Ram Lal vs State on 20 July, 1954

Equivalent citations: 1954CRILJ1581

JUDGMENT

Desai, J.

1. I have seen the order proposed to be made by my learned brother.

2. It was contended before us that the Ordinance lapsed before, the prosecution. This contention was advanced on behalf of Sridhar Acharya before the withdrawal of the prosecution on 29-9-1948 and was overruled by the trial Court. He had brought up the matter to this Court and our brother Harish Chandra rejected the contention, see - Sridhar Achari v. Emperor AIR 1948 All 182 (A). He held that, the Ordinance was not of a limited validity and remained valid and in force after 1-4-1946 and that there was no legal bar to a prosecution started under 8. 7 of the Ordinance in March 1947.

The present prosecution is a different prosecution and the decision of our brother Harish Chandra is not binding on the applicant. But we are in full agreement with the decision. The Ordinance, having been promulgated between 27-6-1940 and 1-4-1946, was not subject to. the limitation of six months' duration contained in Section 72 of Sch. IX of the Government of India Act, 1935, It was to remain in force so long as it was not repealed.

3. The second contention that the sanction was not proved no longer remains valid. We examined Sri O. P. Gupta, Assistant Secretary to Government of India, Finance Department, He proved that under a resolution dated 28-7-1939 of the Ministry of Home Department he was authorised to sign letters and orders issued on behalf of the Government of India, that the Government of India had received a precis of the case from the State Government and after considering the facts of the case had sanctioned prosecution of the applicant and others for the offence of Section 7 of the Ordinance and that the sanction sent to the State Government on 16-4-1947 was signed by him. He also stated that the Deputy Secretary of the Finance Department and an Officer of the Department of Law were consulted before the sanction was granted.

4. Another contention was that the sanction does not show the facts constituting the offence. It certainly does not show the facts but there is no law that it should show the facts. The sanction is not required to be in any form. It need not be in writing even, see - Gokul Chand Dwarka Das v. The King AIR 1948 PC 82 at p. 84 (B). It was pointed out in that case that V the facts were not stated in a sanction the prosecution would have to prove that the sanction related to those facts which formed the basis of the trial. Sri O. P. Gupta has proved that the sanction was for those acts of the four men which were mentioned in the precis sent by the State Government to the Government of India.

5. The next contention was that 8s. 3 and 4 of the Ordinance contravened Article 19(1)(f) of the Constitution and, therefore, became void under Article 13. Under Article 19(1)(f) all citizens have the right "to acquire, hold and dispose of property." Section 3 of the Ordinance declared that after 12-1-1946 all high denomination bank notes ceased to be legal tender in payment; or on account, while Section 4 prohibited every person after that date from transferring to the possession of another or receiving into his possession from another, any high denomination bank note.

As far as the declaration that the high denomination notes ceased to be legal tender is concerned, it did not interfere with anybody's right to acquire, hold or dispose of property; the high denomination notes ceased to be legal tender but anybody could hold them and nobody was prevented by Section 3 from acquiring or disposing of them. Section 4 certainly interfered with that right, but the right of citizens to acquire, hold and dispose of property is subject, under the Constitution itself, to any existing law in so far as-it imposes reasonable restrictions on the exercise of it, in the Interest of the general public.

The Ordinance was promulgated in the interest of the general public to meet a certain emergency that had arisen. The declaration that the high denomination bank notes ceased to be legal tender did not infringe any of the constitutional rights of a citizen. Once the high denomination bank notes ceased to be legal tender, any restriction on their transfer to another person cannot be said to be unreasonable. The Ordinance provided for exchange of the high denomination notes for notes of smaller denominations on certain conditions.

Therefore all that a person who held high denomination notes had to do was to have them exchanged for notes of smaller denominations after fulfilling the conditions prescribed therefor. He had nothing to gain by not having them exchanged for notes of smaller denominations and instead transferring them to another person.

A person also had nothing to gain by acquiring high denomination notes when they had ceased to be legal tender. Therefore, the restriction imposed by Section 4 of the Ordinance upon the power to transfer or to receive high denomination notes was not at all an unreasonable restriction; having regard to the emergency which justified the promulgation of the Ordinance, the restriction was undoubtedly reasonable.

But really we are not concerned even with the question whether Sections 3 and 4 became void under Article 13 or not. The applicant has been convicted not for infringing the provisions of Sections 3 and 4 but for violating the provisions of Section 6(2) by making a false or only partially true declaration. If Section 6 were unconstitutional, the applicant could not be prosecuted for violating its provisions. The constitutionality of Section 6 was not Impugned and did not depend upon the constitutionality of Sections 3 and 4.

6. The next contention, a contention which was argued very seriously, was that it has not been proved that the Central Government considered the facts of the case before sanctioning the prosecution of the four men. All that Section 7 of the Ordinance requires is that there must be a previous sanction of the Central Government. It does not require, that the Central Government must

consider the allegations made against the accused; much less does it require that it should be proved to the satisfaction of the Court that the Central Government had considered the allegations and spent a certain minimum amount of time over the consideration.

The requirement of Section 7 was fully met if there was on the record a sanction of the Central Government for prosecution of the four men for the acts which were the subject-matter of the trial. The leading case on the subject is - AIR 1948 PC 82 (B) in which Sir John Beaumont observed at page 84 that :

> In order to comply with the provisions of Clause 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged." ("Cl. 23" referred to Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, which provided that no prosecution for the contravention of any provision of it can be instituted without the previous sanction of the Provincial Government).
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> His Lordship said in continuation that it is desirable that the facts should be referred to on the face of the sanction and that if it is not done, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority.
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> His Lordship certainly did not intend to lay down that the prosecution must prove that the facts constituting the offence were considered by the authority. If the facts were mentioned in the sanction itself, nothing was required to be proved by the prosecution; the prosecution had not to prove either that the facts were placed before the authority or that they were considered by it. It is because the very mention of the facts in the sanction would have shown that the sanction was for prosecution in respect of those facts.
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> If the facts were not mentioned in the sanction itself, the fact that they were placed before the authority was required to be proved not because it was necessary to prove that the facts were considered by the authority, but because it had to be shown that the sanction was in respect of those facts and not some other facts. A general sanction would not do; the sanction had to be for the particular act alleged to have been done by the accused.
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> Unless the sanction for doing an act, for doing which the accused was placed on trial, was there, it could not be said that the prosecution was with previous sanction. Consequently - Gokulchand Dwarkadas v. The King (B)' is no authority for the proposition that even if it is shown that the sanction was for the act, for doing which he is tried, the prosecution must show that the allegations made against him were considered by the sanctioning authority.
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> In the present case it has been shown that the sanction and the trial were for the acts done by the applicant and the other men; in other words, the prosecution of the four men was with previous sanction. The preliminary condition for the taking of

cognizance against the four men having been satisfied, all that the Court had to see was whether the offence was established against them or not.

7. Since there is no law which expressly requires that the sanctioning authority must consider the allegations made against the accused, there should not arise any question of the identity of the person who actually considers the facts. Under the ordinance the sanction has to be of the Central Government. According to the General Clauses Act, Section 2(8), 'Central Government' means the Governor-General in Council. Under Section 313, Government of India Act, the executive authority was to be exercised by the Governor-General in Council either directly or through officers subordinate to them.

Sanctioning prosecution for an offence was an exercise of executive authority so the Governor-General could sanction prosecutions himself or could authorise officers subordinate to him to sanction them. It was provided in Section 40 of 9th Schedule of the Government of India Act, 1935, that the Governor-General could make rules and orders, for the more convenient transaction of business, in his Executive Council and that every order made or acted upon in accordance with them, was to be treated as being the order or act of the Governor-General in Council.

According to the Administrative Directory of the Government of India, page 125, currency matters were to be dealt with by the Deputy Secretary (F), through Assistant Secretary (P). Shri K. N. Kaul was the Deputy Secretary (F) and it was he who sanctioned the prosecution.

Sanctioning prosecution for breach of an Ordinance dealing with currency matters was undoubtedly a currency matter; therefore, the Deputy Secretary sanctioned the prosecution in accordance with the rules made by the Governor-General under Section 40(2) of the 9th Schedule, Government of India Act, and the sanction granted by him must be treated as that of the Governor-General in Council, i.e., of the Central Government, There was thus no illegality in the sanction.

8. In - Harprasad Ghasiram Gupta v. State , a Bench of the High. Court of Bombay dealt with a sanction given by the Deputy Secretary to the Government of India for prosecution under Section 7(3) of the High Denomination Bank Notes Ordinance and the sanction was held to be in order. With regard to - Shyamaghana Ray v. State , which was cited on behalf of the applicant, I have to make two observations. One is that it related to interpretation of Section 3, Preventive Detention Act (1950), which requires not only that the Governor should pass an order of detention but also that he should be satisfied that such order is necessary.

The Ordinance requires only one act to be done by the Central Government, namely, that of sanctioning the prosecution. Since two acts are required to be done under the Preventive Detention Act, it may be argued that while one act may be done by an officer authorised by the Governor to do it, the other act, namely, that of being satisfied, must be done by the Governor himself; no such argument is possible in the present 'case where only one act is required to be done. The other is that the decision in that case depended upon the subsidiary rules of business made by the Orissa State Government, with which we have no concern in the present case.

9. In - Emperor v. Sibnath Banerji AIR 1945 PC 156 (E), the Privy Council held that Rule 26, Defence of India Rules, which authorised the Central Government or the Provincial Government, "If it is satisfied with respect to any particular person....", to pass an order of detention against him, did not require that the Governor must be personally satisfied.

10. Section 40 of the 9th Schedule of the Government of India Act laid down that all orders...of the Governor-General to Council shall be expressed to be made by the Governor-General in Council, and shall be signed... as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceedings on the ground that they were not duly made by the Governor-General in Council.

The sanction was expressed to be made in the name of the Governor-General in Council (i.e. the Central Government); it uses the words "the Central Government is pleased to sanction...." There was no dispute on this point. It was signed toy the Assistant Secretary of the Government of India, Defence Department, Shri O. P. Gupta, who deposed that he was authorised to sign it. Under Home Department Resolution No. 18/3/39-dated Public-28-7-1939, the Governor- General in Council had directed in pursuance of Section 40(1) of the 9th Schedule, that orders and other proceedings of the Governor-General in Council should toe signed by a Secretary, a Deputy Secretary, or an Assistant Secretary of the Government of India.

Thus the provisions of Section 40, 9th Schedule, were fully complied with and the result was that the sanction could not be called into question in any legal proceedings on the ground that it was not duly made by the Governor-General in Council.

The word 'duly' is of great importance. If it was a requirement of a due sanction of prosecution that the facts were placed before the sanctioning authority and were properly considered by it, 3, 40 prohibited the questioning of the sanction in any legal proceedings (such as the trial of the accused for the offence) on the ground that it was not made by the Governor-General in Council after duly considering the facts.

There is no substance in the argument that all that was barred under Section 40 was the contention that the sanction was not given by the Governor-General in Council and not the contention that the Governor-General had not considered the facts of the case. 'AIR 1945 PC 156 (E)' does not support the argument advanced on behalf of the applicant. It interpreted the words used in Section 59, Government of India Act, which are materially different from those of Section 40(2) of 9th Schedule, inasmuch as it did not use the word 'duly'.

There is a difference between questioning an order on the ground that it was not made by the Governor-General in Council and questioning it on the ground that it was not duly made by him. Further in that case it was decided that the Court was not debarred from investigating the truth of a recital contained in the order.

The applicant before us does not question the truth of any recital contained in the sanction. "From the fact that he is not debarred from questioning the truth of any recital contained in the sanction, it

does not follow that he is not debarred from questioning that the sanction was duly given. Article 166(2) uses language similar to that of Section 59, Government of India Act; therefore, the interpretation placed upon it by the Orissa High Court in 'Shyama Ghana Ray's case (D)' is of no assistance. I agree with my brother Mukerji that Section 40(2) is a complete answer to this contention of the applicant.

11. The next contention is that the confiscation Of the notes recovered from the temple treasury contravenes Article 19 of the Constitution. The order of confiscation was passed by the Courts below under 8. 517, Cr. P. C. The Ordinance contains no provisions for confiscation or forfeiture and Section 517, Cr. P. C., being the only provision dealing with these matters, must be deemed to be the authority for the order.

Section 517, Cr. P. C. certainly does not contravene Article 19. A confiscation or forfeiture of property does not amount to any disturbance of the right to acquire, hold or dispose of the property, it certainly has nothing to do with the right to acquire, or dispose of property. It removes the property from the possession of a person, but not on the ground that he has no right to hold it. Even if it does, the provisions of Section 517, Cr. P. C., are reasonable restrictions on the right to hold property.

It is in the public interest that the property that the offender acquired through the commission of an offence should be taken away from him. It is a reasonable restriction that a person should not be allowed to retain in his possession the property acquired by him through commission of offence. Nobody can claim a right to hold a property, the possession over which has been acquired by him through the commission of an offence.

12. Further I find that the applicant himself does not claim that the notes of smaller denominations belong to him. He has no right whatsoever over them, and no right of his is infringed by the order of forfeiture. The notes do not belong even to the temple. The real owner has remained behind the screen. He may be aggrieved by the order of confiscation but not the applicant or even the temple trust committee.

13. The applicant did not rely upon Article 31 of the Constitution.

14. The last but one contention is that the applicant did not make any false or partially true declaration. (His Lordship referred to the evidence and proceeded :)

15. The Courts below relied upon the prosecution evidence. This Court sitting in revision is not concerned at all with the question whether they were justified or not in relying upon it. This Court does not ordinarily go into questions of fact and would not interfere with a finding of fact unless there was no evidence to support it or the evidence was so bad that no reasonable person could act upon it. (His Lordship after discussing the evidence held that the accused was rightly convicted and sentenced and proceeded :)

16. The order of forfeiture was challenged on the ground that it was not covered by the language of Section 517 of the Code inasmuch as the notes of smaller denomination seized by the police from the double lock were not property regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

The offence committed by the applicant was that he signed the declaration without being the owner and that he stated in it particulars which were false or were not believed by him to be true. Even if it is correct to say that the smaller denomination notes were not the property regarding which the offence was committed or which had been used for the commission of the offence, there is another circumstance on account of which the courts below could pass the order of forfeiture. They had the power to pass orders as they thought fit for the disposal, by confiscation or otherwise, of any property that was produced before them.

It did not matter if the property had not been used for the commission of any offence or was not one regarding which any offence had "been committed. The bare fact that it was produced by the police before them invested them with the lauthqrity to pass an order for its disposal. In what manner they should order it to be disposed of was within their discretion. They might abuse the discretion by ordering it to be disposed of in an improper manner but there can be no doubt that they had the exclusive jurisdiction to pass an order for its disposal. The property having come in their custody, they had to pass an order for its disposal.

Once the smaller denomination notes were seized by the police, rightly or wrongly, legally or illegally, and produced before them, they had to pass an order for their disposal. Therefore the order of confiscation was an order within their jurisdiction. As regards the propriety of it, I think it was the only correct order that could be passed in the circumstances. There was no claimant for the notes; the trustees of the temple did not claim them as temple property. The applicant did not claim them as his personal property and had no 'locus standi' to claim them as temple property in opposition to the trustees themselves.

As a matter of fact, it was not temple property at all. The rightful owner was not known, as I said earlier, he chose, and chose for very good reasons, to remain in the background. Therefore the notes could not be ordered to be handed over to any person. Since they had been obtained through the commission of an offence, they could very reasonably be ordered to be confiscated. The Courts below did not exercise their discretion at all arbitrarily or injudiciously and it would be illegal for me to interfere with their exercise of discretion.

17. There is no force in the application which should be dismissed.

Mukerji, J.

18. The applicant Ram Lal has been convicted under Section 7, High Denomination Bank Notes (Demonetization) Ordinance, 1946 (3 of 1946), and sentenced to a fine of Rs. 800/-. In default of the payment of fine he was ordered to undergo rigorous imprisonment for six months. There is further an order forfeiting a sum of Rs, 50,000/- in currency notes.

19. The applicant was the mukhtar-a-am and also performed the functions of an accountant of a trust which appertained to the temple of Sri Rangji at Brindaban in the district of Mathura. This trust was managed by a Board of Trustees in accordance with a scheme that had been drawn up by this Court some time back. The temple, or more appropriately the trust, possessed extensive properties which were in its hands as endowment and the trust also had in its treasury a large sum of money, almost, at all times.

20. The exigencies of the War necessitated action in regard to certain monetary activities of the country and, therefore, an Ordinance called the High Denomination Bank Notes (Demonetisation) Ordinance was promulgated on 12-1-1946 toy the Governor-General in exercise of the powers conferred upon him by Section 72, Government of India Act, as set forth in the 9th Schedule of that Act.

Section 6 of the Ordinance provided for the exchange of high denomination bank notes held toy any one for notes of smaller denomination or for other valid legal tender. This section provided for the procedure that had to be under gone, if and when, a holder of a high denomination bank note wished to have it converted into equivalent monies.

Section 6 provided for a declaration that the owner of a high denomination bank note was enjoined to make before he was entitled to have that note converted by the Reserve Bank of India; for the Reserve Bank of India was authorised to convert the high denomination bank note which had been demonetised by the Ordinance. Section 7 of the Ordinance provided for penalties that would be imposed for breaches of any of the provisions of the Ordinance. The same section by its Clause (3) provided as follows :

> No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the Central Government.
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> Section 7(1) was to the following effect :
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> Whoever knowingly makes in any declaration under Section 6 any statement which is false or only partially true or which he does not believe to be true, or contravenes any provision of this Ordinance or the rules made thereunder, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
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> It is necessary to note the provision of Sub-section (5) of Section 6 also. That provision was in these words:
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> The person who signs any declaration under this section shall be deemed for all purposes to be the owner of the high denomination bank notes to which it relates, and if it is proved that he is not in fact the owner of such bank notes, he and the owner thereof, unless in the case of the latter he can prove that the declaration was made without his knowledge, shall be deemed to have contravened the provisions of Section 4.

Section 4 reads thus :

> Save as provided by or under this Ordinance, no person shall after the 12th day of January 1946 transfer to the possession of another person or receive into his possession from another person any high denomination bank note.

21. On 16-1-1946, Mahant Govind Das, the managing trustee, sent a letter to Sridhar Acharya, the manager, authorising him to exchange the high denomination bank notes belonging to and held by the trust in accordance with the provisions of the Ordinance. On 25-1-1946 Sridhar Acharya accompanied by the applicant went to the Civil and Sessions Judge of Mathura before whom the applicant made a declaration on an application which was signed by him in accordance with the requirements of Section 6 of the Ordinance. The application was in accordance with the requirements of the Ordinance.

In the column 'Name of declarant' the applicant put down this - "Sri Thakur Rangji Maharaj under the mahtamim Mahant Govind Das through Ram Lal mukhtar-e-am." In the column of 'Status of declarant' he put down-"Individual capacity of God". In the column of 'Particulars of high denomination notes tendered' he gives the particulars of the fifty notes of the value of Rs. 1,000/- each. The other particulars required to be filled in were also filled in by the applicant. The declaration which the applicant signed was in these words :

> I hereby declare that the particulars furnished above are full, true and correct to the best of my our knowledge and belief. I further declare that the bank notes tendered herewith belong to me/us and are not benami holdings.
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> The applicant signed his name and described himself as mukhtar-e-am of Mahant Govind Das mahtamim Sri Rangji Temple, Brindaban.

22. The Imperial Bank received the application but did not forthwith determine to exchange the high denomination notes but the Agent of the Bank referred the matter to the Finance Department of the Government of India for orders. The Agent also sent a copy of his letter, Which he addressed to the Government of India, to Mahant Govind Das. On 13-3-1946 the Imperial Bank, however, exchanged the high denomination bank notes and delivered to the applicant five hundred notes of the value of Rs. 100/- each.

23. It appears that on receipt of the letter of the Agent of the Imperial Bank, Drigpal Singh, one of the trustees, recorded the statements of the applicant and some others in respect of this transaction of exchanging the high denomination bank notes. The applicant in his statement said that Sridhar Acharya had given him the notes for having them exchanged and it was Sridhar Acharya who had told him that the notes belonged to the temple and had been taken out from the temple treasury.

The applicant made it clear in his statement that he had no personal knowledge as to the source from where the high denomination bank notes came. From his statement it was further clear that to his knowledge there existed in the temple treasury and tosha khana some two or three high

denomination bank notes. The applicant made it further clear in his statement that he had exchanged the high denomination bank notes in his capacity of a general attorney or mukhtar-e-am of the temple.

24. On 19-3-1946 Drigpal Singh sent a complaint to the Superintendent of Police alleging that there was to his knowledge, no high denomination bank notes in the temple treasury and that the alleged exchange of the 50 high denomination bank notes through the Imperial Bank were not apparently made on behalf of the temple. Drigpal Singh, therefore, requested for an inquiry in respect of the matter. On 14-4-1946 the police examined the double-locked treasury of the temple and recovered therefrom five hundred notes of the value of Rs. 100/- each.

Further, they recovered a sum of Rs. 11,943/- in notes and coins of other denomination. The recovered money was kept in two separate stocks. The police after completing their investigation submitted a report to the Secretary in the Finance Department of the Provincial Government. The Secrtary in this Department wrote to the Government of India in the Finance Department on 24-10-1946 seeking sanction for the prosecution of the applicant and some other persons under Section 7(1) of the Ordinance.

Sanction was accorded by the Deputy Secretary to the Government of India in the Finance Department on 25-11-1946. A copy of this sanction was forwarded to the Government of U. P. by Sri O. P. Gupta, an Assistant Secretary to the Government of India in the Finance Department. Curiously enough, this sanction which was conveyed to the U, P. Government by Sri O. P. Gupta did not bear any signature.

The omission was discovered at a subsequent stage and on 16-4-1947 another sanction bearing proper authentication was sent to the U. P. Government. Curiously enough again, a charge-sheet had been submitted to the Court accompanied by that sanction which borne no signature; the prosecuting agency, however, rectified their error by withdrawing that charge-sheet and immediately putting in another charge-sheet accompanied by the properly signed sanction dated 16-4-1947. This was done on 29-9-1948. The charge-sheet was against four persons, Sridhar Acharya, Lakshmi Narain, Parshotam Das and Ram Lal Asthana (the applicant). Sridhar Acharya died during the pendency of the proceedings before the Magistrate, while Lakshmi Narain and Parshotam Das were discharged by the Magistrate and a charge against the applicant alone was framed under Section 7(1) of the Ordinance on 9-4-1949.

25. Several defences were raised on behalf of the applicant before the trial Court. One such defence was that the sanction had not been proved in accordance with law and further that the sanction which had been produced in Court did not show that the sanctioning authority had considered all the relevant facts before according sanction. This contention was raised before the Magistrate by the applicant on 6-7-1949.

On the 12th of July, the Magistrate considered it proper to examine a C. I. D. Inspector under Section 540, Criminal P. C., in order to prove the sanction. The Magistrate after receiving all the evidence that was tendered before him convicted the applicant in the terms referred to above. On

appeal, the learned Sessions Judge considered all the points that were raised before him. He too upheld the conviction of the applicant, for he found no force in any of the contentions raised before him.

26. The applicant has come up in revision to this Court and has raised several points. It was contended on his behalf-

> (1) that the sanction had not been proved in accordance with law and further that the sanction was not a proper sanction, inasmuch as, it did not show on the face of it that the sanctioning authority had either the relevant facts, on which he had given his sanction, before him or that he had applied his mind to the facts before according the sanction;
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> (2) that the declaration which had been made by the applicant was not false; at any rate, it had not been shown that the applicant knew that the declaration, he was making, was false;
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> (3) that the Ordinance having lapsed before the prosecution was launched, the conviction could not stand;
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> (4) that Sections 3 and 4 of the Ordinance were of a confiscatory nature and were therefore void in view of Article 19(1)(f) of the Constitution of India and that Sections 5, 6 and 7, being merely subsidiary sections, fell with the main Sections 3 and 4; and (5) that, in any event, the order of forfeiture or confiscation, which was passed by the-Magistrate in respect of the currency notes of the value of Rs. 50,000/-, was unjustified and illegal.

27. I shall now take up the questions that were raised on behalf of the applicant for decision.

28. As I have already stated, the sanction which was made the basis of this prosecution, was attempted to be proved by a C. I. D. Officer. The evidence of this officer was placed before us and we were of the opinion that the evidence, which had been led, was not sufficient to prove the sanction on which reliance had been placed by the Courts below. We accordingly gave the State an opportunity to adduce further evidence to satisfy us that the sanction, which had been produced in this case, was a sanction that had been made or given in accordance with the requirements of Section 7(3) of the Ordinance.

The State summoned Shri O. P. Gupta, Deputy Secretary to the Government of India in the Ministry of Finance, to prove the sanction. The sanction bore the signature of Shri Gupta so that, 'prima facie', he was the appropriate person to prove the sanction. Shri Gupta stated that the papers, which had been sent to the Government of India by the U. P. Government, had been carefully scrutinised and the facts which appeared on those documents, were considered by a number of officers before sanction was given for the prosecution of the applicant.

Shri Gupta was unable to state, however, whether the then Deputy Secretary consulted higher officers of Government, or, even consulted the Governor-General himself before he accorded his approval to the proposal made by the witness for giving sanction. On behalf of the State, reliance was placed on Section 40 of the 9th Schedule of the Government of India Act, 1935, for the argument that the sanction, having been authenticated by an officer authorised to make such authentication, could not be challenged before a Court.

29. Section 40 of the 9th Schedule of the Government of India Act, 1935, is in these words :

> 40(1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a Secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, When so signed, shall not be called into question in any legal proceedings on the ground that they were not duly made by the Governor-General in Council.
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> (2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

I may here point out that, under Home Department Resolution No. 18/3/39-Public, dated 23-7-1939, the Governor-General in Council had directed, in pursuance of Section 40(1) of the 9th Schedule of the Government of India Act, 1935, that all orders and other proceedings of the Governor-General in Council be signed by a Secretary, Deputy Secretary or Assistant Secretary to the Government of India.

In view of the aforementioned resolution, the authentication by one of the three classes of Secretaries mentioned above was to be treated as proper authentication within the meaning of Section 40(1) of the 9th Schedule. Under Section 40(1), any order expressed to have been made by the Governor-General in Council and signed by a Secretary, Deputy Secretary or Assistant Secretary was to be deemed to be ah order duly made by the Governor-General in Council and such an order could not be called into question in any legal proceeding. Under Section 40(2), there was the relevant notification which gave expression to an order of the Governor-General for a more convenient transaction of business in his Executive Council; in other words, an Assistant Secretary to the Government of India was authorised to issue an order under his signature which had to be treated as an order or as an act of the Governor-General in Council.

30. Shri O.P. Gupta was, therefore, authorised to sign the sanction and, after his signature, the sanction was to be deemed to be the sanction given by the Governor-General in Council. Under Section 40, what could not be challenged is the fact that the order, which had been properly authenticated by a Secretary, was not order 'duly made'.

On behalf of the applicant, reliance was placed on the case of - AIR 1945 PC 156 (E)' for the argument that it was open to the applicant to show that the sanction, which had been authenticated by Shri O. P. Gupta and had been exhibited in the case and made the basis of the prosecution, had not been accorded by the Governor-General in Council.

In - Sibnath Banerji's case (E)', their Lordships of the Privy Council did not consider the provisions of Section 40 of the 9th Schedule but considered the provisions of Section 59(2), Government of India Act, 1935. Section 59(2) of that Act is in these words :

> 59(2)- Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
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> Section 59(2) creates a bar to questioning the 'validity' of an order on the ground that such an order was not an order made by the Governor. Section 40(1), on the other hand, creates a bar in the way of the applicant from raising the question that the order, which was duly authenticated, had not been 'duly made' by the Governor-General in Council, To my mind, there is a distinction between questioning the 'validity' of an order and raising the question that an order, duly authenticated, had not been 'duly made'. Their Lordships of the Privy Council quoted, with approval, a passage from the judgment of the learned Chief Justice of the Federal Court. The passage, which they quoted, was this :
>
> It is quite a different thing to question the accuracy of a recital contained in a duly authenticated order, particularly, where that recital purports to state as a fact the carrying out of what I regard as a condition necessary to the valid-making of that order. In the normal case, the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by a Court as establishing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenu to produce admissible evidence sufficient to establish even a prima facie case that the recital is not accurate.
>
> Their Lordships expressed the opinion that the contention of the Crown in that case went too far, inasmuch as, Sub-section (2) of Section 59 related only to one specified ground of challenge and that was that the order or instrument was not made or executed by the Governor. What was really decided was that where the power of the Governor to make the order was being challenged, or, a challenge to the order was being made on the ground that the power, which could only have been exercised on the existence of certain circumstances or on the existence of certain facts, then a challenge could be made on the ground that the Governor had no power to make the order, or, the circumstances or the facts, on which the order could have been made, did not exist.

> In - Sibnath Banerji's case (E)', what was argued on behalf of the detenu was that the Governor had not the power to make the order because the Governor had not complied with the conditions precedent to making the order - in effect, the power of the Governor to make the order was questioned. Under the above circumstances, their Lordships of the Privy Council approved of the statement made by the learned Chief Justice of the Federal Court which I have quoted above.
>
> In the case before us, the applicant did not challenge the power of the Governor-General to accord the sanction. It was not contended that there were any pre-requisites to making the sanction by the Governor-General. What was challenged was that the sanction, which had been produced in the case, was not the sanction of the Governor-General in Council but was a sanction that had been given by some officer of Government. In my judgment, Section 40(1) of the 9th Schedule in terms applies to such a contingency and bars such an argument being raised.

31. It was next contended on behalf of the applicant that the Governor-General had no materials before him, on which he could accord a proper sanction. It was further argued that there was nothing in the sanction to indicate that the Governor-General considered the relevant facts of the case before he accorded the sanction, assuming that the sanction was accorded by the Governor-General in Council. Reliance was also placed on the case of - AIR 1948 PC 82 (B)'. In that case, the Privy Council had to interpret Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943. That Clause was in these words :

> 23. No prosecution for the contravention of any of the provisions of this Order shall be instituted without the previous sanction of the Provincial Government (or of such officer of the Provincial Government not below the rank of District Magistrate as the Provincial Government may by general or special order in writing authorise in this behalf).

Their Lordships further held that where a sanction simply names the person to be prosecuted and only specifies the provisions of the Order which are alleged to have been contravened, it was not a sufficient compliance with Clause 23. Their Lordships went on to point out that, in order to comply with the provisions of Clause 23, Cotton Cloth and Yarn (Control) Order, 1943, it must be proved that the sanction was given "in respect of the facts constituting the offence charged". That is to say, there was to be proof that the sanction, which was being produced in a case, related to the facts of that particular case.

If a sanction did not relate to a particular case which was being supported by that sanction, then, obviously, the sanction could not be used to support that case. Their Lordships further pointed out in - Gokulchand Dwarkadas's case (B)' that it was desirable that the facts should be referred to on the face of the sanction but they were careful to observe that this was not essential since Clause 23 did not require a sanction to be in any particular form, or, even to be in writing.

But if the facts, constituting the offence charged, were not shown on the face of the sanction, then it was open to the prosecution to prove by extraneous evidence that those facts had been placed before the sanctioning authority. The sanction in the case before us was in these words :

> In pursuance of Sub-section (3) of Section 7 of the High Denomination Bank Notes (Demonetization) Ordinance (3 of 1946), the Central Government is pleased to sanction the institution of prosecution against Messrs. Ram Lal, Shridhar Acharya, Laxmi Narain and Parshottam respectively, mizkhtaran-e-am, ex-manager, accountant and ex-munim of Shri Rangji's Temple, Brindaban, Muttra, for having made or abetted the making of a declaration on behalf of Shri Ragji's Temple, Brindaban, in circumstances which constitute an offence punishable under Section 7 of the said Ordinance.
>
> From the aforequoted sanction, it would appear that the sanction on the face of it did not show which particular declaration was thought to have been false and in respect of which the prosecution had been ordered. Therefore, it was necessary for the State to prove which particular declaration it was, in respect of which the sanction had been accorded, and this the State in this case has done so that there was no invalidity in the sanction.
>
> The evidence given by Shri O. P. Gupta also indicated that the sanctioning authority had all the material facts necessary for according the sanction before it. In my view, it was not necessary for the prosecution to prove that the material facts before the sanctioning authority were sufficient for according the sanction. According to the rules of business framed by the Governor-General, allocation of duties was made between the various departments and officers serving in those departments.
>
> The allocation of these duties was evidenced by a publication called 'The Administrative Directory of the Government of India'. This Directory was produced before us and we found that, on page 125 of that Directory, currency matters were to be dealt with by the Deputy Secretary (F) through the Assistant Secretary (F). During the relevant period in question, Shri K. N. Kaul was the Deputy Secretary (F) and it was he who sanctioned the prosecution in the "present case. The breach complained of was a breach in respect of a currency matter, for the Ordinance, under which the prosecution was launched, dealt with a currency matter, namely, the demonetization of high denomination notes.

32. A similar question was raised before the Bombay High Court in the case of - AIR 1952 Bom 184 (C)' and a Bench of that Court held that a sanction given by a Deputy Secretary to the Government of India under Section 7 (3) of the High Denomination Bank Notes (Demonetization) Ordinance, 1946 (No, 3 of 1946) was a valid sanction. Reliance was also placed by learned Counsel for the applicant on the case of - AIR 1952 Orissa 200 (D)'.

That case was in respect of the public safety -Preventive Detention Act. The Provincial Government had to be 'satisfied' before an order under Section 3 of the Preventive Detention Act could be made. In that case, the detention order had been made by the Home Secretary and the question, that was raised, was whether the Home Secretary had the necessary authority to make that order. It was contended on behalf of the State that a presumption as regards the validity of the sanction should be drawn under Section 11V Illustration (e) of the Indian Evidence Act. To that contention, the learned Judges observed as follows :

> The contention strongly urged by the learned Advocate-General is that this subsidiary rule validates the order passed by the Home Secretary in this case and that the authority of the Minister-in-charge to the Home Secretary to deal with these cases is to be presumed in accordance with the ordinary presumption that all official acts are to be taken to have been regularly performed, 'vide' Section 114, Illustration (e) of the Evidence Act. The presumption, however, is one that 'may' be drawn by a Court.
>
> In a matter so fundamental and important as the liberty of a subject which can be deprived of only by strict compliance with the statutory requirements of Section 3 of the Preventive Detention Act, we are not prepared to uphold the validity of the orders in question by reliance on any such presumption.
>
> We specifically put it to the Advocate-General, whether he was in a position to substantiate that the Home Secretary had the requisite authority either generally, or directed to these specific cases and we were prepared to consider, if necessary, a request for short time for production of any such material, if available.
>
> But the learned Advocate-General frankly pleaded his inability. It must, therefore, be taken as a fact that the Home Secretary had no such authority which would enable him to pass the orders now under challenge in purported reliance on Rule 2 of subsidiary rules of business.
>
> The position of an order of detention made under the Preventive Detention Act stands on a footing different from that of a sanction which has to be accorded under Section 7 (3) of Ordinance 3 of 1946. Under Section 7 (3), there was no question of there first being any 'satisfaction' in the sanctioning authority before according sanction so that there could be no question of the prosecution showing that the sanctioning authority had accorded the sanction after being satisfied on the facts and materials placed before it that sanction should be accorded.
>
> There were before the sanctioning authority all the relevant facts on which a sanction could be given. Therefore, in my view, the sanction, that had been accorded and was made the basis of this prosecution, was beyond challenge.

33. The question whether the declaration, which the applicant made, was a false declaration within his knowledge was a question of fact. The Courts below have found it as a fact that the declaration,

that the applicant made, was a false declaration. There was before the Courts below sufficient material to come to that conclusion and, sitting as a revisional Court, I do not think it appropriate to go into that question of fact over again. The declaration, which the applicant gave, was certainly partially false.

Under Section 6 (5) of the Ordinance, a person, who signs a declaration, is to be deemed to be the owner of the high denomination bank notes, to which the declaration relates. The applicant, on his own case, was not the owner of those notes. The declaration, which the applicant made and signed, was in the following-words :

> I hereby declare that the particulars furnished above are fully true and correct to the best of my knowledge and belief. I further declare that the bank notes tendered herewith belong to me and are not 'benami' holdings.
>
> I undertake to advise 'to' Reserve Bank of India, Bombay, if, any other high denomination bank notes were tendered for exchange by me at any other station, Sd/- Ram Lal Asthana Mukhtaram of Mahant Govind Das Mahtamim Shri Rangji Temple, Brindaban.

The bank notes admittedly did not belong to the declarant and, consequently, his declaration that they belonged to him and were not 'benami' holdings was clearly false. Evidence was led in this case to show that the high denomination bank notes in question did not belong to the temple of Shri Rangji. The prosecution also showed that the applicant had the means of knowing, and, in fact, he did know, that those high denomination bank notes were not in the temple treasury.

That evidence was believed by the Courts below and I have seen no reason to disbelieve that evidence. Learned Counsel appearing for the applicant made a good deal of argument on the various books of account of the temple that had been produced in the case to show that the applicant did not know that the high denomination bank notes, that he was tendering, did not belong to the temple.

In my opinion, the attempt of learned Counsel in this respect was futile for there was nothing in the books of account, that had been produced, and to which our attention was drawn during the course of argument, to show that the applicant did not or could not know that the high denomination bank notes, which he was tendering for exchange, were not the temple property.

34. Learned Counsel for the applicant, although he raised an argument to the effect that, the Ordinance having lapsed before the prosecution had been launched, the conviction of the applicant under that Ordinance was illegal, did not' press this argument before us in view of the decision which had been given in this very case by this Court in earlier proceedings.

35. Learned Counsel argued that Sections 3 and 4 of the Ordinance were confiscatory in nature and, therefore, they were void on account of the guarantee contained in Article 19(1)(f) of the Constitution. Section 3 of the Ordinance was in these words :

> 3. On the expiry of the 12th day of January, 1946, all high denomination bank notes shall, notwithstanding anything contained in Section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), cease to be legal tender in payment or on account at any place in British India.

There was 'prima facie', therefore, nothing in Section 3 to make it confiscatory in its operation. Currency notes are token money and their validity as money is dependent upon certain enactments and it is, therefore, open to the authority, which gives validity to such money, to withdraw that validity whenever it is thought necessary to withdraw that validity. It may perhaps be open to challenge in cases where the withdrawal operates to cause a kind of forfeiture or confiscation of the money in respect of which the bank note or the currency note was a token.

In the case of these high denomination bank notes, the Ordinance made provision for the exchange of these notes in the event of a person, holding these notes, following a certain prescribed procedure. There was, therefore, no confiscation of the money, which these notes represented, by the State under the terms of the Ordinance.

36. Section 4 of the Ordinance read as follows :

> 4. Save as provided by or under this Ordinance, no person shall after the 12th day of January, 1946, transfer to the possession of another person or receive into his possession from another person any high denomination bank note.

On the afore-mentioned words of the section, no confiscation in any sense of that word could arise. Under Article 19(1)(f) of the Constitution, what has been guaranteed is the right of every citizen to acquire, hold and dispose of property. Section 4 undoubtedly places a restriction on the power of disposing of and acquiring high denomination bank notes after a certain date, and high denomination bank notes must be held to be property but Article 19(1)(f) is subject to the restrictions mentioned in Clause (5) of that Article.

Under Clause (5), the State could make any law, imposing reasonable restrictions on the exercise of the right of a citizen to acquire and dispose of or hold property in the interest of the general public. The impugned Ordinance was passed because an emergency had arisen because of great currency inflation and restrictions were placed because such restrictions were necessary in the interest of the general public.

Section 4 of the Ordinance, it should be noticed, did not place any restriction on the right of any citizen to acquire or receive the equivalent in smaller" denomination bank notes, the value that was represented by high denomination bank notes, nor did it prohibit the transfer of an equivalent value of a high denomination note to another citizen : ' What was prohibited was the receiving or the

transfer of the high denomination notes in species and this prohibition was made, as I have already said, in the interest of the general public. In my view, therefore, the provisions of Sections 3 and 4 of the Ordinance were not in conflict with the guarantee given by the Constitution under Article 19(1)(f).

37. The last major argument on behalf of the applicant was that the order of forfeiture or confiscation made by the Magistrate in respect of the currency notes of the value of Rs. 50,000/- was unjustified. It is clear that there is no provision in the Ordinance for confiscation either of the high denomination notes or the equivalent thereof. The Ordinance only prescribes punishment for any breach of any of the conditions provided for by the Ordinance.

The order of confiscation was made by the Magistrate apparently because the Magistrate took the view that the sum of Rs. 50,000/-, which was recovered from the treasury of the temple, was money obtained by changing the fifty high denomination bank notes improperly through the agency of the Imperial Bank of India. It is clear that the applicant did not lay any claim to these fifty thousand rupees himself.

On behalf of the temple, no one has come forward to claim this sum of Rs. 50,000/- but one thing is clear, namely, that the sum of Rs. 50,000/- in currency notes, which has been forfeited to the State under the orders of the Magistrate, was recovered from the treasury of the temple. The money, therefore, at the time of its having been recovered by the police, was in the temple treasury and if nothing else was known, the money should be presumed to belong to Shri Rangji from whose treasury it was obtained by the police.

38. The order of confiscation has been attempted to be justified on the ground that a Magistrate has the power to order confiscation of any property, or, to make an order in regard to the disposal of any property when such property has come before the Magistrate during the course of any trial. Reliance was placed for this argument on Sections 516-A and 517, Criminal P. C Section 516-A says :

> 516-A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.
>
> This section, to my mind, has no application to the facts and circumstances of the present case. (39) The relevant portion of Section 517, Criminal P. C. is in these words :
>
> 517 (1). When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal (by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise) of

> any property or document 'produced before it' or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

The question is whether a Court under Section 517 (1), Criminal P. C., has the power to order confiscation of property which has been produced before it, or, which is in its custody irrespective of the fact whether any offence regarding such property has been committed or not, or, whether such property was used for the commission of any offence.

A plain reading of the sub-clause makes it clear that the power of the Magistrate to order disposal either by destruction, confiscation or otherwise of property comes into play even when the property is just produced before him irrespective of the fact whether any allegation that any offence in respect of that property has been committed or that property has been used for the commission of that offence is made or not. The explanation to the section makes it clear that the word 'property' in the section includes not only the original property , regarding which an offence appears to have been committed but also any property which has come into being as a substitute of that property. The high denomination bank notes in this case were the subject-matter of the offence, in essence; in essence also, the high denomination bank notes were used for purposes of committing an offence, or, in respect of which an offence had been committed by the applicant.

According to the prosecution, the notes, which were ordered to be confiscated, had been converted or exchanged for the high denomination bank notes and, therefore, an order in respect of those notes could be made in the same manner in which an order could have been made in respect of ' the high denomination bank notes themselves.

There is no satisfactory proof on the record to enable me to hold that the notes, that were produced in the case, had been taken from the bank in exchange for the fifty high denomination bank notes. Even so, there being power in the Magistrate to order the disposal, by confiscation, of property which is produced before him, or, is in his custody irrespective of whether that property was used for the commission of an offence, or, an offence was committed in respect of it, the order of confiscation, which the Magistrate made in regard to the notes, could not be said to be either without jurisdiction or illegal.

The order must be maintained because there was nobody before the Court, claiming this sum of money as his. As I have already said, the applicant laid no claim to this money, nor was any claim laid to this money on behalf of Shri Rangji and, consequently, the order, which has been made by the Magistrate, appears to me to have been the only possible order in respect of this money.

40. For the reasons given above, I agree with my brother Desai, J., that this application in revision should fail and should be dismissed.

(Leave to appeal to the Supreme Court was prayed but was refused).