

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of order: 13th February, 2008.

CRL.M.C. 6906/2006

PRAKASH CHAND YADAV Petitioner
Through Mr. Deepak Dhingra, Vivek Sehgal and
Ms. Anjeney Mishra, Advocates.

versus

ENFORCEMENT DIRECTORATE Respondent
Through Mr. Rajesh Manchanda and Mr. Ankit
Ahluwalia, Advocates.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

Dr. S. Muralidhar, J (open court)

1. Challenging an order dated 15th October 1996 passed by the Additional Chief Metropolitan Magistrate ('ACMM'), Delhi taking cognizance of the offence under Section 40 of the Foreign Exchange Regulation Act, 1973 ('FERA') in the Complaint Case titled "*Enforcement v. Parkash Chand Yadav*", the Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'). The petition also challenges an order dated 20th September 2006 passed by the Additional Sessions Judge ('ASJ'), Delhi by which Criminal Revision No. 85 of 2005 filed by the Petitioner

against an order dated 2nd June 2005 passed by the learned ACMM framing the charge against the Petitioner for the offence under Section 40 FERA was upheld. Thirdly, the Petitioner also seeks the quashing of the aforementioned Complaint Case (renumbered as No. 4/1 of 2001).

2. The Petitioner was arrested by the Central Bureau of Investigation in connection with the urea scam case on 18th June 1996. Subsequently he was granted bail and released on 18th September 1996. During this period he was interrogated thrice.

3. The Enforcement Directorate which was examining the case for violations of the FERA issued a notice on 18th September 1996 to the Petitioner requiring his appearance at its on 25th September 1996. This notice was sent to the Petitioner at his address at 9, Pandit Pant Marg, New Delhi. The report of the process server in regard to the service of this notice reads as under:

“As instructed by you, I went to serve summons to Mr. Prakash Chandra Yadav on 20.9.96 at 9, Pandit Pant Marg, New Delhi. Summons No. 1/Imp/889/DZ/96-AD (P) dated 20.9.96. Upon reaching there, the security guard informed that Shri Prakash Chandra Yadav was not available at that time and he was in Patna. The Security guard was not aware of his return. Summons No. 1/Imp/889/DZ/96-AD (P), in accordance with Rule 3(c) of the Foreign Exchange Regulation Rules, 1974 were thereafter pasted on the front gate of 9, Pandit Pant Marg, New Delhi in presence of two witnesses. The panchnama to this effect was prepared on spot and is attached herewith.

Report for information.

‘A’

Sd/-

Surendra Kulshrestha

20/9/96
AEO, New Delhi.”

4. Thereafter a fresh summons was issued on 20th September 1996 for appearance of the Petitioner on 27th September 1996. This was also sent to the Petitioner at his address 9, Pandit Pant Marg, New Delhi. Again the petitioner was unable to be served as the process server was informed that the petitioner had gone to Patna. In the presence of two witnesses, the summons was affixed on the front gate of the said premises. The said summons was also sent by speed post to the Petitioner’s address at Patna. This notice was returned unserved with the remarks in Hindi which when translated read “the addressee has since long been outside Patna.”

5. For a third time another summons was sent to the petitioner on 4th October 1996 requiring him to appear on 9th October 1996. The report of the process server in this regard reads as under:

“REPORT

As instructed by your good self, I went to serve summons to Mr. Prakash Chandra Yadav at 9, Pandit Pant Marg, New Delhi. The present Delhi Police personnel, Raju Singh (No. 11242) informed that Mr. Prakash Chandra Yadav was not at home and was gone to Patna. When I informed him that the summons were to be served upon Mr. Prakash Chandra Yadav, and his in absence could be served to any member of the family (mother/father/wife), I was informed that there was no one present in the house. Therefore summon no. T/Imp/889/DZ/96-AD (P) dated 4.10.96, in accordance with Rule 3 (c) of the Foreign Exchange Regulation Rules, 1974 the summons were pasted on the front gate of bungalow No. 9, Pandit Pant Marg, New Delhi in presence of two witnesses. The panchnama to this effect was prepared on spot and is attached herewith.

Report for your information.

Sd/-
Surendra Kulshrestha
AEO, New Delhi
4/10/96”

6. When the Petitioner did not appear despite the summons on three occasions being pasted on the gate of his address at Delhi, and one of them also being sent by speed post to his address at Patna, the complaint as aforementioned was filed by the Enforcement Directorate on 15th October, 1996 under Section 200 CrPC in the Court of the learned ACMM. By an order dated 15th October 1996 the learned ACMM took cognizance of the offence and summoned the Petitioner.

7. The petitioner states that he was arrested on 8th November 1996 and granted bail on 14th November 1996 on the condition that he would join investigation. He was present for investigation on 18th November and 19th November, 1996. It is stated that he was again arrested on 19th November 1996. On 14th January 1997, the learned ACMM granted bail to the Petitioner since the chargesheet had not been filed despite the expiry of sixty days.

8. Thereafter, the Petitioner filed an application under Section 245 CrPC before the learned ACMM seeking discharge. That petition was allowed by the learned ACMM by an order dated 6th August 1999. However the revision petition filed against the said order by the Enforcement Directorate was allowed by the learned ASJ by an order dated 15th December 2000 and the complaint was restored to file.

9. By an order dated 22nd December 2004 the learned ACMM decided whether charges could be framed against the Petitioner. Referring to Rule 3(b) of the Foreign Exchange Regulation Rules, 1974 ('Rules'), the learned ACMM observed that although the summons were not sent by registered post with acknowledgment due they were sent by speed post "which should serve the purpose". Thereafter on 2nd June 2005 the learned ACMM passed an order framing a charge against the petitioner for deliberately not appearing before the Enforcement Directorate despite the summons under Section 40 FERA thereby committing an offence punishable under Section 56 FERA.

10. The revision petition filed by the Petitioner challenging the order framing the charge was dismissed by the learned ASJ by an order dated 20th September 2006. Thereafter the present petition was filed.

11. The issue arising for determination as formulated by this Court at the hearing of this petition on 31st October 2006 reads as under:

"The complaint in question has been filed by the respondent/Enforcement Directorate under Section 56 of the Foreign Exchange Regulation Act, 1973 (in short 'FERA') alleging non-compliance of summons allegedly served upon the petitioner. Case of the petitioner is that as per Rule 3 of Foreign Exchange Regulation Rules, 1974, it was a mandatory requirement to serve the petitioner through registered post and even as per the impugned order, the petitioner was not served through the prescribed mode (i.e. by registered post) but the summons were sent by speed post. **The question for determination, therefore, would be as to whether in view of Rule 3 it is mandatory to serve the summons only by registered post and serving of summons by speed post would not amount to substantial compliance of Rule 3?**"

12. Learned counsel for the petitioner submits that the mandatory requirement of Rule 3(b) of FERA was not complied with. The notice was not sent by registered post with acknowledgment due. There was no way the Petitioner can be held liable for non-compliance of summons which are not served in accordance with law. It is further submitted that the Petitioner is an elderly person who has been facing these proceedings for over 11 years and the interminable delay has caused him extreme hardship and defeated his fundamental right to a speedy trial. Since the proceedings have not concluded for over eleven years, and for no fault of the petitioner, this is sufficient ground for quashing the criminal complaint.

13. Rule 3 of the Rules reads as under:

“3. Service of directions, orders or notices made or issued under the Act, or these rules or under any order or notification made thereunder

A direction, order or notice made or issued under the Act or these rules or any order or notification made thereunder shall be served on any person in the following manner, that is to say, --

(a) By delivering or tendering it to that person or to his duly authorized agent; or

(b) By sending it to him by registered post with acknowledgment due to the address of his place or residence of his last known place of residence or the place where he carries on, or last carried on, business, or personally works, or last worked, for gain; or

(c) If it can not be served in any of the manners aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided or carried on, or last carried on, business, or personally works, or last worked for gain and the written report whereof should be witnessed by two persons.”

14. A plain reading of the above Rule shows that there are three alternative modes of service. The first is service through any known means which would include service through the process server of the Enforcement Directorate. The mode in Rule 3 (a) has been tried thrice and without success in the instant case. The failure to serve the summons in the manner contemplated under Rule 3 (a) can lead to the procedure under Rule 3 (c) which is by way of affixation on the outer door of the premises in which such person resides. On each of the three occasions when the procedure under Rule 3 (a) failed, the procedure of affixation under Rule 3 (c) was resorted to.

15. The third alternative is under Rule 3 (b) which is to send the summons by registered post with acknowledgment due to the person at his place of residence or his last known place of residence or where the addressee carries on, or last carried on business or personally works, or last worked for gain. In the instant case, the dispatch of the summons by speed post is in fact a dispatch by registered post. Speed post was not a known mode at the time the Rule was formulated. The procedure that is followed by the Postal Department while dispatching letters by speed post is in fact no different from what is followed by it while dispatching letters and parcels by registered post. In fact even speed post letters can be sent with acknowledgment due cards.

16. In the instant case, the envelope containing the summons which was sent by the speed post was returned with the report “accused has gone out of Patna”. Even if the letter had therefore been sent with an acknowledgment

due card, the remarks would have been no different. In other words, the summons would still have been returned unserved with the same remarks. Therefore no prejudice can be said to have caused to the Petitioner on account of the fact that the summons was sent by speed post but without an acknowledgment due card.

17. For the above reason, the question formulated by this Court in its order dated 31st October 2006 in answered by holding that for the purposes of Rule 3 (b) of the Rules, the requirement of sending summons by registered post to the last known address of the Petitioner should be held to have been satisfied if the summons is sent by speed post. Further, in the instant case, the failure to send it with an acknowledgment due card would make no difference since in any event the petitioner was not found at Patna and the speed post cover was returned unserved. There was therefore substantial compliance with Rule 3 of the Rules.

18. The material on record does show that on three separate occasions, on not being able to serve the petitioner the summons in the manner contemplated under Rule 3 (a), the Enforcement Directorate affixed the summons on three occasions the on the door of the address of the Petitioner in Delhi. Thus the requirement of Rule 3(a) read with Rule 3 (c) was complied with.

19. In the facts and circumstances of the case, this Court finds no infirmity in the charge framed by the learned ACMM and the order of the learned ASJ dismissing the revision petition challenging the framing of such charge.

20. The delay in the disposal of the case thus far cannot be attributed to any of the parties to this litigation but to the judicial process itself. Given the facts and circumstances, it would not be in the interests of justice to quash the criminal case only on this ground.

21. However, it is directed that the Petitioner shall continue to remain exempted from personal appearance in the Court of the learned ACMM as long as he is represented through counsel and subject further to the condition that he should be present in the court as and when he is directed by the learned ACMM.

22. With above observations and directions, this petition is dismissed but in the circumstances with no order as to costs.

S. MURALIDHAR, J

FEBRUARY 13, 2008
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