

Dara Singh

Vs

State Trough Director of Enforcement, New Delhi

Criminal Appeal No. 76 of 1974

(R. S. Sarkaria, E. S. Venkataramian JJ)

29.10.1980

JUDGMENT

VENKATARAMIAH, J. –

1. This appeal by special leave is filed against the judgment of the High Court of Delhi in Criminal Appeal 174 of 1972 convicting the appellant, Dara Singh, of an offence punishable under Section 23-F of the Foreign Exchange Regulation Act, 1947 (7 of 147) (hereinafter referred to as 'the Act') and sentencing him to imprisonment for a term of one year with a direction that the said sentence should be served by him concurrently with the sentence of imprisonment for life imposed on him in another case on a charge of murder.

2. The facts leading to this appeal can be summarised thus : On March 28, 1963 foreign currencies amounting to @ 185 and U.S. Dollars 13060 besides Indian currency amounting to Rs. 1,300 were seized from the appellant by the Railway Station at Sangrur. There-upon proceedings were initiated against the appellant for contravention of Sections 4 and 9 of the Act under Section 23(1)(a) read with Section 23-D of the Act before the Director of Enforcement of Foreign Exchange Regulation appointed by the Central Government for the purpose of enforcing the provisions of the Act. By an ex parte order dated May 12, 1967, the Director of Enforcement held the appellant guilty of contravention of provision of Section 9 of the Act read with the Central Government Notification No. F. 1 (67-EC/57 dated September 25, 1958 as amended up to March 6, 1961) and Section 4(1) of the Act and imposed on him a penalty of Rs. 6,000 which the appellant was directed to pay to the Directorate of Enforcement within forty-five days from the date of the issue of the order. As the penalty was not paid within forty-five days from the date of the issue of the order of the Director of Enforcement, a complaint was lodged on November 13, 1969 by the Deputy Director of Enforcement before the Judicial Magistrate, First Class, New Delhi under Section 23-F of the Act. In the complaint it was specifically stated that a copy of the order of the Director of Enforcement imposing the penalty on the appellant had been served on him on May 4, 1968 and that as the appellant had not deposited the penalty with the Directorate of Enforcement within forty-five days from the date of the order, the appellant was liable to be punished under Section 23-F of the Act. The appellant denied that he had been served with the copy of the order of the Director of Enforcement imposing penalty on him and further stated that he did not know that he had to pay the penalty in question. The learned Magistrate acquitted the appellant by his order dated July 29, 1972 holding that it had not been established that the order passed by the Director of Enforcement had been served on the appellant on May 4, 1968 as alleged in the complaint and that, therefore, there were no grounds to hold the appellant guilty of contravention of Section 23-F of the Act which read thus :

If any person fails to pay the penalty imposed by the Director of Enforcements or the Appellate Board or the High Court, or fails to comply with any of their directions or orders, he shall, on conviction before a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

3. The Magistrate while acquitting the appellant rejected the plea of the complainant that the appellant was liable to be punished under Section 23-F since he had in any event come to know of the order of the Director of Enforcement on the date on which he appeared in the court i.e. on August 7, 1970 and that the charge had been framed by the Magistrate on March 4, 1972 after the expiry of a period of forty-five days from the date on which the appellant had appeared in the court by observing that "he could not be convicted in the case on that count because these allegations are not contained even in the charge much less in the complaint". Aggrieved by the decision of acquittal of the Magistrate, the Director of Enforcement filed an appeal before the High Court of Delhi with the special leave of that Court granted under Section 417(3) of the Code of Criminal Procedure, 1898. As the appellant who was undergoing imprisonment for life imposed on him in another case at the Central Jail, Ferozepur did not make any arrangement for his defence before the High Court, an advocate was appointed as amicus curiae to assist the court in the appeal. After hearing learned counsel who appeared in the case, the High Court by its judgment dated November 9, 1973 reversed the order of acquittal passed by the Magistrate, found the appellant guilty of the offence punishable under Section 23-F of the Act and sentenced him to imprisonment for a term of one year. While doing so, the High Court agreed with the finding of the Magistrate that the order of the Director of Enforcement imposing penalty on the appellant had not been served on the appellant on May 4, 1968 as alleged in the complaint but it was of the view that since the appellant had come to know about the order on August 7, 1970 when he appeared before the Magistrate and he had not paid the penalty within a reasonable time thereafter, he was liable to be punished under Section 23-F of the Act. The relevant part of the judgment of the High Court reads thus :

The order of acquittal made by the learned trial Magistrate proceeds, in our opinion, on an altogether erroneous view of the provisions of Section 23-F of the Act. For proving the guilt of Dara Singh in the light of the charge framed against him, it had only to be established that he had failed to pay the penalty imposed by the Director of Enforcement. As was ordered by the Director of Enforcement the penalty had to be paid within 45 days from the date of issue of the adjudication order. Obviously, however, no payment could be made unless the person on whom the penalty was imposed had come to know about the order. At the latest Dara Singh came to know about the adjudication order on August 7, 1970, if not earlier. He should have, therefore, paid the penalty within a reasonable period from that date and in any case within 45 days from the said date. The penalty not having been paid or deposited by Dara Singh, he was clearly guilty of contravention of the adjudication order made by the Director of Enforcement and should have been convicted under Section 23-F of the Act.

4. The question which arises for consideration in this appeal is whether the High Court was right in the circumstances of the case in finding the appellant guilty of the offence in question. It is necessary at this stage to refer briefly to some of the provisions of the Act and the Adjudication Proceedings and Appeal Rules, 1957 (hereinafter referred to as 'the Rules') framed under Section 27 of the Act. Under clause (a) of sub-section (1) of Section 23 of the Act, the Director of Enforcement is empowered to levy 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 him in the manner provided in the Act if any person is found to contravene the provision of Section 4, Section 9 or any of the other provisions referred to in Section 23(1). Section

23-D of the Act requires the Director of Enforcement to hold an inquiry in the prescribed manner against any person who is liable to be proceeded against under clause (a) of Section 23(1) after giving him a reasonable opportunity of being heard and if on such inquiry, the Director of Enforcement is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provision of Section 23 of the Act. An appeal lies to the Appellate Board under Section 23-E of the Act against the order of the Director of Enforcement imposing penalty. Rules 3, 4 and 5 of the Rules set out the procedure to be followed by the Director of Enforcement in holding the inquiry under Section 23-D of the Act. Rule 3 of the Rules among others provides for the issue of a notice to the person against whom proceedings are initiated for contravention of the provisions referred to in Section 23(1) of the Act and for giving an opportunity to him to defend himself in the proceedings before the Director of Enforcement. Sub-rule (7) of Rule 3 of the Rules provides that if, upon consideration of the evidence produced before the Director, the Director is satisfied that the person has committed the contravention, he may, by order in writing impose such penalty as he thinks fit in accordance with the provisions of clause (a) of sub-section (1) of Section 23. There is no rule requiring the person against whom an order is made to appear before the Director of Enforcement on any specified date on which the order would be pronounced in his presence. Rule 4 of the Rules, requires the Director of Enforcement to specify in his order the provisions of the Act or of the Rules, directions or orders made thereunder in respect of which contravention had taken place and to give brief reasons for his decision. Rule 5 of the Rules requires that a copy of the order made under sub-rule (7) of Rule 3 shall be supplied free of charge to the person against whom the order is made and that every copy of such order shall state that the copy is supplied free of charge for the use of the person to whom it is issued and that an appeal lies against that order to the Appellate Board under Section 23-E within thirty days of the date of the order. Rule 6 of the Rules state that every appeal presented to the Appellate Board under Section 23-E of the Act shall be in the form of a memorandum signed by the appellant and the memorandum shall be accompanied by a copy of the order appealed against.

5. Having regard to the aforesaid provisions of the Act and the Rules, it has to be held that the service of a copy of the order made under sub-rule (7) of Rule 3 of the Rules on the person against whom the said order is made is not an empty formality. In the absence of a provision of law requiring the Director of Enforcement to pronounce his order in the presence of the person against whom it is made, the only date on which it can be deemed to have been effectively made is the date on which he gets the knowledge of the order either by the supply of a copy of the order or by any other means because first, the statute provides a remedy to the person against whom the order is made by way of an appeal to be preferred within the prescribed period from the date of the order to the Appellate Board under Section 23-E of the Act and secondly non-compliance with the order would expose him to the punishment that may be imposed on him under Section 23-F of the Act. It would be wholly unjust to compute the period limitation to file an appeal from a date earlier than the date on which the party who is entitled to prefer an appeal has the knowledge of the order. In cases where an order which is appealable is not pronounced in the presence of the person against whom it is made, it should be assumed that unless there is any specific provision of law to the contrary the date of his knowledge of the order is the date of the order for the purpose of computing the period of limitation irrespective of the date on which it is actually passed (vide : Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer ((1962) 1 SCR 676 : AIR 1961 SC 1500)). It is equally so even in the case of an order non-compliance of which would lead to prosecution and consequent imposition of penalty. When the law lays down that non-compliance with an order would expose the person against whom it is made to criminal liability it is reasonable to hold that in the absence of proof of his knowledge of the order no penal action can be taken against him for non-

compliance with it. The information or knowledge which he may gather about such order in the course of the criminal proceedings instituted for non-compliance with it cannot be a substitute for the knowledge of the order as mentioned above, which should ordinarily precede the institution of such proceedings.

6. Under Section 23-F of the Act if any person fails to pay the penalty imposed by the Director of Enforcement, he on conviction is liable to be punished with imprisonment which may extend to two years or with fine or with both. No person can be convicted under Section 23-F for failure to pay the penalty imposed on him by the Director of Enforcement when he is not at all informed earlier about the imposition of the penalty, hence in the absence of proof of his knowledge of the order either by the supply of the copy of the order under Rule 5 of the Rules or in any other manner, it cannot be said that such person has failed to pay the penalty imposed on him under the Act and has become liable to be proceeded against under Section 23-F.

7. As mentioned earlier, the specific case set out in the Complaint was that a copy of the order of the Director of Enforcement had been served on the appellant on May 4, 1968 and that both the Magistrate and the High Court refused to accept it. The finding of the High Court is that the appellant must have come to know of the order on August 7, 1970 when he appeared before the Magistrate. It is, therefore, obvious that on the date on which the complaint was filed before the Magistrate i.e. on November 13, 1969 or on the date on which process was issued by the Magistrate on taking cognisance of the case to the appellant to appear before him pursuant to which he appeared before him on August 7, 1970, the appellant had not even the knowledge of the passing of the order imposing penalty on him let alone the specific provision of the Act or the Rules which according to the order he had violated and the reasons in support of the order. The appellant had not, therefore, committed any offence punishable under Section 23-F of the Act on those dates. The Magistrate could not, therefore, take cognisance of any offence punishable under Section 23-F of the Act on the date on which he issued process to the appellant to appear before him. Even the charge framed against the appellant did not state that the order imposing penalty on him had been communicated to him on August 7, 1970 and that he was being tried for an offence punishable under Section 23-F for non-compliance with the order so communicated on August 7, 1970. The charge only contained the gist of what was stated in the complaint on November 13, 1969. The High Court was, therefore, in error in the circumstances of the case in setting aside the order of acquittal passed by the Magistrate and in finding the appellant guilty of the offence complained of.

8. In the result, the appeal is allowed and the conviction of the appellant and the sentence imposed on him by the High Court are set aside. The order of acquittal passed by the Magistrate is restored.

9. At the time of granting special leave to appeal in this case, as it was stated that the appellant had been acquitted of the charge of murder, the sentence of imprisonment for life had been cancelled and that he had been undergoing imprisonment awarded by the High Court under Section 23-F of the Act, this Court granted bail to the appellant to the satisfaction of the trial Court and directed that he should be released on bail unless he was required to be in prison in connection with or on account of any other case. It is not known whether the appellant was in fact released on bail pursuant to the above order. If he is bail bond stands cancelled.

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