STATE OF MAHARASHTRA

v.

JAYANTI LAL AND OTHERS

January 17, 1948

[S. MURTAZA FAZAL ALI AND RANGANATH MISRA JJ.]

Forward Contracts (Regulation) Act, 1952 Section 22A and 22B as inserted by the Amending Act 62 of 1960, — Whether the two newly inserted sections exclude the application of section 5(2) of Criminal Procedure Code—Whether the presumptions provided under section 22B of the Act would be available in respect of books of account and documents seized in investigations under the Code, where action has not been taken under section 22A.

Dismissing the appeal by Special Leave, the Court,

HELD : 1 By sections 22 A and 22B, inserted into the Forward Contracts (Regulation) Act, 1952, by the Amending Act 62 of 1960, the application of the provisions of section 5(2) of the Criminal Procedure Code in respect of offences under the Act was not excluded. Therefore, even with these provisions in the Act, it was open to the prosecution to make investigations under the Code and in exercise of the powers vested under Section 165 thereof, search and seizure could be effected [436H, 437A]

2. Section 22A of the Forward Contract (Regulation) Act is a Special provision prescribing a particular procedure. Section 22B(1) does refer to documents seized from any place as referred to in s. 22A(1). Ordinarily, in a criminal prosecution the burden to prove the charge is on the prosecutor. A special rule of evidence has been provided by raising a presumption as a result of which the burden which ordinarily lay on the prosecution has been shifted to the defence. [435C-E]

The manner in which the two new provisions have come into the Act, the placement of the two provisions, reference to books of account and documents seized from any place in s. 22B(1) which are words used in s.22A(1), and the fact that Parliament has prescribed a special procedure of authorisation by a magistrate and has prescribed special credence to be given to these documents seized pursuant to the particular procedure prescribed, lead to the only conclusion that the benefit of s. 22B of the Act is confined to books of account and documents which have been seized pursuant to a warrant authorising a police officer not below the rank of sub-inspector as prescribed in s.22A(1) of the Act. A special mode was prescribed requiring magisterial warrant, authorisation of a police officer not below the rank of a sub-inspector, the place to be searched was required to be specified in warrant; magisterial control was prescribed over the investigation and when these conditions were satisfied, the special rule of evidence became applicable. [435 E-G]

Admittedly there is no indication in s. 22B of the Act as to whether entries in

A the books of account and documents seized without the aid of s.22A(1) would have the benefit of such presumption. But since a special procedure has been indicated in s.22A and s. 22B which is with reference to s. 22A has provided the special mode of evidence, that in order to have the benefit of s. 22B of the Act, the prosecution must have carried on the search and seizure of the books of account and documents in the manner prescribed under s. 22A(1) of the Act. Unless the special procedure has been followed, the special rule of evidence under s. 22B of the Act would not B be attracted. [435H, 436A-B]

3. Since it would be open to the prosecution to carry on investigation of offences under the normal provisions of the Code as also by invoking the Special provisions in s. 22A of the Act, two separate positions would arise with reference to seized books of account and other documents. When s. 22A of the Act has been invoked the presumption under s.22B of the Act would arise. When investigation C has been carried under the Code without the aid of s. 22A of the Act, the presumption would not arise and the prosecution will have to prove the documents according to the ordinary rule of evidence. There is nothing anomalous because in one case the normal rule of evidence would apply and in the other, where the special mode has been invoked, the presumptions would arise. Such a situation is not unknown in law. [436 B,D,E]

D *State of U.P. & Anr.* v. *Chambers of Commerce (Regd.), Chandausi, District Moradabad & Ors.* (1970) All. LJ. 182; *M.R. Pillai* v. *M/s. Motilal Vrijbhukhandas & Ors.*, AIR 1970 Bont 24 approved.

The Bullion & Agricultural Produce Exchange Private Ltd. v. *The Forward Markets Commission, Bombay & Ors.*, AIR 1968 338 overruled.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 447 of 1979.

Appeal by Special leave from the Judgment and Order dated the 1st/2nd February, 1979 of the Bombay High Court (Nagpur Bench) in Criminal Appeal No. 26, 27-30, 33 and 36 of 1975 and Criminal F Revision Application Nos. 82 & 83 of 1975.

D.P. Rana and *M.N. Shroff* for the Appellant.

N.M. Ghatate and *V.D. Deshpande* for the Respondents.

G The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by special leave at the instance of the State of Maharashtra is directed against the decision of a Full Bench of the High Court of Bombay dealing with an interesting question under the Forward Contracts (Regulation) Act, 1952 H ('Act' for short). Several prosecutions were launched against the respondents for offences punishable under sections 20 and 21 of the

Act on the basis of investigation carried under section 5(2) of the Code of Criminal Procedure, 1898 ('Code' for short) and seizure of documents as a result of search conducted under s.165 of the Code. Two cases ended in conviction and seven prosecutions resulted in acquittal. Against the conviction two separate appeals were carried to the Court of Sessions which were dismissed. The convicted accused carried two criminal revisions to the High Court. Against acquittal in other prosecutions the State preferred appeals to the High Court. The seven criminal appeals and the two criminal revisions were ultimately referred to a Full Bench for deciding the question raised, viz., as to whether or not the cases in question would be governed by the provisions of s.22B of the Act.

The Full Bench has come to the following conclusions (*State of Maharashtra* v. *Jayantilal Popatlal Chandrani, etc*)[1]:

(1) By sections 22A and 22B inserted into the Act by Amending Act 62 of 1960, the application of the provisions of s.5(2) of the Code in respect of offences under the Act was not excluded. Therefore, even with these provisions in the Act it was open to the prosecution to make investigation under the Code and in exercise of powers vested under s.165 thereof search and seizure could be effected;

(2) The manner of search and seizure under the Code and under s.22A of the Act were different. The new provisions were inserted into the Act with a view to obviating the difficulties in successfully prosecuting the delinquents for offences under the Act;

(3) The presumption contemplated in s. 22B is confined to books of account and other documents seized pursuant to a warrant issued under s.22A (1) of the Act and not to documents seized in exercise of powers under the Code.

The High Court referred to an earlier decision of the Division Bench of the same Court where it had been held that the insertion of the two provisions by Act 62 of 1960 did not have the effect of excluding the application of the Code to prosecutions under the Act but in view of the conclusions indicated above, it did not agree with

(1979) Crl. L. J. 1231.

A the earlier view of the Division Bench that the presumption under s. 22B of the Act also extended to documents seized in investigation under the Code without the aid of s.22A of the Act.

Neither counsel contended before us that the insertion of ss. 22A and 22B had the effect of excluding the application of s. 5(2) of the B Code. We are in agreement with the view expressed by the Full Bench that the provisions of the Code still apply to investigation of offences under the Act.

The only question which has been seriously debated at the Bar is as to whether the presumptions provided under s. 22B of the Act C would be available in respect of books of account and documents seized in investigations under the Code where action has not been taken under s. 22A of the Act ? The two sections inserted by Act 62 of 1960 provided :

D "22A. (1) Any presidency magistrate or a magistrate of the first class may, by warrant, authorise any police officer not below the rank of sub-inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of this Act, may be or may be reasonably suspected, to be, and such E police officer may seize any such book or document, if in his opinion, it relates to any such forward contract or option in goods;

(2) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure F made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

22B. (1) Where any books of account or other documents are seized from any place and there are entries therein G making reference to quantity, quotations, rates, months of delivery, receipt or payment of differences or sale or purchase of goods or option in goods, such books of account or other documents shall be admitted in evidence without witnesses having to appear to prove the same; and such entries shall H be *prima facie* evidence of the matters, transactions and accounts purported to be therein recorded;

(2) In any trial for an offence punishable under section 21, it shall be presumed, until the contrary is proved, that the place in which the books of account or other documents referred to in sub-section(1) were seized, was used, and that the persons found therein were present, for the purpose of committing the said offence."

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There is no dispute that these provisions came to be inserted when it became difficult to successfully prosecute offenders under the Act on account of want of evidence, particularly with reference to the accounts and other documents. Both the sections were introduced at the same time. Section 22A(1) empowers the presidency magistrate or a magistrate of the first class, by warrant, to authorise a police officer not below the rank of a sub-inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of the Act may be or may reasonably be suspected to be available. This indeed is a special provision prescribing a particular procedure. Section 22B(1) does refer to documents seized from any place as referred to in s. 22A(1). Ordinarily, in a criminal prosecution the burden to prove the charge is on the prosecutor. A special rule of evidence has been provided by raising of a presumption as a result of which the burden which ordinarily lay on the prosecution has been shifted to the defence. The manner in which the two new provisions have come into the Act, the placement of the two provisions, reference to books of account and documents seized from any place in s. 22B(1) which are words used in s.22A(1), and the fact that Parliament has prescribed a special procedure of authorisation by a magistrate and has prescribed special credence to be given to these documents seized pursuant to the particular procedure prescribed, lead to the only concusion that the benefit of s.22B of the Act is confined to books of account and documents which have been seized pursuant to a warrant authorising a police officer not below the rank of sub-inspector as prescribed in s. 22A(1) of the Act. A special mode was prescribed requiring magisterial warrant, authorisation of a police officer not below the rank of a sub-inspector, the place to be searched was required to be specified in warrant; magisterial control was prescribed over the investigation and when these conditions were satisfied, the special rule of evidence became applicable.

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Admittedly there is no indication in s. 22B of the Act as to whether entries in the books of account and documents seized without the aid

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A of s. 22A(1) would have the benefit of such presumption. But since a special procedure has been indicated in s. 22A and s. 22B which is with reference to s. 22A has provided the special mode of evidence, we agree with the view of the Full Bench that in order to have the benefit of s. 22B of the Act, the prosecution must have carried on the search and seizure of the books of account and documents in the B manner prescribed under s. 22A(1) of the Act. Unless the special procedure has been followed, the special rule of evidence under s. 22B of the Act would not be attracted.

As we have held that it would be open to the prosecution to carry on investigation of offences under the normal provisions of the C Code as also by invoking the special provisions in s. 22A of the Act, two separate positions would arise with reference to seized books of account and other documents. When s. 22A of the Act has been invoked the presumption under s. 22B of the Act would arise. When investigation has been carried under the Code without the aid of s.22A of the Act, the presumption would not arise and the prosecu- D tion will have to prove the documents according to the ordinary rule of evidence. It was canvassed before us that such an anomalous position could not have been intended by Parliament and it must have been the legislative intention to extend the benefit of s. 22B to books of account and documents seized by the prosecution with or without the aid of s. 22A of the Act. We are not inclined to accept E this submission for the reasons we have indicated and in our opinion there is nothing anomalous because in one case the normal rule of evidence would apply and in the other, where the special mode has been invoked, the presumptions would arise. Such a situation is not unknown in law and we uphold the view of the Full Bench.

F At the hearing some decisions of the different High Courts were placed before us. A learned single Judge in *The Bullion & Agricultural Produce Exchange Private Limited* v. *The Forward Markets Commission, Bombay & Ors.*,[1] took the view that search conducted without the requisite warrant from a magistrate was *ab initio* void. In view of the conclusions we have reached, this decision is certainly G bad and cannot be accepted as laying down good law. In *State of U.P. & Anr.* v. *Chambers of Commerce (Regd.). Chandausi, District Moradabad & Ors.*,[2] a Division Bench had taken the view that under s. 5(2) of the Code offences under the Act could still be investigated

H (1) A.I.R. 1968 Bom. 338.
(2) 1970 All. L.J. 182.

and s. 165 of the Code was not inconsistent with but supplemental to s. 22A of the Act. So far as this decision goes there is nothing inconsistent with what we have said. A single Judge of the Bombay High Court in *M.R. Pillai* v. *M/s. Motilal Vrijbhukandas & Ors.*,[1] took the view that s. 22A of the Act did not debar the police from exercising the powers under s. 165 of the Code. This is in accord with the conclusion reached by us. A B

The appeal is dismissed and the decision of the Full Bench is affirmed.

S. R. *Appeal dismissed.*

(1) AIR 1970 Bom. 24.