

Mirza Iqbal Hussain Through Askari Begum

Vs

State of Uttar Pradesh

Criminal Appeal No. 284 of 1978

(CJI Y. V. Chandrachud, O. Chinnappa JJ)

10.11.1982

ORDER

1. By a judgment dated February 16, 1976 the learned Special Judge, Deoria, convicted the appellant under Section 5(1)(e) of the Prevention of Corruption Act, 1947 on the charge that during the period of his office as a police constable, he was found in possession of property disproportionate to his known sources of income, for which he could not satisfactorily account. The learned Special Judge directed that the two fixed deposit receipts in the sum of Rs 5000 each and the cash amount of Rs 5200 which were seized from the house of the appellant and which formed the subject-matter of the charge under Section 5(1)(e) shall stand confiscated to the State. The appellant filed an appeal against the judgment of the Special Judge to the High Court of Allahabad but that appeal was dismissed. No point was raised in the High Court that the order of confiscation passed by the trial court was either without jurisdiction or was not called for on the facts of the case.

2. In this appeal by special leave, the only point raised by Mr Bana on behalf of the appellant is that the learned Special Judge had no jurisdiction to pass an order of confiscation. We see no substance in this contention. Section 4(2) of the Code of Criminal Procedure provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and "otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigation, enquiring into, trying or otherwise dealing with such offences". It is clear from this provision that insofar as the offences under laws other than the Indian Penal Code are concerned, the provisions of the Code of Criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried. Therefore, what we have to ascertain is whether the Code of Criminal Procedure confers the power of confiscation, and secondly, whether there is anything in the Prevention of Corruption Act which militates against the use of that power, either by reason of the fact that the latter Act contains a specific provision for confiscation or contains any provision inconsistent with the power of confiscation conferred by the Code of Criminal Procedure. On the first of these questions, Section 452 of the Code provides by sub-section (1), insofar as material, that if the trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal of property by confiscation. This power would, therefore, be available to a court trying an offence under the Prevention of Corruption Act unless that Act contains any specific or contrary provision on the subject-matter of confiscation. None of the provisions of the Prevention of Corruption Act provides for confiscation or prescribes the mode by which an order of confiscation may be passed. The Prevention of Corruption Act being totally silent on the question of confiscation, the Provisions of the Code of Criminal Procedure would apply in their full force, with the result that the court trying an offence under the Prevention of Corruption Act would have the power to pass an order of confiscation by reason of the provisions contained in

Section 452 of the Code of Criminal Procedure. The order of confiscation cannot, therefore, be held to be without jurisdiction.

3. If we were to accept the above submission of Mr Bana, it would lead to startling results. If, for example, a person is convicted for taking a bribe under the Prevention of Corruption Act, he could always say that since he has already taken the bribe and the money which forms the subject-matter of the bribe belongs to him, no order of confiscation of that amount can be passed. A person who is found guilty of accepting the bribe is not only liable to be convicted and sentenced for the offence of bribery, but the amount which he has taken by way of bribe is liable to be confiscated by reason of the powers of confiscation conferred by Section 452 of the Code of Criminal Procedure to the extent that the said provisions apply.

4. There is equally no substance in Mr Bana's contention that even assuming that the Special Judge had the power or the jurisdiction to pass the order of confiscation, he did not exercise his discretion properly in ordering the confiscation of the two fixed deposit receipts and the cash amount found in the house of the appellant. The appellant has been convicted under Section 5(1)(e) precisely for the reason that he was in possession of the two receipts and the aforesaid cash sum. It cannot then be said that the order of confiscation in regard to these amounts has not been properly passed or has been passed without any application of mind.

5. Mr Bana drew our attention to certain decisions, particularly the decision of this Court in *Remo Paul Altoe v. Union of India* ((1978) 1 SCR 719 : (1977) 4 SCC 437 : 1977 SCC (Cri) 629 : 1977 Cri LJ 1933), but that cannot help him because the question which he has raised before us was expressly left open in that case.

6. For these reasons, we confirm the order of confiscation and dismiss the appeal. The amount of Rs 3000 which was directed by this Court to be paid to the appellant out of the confiscated amount, in order to enable him to prosecute this appeal need not be refunded by the appellant.

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