

P. Philip

Vs

The Director of Enforcement, New Delhi and Another

Criminal Appeal No. 76 of 1976

(R.S. Sarkaria, N.L. Untwalia JJ)

03.03.1976

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against an order, dated July 1, 1975, of the High Court of Kerala, dismissing the criminal revision petition filed by the appellant. It raises questions with regard to the scope and interpretation, inter alia, of Sections 399(3) and 484(2)(a) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the new Code). The facts are these.

2. On February 2, 1971 the Director of Enforcement, New Delhi made a complaint against four accused persons, alleging the commission of offences under Section 120-B, Penal Code and Section 5(1)(aa) and 5(1)(c) of the Foreign Exchange Regulation Act, 1947 (for short, called the Act) in the court of the District Magistrate, Ernakulam.

3. The appellant herein was accused No. 2 in that complaint. By an application he raised two objections to the maintainability of the complaint and prayed for its dismissal : First, the opportunity as required under the proviso to Section 23(3) of the Act was not given to the accused for showing that he had permission from the Reserve Bank of India for doing the alleged acts. Second, that the complainant did not comply with the conditions in the proviso to Section 23D(1) of the Act, inasmuch as there was no additional material before him to come to the conclusion that the penalty which he is empowered to impose under Section 23, would not be adequate and that consequently, it was necessary to file a complaint in court.

4. By an order dated September 5, 1973, the trial Court dismissed the application holding inter alia "that the points raised here will be considered after recording the evidence". On the same day, against this order dated September 5, 1973, accused No. 2 (P. Philip) filed Cr. Revision Petition No. 27 of 1973 under Section 435 of the Code of Criminal Procedure, 1898 (hereinafter called the old Code) before the Sessions Judge, Ernakulam, who dismissed the same by an order, dated August 6, 1974. Aggrieved by the order of the Sessions Judge, P. Philip preferred Cr. Revision Petition No. 393 of 1974 to the High Court. This revision was heard by a Division Bench along with two other revisions (Cr. Rev. Petns. Nos. 409 and 411 of 1974) and dismissed, without going into the merits, on the ground that it was not maintainable in view of Section 399(3) of the new Code.

5. Mr. Raghavan, learned Counsel for the appellant contends that the order under appeal is manifestly erroneous because at the time when the revision petition was filed before the Sessions Judge, the old Code was in force, and in view of Section 484 of the new Code, it had to be disposed of in accordance with the old Code.

6. As against this, Mr. D. Mookerjee submits that the word "application" in Section 484(2)(a) of the Code of 1973 is a word of limited import. According to the Counsel, only those applications which could be finally disposed of by the Sessions Judge would be covered by this word. Since the revision application, in the instant case - proceeds the argument - was one for reference to the High Court under Section 438 of the Code of 1898, and could not be finally disposed of by the Sessions Judge at his level, it would not be an "application" within the contemplation of Section 484(2)(a) of the Code of 1973. It is pointed out that procedural rights are not vested rights, that whereas a right of appeal is a substantive right, the procedural facility to move in revision does not involve such a right. On these premises it is maintained that the saving clause in Section 484 should be very strictly construed with the result that the Code of Criminal Procedure, 1973, will govern all revisions which were pending on April 1, 1974 when it came into force.

7. We are unable to accept the interpretation of Section 484(2)(a) of the new Code suggested by the learned Counsel for the respondents. The language of this provision is clear. Its material part runs as under :

(1) The Code of Criminal Procedure, 1898 (V of 1898) is hereby repealed.

(2) Notwithstanding such repeal -

(a) If, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898) as in force immediately before such commencement ... as if this Code had not come into force ....

8. It will be seen that the word "application" in the saving provision contained in clause (a) of sub-section (2) of Section 484 immediately follows the terms "appeal". It therefore takes some colour from the collocation of words in which it occurs. It is synonymous with the term "petition" which means a written statement of material facts, requesting the court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognised by law. Thus considered there can be no doubt that the word "application" as used in clause (a) of Section 484 of the Code of 1973 will take in a revision application made under Section 435 of the old Code. Such a revision application does not cease to be an "application" within the purview of the aforesaid clause (a) merely because in the event of the application being allowed, the Sessions Judge was required to make a reference to the High Court under Section 438. Whether such an application is granted or dismissed by the Sessions Judge, he finally disposes of the matter so far as his court is concerned. Maybe that a purely interlocutory application in a pending action, which by itself is not an independent mode of seeking redress recognised by law is not covered by the word 'application' as used in the aforesaid clause (a). But it is not necessary to express any final opinion on that point because a revision application of the kind before us is not, by any reckoning, such an interlocutory application.

9. In the present case, the revision application made by P. Philip was pending before the Sessions Judge when the new Code came into force. In view of Section 484(2)(a) of the new Code, this revision was required to be disposed of in accordance with the provisions of the old Code.

10. The above being the position, the learned Judges of the High Court were clearly in error in holding that in view of Section 399(3) of the new Code, the appellant was not competent to

maintain a revision in the High Court against the order dated August 6, 1974 of the Sessions Judge.

11. For these reasons we allow this appeal, set aside the order of the High Court and send that appellant's revision petition (No. 393 of 1974) back to it for disposal with utmost expedition, in accordance with law.

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