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S.K. KAMDAR AND ANR.

v.

STATE OF MAHARASHTRA

SEPTEMBER 6, 1995

B

[G.N. RAY AND G. T. NANAVATI, JJ]

Foreign Exchange Regulation Act, 1947 : Sections 4(1)(2) and 5(1)(a), (aa) (c).

C

Foreign Exchange Regulation Act, 1973 Section 8(1) (2) and 9(1)(a), (b), (d).

Indian Penal Code, 1860 : Section 120-B.

D

Offences committed under the 1947 Act—Complaint in Criminal Court under 1973 Act—Maintainability of—Adjudication by Revenue authorities as to inadequacy of penalty to be imposed—Complaint held maintainable as offence under section 120-B IPC could not have been adjudicated by Revenue Authorities either under the old or new Act.

E

The appellants are alleged to have committed offences under Sections 4(1)(2) and 5(1)(a), (aa), (c) of the Foreign Exchange Regulation Act, 1947 read with section 120-B of the Indian Penal Code, 1860. A complaint lodged against them under the corresponding provisions of the Foreign Exchange Regulation Act, 1973 read with section 120-B of the Indian Penal Code was held not maintainable by Trial Court on the ground that there was inherent inconsistency between the 1947 and 1973 Acts in the matter of lodging complaint in the Criminal Court. On revision the High Court set aside the Judgment of Trial Court holding that the complaint was maintainable. Hence these appeals.

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Dismissing the appeals, this Court

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HELD : The complaint has been lodged not only for the violation of the provisions of the Foreign Exchange and Regulation Act, 1947, but also for an offence under Section 120-B of the Indian Penal Code. The complaint under latter provision in any event, could not have been decided by the departmental authority either under the old Act or under the new Act. Such

complaint, therefore, was to be made only before the Criminal Court. Even otherwise before lodging the complaint in question, a finding was made by the departmental authority that imposition of penalty would not be adequate in the facts of the case but immediately thereafter no complaint in Criminal Court was lodged. The same was lodged after lapse of some time by which the new Act has become operative. In these circumstances, the complaint being maintainable, no interference is called for. [363-C-E]

The Superintendent & Rememberancer of Legal Affairs, West Bengal v. Girish Kumar Navalakna and Others, [1975] 4 SCC 754, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 522 of 1980.

From the Judgment and Order dated 27.11.79 of the Bombay High Court in Crl. A No. 542 of 1978.

Krishan Mahajan and P.H. Parekh for the Appellants.

V.N. Ganpule, S.M. Yadav and A.S. Bhasme for the Respondent.

The following Order of the Court was delivered :

These appeals are directed against the judgment dated 27th November, 1979, passed by the High Court of judicature at Bombay in Criminal Revision Application No. 542 of 1978. The appellants challenged the validity of the complaint made by the assistant Director of Enforcement Directorate, Government of India, Bombay, against the appellants alleging commission of offences under Section 120B of the Indian Penal Code read with Sections 4(1), 4(2), 5(1)(a), 5(1)(aa) and 5(1)(c) of the Foreign Exchange Regulation Act, 1947 corresponding to section 120B of the Indian Penal Code read with sections 8(1), 8(2), 9(1)(a), 9(1)(b) and 9(1)(d) of the Foreign Exchange Regulation Act, 1973. The learned Additional Chief Metropolitan Magistrate, Third Court, Bombay, dismissed the complaint on August 11, 1978 in Case No. 133/W/1977 *inter alia* holding that penal provisions and procedure to be followed for lodging complaint in a criminal court under the Foreign Exchange and Regulation Act, 1947 under which alleged violation by the accused had taken place, being different and inconsistent with the provisions of the later Act namely Foreign Exchange and Regulation Act, 1973, the complaint under the New Act was not maintainable.

- A The State of Maharashtra thereafter moved the High Court of Bombay by filing a Revision Petition challenging the correctness of the order of dismissal of the complaint passed by the learned Additional Chief Metropolitan Magistrate. By the impugned judgment, the Bombay High Court has come to the finding that there was no inconsistency with the provisions of the old Act i.e. Foreign Exchange Regulation Act, 1947 and
- B the new Act namely Foreign Exchange Regulation Act, 1973 thereby affecting any substantive right of the accused which they had under the old Act. It has been held by the High Court that the complaint was maintainable and the impugned order was set aside.
- C Mr. Mahajan, learned counsel appearing for the appellants, has contended that the High Court has failed to appreciate the inherent inconsistency under the old Act and the new Act in the matter of lodging complaints in Criminal Court. He has submitted that in the instant case, the offence had been committed under the provisions of the Foreign
- D Exchange and Regulations Act, 1947. The substantive right of the appellants to have an adjudication by the Revenue Authorities under the provisions of Foreign Exchange & Regulations Act, 1947 that the penalty in such adjudication proceeding would not be adequate before a complaint before the criminal court was to be made cannot be by passed. In the absence of such adjudication by the Revenue authorities as a condition
- E precedent to lodge complaint in a criminal court in the later Act of 1973, the provisions for lodging complaint in a criminal court by following the procedure under later Act not only takes away the substantive right of the accused to have departmental adjudication but the same being inconsistent with the provisions relating to lodging of complaint under the old Act, no
- F complaint for any violation of the provisions of the old Act is maintainable and the learned Magistrate is fully justified in dismissing the complaint. He has submitted that under the old Act, no complaint could be straightaway lodged to the criminal court until and unless in a departmental proceeding initiated under the old Act, the departmental authority after giving opportunity of being heard to the alleged offender would come to a decision that
- G in the facts of the case, imposition of penalty was not adequate. Since a guideline namely constitution of adequacy of penalty was there, the vires of the proviso to sub- Section 23-D (i)(a) of the old Act was upheld by this Court in a decision in *The Superintendent & Rememberancer of Legal Affairs, West Bengal v. Girish Kumar Navalakna and Others*, [1975] 4 SCC
- H 754. Mr. Mahajan has contended that under the present Act, there is a

provision for initiating departmental proceeding for imposing penalty for violation of the provisions of the Foreign Exchange & Regulation Act, 1973 under Section 51 of the said Act, But no guideline has been given as to under what circumstances, the departmental authority would file a complaint before the criminal court instead of deciding the case of violation of Foreign Exchange & Regulations Act, 1973 departmentally. Hence, Section 51 of the new Act also suffers from the vice of excessive and unregulated discretionary power. A B

In our view, in the facts and circumstances of the case it is not necessary to consider any of such contentions raised by Mr. Mahajan because in the instant case, the complaint has been lodged not only for the violation of the provisions of the Foreign Exchange & Regulation Act, 1947, but also for an offence under Section 120 B of the Indian Penal Code. Such complaint of commission of an offence under section 120 B of the Indian Penal Code, in any event, could not have been decided by the departmental authority either under the old Act or under the new Act. Such complaint, therefore, was to be made only before the criminal court. Incidentally, we may also indicate here that previously, before lodging the complaint in question, a finding was made by the departmental authority that imposition of penalty would not be adequate in the facts of the case put immediately thereafter, no complaint in criminal court was lodged and the complaint has been lodged after lapse of some time by which the New Act has become operative. C D E

In the aforesaid circumstances, the complaint being maintainable, no interference is called for. The appeals are, therefore, dismissed.

T.N.A.

Appeals dismissed.