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STATE REP. BY C.B.I. AND ANR.

v.

M. KURIAN CHIEF FUNCTIONARY OF THE CROSS

MARCH 26, 2001

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[G.B. PATTANAİK AND U.C. BANERJEE, JJ.]

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Foreign Contribution (Regulation) Act, 1976—Sections 3(a), 5, 6, 20(3), 23—Foreign Contribution (Regulation) Rules, 1976—Rule 3—Deposit of foreign contributions in undisclosed bank account by Registered Society in contravention of provisions of the Act—Criminal proceedings initiated quashed by High Court—Held, provisions of the Act violated and hence constitutes offence under Section 23 of the Act—Quashing of Criminal proceedings will defeat the very purpose of the Act—Criminal Procedure Code—Section 482.

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Respondent-Society filed an application for registration under the provisions of the Foreign Contribution (Regulation) Act, 1976 disclosing the details of bank account for receiving foreign contributions. Registration was granted to the Society. The Society received foreign contribution of Rs. 3.65 lacs by way of Bank drafts. The Society deposited the drafts in an undisclosed bank account and failed to intimate the Central Government as per the provisions of the Act. The Central Government issued a notification under the Act requiring the Society to take prior permission from it before accepting contributions. The notification was quashed by the High Court on a Writ Petition filed by the Society. First Information Reports were lodged before C.B.I. against the Society. C.B.I. Submitted a charge-sheet under the provisions of the Act. The Society filed a petition before the High Court under Section 482 Cr.P.C. for quashing the criminal proceedings, which was allowed. Hence the present appeal.

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The appellant contended that under the provisions of the Act, the contravention/violation of any of the terms and conditions would constitute the contravention of the provisions of the Rules made under the Act; that receiving foreign contributions through undisclosed mode or channel would constitute an infraction of the provisions of the Rules; that such infraction must be held to be punishable under Section 23 of the Act; and that the Act had been enacted to regulate the acceptance and utilization of foreign contribution or foreign hospitality by persons or associations with a view to ensure that parliamentary institutions, political associations and

other voluntary organisations may function in a manner consistent with the values of sovereign democratic republic.

The Society contended that as per Section 23 of the Act, only the contravention of any provisions of the Act or Rules made thereunder is punishable; that the information provided in the application form and violation thereof would not constitute a contravention of the provisions of the Act or Rules; and that the penal statutes which create offences, must be construed strictly.

Allowing the appeal, the Court

HELD : 1.1. The main object of Foreign Contribution (Regulation) Act, 1976 was to regulate and keep a control over the acceptance and utilization of foreign contributions. The entire purpose behind the Act was that the recipients of such foreign contribution may not act in a manner inconsistent with the values of the sovereign republic which our founding fathers have given to us. Without prohibiting the receipt of such foreign contribution, the Act intends to regulate the same and it is for that purpose, it is required that recipient of such contribution must intimate the Central Government in the manner prescribed by the Rules. Since several recipients did not send the intimations, for effectively monitoring the receipt of foreign contribution, Section 6(1) of 1976 Act was amended making it obligatory for the associations to get themselves registered with the Central Government and then they could accept the contribution only through a specified branch of a bank. The Act enables the Central Government to inspect the accounts of persons or associations. The Act also prohibits acceptance of foreign contribution under certain circumstances. This indicates the legislative intent and purpose behind the Act and, therefore, the provisions of the Act are required to be construed accordingly. [711-A-E]

1.2. A plain reading of Section 23 of the Act would make it clear that any receipt of foreign contribution in contravention of the provisions of the Act or Rules made thereunder becomes punishable. Reading the provisions of the Act and giving a literal meaning to the expressions contained in the provisions, the receipt of contribution and depositing the same in a bank other than the bank indicated in the application form would be a violation of the provisions of Section 6(1)(b) of the Act itself as no association is entitled to accept foreign contribution, unless the association agrees to receive the foreign contribution only through such branch of

A the bank, as it may specify in its application for registration. The violation being a violation of the provisions of Section 6(1)(b), it would constitute an offence under Section 23 and, therefore, the High Court committed serious error in quashing the criminal proceedings on a finding that it does not tantamount to violation of any provisions of the Act.[712-F; 713-B-C]

B 1.3. If associations and political parties are allowed to receive foreign contribution and deposit the same in any bank they like, notwithstanding their declaration with the Central Government at the time of registration, then the very purpose of conferring power on the Central Government to regulate would be frustrated and all other provisions for inspection and auditing conferring power on the Central Government will be futile.

C In the aforesaid premises, the High Court has committed serious error by quashing the criminal proceedings in the impugned judgment on an erroneous interpretation of the provisions of the Act and the Rules made thereunder. The Magistrate is directed to proceed with the matter expeditiously. [713-D-F]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 377-379 of 2001.

From the Judgment and Order dated 27.9.99 of the Delhi High Court in CrI.M. (M) No. 1125 and CrI.M. No. 1987/96 with CrI.M. (M) No. 1833 of 1987.

E Altaf Ahmed, Additional Solicitor General, Syed Naqvi and P. Parmeswaran for the Appellants.

Dr. M.P. Raju and S.P. Sharma for the Respondent.

F The Judgment of the Court was delivered by

PATTANAİK, J. Delay condoned. Leave Granted.

G These appeals by the Central Bureau of Investigation are directed against the judgment dated 27th September, 1999 of a learned Single Judge of Delhi High Court. By the impugned judgment, the High Court in exercise of power under Section 482 of the Code of Criminal Procedure, has come to hold that a breach of the undertaking given by an Association under Section 6(1)(b) of the Foreign Contribution (Regulation) Act, 1976 [hereinafter referred to as 'the Act'] would not amount to contravention of the provisions of the Act within the meaning of Section 23 of the said Act and

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as such the criminal prosecution that had been launched, would not lie. The High Court having quashed the criminal proceedings, arising out of the two F.I.Rs, the Central Bureau of Investigation is in appeal.

The respondent-society, submitted an application in the prescribed form for registration under Section 6 of the Act for receiving foreign contribution. It was indicated therein that the foreign contribution will be received only through the main branch of the State Bank of India, Hyderabad and a separate bank account was opened for the purpose. The society was allotted a registration number by the Central Government in accordance with Section 6(1)(a) of the Act. The said society entered into an agreement with M/s HEKS, Switzerland and the latter agreed to finance the project of "teaching aid non-formal education". The said M/s HEKS issued instructions to the Canara Bank, Cantonment Branch, Bangalore, pursuant to which two Bank Drafts were issued amounting to Rs. 2 lacs and Rs. 1.65 lacs, in favour of the respondent-society by the Canara Bank, Bangalore. The respondent society instead of depositing the same in the main branch of the State Bank of India, Hyderabad, in accordance with the terms of the agreement, deposited the same into the account of Canara Bank, M.G.Road, Secunderabad. It was further alleged that the respondent society even failed to intimate the Central Government about the receipt of the contribution from M/s HEKS, as required under Section 6(1)(b) of the Act. The Central Government in exercise of its power under Section 10(b) of the Act, issued a notification, requiring the society to have prior permission of the Government before accepting any contribution. But that notification was quashed by the High Court on a writ petition being filed. The Central Government, thereafter got the accounts of the respondent society inspected by the Assistant Director, appointed under Foreign Contribution (Regulation) Act, in the Ministry of Home Affairs and on the basis of reports submitted by the said Assistant Director, two First Information Reports were lodged against the society. The investigating agency, after inspecting into the allegations, submitted a charge-sheet under Section 6 read with Section 20(3) and it is at that stage, the respondent filed the petition under Section 482 of the Code of Criminal Procedure for quashing of the criminal proceedings. As stated earlier, the High Court having allowed the petitions and having quashed the criminal proceedings, the Central Bureau of Investigation is in appeal before this Court.

Mr. Altaf Ahmed, the learned Additional Solicitor General, appearing for the appellants contends that a conjoint reading of Section 6(1)(b) and

A Section 23 of the Act read with Section 3(a) and the prescribed form FC-1, required to be filed, seeking permission of the Central Government for accepting foreign contribution would unequivocally indicate that the contravention and/or violation of any terms and conditions contained in the very application form, would constitute the contravention of the provisions of the Rules made under the Act and as such would be punishable under Section 23 of the Act and the High Court committed an error in holding that there has been no contravention of the provisions of the Act. Learned Additional Solicitor General further contended that the Act in question having been enacted to regulate the acceptance and utilization of foreign contribution or foreign hospitality by persons or associations with a view to ensure that

B parliamentary institutions, political associations and other voluntary organisations may function in a manner consistent with the values of sovereign democratic republic, any contravention of the provisions of the Act or the Rules made thereunder should be strictly construed, and on being so construed, if an applicant indicates the mode or channel of foreign contribution

C in his application and in violation of the same receives through a different mode or channel, that would constitute an infraction of the relevant provisions of the Rules, on the information given by the persons concerned and such infraction must be held to be punishable under Section 23 of the Act and the same cannot be lightly brushed aside.

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E Dr. M.P. Raju, appearing for the respondent, on the other hand contended that Section 23 of the Act makes only the contravention of any provisions of the Act or any Rule made thereunder punishable, and the information provided in form FC-1 and violation thereof, would not constitute a contravention of the provisions of the Act or Rules made thereunder and as such, the High Court rightly quashed the criminal proceedings. The learned

F counsel contends that the penal statutes which create offences, must be construed strictly and there is no rhyme or reason for construing the same liberally and thus construed, violation of any particulars given in the form for receipt of the contribution in a particular bank would not constitute a violation of either the provisions of the Act or Rules made thereunder

G and as such, it would not be an offence within the ambit of Section 23 of the Act.

H In order to appreciate the correctness of the rival stand, it would be necessary to examine some of the provisions of the Act and the Rules made thereunder. But before focussing attention on the same, it may be noticed that

when political associations and voluntary organisations as well as individuals working in important areas of national life were found to be in receipt of foreign contribution and foreign hospitality, the Parliament came forward to enact the Act. The main object was to regulate and keep a control over the acceptance and utilization of foreign contribution. The entire purpose behind the Act was that the recipients of such foreign contribution may not act in a manner inconsistent with the values of the sovereign republic which our founding fathers have given to us. Without prohibiting the receipt of such foreign contribution, the Act intends to regulate the same and it is for that purpose, it is required that recipient of such contribution must intimate the Central Government within the time and in the manner to be prescribed by the Rules. Since several recipients did not send the intimations, for effectively monitoring the receipt of foreign contribution, Section 6(1) of 1976 Act was amended by Act 1 of 1985, making it obligatory for the associations to get themselves registered with the Central Government and then they could accept the contribution only through a specified branch of a bank. The act enables the Central Government even to inspect the accounts of persons or associations by insertion of Section 15-A. The Act also has inserted Section 25-A even prohibiting acceptance of foreign contribution under certain circumstances. This indicates the legislative intent and purpose behind the Act and, therefore, the provisions of the Act are required to be construed accordingly. Section 6 of the Act prohibits receipt of foreign contribution by an association unless the association gets itself registered with the Central Government, and agrees to receive contribution only through such one of the branches of a bank, as it may specify in its application for such registration. Section 6(1) of the Act is extracted herein below in extenso:

"Section 6(1) : No association [other than an organisation referred to in sub-section (1) of Section 5] having a definite cultural, economic, educational, religious, or social programme shall accept foreign contribution unless such association -

(a) registers itself with the Central Government in accordance with the rules made under this Act; and

(b) agrees to receive such foreign contributions only through such one, of the branches of a bank as it may specify in its application for such registration,

and every association so registered shall give, within such time and in such manner as may be prescribed, an intimation to the Central

A Government as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was utilised by it :

B Provided that where such association obtains any foreign contribution through any branch other than the branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.”

C Section 23 which is the penal provision, provides thus:

D “*Sec. 23. - Punishment for the contravention of any provision of the Act. - (1) Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.*

E *(2) Whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made thereunder shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.*”

F A plain reading of Section 23 would make it clear that any receipt of foreign contribution in contravention of the provisions of the Act or Rules made thereunder becomes punishable. Section 30 confers power on the Central Government to make Rules for carrying out the provisions of the Act. In exercise of such powers, the Central Government has framed the Rules called the Foreign Contribution (Regulation) Rules, 1976 [hereinafter referred to as ‘the Rules’]. The expression ‘Form’ has been defined in Rule 2(b) to mean

G a form appended to the rules. Rule 3 provides that an application for obtaining prior permission of the Central Government to receive foreign contribution under sub-section (1) of Section 5, or clause (a) of sub-section (2) of that Section, shall be made in Form FC-1. The aforesaid Form FC-1 at serial No. 5, stipulates that the applicant should intimate the mode/channel of receipt.

H The form also provides the declaration, which the applicant must declare to

the effect that the particulars furnished by the applicant are true and correct. This form must be held to be a statutory form being appended to the Rules and being the form prescribed under Rule 3 for obtaining permission to receive foreign contribution. Reading the aforesaid provisions together and giving a literal meaning to the expressions contained in the aforesaid provisions, the conclusion is irresistible that receipt of contribution and depositing the same in a bank other than the bank indicated in the application form FC-1, would be a violation of the provisions of Section 6(1)(b) itself inasmuch as no association is entitled to accept foreign contribution, unless the association agrees to receive the foreign contribution *only through such one of the branches of the bank, as it may specify in its application for registration*. The violation being a violation of the provisions of Section 6(1)(b), it would constitute an offence under Section 23 and, therefore, the High Court, in our opinion, committed serious error in quashing the criminal proceedings on a finding that it does not tantamount to violation of any provisions of the Act. Needless to mention that if associations and political parties would be allowed to receive foreign contribution and would deposit the same in any bank they like notwithstanding their declaration with the Central Government at the time of registration, then the very purpose of conferring power on the Central Government to regulate, would be frustrated and all other provisions for inspections and auditing conferring power on the Central Government would be futile. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed serious error by quashing the criminal proceedings in the impugned judgment on an erroneous interpretation of the provisions of the Act and the Rules made thereunder, as stated above and we, accordingly set aside the same. These appeals are allowed. The Magistrate is directed to proceed with the matter expeditiously.

B.S.

Appeals allowed.