ELECTRICAL MANUFACTURING CO. LTD.

v.

D. D. BHARGAVA

August 30, 1967

[M. HIDAYATULLAH, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

Imports & Exports (Control) Act, 1947 (18 of 1947), ss. 5 and 6—Section 6 requiring complaint under s. 5 to be filed by authorised officer in writing—Such officer whether required to apply his mind to the relevant materials before filing complaint—Principles relating to grant of sanction whether applicable.

The Deputy Chief Controller of Imports & Exports New Delhi filed a complaint against the appellant under s. 5 read with s. 6 of the Imports & Exports (Control) Act, 1947 before the Magistrate First Class Delhi. In the witness box the complainant admitted that when he filed the complaint he had not seen any of the documents referred to in the report of the Special Police Establishment in connection with the case and had not verified personally all the details mentioned in the report. The appellant filed an application requesting the Magistrate not to take cognizance of the case as the complaint did not satisfy the requirements of s. 6 of the Act. The plea was rejected by the Magistrate, the Sessions Judge and the High Court. An appeal to this Court was filed by special leave. It was contended on behalf of the appellant that as in the case of sanction for prosecution of certain offences, before a court can take cognizance of an offence punishable under s. 5 on the basis of a complaint under s. 6, the prosecution will have to establish that the facts constituting the offence, were placed before the complainant, and that the latter on a proper consideration of these facts has filed the complaint.

Held: (i) The principles applicable to cases requiring sanction have no application to filing of complaints under s. 6 of the Act. Section 6 only insists that the complaint is to be in writing and that it must be made by an officer authorised in that behalf. The limitation contained in s.6, is only regarding the particular officer who could file a complaint and, when once he satisfies those requirements, the bar is removed to the taking of cognizance by a court, on a complaint made in accordance with s. 6. [398F-G]

In the present case the complaint had been made by an authorised officer in writing. The requirements of s. 6 were therefore satisfied and the Magistrate rightly took cognizance of the offence. [399B-C]

Gokulchand Dwarkadas Morarka v. *The King*, L.R. 75 I.A. 30; *Madan Mohan* v. *State of Uttar Pradesh*, A.I.R. 1954 S.C. 637, 641 and *Jaswant Singh* v. *State of Punjab*, [1958] S.C.R. 762, 765, referred to.

S.A. Venkataraman v. *The State*, [1958] S.C.R. 1037, 1041, applied.

Feroz Din v. *The State of West Bengal*, [1960] 2 S.C.R 319, 330, distinguished.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 41 of 1967.

Appeal by special leave from the judgment and order dated November 21, 1966 of the Delhi High Court in Criminal Revision Application No. 273-D of 1965.

A. K. Sen, Veda Vyasa, K. B. Mehta, and H. L. Anand, for the appellant.

H. R. Khanna and R. N. Sachthey, for the respondent.

A The Judgment of the Court was delivered by

Vaidialingam, J. The sole point, which arises for consideration, in this appeal, by special leave, directed against the order of the High Court of Delhi, dated November 21, 1966, is about the validity of the complaint filed by the Deputy Chief Controller of B Imports and Exports, New Delhi, the respondent herein, under s. 5 read with s. 6 of the Imports & Exports (Control) Act, 1947 (Act XVIII of 1947) (hereinafter referred to as the Act). Section 6 of the Act, relating to cognizance of offences, is as follows:

> "6. No Court shall take cognizance of any offence punishable under section 5 except upon complaint in writing made by an officer authorized in this behalf by C the Central Government by general or special order, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.".

The respondent filed a complaint, on December, 31, 1962, before the First Class Magistrate. Delhi, alleging that the appellants, before us, and four others, had committed offences punishable D under s. 120B, read with s. 420, I.P.C., and s. 5 of the Act. The complaint, fairly elaborately, sets out the various matters containing allegations of violations of the conditions of the import licences granted to the appellants. It may also be stated at this stage, that the Chief Commissioner, Delhi, by his order, dated December 12, 1962, had given his consent to the initiation of proceedings, in the prosecution of the appellant and four others, mentioned E therein, under sub-s. (2) of s. 196A, of the Code of Criminal Procedure (hereinafter called the Code), inasmuch as the complaint also involved an offence of criminal conspiracy, under s. 120B, I.P.C., to commit a non-cognizable offence. So far as this consent is concerned, it is not the subject of any attack, before us.

The complainant was examined as P.W. 3. He has stated, in his chief-examination, that he filed the complaint, in question, F after satisfying himself about the *prima facie* commission of the offences, mentioned in the complaint. In cross-examination he has referred to the fact that he came to know about the case when he received a report from the Special Police Establishment, at the end of September 1962. When a question was put, as to whether the complainant would produce the said report, objection was raised, by the Public Prosecutor, that the said report was only the G opinion of a police officer, and was not admissible, in law. This objection has been upheld by the Magistrate. The complainant has further stated that he visited the Special Police Establishment Office, for the first time, in connection with the case, only in September or October 1963, whereas the complaint had been filed, on December 31, 1962. He has also stated that he has not seen any H of the documents, referred to in the police report, between the date when he received the report, and the date when the complaint was filed. He has further stated that, on receipt of summons

from the Court, he visited the Special Police Establishment Office to see the documents, for satisfying himself that the complaint which he had filed, was based on absolute facts. His further answers were to the effect that when he filed the complaint he had not verified personally all the details mentioned in the police report, and that the Chief Commissioner's permission, to initiate proceedings, had already been obtained, when he signed the complaint, on December 29, 1962. But, he has also stated that he had asked the Special Police Establishment, to draft the complaint.

The appellant filed an application, on September 26, 1964, before the Trial Magistrate, stating that, in view of the above answers given, by the complainant, no cognizance should be taken, on the basis of the complaint filed by the respondent, Shri Bhargava, the Deputy Chief Controller of Imports and Exports. According to the appellant, s. 6 of the Act is mandatory in character and enjoins that the entire facts and materials, connected with the allegations, which form the subject of the charge or charges, must be placed before the competent authority, and the complaint is to be initiated by the appropriate authority, only after due consideration of the entire materials. In this case, according to the appellant, the answers given by the Officer, as P.W.3, coupled with the non-production of the Special Police Establishment's report, will clearly show that the facts constituting the offence were not placed before him; and it is also clear that the complainant has not filed the complaint, after verifying and satisfying himself about the facts mentioned in the police report. As to what is contained in the police report, is a matter of pure conjecture, inasmuch as it has not been produced, before the Court.

The Magistrate rejected this application, and his order was also confirmed, in revision, by the Additional Sessions Judge, Delhi. Aggrieved by these orders of the Subordinate Courts, the appellant moved the Delhi High Court, for redress. The learned Judge, of the Delhi High Court, in his order, under appeal, has confirmed the orders of the Subordinate Courts.

Mr. A.K. Sen. learned counsel for the appellants, has raised the same contentions, which did not find favour with the High Court. According to the learned counsel, s. 6 of the Act is mandatory and, before a Court can take cognizance of an offence; punishable under s. 5, the prosecution will have to establish that the facts constituting the offence, were placed before the complainant and that, after a proper consideration of those facts, the complaint has been instituted—in this case, by P.W.3. Counsel also pointed out that the prosecution could have, very well, placed before the Court the report of the Special Police Establishment to show that the necessary facts, which formed the basis of the complaint, were placed before the complainant; but, in this case, the prosecution had declined to produce the report, as will be

A seen from the objections raised by it. Therefore, under those circumstances, an inference will have to be drawn against the prosecution, and the normal presumption should be that the evidence which could be, but had not been, produced would, if produced, be unfavourable to the person who withholds it, which, in this case, is the prosecution. Counsel also pointed out that, in this B case, the High Court has proceeded on the basis that the filing of a complaint, by P.W. 3, is merely a mechanical act, which view is not justified, in law. In fact, we understood Mr. Sen to contend that there is no distinction, in principle, between provisions in statutes providing for the taking of cognizance of offences, only on the previous sanction of any particular authority, and provisions providing, *simpliciter*, for a complaint being filed, by a C particular person or officer.

Mr. H. R. Khanna, learned counsel for the respondent-complainant, has pointed out that the principles, enunciated by the appellants' counsel, do not apply to cases where the statute, as in this case, *simpliciter* provides for a complaint being made, by the particular officer, mentioned therein. In such cases, counsel points D out, the Court has only to see whether the person or authority, mentioned therein, has initiated the proceedings, by filing a complaint, in the manner, referred to in the particular provision. In this case, counsel points out, there is no controversy that the respondent is an officer, authorized by the Central Government, to file complaints, under s. 5 of the Act.

In this connection, counsel referred us to the provisions, con- E tained in the Code of Criminal Procedure, some of which provide for cognizance being taken, of offences, only on a complaint made by a person or officer, mentioned therein, and in other cases, where taking cognizance of offences is prohibited, except on a sanction given by an authority, *e.g.*, ss. 195, 197, 198, etc. Having due regard to the provisions contained in s. 6 of the Act, counsel pointed out, there is no infirmity in the complaint, filed by the F respondent.

The principle, that the burden of proving that a requisite sanction has been obtained, rests on the prosecution, and that such burden involves proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based, facts which might appear on the fact of the sanction, or might be proved by extraneous evidence, is now G well-settled, by the decision of the Judicial Committee of the Privy Council, in *Gokulchand Dwarkadas Morarka* v. *The King*(1). There, their Lordships were considering cl. 23 of the Cotton Cloth and Yarn (Control) Order, 1943, as amended, to the effect:

> "No prosecution for the contravention of any of the pro- H visions of this Order shall be instituted without the previous sanction of the Provincial Government (or of such

(1) L.R. 75 I.A. 30.

officer of the Provincial Government not below the rank of District Magistrate as the Provincial Government may by general or special order in writing authorize in this behalf)."

The Judicial Committee has held that in order to hold that there is a compliance with the provisions of cl. 23, it must be proved that the sanction was given, in respect of the facts constituting the offences charged, because the sanction to prosecute is an important matter, as it constitutes a condition precedent to the institution of the prosecution, and the Government have an absolute discretion to grant or withhold that sanction. The Judicial Committee has also emphasized that the Government cannot also adequately discharge the obligation of deciding whether to give or withhold the sanction, without a knowledge of the facts of the case, as sanction has to be given to a prosecution for the contravention of any of the provisions of the Order.

These principles, laid down by the Judicial Committee, have also been approved, by decisions of this Court: See *Madan Mohan* v. *State of Uttar Pradesh*(1); *Jawsant Singh* v. *State of Punjab*(2); and *Feroz Din* v. *The State of West Bengal*(3). *In Jaswant Singh's Case*(2), this Court, dealing with a case of sanction, under the Prevention of Corruption Act, 1947, after referring to the decision of the Judicial Committee, has observed that the sanction, under the said Act, is not intended to be, nor is an automatic formality, and it is essential that the provisions in regard to sanction should be observed with complete strictness, as the object of the provision for sanction is that the authority, giving the sanction, should be able to consider, for itself, the various facts alleged, before it comes to the conclusion that the prosecution, in the circumstances, be sanctioned or forbidden.

We are not inclined to accept the contentions of Mr. Sen, that the principles laid down in these decisions, which relate to the question of sanction, have any application to the filing of complaints, under s. 6 of the Act. Section 6 only insists that the complaint is to be in writing and that it must be made by an officer, authorised in that behalf. The complaint, in this case, has been made by the respondent in writing, and that he is an authorised officer, in this behalf, has not been challenged. The limitation, contained in s. 6, is only regarding the particular officer who could file a complaint and, when once he satisfies those requirements, the bar is removed to the taking of cognizance by a Court, on a complaint, made in accordance with s. 6. In this connection, it is desirable to bear in mind the observations of this Court, made in *S. A. Venkataraman* v. *The State*(4). After considering the scheme of the Code, this Court observed:

"In construing the provisions of a statute it is essential for a court, in the first instance, to give effect to the

(1) A.I.R. 1954 S.C. 637, 641. (2) [1958] S.C.R. 762, 765.
(3) [1960] 2 S.C.R. 319, 330. (4) [1958] S.C.R. 1037, 1041.

A natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a court is entitled to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration other matters and the circumstances which led to the enactment of the B statute."

Going by the plain words, contained in s. 6 of the Act, we are satisfied that the complaint, in this case, filed by the respondent, can be considered to be in conformity with the provisions, contained therein.

But Mr. Sen relied upon the decision of this Court in *Feroz* C *Din's Case*(1) in support of his argument that cases in which sanction is necessary, to enable a Court to take cognizance of offences, and cases, in which a mere complaint, is to be filed by a public officer, without the requirement of any sanction, have been treated on a par, and the same tests, for finding out the legality of a complaint, in the former class of cases, have been applied to the latter class of cases also. It is therefore necessary to consider the D exact scope of that decision. In that decision, this Court was considering a complaint, filed by a management, under ss. 24 and 27, of the Industrial Disputes Act, 1947. The management company, in that case, filed a complaint, with the sanction of the Government. The provision, regarding sanction, is contained in s. 34(1) of the Industrial Disputes Act, which is as follows:

E "No Court shall take cognizance of any offence punishable under this Act..... save on complaint made by or under the authority of the appropriate Government."

One of the contentions raised by the appellants, therein, based upon the decision of the Judicial Committee, in *Morarka's Case*(2), was that the sanction, given by the Government of West F Bengal, to file the complaint against them, was bad, as it had been granted without reference to the facts constituting the offence. This Court, after referring to the said decision, rejected the contention of the appellants and held that the entire facts, connected with the offence, had been placed before the sanctioning authority, and the Government gave the sanction, on consideration of those facts, and that those circumstances fully satisfied the requirements of 'prior sanction', as laid down by the Judicial Committee. It will G be seen, by a reference to s. 34(1) of the Industrial Disputes Act, extracted above, that a complaint can be filed by the appropriate Government itself, or it can be filed, under the authority of the appropriate Government. In the decision before this Court, the Government had not filed the complaint, but, on the other hand, the management company obtained the sanction of the Govern- H ment of West Bengal, to file the complaint. That is why this Court

(1) [1960] 2 S.C.R. 319, 330. (2) L.R. 75 I.A. 30.

had occasion to consider the validity of the sanction, regarding which an attack was made by the appellants. This Court, in that case, had no occasion to consider whether those principles, would, nevertheless, apply, if the Government itself had filed the complaint, as it was entitled to, under s. 34(1). Therefore, the observations made, in that case, regarding the validity of sanction, will have to be confined to the facts of that case.

No such question arises, with regard to the matter before us. The section, with which we are concerned, does not contain any such restriction, regarding the obtaining of sanction, on the basis of which alone a complaint can be filed, to enable a Court to take cognizance of an offence.

The result is, the view of the High Court, that the complaint, filed by the respondent, on December 31, 1962, satisfies the requirements of s. 6 of the Act, is perfectly correct. The appeal therefore fails, and is dismissed.

G.C. *Appeal dismissed.*