

SUPREME COURT OF INDIA

State of M.P.

Vs.

Balram Mihani

CrI.A.Nos.891-893 of 2007

(V.S. Sirpurkar and Surinder Singh Nijjar JJ.)

01.02.2010

JUDGEMENT

V.S.Sirpurkar, J.

1. By our earlier order dated 19.01.2010, we have dismissed the appeals filed by the State of Madhya Pradesh. Now, we proceed to give reasons thereof.

2. The Station House Officer, Itarsi moved applications before the Judicial Magistrate, First Class, Itarsi for initiating proceedings against the respondents herein under Chapter VII-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for attachment and forfeiture of the properties of the respondents. According to the applications, the said properties were derived from or used in commission of offences and were acquired from the criminal activities. The police further urged that the respondents were involved in the criminal activities since long and had accumulated huge wealth derived directly or indirectly by or such criminal and unlawful activities. According to the police some of these properties were in the names of their relatives which were clearly traceable to the respondents herein. The prayer thus was made under Section 105-D of the Code for authorization to take all necessary steps to trace out and identify such properties and further for the forfeiture and vesting thereof. Some other applications were also filed on identical facts against some other respondents also. The Trial Court having passed an order in pursuance of these applications allowing the same, the respondents challenged the same by way of a petition under Section 482 of the Code. Finding that there were divergent opinions on the tenability of the applications amongst two learned Single Judges of the Madhya Pradesh High Court, the matter was referred to the Division Bench and the Division Bench by the impugned order quashed the proceedings holding that the provisions of Chapter VII-A were not applicable to such local offences complained of. It is this order which is in challenge before us at the instance of the State Government in these appeals.

3. Shri Dushyant A. Dave, learned Senior Counsel appearing on behalf of the State of Madhya Pradesh very painstakingly took us through Chapter VII-A containing Sections 105-A to 105-L. It will be useful to see the import of some of the Sections.

4. Section 105A(a) defines "contracting State" and refers to any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise. Section 105A (c) defines proceeds of crime as under:

“(c) "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property”

Section 105A (d) defines the property as under:

"(d) "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assts derived or used in the commission of an offence and includes property obtained through proceeds of crime."

Section 105-B deals with assistance in securing arrest of persons on request from contracting states or the arrest in the contracting states. Sub- Section (1) thereof starts with the words "Where a Court in India". So also Sub-Section (3) starts with the aforementioned words. Section 105C is as under:

"105C. Assistance in relation to orders of attachment or forfeiture of property.

(1) Where a court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive).

(2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting State, the court may issue a letter of request to a court or an authority in the contracting State for execution of such order.

(3) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the court, as it thinks fit, for execution in accordance

with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force.”

5. Section 105-D empowers the court to direct any police officer not below the rank of Sub-Inspector to take steps for tracing and identifying such property under Section 105C (1) or on receipt of letter of request under sub-section (3) of Section 105-C. Section 105-E empowers the officer conducting an inquiry or investigation to make an order of seizure of such property, if he has a reason to believe that such property is likely to be concealed, transferred or dealt with in any manner which will result in disposal of the property. Section 105-F relates to the power of court to appoint District Magistrate of any area or his nominee where the property situated to perform the functions of an administrator of such property.

“Section 105G provides for show cause notice before forfeiture. Section 105-H deals with the forfeiture of the property to Central Government while Section 105-I empowers the Court giving an option to the owner of such property to pay, in lieu of forfeiture, the fine equal to the market value of such property. Section 105-J takes care of the situation where after making an order under sub-section (1) of Section 105-E or the issue of a notice under Section 105-G, the property stands transferred by any mode whatsoever and further provides that such transfer shall be ignored and also that such transfer of property shall be deemed null and void. Section 105-L deals with the applications and powers in this Chapter.”

6. The stress of the learned counsel is particularly on Section 105-D and the learned counsel is at pains to point out that Section 105-C and D can apply to any property in India which is derived or obtained from the commission of offence. Such offence could be even the offence which does not have international ramifications. The High Court has taken stock of all these Sections and referred to the heading of the Chapter, the Statement of Objects and Reasons of the amending Act being Act No.40 of 1993 and the speech of the Hon'ble Minister for Home Affairs Shri S.B. Chavan (as he then was). From this the High Court has come to the conclusion that firstly the provisions of Chapter VII-A are not the ordinary law of land and further the provisions therein would be applicable only to the offences which have international ramifications. The High Court has further reached the conclusion that the said provisions override the provisions of Chapter V, VI AND VII of the Code relating to search and seizure during investigation. The High Court has posed following questions:

“i) What was the law before the making of the amendment? ii) What was the mischief and defect for which the law did not provide? iii) What is the remedy that the amendment has provided? And iv) What is the reason of the remedy?”

7. Answering all these questions and also taking into account the general provisions of search and seizure contained in Sections 91 to 101 of the Code, as also taking into consideration Sections 451, 452 and 457 of the Code dealing with the custody and disposal of the property involved in crime, the High Court ultimately came to the conclusion that the said provisions of Chapter VII-A would not apply to the cases in question. The High Court has also taken

into consideration the provisions of Section 41(1)(g) of the Code, Sections 166-A and 166-B of the Code and has relied upon three other cases, namely, *Union of India & Anr. v. W.N. Chadha*¹, *Jayalalitha v. State*² and *Bhinka v. Charan Singh*³. It has ultimately held that Chapter VII-A has been incorporated with an intention to curb mischief or completely eliminate the terrorists activities and international crimes. According to the High Court, the provisions of this Chapter are supplemental to the special provisions contained in Sections 166-A and 166-B and had nothing to do with the investigation into offences in general.

8. We have considered the judgment as also the contentions raised by the learned counsel. We have also perused the heading of Chapter VII-A as also the Statement of Objects and Reasons. After perusing the same we are of the firm opinion that the well written judgment of the High Court is correct and the High Court has taken a correct view.

9. In the Statement of Objects and Reasons to the Amending Act 40 of 1993 there is a clear cut reference that the Government of India had signed an agreement with the Government of United Kingdom of Great Britain and Northern Ireland for extending assistance in the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds of crime (including crimes involving currency transfer) and terrorist funds, with a view to check the terrorist activities in India and the United Kingdom. The statement further goes on to provide the three objectives, viz.:

“(a) the transfer of persons between the contracting States including persons in custody for the purpose of assisting in investigation or giving evidence in proceedings;

(b) attachment and forfeiture of properties obtained or derived from the commission of an offence that may have been or has been committed in the other country; and (c) enforcement of attachment and forfeiture orders issued by a court in the other country.”

10. We have even taken into consideration the speech of the then Home Minister Shri S.B. Chavan which leaves no doubt that this Chapter is not meant for the local offences.

11. When we see the applications as also the order passed by the Trial Court, it is clear that it is only and only in respect of the local offences like gambling and the offences under I.P.C. which are local. Even the properties are not shown to be connected with crimes mentioned in the Objects and Reasons of the amending Act. In fact, no connection is established also between crimes mentioned and the properties. Such properties are clearly not included in Section 105-C. Though the language of Section 105-C (1) is extremely general, its being placed in Chapter VII-A cannot be lost sight of. Again there is a clear cut reference in Sub-section (2) thereof to the contracting state, the definition of which is to be found in Section 105-A (a). It is, therefore, clear that the property envisaged in Section 105-C (1) cannot be an ordinary property earned out of ordinary offences committed in India. Where the language is extremely general and not clear, the contextual background has to be taken into consideration

for arriving at clear interpretation. Some assistance was tried to be taken from the language of Section 105-B(2) which starts with the words "notwithstanding anything contained in this Code". However, when the sub-section is read in entirety, it is clear that it makes reference to a person who is in "contracting State". Therefore, even that reference will not bring in any provision within the scope of general law. We again cannot ignore the express language of Sections 105-B and 105-C which starts with the words "where a court in India". If this chapter was meant for the general offences and the properties earned out of those general offences in India, then such a phraseology would not have been used by the Legislature.

12. Lastly we see the provisions of Section 105-L which are clear that the Central Government may by notification in the official gazette, direct that the application of this chapter in relation to a contracting State with which there are reciprocal arrangements would be subject to some conditions, exceptions and qualifications as would be specified in the said notification. It is, therefore, clear that the whole chapter is specific chapter relating to the specified offences therein and has nothing to do with the local offences or the properties earned out of those.

13. At this juncture, it is pointed out that there are specific other Central laws wherein the properties earned out of trading of Narcotic Drugs and Psychotropic Substances or the offences relating to smuggling or financial offences relating to foreign exchange are liable to be attached, seized and forfeited. Chapter VII-A is one such measure to introduce stringent measures for attachment and forfeiture of the properties earned by the offences, by way of reciprocal arrangement in the contracting countries.

“However, if we accept the State's contention that the provisions of Chapter VII-A are for all and sundry offences in India, it would be illogical.”

14. If such a construction as claimed by the petitioner is given then it would mean that even for the offences which are local in nature and committed within the State, still the property connected with those offences shall be forfeited to the Central Government. That would obviously be an absurd result.

15. Lastly, we cannot ignore the likely misuse of the provisions in Chapter VIIA if the whole Chapter is made applicable to the local offences generally. Such does not appear to be the intendment of the Legislature in introducing Chapter VII A.

16. In view of the above we approve the judgment of the Madhya Pradesh High Court and confirm the same. The appeals are dismissed.

¹1993 Supp. (3) SCC 260

²(2002) Cr.L.J. 3026

³AIR 1959 SC 90