26. Thus, it can be seen that the respondent Nos. 1 and 2 have stated in the Dispute sufficient material facts and the details on account of which according to them, the Election was not conducted in a just and fair manner. Therefore, this is not the case, where it can be said that no cause of action is disclosed or the entire chain of events, which constitute the cause of action is incomplete, so as to cause any material irregularity or illegality in the petition or to cause any prejudice to the petitioners, so as to reject the Dispute under Order 7, Rule 11(a) of Civil Procedure Code.

27. As both the Courts below have rightly considered all these aspects of the case and then rejected the petitioners' application filed under Order 7, Rule 11(a) of Civil Procedure Code, the impugned order passed by the Co-operative Court and confirmed by the Revisional Court being just, legal and correct; no interference is warranted therein.

28. Both the Writ Petitions, therefore, stand dismissed.

Petitions dismissed.

CONVICTION OF INDIAN BY FOREIGN COURT FOR OFFENCE COMMITTED IN THAT COUNTRY : NOT BINDING ON INDIAN COURTS

[Full Bench]

(B. R. Gavai, K. R. Shriram and B. P. Colabawalla, JJ.)

PRABODH K. MEHTA *Appellant.*

vs.

CHARUBEN K. MEHTA *Respondent.*

(a) Constitution of India, Art. 20 and Criminal Procedure Code (2 of 1974), S. 300 — *Conviction of an Indian by a foreign Court for the offence committed in that country can be taken notice of by the Courts or authorities in India while exercising their judicial and/or quasi judicial powers.* 2001(3) Mh.L.J. 673 affirmed. (Para 34 to 41)

(b) Criminal Procedure Code (2 of 1974), S. 300 and Constitution of India, Art. 20 — *Though conviction of an Indian by a foreign Court for the offence committed in that country can be taken notice of by Courts in India, such conviction would not be binding on the Courts and authorities in India while exercising their judicial and/or quasi judicial powers — Factors to be taken into consideration while deciding as to how much and what weightage has to be given to such judgment and order of conviction — Courts and authorities, while exercising their judicial and quasi judicial powers will have to take a call on facts and circumstances of each case and take a decision as to what is the effect of such judgment and order of conviction.*

Though the judgment and order of conviction of a foreign Court for the offence committed in India (sic : in that Country) can be noticed/looked into and recognized by judicial and quasi judicial authorities in India, while exercising

First Appeal No. 922 of 2013 in Charity Application No. 10 of 2013 with First Appeal No. 923 of 2013 in Charity Application No. 13 of 2013 decided on 1-3-2018. (Bombay)

their judicial and quasi judicial powers, it cannot be said that the same will be ipso facto binding on such Courts and authorities. If it is held that such a judgment of a foreign Court for an offence committed in that country, is binding on the Courts and authorities in India while exercising their judicial and quasi judicial powers, it will amount to directly or indirectly enforcing the judgment of the foreign Court. What is the effect of such order of conviction, would depend upon variety of factors such as, nature of the proceedings, purpose for which the said order of conviction needs to be taken into consideration, nature of conviction and effect thereof on the proceedings, nature of consequences of the ultimate decision to be taken in the said proceedings, are some of the factors which will have to be taken into consideration while deciding as to how much and what weightage has to be given to such judgment and order of conviction. No hard and fast rule can be laid for that purpose. The Courts and authorities, while exercising their judicial and quasi judicial powers will have to take a call on the facts and circumstances of each case and take a decision as to what is the effect of such judgment and order of conviction. (Para 42)

For appellant : *Rafique Dada, Senior Counsel along with Prateek Saksaria, Dhirendra Sinha, Saket Mone and Ashish Gatagat instructed by M/s Vidhi Partners*

For respondent : *Aabad Ponda along with Dakshesh Vyas, Abhishek Prabhu and Yash Mehta instructed by Thakore Jariwala & Associates*

List of cases referred :

1.	*Govind Kesheo Powar vs. State of Madhya Pradesh and others, 1955 NLJ 498 = 1955 Cri.L.J. 1275 : AIR 1955 Nag 236*	(Paras 5, 9, 18, 39)
2.	*Huntington vs. Attrill, 1893 House of Lords 150*	(Paras 5, 12, 13, 16)
3.	*Banco De Vizcaya vs. Don Alphonso De Borbon, [1935] K.B. 140*	(Paras 5, 13, 16)
4.	*United States of America vs. Inkley, 1989 1 Q.B. 255,*	(Paras 5, 14, 16)
5.	*Raulin vs. Fischer, 2 Kings Bench 1911*	(Para 5)
6.	*Frankfurther vs. W. L. Exner Limited, 1947 1 Chancery Division 629*	(Para 5)
7.	*Ogden vs. Folliott, 3 TR 725*	(Para 5)
8.	*Wolff vs. Oxholm, 6 M & S 91*	(Para 5)
9.	*Lynch vs. The Provisional Government of Paraguay*	(Para 5)
10.	*Union of India and others vs. Susanta Kumar Mukharjee, 1977 II L.L.J. 460*	(Paras 5, 18)
11.	*Brace Transport Corporation of Monrovia, Bermuda vs. Orient Middle East Lines Ltd, Saudi Arabia and others, 1995 SUPP (2) SC 280*	(Paras 6, 21, 38)
12.	*Ralli Brothers vs. Compania Naviera Sota Y Aznar, 1920 (2) K.B. 287*	(Paras 6, 22)

13.	*Regazzoni vs. K. C. Sethia, 1954(3) W.L.R. 79*	(Paras 6, 23, 24, 26, 37)
14.	*Emery vs. Emery, 1959 Chancery Division 410*	(Paras 6, 24)
15.	*Oppenheimer and Cattermole (Inspector of Taxes), Nothman and Cooper (Inspector of Taxes), 2 W.L.R. 347*	(Paras 6, 25, 37)
16.	*Euro-Diam Ltd. vs. Bathurst, [1990] 1 Q.B. 1*	(Paras 6, 26, 37)
17.	*Indian and General Investment Trust Ltd. vs. Sri Ramchandra Mardaraja Deo, Raja of Khalikote, AIR 1952 Cal 508*	(Para 7)
18.	*State (NCT of Delhi) vs. Brijesh Singh and ors., MANU/SC/1273/2017*	(Para 8)
19.	*Avinashkumar Bhasin vs. Air India, Bombay, 2001(3) Mh.L.J. 673*	(Paras 8, 9, 20, 40)
20.	*Raulin vs. Fischer, 192 Kings Bench 1911 page 93*	(Para 15)
21.	*Holman vs. Johnson, 1 Cowp. 341, 343*	(Para 23)
22.	*Government of India vs. Taylor, 1955 A.C. 491*	(Para 23)
23.	*Peter Buchanan Ltd and Macharg vs. Mc. Vey, 1955 AC 516n, 523*	(Para 23)
24.	*Jitendra Panchal vs. Intelligence Officer, Narcotics Control Bureau and another, (2009) 3 SCC 57*	(Para 35)
25.	*Regional Manager and another vs. Pawan Kumar Dubey, 1976(3) SCC 334*	(Para 39)

JUDGMENT :

B. R. GAVAI, J. :— This matter is placed before us as per the orders passed by the Hon'ble the Chief Justice for answering the following question :—

> "Whether conviction of an Indian by a foreign Court for the offence committed in that country can be taken notice of by the Courts or authorities in India and such conviction would be binding on Courts and authority in India while trying such person for such offence in India?"

2. When the matter was listed before us on 21-2-2018, with the consent of the parties, the question which is referred to us has been re-framed as thus :

> (1) Whether conviction of an Indian by a foreign Court for the offence committed in that country can be taken notice of by the Courts or authorities in India and as to whether such conviction would be binding on Courts and authorities in India while exercising judicial and quasi judicial powers ?

3. Since we are called upon to only answer the question, reference to the factual matrix would not be necessary.

4. We have heard Shri Dada, learned Senior Counsel appearing on behalf of the Appellant in the First Appeal and Shri Ponda, learned Counsel appearing on behalf of the Respondent. Though lengthy and elaborate arguments have been advanced by both Shri Dada and Shri Ponda, we will only deal with such of the arguments that are necessary for answering the reference.

5. Shri Dada submitted that, the judgment and order of conviction by a foreign court for the offence committed in that country cannot even be looked into or no notice be taken of by the Indian Courts. Learned Senior Counsel submitted that, the view taken by the erstwhile Nagpur High Court in the case of *Govind Kesheo Powar vs. State of Madhya Pradesh and others, 1955 NLJ 498 = 1955 Cri.L.J. 1275 : AIR 1955 Nag 236,* lays down the correct position of law. He submitted that, the view taken by the Nagpur High Court is in tune with the view taken by the House of Lords in *Huntington vs. Attrill, 1893 House of Lords 150*, Kings Bench Division in *Banco De Vizcaya vs. Don Alphonso De Borbon, [1935] K.B. 140,* Queens Bench in *United States of America vs. Inkley, 1989 1 Q.B. 255*, Kings Bench in *Raulin vs. Fischer, 2 Kings Bench 1911* page 93, Chancery Division in *Frankfurther vs. W. L. Exner Limited, 1947 1 Chancery Division 629, Ogden vs. Folliott, 3 TR 725, Wolff vs. Oxholm, 6 M & S 91* and *Lynch vs. The Provisional Government of Paraguay*. The learned Senior Counsel also relied on the Judgment of Division Bench of the Calcutta High Court in *Union of India and others vs. Susanta Kumar Mukharjee, 1977 II L.L.J. 460* . The learned Senior Counsel further submits that, it has been consistently held that the Court of one country would not directly or indirectly execute decree of the Court of another country and if the Court of one country is permitted to take note of decree of the Court of another country, it will amount to nothing else but indirect enforcement of decree of the foreign Court.

6. Per contra, Shri Ponda, the learned Counsel appearing on behalf of the Respondent, submits that, though judgment and order of conviction passed by the foreign Court may not be binding on the Courts in India, the same, however, could be noticed and recognized while exercising judicial or quasi judicial powers by the Courts and authorities as the case may be in India. The learned Counsel submits that, enforcement of a judgment of foreign court is distinct from recognizing or noticing the said judgment by the Courts and authorities in India. In this respect, the learned Counsel relied on the judgment of the Apex Court in *Brace Transport Corporation of Monrovia, Bermuda vs. Orient Middle East Lines Ltd, Saudi Arabia and others, 1995 SUPP (2) SC 280.* The learned Counsel also relies on the judgment of King's Bench in *Ralli Brothers vs. Compania Naviera Sota Y Aznar, 1920 (2) K.B. 287*, of the Court of Appeal in the case of *Regazzoni vs. K. C. Sethia, 1954(3) W.L.R. 79*, of the Chancery Division in the case of *Emery vs. Emery, 1959 Chancery Division 410*, of the House of Lords in the case of *Oppenheimer and Cattermole (Inspector of Taxes), Nothman and Cooper (Inspector of Taxes), 2 W.L.R. 347*, and of the Court of Appeal in the case of *Euro-Diam Ltd. vs. Bathurst, [1990] 1 Q.B. 1.*

7. Shri Ponda, the learned Counsel for the Respondent, relying on the Judgment of the learned Single Judge of the Calcutta High Court in the case of *Indian and General Investment Trust Ltd. vs. Sri Ramchandra Mardaraja Deo, Raja of Khalikote, AIR 1952 Cal 508*, submits that the Indian Courts are not bound to follow the rules of private international law, as are laid down by the

English Courts. He submits that, Indian Courts are free to evolve their own rules of private international law and follow the same.

8. Shri Ponda, relying on the judgment of the Apex Court in the case of *State (NCT of Delhi) vs. Brijesh Singh and ors., MANU/SC/1273/2017*, submits that the principle that "crime is local" cannot be stretched to such an extent that the judgment and order of conviction by foreign Court even cannot be looked into by the Courts in India. The learned Counsel submits that, the view taken by a Division Bench of this Court in the case of *Avinashkumar Bhasin vs. Air India, Bombay, 2001(3) Mh.L.J. 673*, lays down the correct position of law and as such, the question needs to be answered that, though the judgment and order of conviction by the foreign Court for offence committed in that country may or may not be binding on the Courts in India, the same can be very well looked into or recognized while exercising judicial and quasi judicial powers by the Courts and authorities in India.

9. Perusal of the Order dated 5-11-2014 passed by the learned Single Judge, would reveal that the learned Single Judge has found that, there is a conflict between the view taken by a Division Bench of Nagpur High Court in the case of *Govind Kesheo Powar* (cited supra) and in the case of *Avinashkumar Bhasin* (cited supra). The learned Single Judge found that, in order to resolve the conflict between the aforesaid two judgments, it will be necessary that the question is decided by the Full Bench.

10. We have some reservations as to whether the judgment of Nagpur High Court, whose successor is now Madhya Pradesh High Court, would be binding on the learned Single Judge of this Court and as to whether the learned Single Judge was bound to follow the Judgment of a Division Bench of the Nagpur High Court. However, since the reference has already been made to us and since an important question, which may have wider ramifications, is involved, we propose to decide the said issue.

11. Though with the consent of parties, the question referred to us has been re-framed by us as above, we find that it will be appropriate to divide the said question in two parts as under :—

> (1)(a) Whether conviction of an Indian by a foreign Court for the offence committed in that country can be taken notice of by the Courts or authorities in India while exercising their judicial and/or quasi judicial powers? and
>
> (1)(b) Whether such a conviction would be binding on the Courts and authorities in India while exercising their judicial and/or quasi judicial powers?

12. Shri Dada has strenuously relied on the judgment of the Privy Council in the case of *Huntington vs. Attrill* (cited supra). He relied on the following observations :—

> "The general law upon this point has been correctly stated by Mr. Justice Story in his "Conflict of Laws", and by other text writers; but their Lordships do not think it necessary to quote from these authorities in explanation of the reasons which have induced courts of justice to

> decline jurisdiction in suits somewhat loosely described as penal, when these have their origin in a foreign court. The rule has its foundation in the well recognised principle that crimes, including in that term all breaches of public law punishable by pecuniary mulct or otherwise, at the instance of the State Government, or of some one representing the public, are local in this sense, that they are only cognizable and punishable in the country where they were committed. Accordingly, no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State whether directly or indirectly, of punishment imposed for such breaches by the lex fori, ought to be admitted in the Courts of any other country."

It could be seen from the aforesaid observations that, the Privy Council in the said case reiterated the well recognized principle that crimes are local and therefore they are only cognizable and punishable in the country where they are committed. Their Lordships further recognized a principle that Courts of no country execute penal laws of another. However, in the said case, after considering the factual and legal position, their Lordships ultimately came to the conclusion that, an action on behalf of Government of New York is not in the sense, penal or in other words, for punishment of an offence against municipal law.

13. The King's Division Bench in the case of *Banco De Vizcaya* (cited supra) observed thus :

> ".....But in the present case the penalty imposed is seizure by the State for its own benefit of all the defendant's properties, rights, and grounds of action, and this penalty is imposed in terms for high treason, and the only way in which the plaintiffs are able to assert their claim that they are entitled as against the defendant is by virtue of these decrees, and they are compelled to admit that they have no personal right or title to the property in the securities. In the words of Lord Loughborough in *Folliott vs. Ogden* (2) : "The penal laws of foreign countries are strictly local, and affect nothing more than they can reach and can be seized by virtue of their authority; a fugitive who passes hither, comes with all his transitory rights; he may recover money held for his use, stock, obligations and the like; and cannot be affected in this country, by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend." These words have frequently been cited with approval, and in my judgment they are directly applicable to the present case. I therefore hold that H.M. Don Alfonso and not the plaintiffs is entitled to the securities in question."

The principle laid down by the Privy Council in the case of *Huntington vs. Attrill* (cited supra) has been reiterated and followed by the King's Bench in *Banco De Vizcaya* (cited supra). It was held by their Lordships that, the Plaintiffs were not asserting their own rights at all but that of the Spanish State. As such, judgment in their favour would involve execution of foreign penal law. It was found that,

the Plaintiffs are not asserting their contractual rights as they originally existed but those rights as attested by the decrees of Spanish State.

14. In the case of *United States of America* (cited supra), the defendant was arrested in 1983 in the United States of America and charged with criminal offences. Subsequently, he was released by United States District Court on bail with a condition that he enters into an "appearance bond" in the sum of $48,000. In September 1983, the defendant, after having obtained the permission from the district court to be absent from the United States for 30 days, returned to England and continued to stay there. In 1986 the United States, having obtained final judgment in their domestic courts against the defendant in the amount of the bond plus interest, issued a High Court writ to enforce the judgment against the defendant in the United Kingdom. In this background, it was observed thus :

> "Applying the above criteria to the facts of this case we have come firmly to the conclusion that the general context and background against which the appearance bond was executed was criminal or penal. The power to require the execution of the bond arose from section 3146 et seq. of the United States Code Annotated for Crimes and Criminal Procedure. The circumstances in which it came into existence were clearly criminal in nature and breaches of the conditions incorporated in it could give rise to further criminal process. Finally, the whole purpose of the bond was to ensure, so far as it was possible, the presence of the executor of the bond to meet justice at the hands of the state in a criminal prosecution. The fact that the obligations under the bond were the subject matter of a declaratory judgment in a civil court does not affect, in our judgment, the basic characteristic of the right which that judgment itself enforced, namely the right of the state as the administrator of public law and justice to ensure the due observance of the criminal law or the exaction of pecuniary penalties if that course was frustrated. Notwithstanding its civil clothing, the purpose of the action initiated by the writ issued in this case was the due execution by the United States of America of a public law process aimed to ensure the attendance of persons accused of crime before the criminal courts."

15. Again, their Lordships of the King's Bench Division in the *Raulin vs. Fischer, 192 Kings Bench 1911 page 93* have held that, where an offender has been convicted and also saddled with damages for the injury may be awarded by the same judgment and in such a case the judgment is severable and that the portion of it awarding damages to the injured person is not within the rule of international law, which prohibits Courts of justice, from executing the penal judgments of a foreign Court.

16. Several other English Judgments have been cited by Shri Dada. We do not find that reference to all of them is necessary inasmuch as position of law, as stated therein, is identical with the view taken in the case of *Huntington vs. Attrill* (cited supra) wherein their Lordships observed that even in the case of civil proceeding which has an effect of directly or indirectly enforcing punishment for breach of penal laws of the other country, Courts would not enforce the same.

Again, in the case of *Banco De Vizcaya* (cited supra), their Lordships found that Plaintiffs were not asserting their contractual rights as they originally existed but those rights altered by the decrees of the Spanish Government. It was observed that such of the rights sought to be enforced by the Plaintiffs therein would directly or indirectly involve an execution of penal laws of the Spanish Republic. In the case of *United States of America* (supra), it was found that the purpose of the Plaintiff's action was execution of their public law process aimed to ensure the attendance of those charged with criminal offence before their criminal court and as such, High Court in U.K. has no jurisdiction to entertain the Plaintiff's action.

17. It could thus be seen that ratio of the aforesaid judgments would be that, if a decree passed under penal law by foreign Court is sought to be enforced directly or indirectly through British Courts, the same would not be permissible. It is on a principle that, Courts of no country execute penal laws of another.

18. No doubt, Shri Dada is justified in relying on the judgment of the Division Bench of Nagpur High Court in the case of *Govind Kesheo Powar vs. State of Madhya Pradesh and others, 1955 NLJ 498 = 1955 Cri. L.J. 1275 : AIR 1955 Nag 236* and a Division Bench of Calcutta High Court in the case of *Union of India and others vs. Susanta Kumar Mukharjee, 1977 II L.L.J. 460* . However, issue in both these judgment is decided on the basis of English judgments, which we propose to analyse hereinafter. In any case, both these judgments only will have persuasive value for this larger Bench.

19. However, the question that we are faced here with is not as to whether a penal decree of a foreign Court could be enforced by the Indian Courts. The question is, as to whether the Courts and authorities in India, while exercising their judicial and quasi judicial powers, should not at all even notice or take into consideration at all the penal decrees of a foreign Court for the offence committed in that country, even if they find the same to be relevant for deciding the question before them.

20. A Division Bench of this Court in *Avinashkumar Bhasin* (cited supra) has held that, such a conviction by a Court of one country can be taken notice of in another country for any purpose whatsoever.

21. Though directly not in issue, we may seek some guidance from the following observations of their Lordships of the Apex Court in the case of *Brace Transport Corporation of Monrovia, Bermuda vs. Orient Middle East Lines Ltd, Saudi Arabia and others, 1995 SUPP (2) SC 280* pertaining to foreign arbitration award. In the said judgment, their Lordships observed thus :

> "13. Before we deal with the facts of the case before us, a statement of some broad principle is necessary. The New York Convention speaks of "recognition and enforcement" of an award. An award may be recognised, without being enforced; but if it is enforced, then it is necessarily recognised. Recognition alone may be asked for as a shield against re-agitation of issues with which the award deals. Where a court is asked to enforce an award, it must recognise not only the legal effect

of the award but must use legal sanctions to ensure that it is carried out....."

It could thus be seen that an Award, if it has to be enforced, it has necessarily to be recognised. However, the converse is not necessary. The recognition may ipso facto be not enforceable. In this background, we propose to examine the question referred to us and re-framed by us as above.

22. In the case of *Ralli Brothers* (cited supra), the Court of Appeal was considering the claim of Spanish Government to recover balance of the freight from the charterers in England, though it exceeded freight limited by Spanish Law. It will be relevant to refer to the following observations of their Lordships of the Court of Appeal :—

"In my opinion the law is correctly stated by Professor Dicey in Conflict of Laws, 2nd ed., p.553, where he says: "A contract .....is, in general, invalid in so far as .....the performance of it is unlawful by the law of the country where the contract is to be performed" and I reserve liberty to consider whether it is any longer an exception to this proposition that this country will not consider the fact that the contract is obnoxious only to the revenue laws of the foreign country where it is to be performed as an obstacle to enforcing it in the English Courts. The early authorities on this point require reconsideration, in view of the obligations of international comity as now understood."

Perusal of the aforesaid observations would reveal that, their Lordships held that, as to whether revenue laws of the foreign country, when the contract is to be performed, can be taken into consideration or not while enforcing the same in English Courts, requires reconsideration in view of obligations of international comity as now understood.

23. In the case of *Regazzoni vs. K.C. Sethia* (cited supra), their Lordships were considering the case wherein, defendant Sethia had agreed to sell and deliver to the Plaintiff Regazzoni 500,000 new B. twills (jute bags). At the time of the making of the contract and at all material times, India was the largest and cheapest producer of jute bags. At that time, South Africa was the large consuming country of the said jute bags. The Indian Authorities, by way of political protest, did not allow the export of jute bags directly to South Africa. However, in view of shortage of bags in South Africa, it was willing to buy any number of jute bags at high prices. As such, an agreement was made between plaintiff and defendant that in order to circumvent the sanctions by the Indian Government, the goods would be shipped from India by the defendant and made available in Genoa, so that plaintiff might make a resale or fulfil a bargain of sale to the South African buying agency. However, defendant informed the plaintiff that the jute bags would be delivered at Hamburg, but the plaintiff insisted on shipment to be made to Genoa and in the result, the goods were not delivered. The plaintiff sued the defendant for damages. While dismissing the claim, Denning, L. J. observes thus :

"Now, what is the law upon this matter ? I quite agree that on looking at the terms of this contract by itself, there is nothing that necessitates or

> requires either party to do an act which is illegal by the law of any country. It is possible that the contract might lawfully have been fulfilled, for example, by Sathia Ltd. getting the goods from somewhere else other than India, or by buying them on board ship, or by Mr. Regazzoni not sending them to South Africa. All that is possible. I do not see, therefore, that this case can be brought within the case of *Ralli Brothers vs. Compania Naviera Sota y Aznar [1920] 2 K.B. 287;* because there is nothing in the stated terms of this contract which compels the performance of an act illegal in the country where it is to be performed. But that is not the sole ground on which these courts will refuse to enforce a contract. The cases starting from *Biggs vs. Lawrence (1789) 3 Term Rep. 454* and finishing with *Foster vs. Driscoll [1929] 1 K.B. 470; 45 T.L.R. 185* show that if two persons agree together on a transaction which to their knowledge is intended to be carried out by means of one or other of them breaking the laws of a friendly country, or procuring or assisting another person in the breach of such laws, then the courts of this country will not lend their aid to the enforcement of the transaction. The reason is because it would be a breach of the comity which should exist between countries, and especially between countries of the British Commonwealth. The courts of one country should not help to break the laws of another. The transaction may not on the face of it disclose any illegal intention. The parties will usually take steps not to let any illegality appear. They will execute a contract for the sale of goods, or for the purchase of a steamer, or such like, which does not actually necessitate the performance of an illegal act, hoping thereby to validate the transaction and make it enforceable. But the court is not to be hoodwinked by subterfuges of that kind. Once it appears that, in order to implement the transaction, one of the parties to the knowledge of the other, intends to break or to assist in breaking the laws of a friendly country or to get some one else to do it, then it will not be enforced."

It could thus be seen that His Lordship observes that, if two persons with knowledge and intent, agree to do something by breaking the laws of friendly country, then the British Courts would not lend their aid to the enforcement of such transaction. His Lordship holds that, by doing so, it would be a breach of the comity which should exist between the countries and especially between the countries of the British Commonwealth. The courts of one country should not help to break the laws of another. His Lordship further goes on to hold that, the court is not to be hoodwinked by subterfuges of that kind. Once it appears that, in order to implement the transaction, one of the parties to the knowledge of the other, intends to break or to assist in breaking the laws of a friendly country or to get some one else to do it, then it will not be enforced. It will further be relevant to refer to the following observations of His Lordship, which read thus :

> "Mr. Lawson urged us to hold that this legislation by the Government of India was an act of retaliation directed against South Africa, an economic sanction imposed because of the racial policy of South Africa, a political

> law of which, he says, the courts should take no notice. He referred us to the observations of Lord Mansfiend in *Holman vs. Johnson*, where he says, Ibid. 343 "no country every takes notice of the revenue laws of another." Mr. Lawson says that has been applied to penal laws, and should extend also to political laws. It seems to me that Lord Mansfield goes too far when he says that these courts will take no notice of such laws. It is perfectly true that the courts of this country will not enforce the revenue laws or the criminal laws of another country at the suit of that other country, either directly or indirectly. These courts do not sit to collect taxes for another country or to inflict punishments for it; and this is so even between countries of the Commonwealth, as the House of Lords held in the *Government of India vs. Taylor [1955] A.C. 491; [1955] 2 W.L.R. 303; [1955] 1 All E.R. 292*. These courts will not enforce such laws at the instance of the foreign country. It is quite another matter to say that we will take no notice of them. It seems to me that we should take notice of the laws of a friendly country, even if they are revenue laws or penal laws or political laws, however they may be described, at least, to this extent, that if two people knowingly agree together to break the laws of a friendly country or to procure some one else to break them or to assist in the doing of it, then they cannot ask this court to give its aid to the enforcement of their agreement."

His Lordship Denning, J. observes that, Lord Mansfield goes too far, when he says that these courts will take no notice of such laws of the other country. His Lordship observes that "these courts will not enforce such laws at the instance of the foreign country" and that "it is quite another matter to say that we will take no notice of them."

Birkett L.J., in the said case, while agreeing with Denning L.J., observes thus :

> ".....I agree with what my Lord has said, that it is wrong to say that one shall take no notice of laws of this kind, as distinct from saying that one shall not enforce such laws. But the view that I take of the whole case here, particularly when I recall the facts upon which the contract was based, really turns upon the principle which was enunciated here by my Lord, that where there are two parties to the contract and the real basis of the making of the contract is that one party or both will break the law of a friendly country, then in that case the matter is one in which for convenience' sake the contract may be said to be an illegal contract, and this court will not enforce it. Particularly is that so when we are dealing with a friendly country within the British Commonwealth."

It could thus be seen that Lord Birkett also observes that, it is wrong to say that one shall take no notice of laws of the other country, as distinct from saying that one shall not enforce such laws.

It will also be relevant to refer to the observations of Parker L.J in the said case :—

> "It is true, as Denning L.J. has said, that Lord Mansfield in *Holman vs. Johnson 1 Cowp. 341, 343* used very wide words indeed, and that his statement has been referred to with approval by the House of Lords in the recent case of *Government of India vs. Taylor [1955] A.C. 491*; but it is equally clear that the wording of Lord Mansfield in certain respects, at any rate, is, taken literally, too wide. That was recognized in the House of Lords case and indeed was recognized by Lord Tomlin, then Tomlin J., in *In re Visser, Queen of Holland vs. Drukker, [1928] ch.877; 44 T.L.R. 692* and more recently in the Irish case, *Peter Buchanan Ltd. & Macharg vs. McVey [1955] A.C. 516n., 523*. There Kingsmill Moore J., having made an exhaustive analysis of the cases and referred to *Foster vs. Driscoll [1929] K.B. 470* says this : "I doubt whether Lord Mansfield intended his remarks to preclude a court from informing itself as to the provisions of a foreign revenue law in order to determine the question whether a foreign transaction was or was not fraudulent and void according to the law of that country."
>
> For my part, I do not see why in principle this court should not also inform itself of the provisions of a penal or revenue law in order to see whether or not the parties to an English contract had in effect agreed to break that law."

It could thus be seen that, Parker L.J also agrees with what has been said by Denning, L.J. that, the words used by Lord Mansfield in *Holman vs. Johnson. 1 Cowp. 341, 343* are very wide indeed. His Lordship further goes on to observe that this statement has been referred to with approval by the House of Lords in the recent case of *Government of India vs. Taylor, 1955 A.C. 491;* but it is equally clear that the wording of Lord Mansfield in certain respects, at any rate, is, taken literally, too wide. He refers to the observations of Kingsmill Moore J. in *Peter Buchanan Ltd and Macharg vs. Mc. Vey. 1955 AC 516n, 523,* wherein, he has expressed a doubt, whether Lord Mansfield intended his remarks to preclude a court from informing itself as to the provisions of a foreign revenue law in order to determine the question whether a foreign transaction was or was not fraudulent and void according to the law of that country.

24. The Chancery Division in the case of *Emery vs. Emery, 1959 Chancery Division 410,* while relying on the aforesaid observations of Denning L.J. in the case of *Regazzoni vs. K.C. Sethia* (cited supra), observes thus :

> ".....But the principle underlying the passage which I have read from the judgment of Denning L.J., and which was part of the ratio decidendi of his judgment, applies, in my view, to such a case as this where a non-resident alien of the United States has so arranged his affairs that he has avoided payment of the withholding tax which he ought to have paid, and which he would have had to pay if the beneficial interest had been, as it should have been, disclosed to the American authorities."

25. In the case of *Oppenheimer and Cattermole (Inspector of Taxes), Nothman and Cooper (Inspector of Taxes), 42 W.L.R. 347*, the question that arose before the House of Lords was, as to whether the Appellant who was German

subject emigrating to England and becoming British National, would retain the German Nationality and thereby entitled to relief against the income-tax – Double Taxation Relief (Taxes on Income) (Federal Republic of German) Order 1955. While holding that, he would not be entitled to such relief since he did not continue to be a German National in view of Article 116(2) of the Basic Law of the Federal German Republic, 1949, Lord Salmon observes thus :

> "The principle normally applied by our courts in relation to foreign penal or confiscatory legislation was correctly stated by Goulding J. : see *[1972] Ch.585, 592*. The comity of nations normally requires our courts to recognise the jurisdiction of a foreign state over all its own nationals and all assets situated within its own territories. Ordinarily, if our courts were to refuse to recognise legislation by a sovereign state relating to assets situated within its own territories or to the status of its own nationals on the ground that the legislation was utterly immoral and unjust, this could obviously embarrass the Crown in its relations with a sovereign state whose independence it recognised and with whom it had an hoped to maintain normal friendly relations."

It could thus be seen that, their Lordships held that, if the English Courts were to refuse to recognize legislation by a sovereign state relating to assets situated within its own territories or to the status of its own nationals on the ground that the legislation was utterly immoral and unjust, this could obviously embarrass the Crown in its relations with a sovereign state whose independence it recognised and with whom it had and hoped to maintain normal friendly relations.

26. The Court of Appeal in the case of *Euro-Diam Ltd.* (cited supra), considering the similar question, observes thus :

> ....."This concerned the question whether, if the plaintiffs were to fail on the matters already discussed, they could nevertheless succeed because Mr. Laub's issue of the understated invoice did not constitute any breach of English law but only of German law, and of a German revenue law at that. The judge rejected this: ante, pp. 20F – 25B. Although we have heard no argument on the point I have no doubt that his conclusion was right. It would be extraordinary if our law were to countenance an agreement involving the commission of a criminal offence in a friendly foreign country with impunity by holding that on that ground the agreement is not to be regarded as contrary to public policy. *Regazzoni vs. K. C. Sethia (1944) Ltd. [1958] A.C. 301* is a sufficient answer to his contention, which appears to fly in the face of all principles of comity. And as regards the point that Mr. Laub's action constituted an offence under a foreign revenue law, as Denning L.J. said in *Regazzoni vs. K. C. Sethia (1944) Ltd. [1956] 2 Q.B. 490, 515, 516,* while our courts do not enforce such laws, they will obviously not assist in their breach."

It could thus be seen that their Lordships have clearly rejected the argument that, the understated invoice did not constitute any breach of English law but only of German law, and of a German revenue law at that. Their Lordships held that, if

English law were to counterance an agreement involving the commission of a criminal offence in a friendly foreign country with impunity by holding that on that ground the agreement is not to be regarded as contrary to public policy, would be an argument of extraordinary nature. Their Lordships held that the view taken in the case of *Regazzoni vs. K.C. Sethia* (cited supra) appears to fly in the face of all principles of comity.

27. In the light of the aforesaid discussion, it appears to be a settled principle of law laid down by English Court that, though the decrees of penal laws of foreign country cannot be enforced in United Kingdom, the laws of foreign countries and especially the countries with which the United Kingdom has friendly relations, cannot only be looked into but on the principle of comity are required to be given due recognition.

28. We find that, if the argument, as advanced by Shri Dada is to be accepted, and if we are inclined to hold that the judgment and order of conviction as recorded by a foreign Court, for the offence committed in the foreign country cannot even be looked into, it may have even an effect of depriving an Indian citizen of the fundamental right available to him under Article 20(2) of the Constitution and to any person under section 300 of the Code of Criminal Procedure Code.

29. It will be relevant to refer to Article 20 of the Constitution of India, which reads thus :

> "**20.** ***Protection in respect of conviction for offences.*** — (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
>
> (2) No person shall be prosecuted and punished for the same offence more than once.
>
> (3) No person accused of any offence shall be compelled to be a witness against himself."

Clause (2) of Article 20 guarantees fundamental right to the citizen that, he shall not be prosecuted and punished for the same offence more than once. Sub-section (1) of section 300 of the Criminal Procedure Code reads thus :

> "**300.** ***Person once convicted or acquitted not to be tried for same offence.*** — (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

It provides that, a person who is once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence while such conviction or acquittal remains in force, would not be tried again for the same offence. It

further provides that, on the same facts, he cannot be tried again for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

30. It could thus be seen that, a valuable right is not only available to Indian citizen but any person if he has been either convicted or acquitted of such offence by the Court of competent jurisdiction. He cannot be tried again while such conviction or acquittal remains in force. Not only that, he cannot also be tried on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof. No doubt, sub-sections (2) to (5) carve out exceptions under which such person could be tried.

31. It will also be appropriate to refer to section 4 of the Indian Penal Code, which reads thus :

> "**4.** ***Extension of Code to extra-territorial offences.*** **—** The provisions of this Code apply also to any offence committed by —
>
> (1) any citizen of India in any place without and beyond India;
>
> (2) any person on any ship or aircraft registered in India wherever it may be;
>
> (3) any person in any place without and beyond India committing offence targeting a computer resource located in India.
>
> *Explanation.* — In this section —
>
> (a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;
>
> (b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)."

It could thus be seen that, the provisions of Indian Penal Code would also apply to any offence committed by any citizen of India in any place without and beyond India. It would also apply to any offence committed by any person on any ship or aircraft registered in India wherever it may be. It would also apply to any offence committed by any person in any place without and beyond India committing offence targeting a computer resource located in India. The Explanation (a) thereof provides that the word "offence" includes every act committed outside India which, if committed in India, would be punishable under the Code.

32. To give an illustration, if an Indian citizen commits murder in United Kingdom, in view of provisions of section 4 of the I.P.C., he would be deemed to have committed an offence also in India and the provisions of the Code would apply to him. If such a person is already tried in the United Kingdom and undergone a sentence for the same, in view of provisions of section 4 of the Indian Penal Code, he is also liable to be tried in India for having committed

murder because, it will be an offence punishable under section 302 of Indian Penal Code. However, such a citizen would be entitled to the protection of double jeopardy under sub-clause (2) of Article 20 and even if he is acquitted upon a trial by a competent Court, he cannot be tried in view of section 300 of the Criminal Procedure Code. The question would be, how such a citizen would prove his earlier conviction or acquittal. If the argument of Shri Dada is to be accepted then such a judgment of conviction or acquittal could not even be noticed by the Courts in India.

33. Take another illustration of a foreign national, who is travelling on a ship or aircraft registered in India. He commits crime while on the ship or aircraft which is within the jurisdiction of foreign country. He is tried in that country and either convicted or acquitted. The crime is also an offence under I.P.C. In view of provisions of sub-section (2) of section 4 of the Indian Penal Code, he would also be liable to be tried in India. However, in view of protection guaranteed under Article 20(2) of the Constitution read with section 300 of the Criminal Procedure Code, even such a foreign national cannot be compelled to face a second trial. How would he prove his prior conviction or acquittal and get protection under Article 20(2) of the Constitution or section 300 of Criminal Procedure Code if judgment of conviction or acquittal cannot even be noticed by the Courts in India.

34. We are of the considered view that, if we accept the argument that judgment and order of conviction and acquittal passed by the foreign Court cannot at all be looked into by Indian Courts is accepted, it would have devastating result, of depriving a person of his right under Article 20(2) and under section 300 of Criminal Procedure Code.

35. As a matter of fact, it could be seen that their Lordships of the Apex Court in the case of *Jitendra Panchal vs. Intelligence Officer, Narcotics Control Bureau and another, (2009) 3 SCC 57*, while considering the arguments of double jeopardy and applicability of Article 20(2) and section 300(1) of the Criminal Procedure Code, have considered the conviction recorded for the appellant under section 846 read with section 841 of Title 21 USC (Controlled Substances Act). Upon comparison of charges for which the Appellant was charged with, in India for the offence punishable under sections 29, 8(c), 12, 20(b)(ii) (C), 23 and 24 of the Narcotic Drugs and Psychotropic Substances Act (For short "NDPS Act"), with the offences for which the Appellant was tried and convicted in the United States, their Lordships observed thus :—

> "41. In our view, the offence for which the appellant was convicted in the USA is quite distinct and separate from the offence for which he is being tried in India. As was pointed out by Mr. Naphade, the offence for which the appellant was tried in USA was in respect of a charge of conspiracy to possess a controlled substance with the intention of distributing the same, whereas the appellant is being tried in India for offences relating to the importation of the contraband article from Nepal into India and exporting the same for sale in the USA."

> "42. While the first part of the charges would attract the provisions of section 846 read with section 841 of Title 21 USC (Controlled Substances Act), the latter part, being offences under the NDPS Act, 1985, would be triable and punishable in India, having particular regard to the provisions of sections 3 and 4 of the Penal Code read with section 3(38) of the General Clauses Act, which has been made applicable in similar cases by virtue of Article 367 of the Constitution. The offences for which the appellant was tried and convicted in the USA and for which he is now being tried in India are distinct and separate and do not, therefore, attract either the provisions of section 300(1) of the Code or Article 20(2) of the Constitution."

If the contention of the Appellant that the judgment and order of conviction could not have been noticed in India is to be accepted, then their Lordships of the Apex Court also could not have considered the judgment and order of conviction as recorded by US Court. If the argument is to be accepted, the Appellant Jitendra Panchal, apart from other charges which he was facing for the offence under the NDPS Act, could also have been tried for part of the offence that he had committed in US territory, if it was punishable under the Indian Law.

36. We further find that the said argument, if accepted, would also be against the public policy and principle of comity of Nations. Let us consider an illustration. An Indian citizen while residing in a foreign nation commits a crime involving moral turpitude and is sentenced for that offence by a foreign court and after undergoing sentence, he returns to India and desires to contest elections, for which conviction for an offence involving moral turpitude is a disqualification. If the argument of the Appellant that the judgment and order of conviction cannot be looked into is to be accepted, not only it would be contrary to public policy of not permitting a person convicted for offence involving moral turpitude to contest elections, it would also be against the breach of the comity which should exist between the countries. As observed by Lord Salmon in Oppenheimer (cited supra), it would have an effect of embarrassing Indian Sovereign in its relations with other Sovereign States, whose independence it recognizes and with whom it has and hoped to maintain normal friendly relations.

37. In any event, English Courts in the cases of *Regazzoni* (supra), *Oppenheimer* (supra) and *Euro-Diam Ltd.* (supra) have consistently taken a view that, though English Courts would not enforce a penal decree of foreign nation, they are not precluded from taking into consideration the foreign penal laws. Not only that, it is their consistent view that, in order to avoid breach of comity, such penal laws should be given due recognition by English Courts also.

38. We have already referred to the observations of the Apex Court in *Brace Transport Corporation of Monrovia* (supra), wherein their Lordships state that there is a distinction between enforcement and recognition.

39. Insofar as judgment of the Nagpur High Court in the case of *Govind Kesheo Powar* (cited supra) is concerned, the only ratio as could be found in the said judgment is thus :—

> "18. From what we have quoted, it will be abundantly clear that the effect of a crime committed by a person does not travel beyond the State in which it was committed. Since that is the general principle, it must be presumed that the Legislature when it enacted section 10(m) of the C.P and Berar Local Government Act did not intend to include therein offences committed by the citizens of Madhya Pradesh in foreign territories....."

What is ratio decidendi has been succinctly described by their Lordships of the Apex Court in the case of *Regional Manager and another vs. Pawan Kumar Dubey, 1976(3) SCC 334* in para 7 of the said judgment, the relevant portion of which reads thus :—

> "7..... It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

A slight distinction of facts, as held by their Lordships, with the application of same principle of law, would lead to diagonally diverse results. The ratio as could be culled out from the said judgment is that, it has to be presumed that, Legislature, when it enacted section 10(m) of the C.P and Berar Local Government Act, it did not intend to include therein offences committed by the citizens of Madhya Pradesh in foreign territories. We find that, the question as to whether the judgment and order of conviction as recorded by foreign Court for the offence committed in that country can be looked into or noticed or recognized for any other purposes by the Courts or authorities in India, did not fall for consideration before the Nagpur High Court.

40. Insofar as Judgment of Division Bench of this Court in the case of *Avinashkumar Bhasin* (cited supra) is concerned, we find that the question, as to whether the judgment and order of conviction can be taken notice in India for any other purposes directly fell for consideration. As such, we do not see any apparent conflict in the two views. However, in the light of discussion hereinabove, we find that the view taken by the Division Bench of this Court in *Avinashkumar Bhasin* (cited supra) lays down the correct position of law.

41. We therefore answer the first question viz question No. (1)(a) in the affirmative.

42. We now propose to consider the second question i.e. question No. (1)(b). We are of the considered view that, though the judgment and order of conviction of a foreign Court for the offence committed in that Country can be noticed/looked into and recognized by judicial and quasi judicial authorities in India, while exercising their judicial and quasi judicial powers, it cannot be said that the same will be ipso facto binding on such Courts and authorities. If we hold that such a judgment of a foreign Court for an offence committed in that

country, is binding on the Courts and authorities in India while exercising their judicial and quasi judicial powers, it will amount to directly or indirectly enforcing the judgment of the foreign Court. What is the effect of such order of conviction, would depend upon variety of factors such as, nature of the proceedings, purpose for which the said order of conviction needs to be taken into consideration, nature of conviction and effect thereof on the proceedings, nature of consequences of the ultimate decision to be taken in the said proceedings, are some of the factors which will have to be taken into consideration while deciding as to how much and what weightage has to be given to such judgment and order of conviction. We are of the considered view that, no hard and fast rule can be laid for that purpose. The Courts and authorities, while exercising their judicial and quasi judicial powers will have to take a call on the facts and circumstances of each case and take a decision as to what is the effect of such judgment and order of conviction. The question No.(1)(b) is answered accordingly.

43. Before we part, we must place on record our appreciation for valuable assistance rendered to us by Shri Dada and Shri Ponda.

Reference answered accordingly.

HINDU FEMALE DYING INTESTATE LEAVING PROPERTY INHERITED FROM HER FATHER : PROPERTY DEVOLVES AMONG HER CHILDREN AND NOT IN HER HUSBAND

(Dr. Shalini Phansalkar-Joshi, J.)

HARESH CHETAN THADANI and another *Petitioners.*

vs.

CHETAN BULCHAND THADANI (since deceased) and others *Respondents.*

Hindu Succession Act (30 of 1956), S. 15(1) — *Succession — Female Hindu dying intestate leaving property inherited by her from her paternal side — Such property would devolve exclusively in her children and not in her husband — Only if she had died issue-less, then, such property will devolve, as per section 15(1), which includes, not only her children and children of her predeceased son and daughter, but also her husband.*

In case of a 'female Hindu', dying intestate, leaving behind her own children or the children of her predeceased son and daughter and the property is inherited by her from her paternal side, then, it will go exclusively to her children and not to her husband. Only if she had died issue-less, then, in that case, such property will devolve, as per section 15(1) of the Succession Act, which includes, not only her children and children of her predeceased son and daughter, but also her husband. Therefore, husband will be entitled to get share in the property left behind by his wife, if she has inherited it from her paternal side, only in the

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W. P. Nos. 13710 of 2017 and 296 of 2018 decided on 24-1-2018. (Bombay)