle enunciated by the Privy Council in the case cited above cannot apply to the notification with which we are concerned.

17. Reference was next made to a decision of the Madhya Pradesh High Court in State of Madhya Pradesh v. Hiralal Sutwala, (AIR 1959 MP 93) but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of the General Clauses Act had been made applicable. In the case before us, Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132-A of the D.I. Rs. for the two obvious reasons

that Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a rule. If Section 6 of the General Clauses Act had been applied, no doubt this complaint against the two accused for the offence punishable under Rule 132-A of the D.I. Rs. could have been instituted even after the repeal of that rule.

18. The last case relied upon in J.K. Gas Plant Manufacturing Co., (Rampur) Ltd. and Others v. The King Emperor. (1947 FCR 141). In that case, the Federal Court had to deal with the effect of sub-section (4) of Section 1 of the Defence of India Act, 1939 and the Ordinance No. XII of 1946, which were also considered by the Allahabad High Court in the case of Seth Jugmendar Das and Others (supra). After quoting the amended sub-section (4) of Section 1 of the Defence of India Act, the Court held :

> "The express insertion of these saving clauses was no doubt due to a belated realisation that the provisions of Section 6 of the General Clauses Act (X of 1897), apply only to repealed statutes and not to expiring statutes, and that the general rule in regard to the expiration of a temporary statute is that "unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate."

The Court cited with approval the decision in the case of Wicks v. Director of Public Prosecutions (supra), and held that, in view of Section 1(4) of the Defence of India Act, 1939, as amended by Ordinance No. XII of 1946, the prosecution for a conviction for an offence committed when the Defence of India Act was in force, was valid even after the Defence of India Act had ceased to be in force. That case is, however, distinguishable from the case before us in two respects. In that case, the prosecution had been started before the Defence of India Act ceased to be in force and, secondly, the language introduced in the amended sub-section (4) of Section 1 of the Act had the effect of making applicable the principles laid down in Section 6 of the General Clauses Act, so that a legal proceeding could be instituted even after the repeal of the Act in respect of an offence committed during the time when the Act was in force. As we have indicated earlier, the notification of the Ministry of Home Affairs omitting Rule 132-A of the D.I. Rs. did not make any such provision similar to that contained in Section 6 of the General Clauses Act. Consequently, it is clear that, after the omission of Rule 132-A of the D.I. Rs., no prosecution could be instituted even in respect of an act which was an offence when that rule was in force.

19. In this connection, Mr. Desai pointed out to us that, simultaneously with the omission of Rule 132-A of the D.I. Rs., Section 4(1) of the Act was amended so as to bring the prohibition contained in Rule 132-A(2) under Section 4(1) of the Act. He urged that, from this simultaneous action taken, it should be presumed that there was no intention of the Legislature that acts, which were offences punishable under Rule 132-A of the D.I. Rs. should go unpunished after the omission of that rule. It, however, appears that when Section 4(1) of the Act was amended, the Legislature did not make any provision that an offence previously committed under Rule 132-A of the D.I. Rs. would continue to remain punishable as an offence of contravention of Section 4(1) of the Act, nor was any provision made permitting operation of Rule 132-A itself so as to permit institution of prosecutions in respect of such offences. The consequence is that the present complaint is incompetent even in respect of the offence under Rule 132-A(4). This is the reason why we hold that this was an appropriate case where the High Court should have allowed the applications under Section 561-A of the Code of

Criminal Procedure and should have quashed the proceedings on this complaint.

20. Consequently, as already directed by our short order, dated 2nd May, 1969, the appeals are allowed, the order of the High Court rejecting the applications under Section 561-A of the Code of Criminal Procedure is set aside, and the proceedings for the prosecution of the appellants are quashed.

</html