

Gir Raj Kishore vs State on 19 August, 1953

Equivalent citations: 1954CRILJ856, AIR 1954 ALLAHABAD 421

JUDGMENT

B. Malik, C.J.

1. The applicant Girraj Kishore was convicted by a Magistrate of the First Class for having contravened the provisions of the High Denomination Bank Notes (Demonitisation) ordinance, 1946, Ordinance No. III of 1946, and has been sentenced to undergo two years' rigorous imprisonment and to pay a fine of Rs. 2,000/- in default of payment of the fine to a further term of rigorous imprisonment for six months. The learned Magistrate's order is in these terms:

I find the accused Girraj Kishore guilty of the offence under Section 7 (1) of the Ordinance No, III of 1946 for contravening Section 4 of the Ordinance by exchanging one thousand rupee notes on 14-1-1946, from the Sagri Sub-treasury without filing a declaration as required under Sub-section (2) of Section 6 of the Ordinance and convict him under the said section of the said Ordinance.

2. Girraj Kishore was Treasurer's agent at the Azamgarh Government Treasury and the charge against him was that on the 14th of January, 1946, he had exchanged 20 notes of Rs. 1,000/- each for notes of lower denomination without making a declaration as provided in Section & of the Ordinance.

The relevant portion of Section 6 is as follows:

6(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1934 (II of 1934), any high denomination bank note held by a person other than a bank or Government treasury shall after the 12th day of January 1946 be exchanged only on tender of the note for exchange by the owner thereof in the manner provided in this section.

(2) Every such owner of a high denomination bank note desiring to tender it for exchange shall prepare in the form set out in the Schedule or in a form as near thereto as may be, three copies of a declaration signed by him giving in full the particulars required by that form, and shall, within ten days after the commencement of this Ordinance, deliver such copies in person together with the. high denomination bank notes he desires to exchange to a branch of the Reserve Bank or to a scheduled bank or to. a Government treasury.

The proviso to the sub-section is not relevant. The other sub-sections also need not be quoted as they are not relevant for our purposes.

3. A prosecution under this Ordinance can only be instituted under the previous sanction off the Central Government (Vide Section 7(3)). On 8th February, 1947, the sanction to institute the proceedings was given by the Government of India under Sub-section (3) of Section 7 of the Ordinance, in these terms:

The Central Government is pleased to sanction the institution of prosecution proceedings against Mr. Girraj Kishore, Government Treasurer's Agent who is alleged to have exchange* 20 pieces of one-thousand rupee notes on 14th. January, 1946, from the Sub-Treasury, Sagri, contrary to the provisions of the Ordinance and thus to have contravened Section 4 of the Ordinance in circumstances which constitute an offence punishable under Section 7 of the said Ordinance.

4. Against the conviction by the Magistrate, Girraj Kishore filed an appeal in the Court of the learned Sessions Judge and the argument advanced on his behalf was that if the facts as alleged by the prosecution were established, he would be guilty under Section 6 of the Ordinance and not under Section 4 and no sanction having been obtained by the Central Government for his prosecution under Section 6, the trial was invalid and he was entitled to an acquittal. The learned Sessions Judge was of the opinion that figure "4" was a typing mistake for figure "6" and that as the facts were fully set out in the sanction, no prejudice had been caused to the accused and the trial was not vitiated on that account. The learned Sessions Judge upheld the conviction and sentence.

5. Against that order a revision was filed in this Court which was referred by a learned Single Judge to a Division Bench and by the Bench to a Pull Bench. In the referring order the learned Judges have said that the whole case was being referred to the Pull Bench for decision. We do not think, however, that it is necessary that the time of three Judges be taken in deciding questions other than the question on which the learned Judges seemed to have some doubt and which necessitated their making this reference to a larger Bench.

6. The point urged on behalf of the accused was as we have already indicated, that Sections 4 and 6 of the Ordinance provide for two separate offences and as the sanction was to prosecute for an offence under Section 4, the conviction under Section 6 was bad in law.

7. Section 4 of the Ordinance is as follows : "Save as provided by or under this Ordinance, no person shall after the 12th day of January 1946 transfer to the possession of another per-* son or receive into his possession from another person any high denomination bank note."

Then Section 5 makes certain exceptions in favour of banks and Government treasuries. It is, however, not necessary for the purposes of this case to quote that section. Section 6 pro-vides that if after the 12th of January, 1946, any person, other than a bank or Government treasury, wants to tender a high denomination note for exchange, he will be required to act in the manner provided in the subsequent sub-clauses of the section, one of the main requirements being that he will have to

fill in a form in triplicate giving the various particulars mentioned in that form, which information was required by the Government for certain purposes of its own.

8. The argument advanced by learned Counsel is that Section 4 deals with the case of dealings between an individual and another, while Section 6 deals with a case where a private individual goes to a bank or a Government treasury and wants to deposit or to exchange a high denomination note after the 12th of January, 1946.

9. The argument that Sections 4 and 6 of the Ordinance create two separate offences must be rejected. Section 4 of the Ordinance starts with the words Save as provided by or under this ordinance.

If Section 4 is confined to dealings between individuals and not between an individual and a Bank or a Government treasury, these words would become redundant as there is no exemption in any of the subsequent sections allowing a private individual to exchange a high denomination note with another individual after the 12th of January, 1946, for cash or for lower denomination notes. There is an absolute bar against private dealings.

Sections 5 and 6 are the only exemptions that allow exchange of high denomination notes in certain circumstances and, therefore, the exemption mentioned in Section 4 could have reference only to those sections. Section 6 allows a person to go to a Bank or a treasury to exchange high denomination notes provided he gives the declaration required by that section. So far as we can see, the Ordinance provides for only one offence and not two separate offences under Sections 4 and 6 and that offence is committed when a high denomination note has been exchanged after the 12th of January, 1946, in contravention of the provisions of the Ordinance.

10. Learned Counsel has referred us to the definition of the word "person" in the General Clauses Act (Act No. X of 1897), where a person is defined as including any company or association or body of individuals, whether incorporated or not.

The argument is that though under this definition of the word "person" a banking company may be included, a Government treasury will not be, and, therefore, Section 4 of the Ordinance will not apply to a case where high denomination notes have been exchanged at a Government treasury. This argument has no substance. The three Sections 4, 5 and 6 read together clearly show that the word "person" in Section 4 of the Ordinance was used in its widest sense and Section 4 was intended to include all cases which did not come under the exceptions given in Sections 5 & 6. To quote an example, in section 6, Sub-section (1) the words are any high denomination bank note held by a person other than a bank or Government treasury.

If the word "person" was not intended to include a bank or Government treasury in Section 4 then it was not necessary to make this exception in section 6. The definitions in the General Clauses Act are to apply unless there is anything repugnant in the subject or context. Beading the three sections together, it appears to us that Section 4 was intended to include all cases of transfer of high denomination notes contrary to the provisions of the Ordinance and Sections 5 and 6 are to be read

as exceptions to Section 4. The sanction to prosecute given under Section 7 or the Ordinance was, therefore, in order.

11. The case must now go back to the learned single Judge for decision according to law.