

PETITIONER:
ENFORCEMENT DIRECTORATE AND ANR..

Vs.

RESPONDENT:
M. SAMBA SIVA RAO & ORS.

DATE OF JUDGMENT: 09/05/2000

BENCH:
S.N.Variava, Doraiswami raju, G.B.Pattanaik

JUDGMENT:

PATTANAIAK, J.

All these appeals are directed against a common judgment of a learned Single Judge of Delhi High Court and a common question of law arises and as such they are heard together and are being disposed of by this common judgment. The question for consideration in all these appeals is whether refusal on the part of a person, who is summoned under Section 40 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as the Act) to comply with the directions under the summons, would attract the provisions of Section 56 of the Act? The High Court by the impugned judgment came to the conclusion that the provisions of Section 56 of the Act will not get attracted for violations of the directions under Section 40 of the Act and, accordingly, the complaints filed for such violation and cognizance taken in the complaint cases have been quashed.

Mr. Mukul Rohtagi, the learned Additional Solicitor General, contended that the power having been conferred on the officers of the Enforcement Directorate to summon any person, whose attendance is necessary, either to give evidence or to produce a document, in course of any investigation or proceeding under the Act and the Act itself having made it binding on the person summoned to attend, as provided in sub-section (3) of Section 40, the refusal on the part of the person summoned to carry out the obligation under the statute, should be seriously viewed and must be held to be a contravention of the provisions of the Act, making such contravention punishable under Section 56 of the Act, and the High Court was in error in quashing the complaints filed.

Mr. R.K. Handoo, the learned counsel appearing for the accused respondents in some of the appeals as well as Mr. A.K.Ganguly, the learned senior counsel, appearing for the accused in some of the appeals, however contended that the orders/directions, violation of which is punishable under Section 56 of the Act are those statutory orders or directions and the summons issued under Section 40 has no statutory character and, therefore, the said violation by the person summoned, cannot be made punishable under Section 56 of the Act. It was also further contended that the

offence not being defined under the Act, one will have to examine the definition of offence in General Clauses Act and on such an examination, it would appear that the impugned violation cannot be held to be an offence and, therefore, cannot be made punishable under Section 56 of the Act, and the High Court, therefore was fully justified in quashing the complaints filed. For better appreciation of the contentions raised, it would be necessary to extract the provisions of Section 40 and Section 56 of the Act in extenso:

Section 40: Power to summon persons to give evidence and produce documents (1)Any Gazetted officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document during the course of any investigation or proceeding under this Act. (2)A summons to produce documents may be for the production of certain specified documents of a certain description in the possession or under the control of the person summoned. (3)All persons so summoned shall be bound to attend either in person or by authorised agents, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required; Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this Section. (4)Every such investigation or proceeding as aforesaid shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code.

Section 56: Offences and prosecutions: (1)Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act [other than Section 13, Clause (a) of sub-section(1) of (Section 18, Section 18A), clause (a) of sub-section (1) of Section 19, sub-section(2) of Section 44 and Section 57 and 58] or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable (i)in the case of an offence the amount or value involved in which exceeds one lakh of rupees with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine; Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months; (ii)in any other case, with imprisonment for a term which may extend to three years or with fine or with both. (2)If any person convicted of an offence under this Act [not being an offence under Section 13 or clause (a) of sub-section (1)(Section 18 or Section 18A) or clause (a) of sub-section (1) of Section 19 or sub-section (2) of Section 44 or section 57 or Section 58] is again convicted of an offence under this Act [not being an offence under 13 or clause (a) of sub-section (1) of [Section 18 or Section 18A] or clause (a) of sub-section (1) of Section 19 or sub-section (2) of Section 44 or Section 57 or Section 58], he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(3)Where a person having been convicted of an offence under this Act [not being an offence under Section 13 or clause (1) of sub-sec.(1) of [section 18 or section 18A] or clause (a) of sub-section (1) of Section 19 or sub-section (2) of section 44 or section 57 or section 58] is again convicted of an offence under this Act [not being an offence under Section 13 or clause (a) of sub-section (1) of [section 18 or section 18A], or clause (a) of sub-section (1) of Section 19 or sub-section (2) of Section 44 or Section 57 or section 58], the court by which such person is convicted may, in addition to any sentence which may be imposed on him under this section, by order, direct that, that person shall not carry on such business as the court may specify, being a business which is likely to facilitate the commission of such offence, for such period not exceeding three years, as may be specified by the court in the order. (4)For the purpose of sub-section (1) and (2), the following shall not be considered as adequate and special reasons for awarding a sentence of imprisonment for a term of less than six months, namely (i)the fact that the accused has been convicted for the first time of an offence under this Act. (ii)the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or goods in relation to such proceedings have been ordered to be confiscated or any other penal action has been taken against him for the same offence; (iii)the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence; (iv)the age of the accused. (5)For the purposes of sub-sections (1) and (2), the fact that an offence under this Act has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than six months. (6)Nothing in [the proviso to Section 188 of the Code of Criminal Procedure, 1973] shall apply to any offence punishable under this Section.

The answer to the questions raised would depend upon an analysis and interpretation of the aforesaid two provisions of the Act. The Foreign Exchange Regulation Act, 1973 was enacted by the Parliament, basically for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interest of economic development of the country. The Act having been enacted in the interest of national economy, the provisions thereof should be construed so as to make it workable and the interpretation given should be purposive and the provisions should receive a fair construction without doing any violence to the language employed by the Legislature. The provisions of Section 40 itself, which confers power on the officer of Enforcement Directorate, to summon any person whose attendance, he considers necessary during the course of any investigation, makes it binding as provided under sub- section (3) of Section 40, and the investigation or the proceeding in course of which such summons are issued have been deemed to be a judicial proceeding by virtue of sub-section (4) of Section 40. These principles should be borne in mind, while interpreting the provisions of Section 40 and its effect, if a person violates or disobeys the directions issued under Section 40. Before embarking upon an in-depth inquiry into the provisions of the Act for the purpose of interpretation of Sections 40 and Section 56, it would be appropriate to notice some of the decisions given by different High Courts on the subject. A learned Single

Judge of the Kerala High Court considered this question in the case of Itty vs. Assistant Director, 1992(58) E.L.T.172 (Ker.). On a conjoint reading of Sections 40 and 56 of the Act, the learned Judge came to the conclusion that the failure to obey the summons issued under Section 40(1) cannot be held to be a contravention of the provisions of the Act, Rule, direction or order inasmuch as it is only when directions pertaining to some money value involved is dis-obeyed, such disobedience is punishable under Section 56 of the Act. The learned Judge applied the ordinary rules of construction that penal statutes should receive a strict construction and the person to be penalised must come squarely within the plain words of the enactment. We are unable to accept the constructions put in the aforesaid judgment as in our view clauses (i) and (ii) of Section 56(1) are material for deciding the quantum of punishment and further, there is no reason why the expression in any other case in Section 56(1)(ii) should be given any restrictive meaning to the effect that it must be in relation to the money value involved, as has been done by the Kerala High Court. The summons issued under Section 40, if not obeyed, must be held to be a contravention of the provisions of the Act and at any rate, a contravention of a direction issued under the Act, and therefore, such contravention would squarely come within the ambit of Section 56 of the Act. The question came up for consideration before a learned Single Judge of the Madras High Court in the case of C. Sampath Kumar vs. A.N. Dyaneswaran in Criminal O.P. No. 5468 and 5629 of 1996 and was disposed of by the learned Judge of the Madras High Court by judgment dated 1.8.97. The Madras High Court also came to the conclusion that the entire Section 56 of the Act is identified and substantiated only in terms of the extent and value of the money involved in the offence, and therefore, violation or contravention of summons, issued under Section 40 of the Act un-related to the money involved in the investigation cannot be held to be punishable under Section 56. Against the aforesaid judgment of the Madras High Court, the department had preferred appeals to this Court, which were registered as Criminal Appeal Nos. 143-144/98, but the question raised was not necessary to be answered as the persons concerned appeared before the Enforcement Authorities and were arrested by the said Enforcement Authority and, therefore, this Court kept the questions of law open by its order dated 20th July, 1998. In yet another case, the question arose for consideration before the Madras High Court in Criminal O.P. No. 5718/96 and a learned Single Judge did not agree with the earlier decision of the said High Court in Criminal O.P. Nos. 5468 and 5629 of 1996 and referred the matter to a Division Bench by his Order dated 13th of August, 1997 and it was submitted at the Bar that the Division Bench has not yet disposed of the matter. The question came up for consideration before the Andhra Pradesh High Court in the case of P.V. Prabhakara Rao vs. Enforcement Directorate, Hyderabad & Anr., reported in 1998 CrL.J.2507 and the said High Court has taken the view that failure to attend and give statement in pursuance of summons issued under Section 40 of the Act, clearly amounts to disobedience of the directions given by the concerned authority and therefore, provisions of sub-section (1) of Section 56 applies. The learned Judge of Andhra Pradesh High Court interpreted the expression in any other case in clause (ii) of Section 56(1) to mean that the said provision would get attracted even though no amount or value is involved in the contravention in question. The

aforesaid view of the Andhra Pradesh High Court appears to us, is the correct interpretation of the provisions contained in Sections 40 and 56 of the Act.

The learned Judge of the Delhi High Court in the impugned Judgment is of the view that Section 56 would bring within its sweep only such violation or contravention which under different provisions of the Act have been deemed to be a contravention under the Act like Section 43(4), Section 8(1) read with Sec.45(1), Section 49 and so on. We are unable to accept this interpretation put by the learned Judge as in our view such interpretation given, would make the power to summons under Section 40 meaningless and the provisions of sub-section(3) of Section 40 making it bounden duty for the persons summoned to attend purposeless. The learned Judge of the Delhi High Court also committed the same error as the learned Single Judge of the Kerala High Court in interpreting clause (ii) of Section 56(1) by holding that the same is identified and substantiated only in terms of the money involved in the offence. On behalf of the department, an argument had been advanced before the learned Single Judge of the Delhi High Court that the provisions of the Foreign Exchange Regulation Act is a complete code in itself but the same contention did not find favour with the learned Single Judge. Obviously, the judgment of this Court in the case of Central Bureau of Investigation vs. State of Rajasthan and Ors., 1996(9) SCC 735 had not been brought to the notice of the High Court. In the aforesaid case, one of the questions for consideration before this Court was whether the provisions of Sections 4 and 5 of the Code of Criminal Procedure would come in aid of the investigation of the offence under FERA by a member of police force like an officer of DSPE in accordance with the Code of Criminal Procedure? This Court held:But FERA is a self-contained code containing comprehensive provisions of investigation, inquiry and trial for the offences under that Act. The provisions under FERA gives power to the officers of the Directorate of Enforcement or other officers duly authorised by the Central Government under FERA to search, confiscate, recover, arrest, record statements of witnesses etc. FERA contains provisions for trial of the offences under FERA and imposition of punishment for such offences. FERA, being a special law, containing provisions for investigation, enquiry, search, seizure, trial and imposition of punishment for offences under FERA, Section 5 of the Code of Criminal Procedure is not applicable in respect of offences under FERA.

In view of the aforesaid authoritative pronouncement of this Court, the ultimate conclusion of the learned Single Judge of the Delhi High Court in the impugned Judgment that the Union of India can prosecute the accused for offences under the provisions of Section 174 or any other relevant provision under chapter 10 of the IPC relating to contempts of the lawful authority of public servants, is not sustainable in law. As has been stated earlier, bearing in mind the purpose for which an officer of Enforcement Directorate have been empowered to summon persons, either to give evidence or to produce a document and the provisions of the Act, making the persons summoned, bound to state the truth and further the investigation in question having been made to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, on a plain literal meaning being given to the language used in Section

56 of the Act, we are of the considered opinion that violation or contravention of the directions given under the summons under Section 40 would come within the purview of Section 56 and, therefore would be punishable thereunder, and the impugned judgment of the Delhi High Court as well the judgment of Kerala High Court must be held to have been wrongly decided. We, therefore, set aside the impugned judgments of the learned Single Judge of Delhi High Court and allow these appeals and direct that the complaint

proceedings may be proceeded with, in accordance with law.

JUDIS