

Ramanlal Bhogilal Shah and Another

Vs

D. K. Guha and Others

Writ Petitions Nos. 164 and 165 of 1972

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar, M.H. Beg, S. N. Dwivedi JJ)

24.01.1973

JUDGMENT

SIKRI, C.J. -

1. The same point of law arises in both the writ petitions and it will suffice if facts in writ petition No. 164 of 1972 are set out. The petitioner, Ramanlal Bhogilal Shah, was the General Manager of United Commercial Bank Ltd., till January 17, 1968, when he became the Chairman and wholetime Director of the said bank. Upon nationalisation of the bank, the petitioner was appointed Custodian thereof and he continued as Custodian till September 1, 1971.

2. On June 4, 1966, the United Commercial Bank had booked a forward exchange contract for Hindustan Motors for 9,32,617 pounds at the rate of 1s. 529/32d. per rupee. On June 6, 1966, the rupee was devalued. On May 24, 1971, the petitioner was served with summons under Section 19-F of the Foreign Exchange (Regulation) Act, 1947 - hereinafter referred to as the Exchange Act - to give evidence in the enquiry which Shri D. K. Guha, Deputy Director, Enforcement Directorate, was making into certain offences under the Exchange Act. The petitioner was examined on June 3, 1971, June 16, 1971 and June 17, 1971.

3. According to the petitioner, the entire examination on the said dates related to the booking by the United Commercial Bank of the aforesaid forward exchange contract, dated June 4, 1966. On August 31, 1971. the petitioner was arrested under Section 19-B of the Exchange Act. Sub-section (1) of Section 19-B provides that "if any officer of Enforcement has reason to believe that any person in India or within the Indian Customs waters has been guilty and shall, as soon as may be, inform him of the grounds for such arrest". Sub-section (2) provides that "every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a Magistrate". Sub-section (3) empowered an officer of Enforcement arresting any person to release such person on bail or otherwise. In this connection he has the same powers and is subject to the same provisions as the officer-in charge of a police station.

4. The grounds of arrest served on the petitioner are elaborate. These give detailed reasons why the enforcement officer had reasons to believe that the petitioner had been guilty of an offence under Section 4(2) and under Section 22 of the Exchange Act punishable under Section 23 thereof. We may reproduce Paras 31 to 40 of the grounds of arrest :

"31. And whereas by such criminal acts the Bank converted pound sterling not at the rate prescribed by the Foreign Exchange Dealers Association of India effective from June 8, 1966, as aforesaid but at the rate of sh. 1-529/32d - Re. 1-during the period of

8-7-66 to 3-3-67 on the total amount of 9,32,617-0-0d pounds;

32. And whereas the aforesaid amount of 9,32,617-0-0d has been converted into Indian currency at rates other than the rates authorised by the Reserve Bank of India;

33. And whereas such unauthorised conversion has been made without fulfilling the condition prescribed in Section XXVIII of the Exchange Control Manual published by the Reserve Bank of India as aforesaid;

34. And whereas such conversion of pound sterling into Indian currencies has been made in contravention of Section 4(2) of the said Act;

35. And whereas false information has been furnished to the Reserve Bank of India contravening the provisions of Section 22 of the said Act;

36. And whereas the aforesaid contraventions have been committed by the said Bank or have taken place with the consent of the said R. B. Shah;

37. And whereas at the time of the aforesaid contraventions were committed, the said R. B. Shah was in charge of, or was responsible to the United Commercial Bank Limited for the conduct of the business of the said Bank;

38. And whereas the said R. B. Shah failed to prove in course of his statements made under Section 19-F of the said Act before Shri D. K. Guha, Deputy Director of Enforcement that the contravention took place without his knowledge or that he exercised all due diligence to prevent the aforesaid contravention, as required under Section 23-C of the said Act;

39. And whereas in view of the aforesaid facts and circumstances, I, Onkar Nath Chattopadhyay, Enforcement Officer, Enforcement Directorate, Department of personnel, Cabinet Secretariat, Government of India, being an officer of Enforcement authorised by the Central Government to exercise the powers under Section 19-B of the said Act, have reason to believe that the said R. B. Shah in India has been guilty of offences under Section 4(2) and under Section 22 of the said Act punishable under Section 23 of the said Act;

40. Now, therefore, I arrest the said R. B. Shah on the grounds stated hereinabove, today August 31, 1971, at 10.35 a.m. under Section 19-B(i) of the Foreign Exchange Regulation Act, 1947."

5. The question arises, with which we will presently deal with, whether after these grounds have been served on the petitioner, it could be said that he was a person accused of an offence within Article 20(3) of the Constitution.

6. The petitioner was produced before the Chief Presidency Magistrate, Calcutta, on August 31, 1971, who released him on bail of Rs. 10,000/-, with the direction that the petitioner should contact the Investigating Officer every alternate day during the next two weeks and thereafter as and when called for.

7. On September 6, 1971, the Chief Presidency Magistrate, Calcutta, recorded :

"Both accused are on C.B. and present. Perused report submitted by I.O.I.O. prays for three months time for submitting further report. Time allowed till December 6, 1971, for submission of report."

8. On December 6, 1971, the order is recorded as follows :

"Both accused are on C.B. and present. Perused report submitted by Enforcement Directorate. Further three months' time. Time allowed till March 6, 1972, for completion of investigation. I.O. is directed to expedite and file complaint, if any, at an early date."

9-10. On March 6, 1972, it was inter alia ordered :

"..... Since no regular complaint has till now been filed, personal exemption prayed for is allowed."

The order further proceeds :

"Considered I.O.'s. remand report. He submits that the matter is pending before the Supreme Court and concerned documents remain sealed in that connection. He further says complaint will be filed soon after the matter is disposed by the Supreme Court. Considering such aspects of the question I.O. is allowed time till June 5, 1972, for a report about progress of investigation and submission of regular complaint, if any, against the accused persons."

11. It is alleged in the petition that "pursuant to enquiries made in this behalf, your petitioner has come to learn that the Supreme Court proceedings referred to by the Respondent No. 4 before the Chief Presidency Magistrate, Calcutta, as recorded in his order, dated March 6, 1972, arose out of a writ petition filed by Hindustan Motors Ltd. before the Hon'ble High Court at Calcutta challenging inter alia the search at the premises of Hindustan Motors Ltd. conducted by the Enforcement Directorate in or about October 1969, and seizure of documents as a result thereof". In the course of this enquiry the petitioner learnt that a case had been registered on a First Information Report, dated November 8, 1971, recorded under Section 154 of the Criminal Procedure Code and an order, dated November 25, 1971, had been obtained from the Chief Presidency Magistrate, Calcutta, permitting the investigation to be made under Section 155(2) of the Code of Criminal Procedure. This First Information Report deals with the forward exchange contract purported to have been entered on June 4, 1966, by M/s. Hindustan Motors Ltd. and the United Commercial Bank Ltd. The offences alleged in the First Information Report are Section 120-B, read with Section 420, I.P.C., and under Section 4(2), read with Section 23(1)(b) of the Exchange Act, and the names and addresses of the accused are given as the Management and other officers of the United Commercial Bank and the Management and officers of the Hindustan Motors Ltd.

12. On April 17, 1972, another summons was issued to the petitioner under Section 19-F of the Exchange Act to appear before the Deputy Director, Enforcement Directorate, on April 28, 1972, to give evidence relating to the transaction of exchange contract booked from Hindustan Motors Ltd. on June 4, 1966. The petitioner wrote to the Deputy Director submitting that the summons was violative of Article 20(3) of the Constitution. In this connection he submitted as follows :

"I remind you that after examining on June 3, 1971, June 16, 1971, and June 17, 1971, proceedings have been initiated and I was arrested on August 31, 1971, and in

the grounds of arrest one of the grounds of accusation is the transaction referred to by you in the summons."

The petitioner requested the Deputy Director to withdraw the summons.

13. On April 22, 1972, the Deputy Director informed the petitioner that the contentions had no substance at all. He further informed the petitioner that the summons issued on April 17, 1972, could not be withdrawn and requested the petitioner to comply with the same.

14. The petitioner thereupon filed the present petition on April 27, 1972.

15. The learned counsel for the petitioner, Mr. A. K. Sen, contends that on the facts given above the petitioner fell within the description of a "person accused of an offence" within the meaning of Article 20(3). He contended that after the Enforcement Officer had examined the petitioner and put his conclusions in the grounds of arrest, the petitioner was definitely accused of an offence under the Exchange Act. He next contends that, at any rate, the petitioner was accused of an offence when the First Information Report was recorded under Section 154, Cr.P.C., by Shri J. N. Prabhakar, Deputy Superintendent of Police, Central Bureau of Investigation, Special Police Investigation Unit, New Delhi.

16. The learned Additional Solicitor General says that the first point is concluded by the decision of this Court in *Romesh Chandra Mehta v. State of West Bengal*. ((1969) 2 SCR 461 : AIR 1970 SC 940 : (1971) 2 SCJ 123) He strongly relies on the following passages at p. 479;

"It was strenuously urged that under Section 104 of the Customs Act, 1962, the Customs Officer may arrest a person only if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 and not otherwise and he is bound to inform such person of the grounds of his arrest. Arrest of the person who is guilty of the offence punishable under Section 135 and information to be given to him, it was contended, to a formal accusation of an offence and in any case the person who has been arrested and who have been informed of the nature of the infraction committed by him stands in the character of an accused person. We are unable to agree with that contention. Section 104(1) only prescribes the conditions in which the power of arrest may be exercised. The officer must have reason to believe that a person has been guilty of an offence punishable under Section 135, otherwise he cannot arrest such person. But by informing such person of the grounds of his arrest the Customs Officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an enquiry under Sections 107 and 108 of the Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender against the Customs Act being charged before a Magistrate. Ordinarily after adjudging penalty and confiscation of goods or without doing so, if the Customs Officer forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided under Section 137 with the sanction of the Collector of Customs and until a complaint is so filed the person against whom an inquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence under Section 135.

17. The learned counsel for the petitioner, however, contends that the facts here are different. He says that under the Exchange Act the position is slightly different. He further says that in Ramesh Mehta's case (supra), no enquiry had been made while in the present case an enquiry under Section 19-F had been made and the Deputy Director had come to a definite conclusion that the petitioner was guilty of an offence. He further says that the next step would be an enquiry under Section 23 of the Exchange Act which might result in a penalty under Section 23(1)(a) or the case being sent to a Court for trial. He says that as far as the enquiry under Section 23(1)(a) is concerned, it is an enquiry in respect of an offence and no further charge or complaint necessary before undertaking the enquiry. He is contends that the protection under Article 20(3) extends not only to criminal trials, but also to trials of all offences under the Exchange Act because for the same offence one person may be convicted and penalty levied under Section 23(1)(a) or convicted by a Court and sentenced to imprisonment.

18. These aspects have not been considered by this Court in any case which has been brought to our notice, but we do not think that it is necessary to dispose of these contentions because we are of the opinion that the second point raised by Mr. A. K. Sen must prevail.

19. It is well settled that the lodging of a first information report a person is accused of an offence within the meaning of Article 20(3). In *M. P. Sharma v. Satish Chandra*, (1954 SCR 1077 : AIR 1954 SC 300 : 1954 Cr LJ 865) where search warrants were issued against persons who had been included in the category of accused in the first information report, Jagannadhadas, J., observed at p. 1088 :

"Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in Article 20(3) is "to be a witness" and not to "appear as a witness" : It follows that the protection afforded to an accused insofar as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course in other situations does not call for decision in this course."

20. In *Raja Narayanlal Bansilal v. Maneck Phiroz Mistry*, ((1961) 1 SCR 417, 438 : AIR 1961 SC 29 : (1960) 30 Com Cas 644) it was observed :

"Similarly, for invoking the constitutional right against testimonial compulsion guaranteed under Article 20(3) it must appear that a formal accusation has been made against the party pleadings the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution."

21. In *Romesh Chandra Mehta v. State of West Bengal* (supra), Shah, J., after reviewing a number of authorities, observed at p. 472 :

"Normally a person stands in the character of an accused when a First Information Report is lodged against him in respect of an offence before an officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial of the offence."

22. The Additional Solicitor General says that the petitioner had not been specifically named as accused in the First Information Report and, therefore, he is not entitled to the protection under Article 20(3). We are unable to agree with him in this respect. The petitioner was the General Manager of the United Commercial Bank and it was alleged in the grounds of arrest that the petitioner was in charge of, or was responsible to the United Commercial Bank Ltd. for the conduct of the business of the said Bank, and that he failed to prove in course of his statements made under Section 19-F before D. K. Guha, Deputy Director of Enforcement that the contravention took place without his knowledge or that he exercised all due diligence to prevent the aforesaid contravention, as required under Section 23-C of the Exchange Act.

23. In view of these allegations it is idle to contend that the petitioner was not included in the expression "the management and other officers of the United Commercial Bank Ltd.". We have already mentioned that in the First Information Report it is the same forward Exchange Contract which is the subject-matter of charge.

24. Although we hold that the petitioner is a person accused of an offence within the meaning of Article 20(3), the only protection that Article 20(3) gives to him is that he cannot be compelled to be a witness against himself. But this does not mean that he need not give information regarding matters which do not tend to incriminate him. This Court observed in *State of Bombay v. Kathi Kalu Oghad*, ((1962) 3 SCR 10, 23 : AIR 1961 SCR 10, 23 : AIR 1961 SC 1808 : (1961) 2 Cr LJ 856) as follows :

"In order that a testimony by an accused person may be said to have been self-incriminatory the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person at least probable, considered by itself."

25. Therefore we are unable to set aside the summons. The petitioner must appear before the Deputy Director and answer such questions as do not tend to incriminate him, as explained by this Court.

26. The petition is accordingly allowed to the extent that it is declared of an offence within Article 20(3).

27. The facts in Writ Petition No. 165 of 1972 are similar and the same declaration is given.

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