

RAMANLAL BHOGILAL SHAH AND ANOTHER

v.

D. K. GUHA AND OTHERS

January 24, 1973

[S. M. SIKRI, C. J., A. N. RAY, D. G. PALEKAR, M. H. BEG AND  
S. N. DWIVEDI, JJ.]

*Constitution of India, Art. 20(3)—Whether accused mentioned in an F.I.R. is bound to appear before Enforcement officer to give evidence in connection with the same offence.*

The point of law being same in both the writ petitions, the facts of writ petition No. 164 of 1972 are as follows :—

The petitioner was the General Manager of United Comm. Bank till January 17, 1968 when he became its Chairman and whole-time Director and after nationalisation of the bank, he was appointed Custodian thereof.

In 1966, the United Comm. Bank had booked a forward exchange contract for Hindustan Motors for £ 9,32,617 at the rate of Rs. 529/32d. per rupee. Thereafter, the rupee was devalued and on May 24, 1971 the petitioner was served with summons under s.19-F of the Foreign Exchange (Regulation) Act, 1947 to give evidence in an enquiry held by respondent No. 1 into certain offences under the Foreign Exchange Act. The petitioner was examined on June 3, 16 and 17, 1971.

According to the petitioner, the entire examination on these days related to the booking by the bank of the said forward exchange contract.

On August 31, 1971, the petitioner was arrested under s.19B of the Foreign Exchange Act. Sub-s. 1 of S. 19B of the Act provides that "if any officer of Enforcement...has reason to believe that any person in India etc., has been guilty of an offence punishable under the Foreign Exchange Act, he may arrest such person and shall, as soon as may be, inform him of the ground of such arrest." Sub-sec. (2) provides that every person arrested under sub section (1) shall, without necessary delay, be taken to a Magistrate. Sub-s.(3) empowers the officer concerned to release an arrested person on bail and he has the same powers and as that of an O/c of a police station. The grounds, served on the petitioner, for the offence under s.4(2), and under s.22 of the Act punishable under s.23, are elaborate. Paras 31 to 40 of the grounds of arrest are *inter alia*, :—conversion of pound sterling not at the prescribed rate, false information furnished to the Reserve Bank in contravention of Sec.22 of the Act etc.

[The question arose whether after these grounds had been served on the petitioner, it could be said that he was a person accused of an offence within Art.20(3) of the Constitution].

The petitioner was later produced before the Chief Presidency Magistrate who released him on bail with a direction that he should contact the investigating officer from time to time.

Thereafter, an F.I.R. was recorded under s.154 Cr.P.C. by the D.S.P., C.B.I., New Delhi and an order was obtained from the

A Chief Presidency Magistrate Calcutta permitting the investigation to be made under s. 155(2) Cr. P.C. The offences alleged in the F.I.R. are s. 120B read with s. 420 I.P.C. and under s.4(2) read with s. 23(1) (b) of the Exchange Act. The names and addresses of the accused were given as the Management and other officers of the United Commercial Bank and the Management and officers of Hindustan Motors Ltd.

B On April 17, 1972 another summons was issued to the petitioner under s. 19F of the Exchange Act to appear before the Enforcement Directorate and to give evidence regarding the transaction of Exchange Contract booked from Hindustan Motors Ltd.

C After objecting to appear before the Enforcement Directorate as witness the petitioner filed the present writ petition before this Court. It was contended by the petitioner that after the Enforcement officer had examined the petitioner and put his conclusions in the grounds of arrest, the petitioner was definitely a "person accused of an offence" within the meaning of Art. 20(3) of the Constitution of India and at any rate, the petitioner was accused of an offence when the F.I.R. was recorded and therefore, the summons dt. April 17, 1972 was illegal.

D Allowing the petition,

HELD : (i) It is well settled that with the lodging of a First Information Report a person is accused of an offence within the meaning of Art. 20(3). [445E-F]

*Ramesh Chandra Mehta v. State of West Bengal* [1969] 2 S.C.R. 461 *Raja Narayanlal Bansilal v. Manack Phiroz Mistry* [1961] 1 S.C.R. 417 and *M. P. Sharma v. Satish Chandra*, [1954] S.C.R. 1077, referred to.

E (ii) Although the petitioner is a person accused of an offence within the meaning of Art. 20(3), the only protection that Art. 20(3) gives to him is that he cannot be compelled to be a witness against himself; but this does not mean that he need not give information regarding matters which do not tend to incriminate him. [446G-H]

*State of Bombay v. Kathi Kalu Oghad*, [1962] 3 S.C.R. 1032, referred to.

F Therefore in the present case the summons must not be set aside. The petitioner must appear before the enforcement Directorate and answer such questions as do not tend to incriminate him. [447C-D]

ORIGINAL JURISDICTION : Writ Petitions Nos. 164 and 165 of 1972.

G Petitions under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

*A. K. Sen*, (in W.P. No. 164) *B. Sen*, (in W.P. No. 165) *Krishna Sen*, *S. R. Agarwala* and *R. K. Khanna*, for the petitioners.

*F. S. Nariman*, Additional Solicitor-General of India and *S. P. Nayar*, for the respondents.

H The Judgment of the Court was delibered by

SIKRI, C.J. The same point of law arises in both the writ petitions and it will suffice if facts in writ petition No. 164 of 1972 are set out. The petitioner, Ramanlal Bhogilal Shah, was the Gene-

ral Manager of United Commercial Bank Ltd. till January 17, 1968 when he became the Chairman and wholetime Director of the said bank. Upon nationalisation of the bank, the petitioner was appointed Custodian thereof and he continued as Custodian till September 1, 1971.

On June 4, 1966 the United Commercial Bank had booked a forward exchange contract for Hindustan Motors for £ 9,32,617 at the rate of 1s. 529/32d, per rupee. On June 6, 1966, the rupee was devalued. On May 24, 1971 the petitioner was served with summons under s. 19-F of the Foreign Exchange (Regulation) Act, 1947—hereinafter referred to as the Exchange Act to give evidence in the enquiry which Shri D. K. Guha, Deputy Director, Enforcement Directorate, was making into certain offences under the Exchange Act. The petitioner was examined on June 3, 1971, June 16, 1971 and June 17, 1971.

According to the petitioner, the entire examination on the said dates related to the booking by the United Commercial Bank of the aforesaid forward exchange contract dated June 4, 1966. On August 31, 1971, the petitioner was arrested under s. 19B of the Exchange Act. Sub-section (1) of s. 19B provides that "if any officer of Enforcement . . . has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under the Exchange Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest." Sub-section (2) provides that "every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a Magistrate." Sub-s. (3) empowered an officer of Enforcement arresting any person to release such person on bail or otherwise. In this connection he has the same powers and is subject to the same provisions as the officer-in-charge of a police station.

The grounds of arrest served on the petitioner are elaborate. These give detailed reasons why the enforcement officer had reasons to believe that the petitioner had been guilty of an offence under s. 4(2) and under s. 22 of the Exchange Act punishable under s. 23 thereof. We may reproduce paras 31 to 40 of the grounds of arrest.

"31. AND WHEREAS by such criminal acts the Bank converted pound sterling not at the rate prescribed by the Foreign Exchange Dealers Association of India effective from 8-6-66 as aforesaid but at the rate of Rs. 1-5 29/32d Re. 1 during the period of 8-7-66 to 3-3-67 on the total amount of £ 9,32,617-O-od;

32. AND WHEREAS the aforesaid amount of £ 9,32,617-O-0d has been converted into Indian cur-

A rency at rates other than the rates authorised by the Reserve Bank of India;

B 33. AND WHEREAS such unauthorised conversion has been made without fulfilling the condition prescribed in Section XXVIII of the Exchange Control Manual published by the Reserve Bank of India as aforesaid.

34. AND WHEREAS such conversion of pound sterling into Indian currencies has been made in contravention of Section 4(2) of the said Act;

C 35. AND WHEREAS false information has been furnished to the Reserve Bank of India thereby contravening the provisions of Section 22 of the said Act;

36. AND WHEREAS the aforesaid contraventions, have been committed by the said Bank or have taken place with the consent of the said R. B. Shah;

D 37. AND WHEREAS at the time of the aforesaid contraventions were committed, the said R. B. Shah was in charge of, or was responsible to the United Commercial Bank Limited for the conduct of the business of the said Bank;

E 38. AND WHEREAS the said R. B. Shah failed to prove in course of his statements made under Section 19F of the said Act before Shri D. K. Guha, Deputy Director of Enforcement that the contravention took place without his knowledge or that he exercised all due diligence to prevent the aforesaid contravention, as required under Section 23C of the said Act.

F 39. AND WHEREAS, in view of the aforesaid facts and circumstances, I, Onkar Nath Chattopadhyay, Enforcement Officer, Enforcement Directorate, Department of Personnel, Cabinet Secretariat, Government of India, being an officer of Enforcement authorised by the Central Government to exercise the powers under Section 19B of the said Act, have reason to believe that the said R. B. Shah in India has been guilty of offences under Section 4(2) and under Section 22 of the said Act punishable under Section 23 of the said Act;

G 40. NOW, THEREFORE, I arrest the said R. B. Shah on the grounds stated herein above, today the 31st August, 1971 at 10.35 a.m. under Section 19E(i) of the Foreign Exchange Regulation Act, 1947."

H The question arises, with which we will presently deal with, whether after those grounds have been served on the petitioner,

it could be said that he was a person accused of an offence within art. 20(3) of the Constitution.

The petitioner was produced before the Chief Presidency Magistrate, Calcutta, on August 31, 1971, who released him on bail of Rs. 10,000 with the direction that the petitioner should contact the Investigating Officer every alternate day during the next two weeks and thereafter as and when called for.

On September 6, 1971, the Chief Presidency Magistrate, Calcutta, recorded :

"Both accused are on C.B. and present. Perused report submitted by I.O. I.O. prays for three months time for submitting further report. Time allowed till 6-12-71 for submission of report."

On December 6, 1971, the order is recorded as follows :

"Both accused are on C.B. and present. Persued report submitted by Enforcement Directorate. Further three months time. Time allowed till 6-3-72 for completion of investigation. I.O. is directed to expedite and file complaint, if any, at an early date."

On March 6, 1972, it was *inter alia* ordered :

"... Since no regular complaint has till now been filed, personal exemption prayed for is allowed."

The order further proceeds :

"Considered I.O.'s remand report. He submits that the matter is pending before the Supreme Court and concerned documents remain sealed in that connection. He further says complaint will be filed soon after the matter is disposed by the Supreme Court. Considering such aspects of the question I.O. is allowed time till 5-6-72 for a report about progress of investigation and submission of regular complaint, if any, against the accused persons."

It is alleged in the petition that "pursuant to enquiries made in this behalf, your petitioner has come to learn that the Supreme Court proceedings referred to by the respondent No. 4 before the Chief Presidency Magistrate, Calcutta, as recorded in his order dated 6th March 1972 arose out of a writ petition filed by Hindusthan Motors Ltd. before the Hon'ble High Court at Calcutta challenging *inter alia* the search at the premises of Hindusthan Motors Ltd. conducted by the Enforcement Directorate in or about October 1969 and the seizure of documents as a result thereof." In the course of this enquiry the petitioner learnt that a case had been registered on a First Information Report dated

- A November 9, 1971, recorded under s. 154 of the Criminal Procedure Code and an order dated November 25, 1971 had been obtained from the Chief Presidency Magistrate, Calcutta, permitting the investigation to be made under s. 155(2) of the Code of Criminal Procedure. This First Information Report deals with the forward exchange contract purported to have been entered on June 4, 1966 by M/s Hindusthan Motors Ltd. and the United Commercial Bank Ltd. The offences alleged in the first Information Report are s. 120B read with s. 420 I.P.C., and under s. (2) read with s. 23(1) (b) of the Exchange Act, and the names and addresses of the accused are given as the Management and other officers of the United Commercial Bank and the Management and officers of the Hindusthan Motors Ltd.

- C On April 17, 1972 another summons was issued to the petitioner under s. 19-F of the Exchange Act to appear before the Deputy Director, Enforcement Directorate, on April 28, 1972 to give evidence relating to the transaction of exchange contract booked from Hindusthan Motors Ltd. on June 4, 1966. The petitioner wrote to the Deputy Director submitting that the summons was violative of art. 20(3) of the Constitution. In this connection he submitted as follows :
- D

- E "I remind you that after examining on the 3rd June, 1971, 16th June, 1971 and 17th June 1971 proceedings have been initiated and I was arrested on the 31st August, 1971 and in the grounds of arrest one of the grounds of accusation mentioned is the transaction referred to by you in the summons."

The petitioner requested the Deputy Director to withdraw the summons. . . . .

- F On April 22, 1972 the Deputy Director informed the petitioner that the contentions had no substance at all. He further informed the petitioner that the summons issued on April 17, 1972 could not be withdrawn and requested the petitioner to comply with the name.

- G The petitioner thereupon filed the present petition on April 27, 1972.

- H The learned counsel for the petitioner, Mr. A. K. Sen, contends that on the facts given above the petitioner fell within the description of a "person accused of an offence" within the meaning of art. 20(3). He contended that after the Enforcement Officer had examined the petitioner and put his conclusions in the grounds of arrest, the petitioner was definitely accused of an offence under the Exchange Act. He next contends that at any rate, the petitioner was accused of an offence when the First
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Information Report was recorded under s. 154, Cr. P.C., by Shri J. N. Prabhakar, Deputy Superintendent of Police, Central Bureau of Investigation, Special Police Investigation Unit, New Delhi.

The learned Additional Solicitor General says that the first point is concluded by the decision of this Court in *Romesh Chandra, Mehta v. State of West Bengal*.<sup>(1)</sup> He strongly relies on the following passage at p. 479 :

"It was strenuously urged that under s. 104 of the Customs Act, 1962, the Customs Officer may arrest a person only if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under s. 135 and not otherwise and he is bound to inform such person of the grounds of his arrest. Arrest of the person who is guilty of the offence punishable under s. 135 and information to be given to him amount, it was contended, to a formal accusation of an offence and in any case the person who has been arrested and who have been informed of the nature of the infraction committed by him stands in the character of an accused person. We are unable to agree with that contention. Section 104(1) only prescribes the conditions in which the power of arrest may be exercised. The officer must have reason to believe that a person has been guilty of an offence punishable under s. 135, otherwise he cannot arrest such person. But by informing such person of the grounds of his arrest the Customs Officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an inquiry under s. 107 and 108 of the Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender against the Customs Act being charged before a Magistrate. Ordinarily after adjudging penalty and confiscation of goods or without doing so, if the Customs officer forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided under s. 137 with the sanction of the Collector of Customs and until a complaint is so filed the person against whom an inquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence under s. 135.

(1) [1969] 2 S.C.R. 461.

**A** The learned counsel for the petitioner, however, contends that the facts here are different. He says that under the Exchange Act the position is slightly different. He further says that in *Romesh Mehta's case*<sup>(1)</sup> no enquiry had been made while in the present case an enquiry under s. 19F had been made and the Deputy Director had come to a definite conclusion that the petitioner was guilty of an offence. He further says that the next step would be an enquiry under s. 23 of the Exchange Act which might result in a penalty under s. 23(1)(a) or the case being sent to a Court for trial. He says that as far as the enquiry under s. 23(1)(a) is concerned, it is an enquiry in respect of an offence and no further charge or complaint is necessary before undertaking the enquiry.

**B**

**C** He contends that the protection under art. 20(3) extends not only to criminal trials, but also to trials of all offences under the Exchange Act because for the same offence one person may be convicted and penalty levied under s. 23(1)(a) or convicted by a Court and sentenced to imprisonment.

**D** These aspects have not been considered by this Court in any case which has been brought to our notice, but we do not think that it is necessary to dispose of these contentions because we are of the opinion that the second point raised by Mr. A. K. Sen must prevail.

**E** It is well settled that with the lodging of a first information report a person is accused of an offence within the meaning of art. 20(3). In *M. P. Sharma v. Satish Chandra*<sup>(2)</sup> where search warrants were issued against persons who had been included in the category of accused in the first information report, Jagannadhadas, J., observed at p. 1088 :

**F** "Nor is there any reason to think that the Protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is "to be a witness" and not to "appear as a witness"; It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of

**G** testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to

**H** other persons in other situations does not call for decision in this case."

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(1) [1969] 2 S.C.R. 461.

(2) [1954] S.C.R. 1077.



In *Raja Narayanlal Bansilal v. Maneck Phiroz Mistry* (1) it was observed :

"Similarly, for invoking the constitutional right against testimonial compulsion guaranteed under Art. 20(3) it must appear that a formal accusation has been made against the party pleading the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution."

In *Romesh Chand Mehta v. State of West Bengal* (2) Shah, J., after reviewing a number of authorities, observed at p. 472 :

"Normally a person stands in the character of an accused when a First Information Report is lodged against him in respect of an offence before an Officer competent to Investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial of the offence."

The Additional Solicitor General says that the petitioner had not been specifically named as accused in the First Information Report and, therefore, he is not entitled to the protection under Art. 20(3). We are unable to agree with him in this respect. The petitioner was the General Manager of the United Commercial Bank and it was alleged in the grounds of arrest that the petitioner was in charge of, or was responsible to the United Commercial Bank Ltd. for the conduct of the business of the said Bank, and that he failed to prove in course of his statements made under s. 19F before Shri D. K. Guha, Deputy Director of Enforcement, that the contravention took place without his knowledge or that he exercised all due diligence to prevent the aforesaid contravention, as required under s. 23C of the Exchange Act.

In view of these allegations it is idle to contend that the petitioner was not included in the expression "the management and other officers of the United Commercial Bank Ltd." We have already mentioned that in the First Information Report it is the same forward Exchange Contract which is the subject-matter of charge.

Although we held that the petitioner is a person accused of an offence within the meaning of art. 20(3), the only protection that art. 20(3) gives to him is that he cannot be compelled to be a witness against himself. But this does not mean that he need not give information regarding matters which do not tend to incrimi-

(1) [1961] 1 S.C.R. 417 ; 438.

(2) [1969] 2 S.C.R. 461.

- A nate him. This Court observed in *State of Bombay v. Kathi Kalu Oghad*<sup>(1)</sup> as follows :

B “In order that a testimony by an accused person may be said to have been self-incriminatory the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person atleast probable, considered by itself.”

- C Therefore we are unable to set aside the summons. The petitioner must appear before the Deputy Director and answer such questions as do not tend to incriminate him, as explained by this Court.

D The petition is accordingly allowed to the extent that it is declared that the petitioner is a person accused of an offence within art. 20(3).

The facts in Writ Petition No. 165 of 1972 are similar and the same declaration is given.

S.C.

*Petition allowed.*

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(1) [1962] 3 S.C.R. 10 32.