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given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant.'

It is, therefore, open to the court to take recourse to Section 34 of IPC even if the said section was not specifically mentioned in the charge and instead Section 149 IPC has been included. Of course a finding that the assailant concerned had a common intention with the other accused is necessary for resorting to such a course. This view was followed by this Court in later decisions also. (*Amar Singh* v. *State of Haryana*[4], *Bhoor Singh* v. *State of Punjab*[5].) The first submission of the learned counsel for the appellant has no merit."

6. The view expressed above lends support to the view taken by us. Under the circumstances, the conviction of the appellants is altered from under Sections 302/149 IPC to the one under Sections 302/34 IPC while maintaining the sentence of life imprisonment. The conviction and sentence of the appellants for the offence under Section 148 IPC is however set aside, but in all other respects, their conviction and sentence is maintained. As a result of the above discussion, except for the alteration made above, this appeal fails and is hereby dismissed.

7. The appellants are on bail. Their bail bonds shall stand cancelled. They shall be taken into custody to undergo the remaining part of the sentence.

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(BEFORE S.P. BHARUCHA AND K. VENKATASWAMI, JJ.)

TEJKUMAR BALAKRISHNA RUIA .. Appellant;

Versus

A.K. MENON AND ANOTHER .. Respondents.

Civil Appeals Nos. 7143-7144 of 1996†, decided on September 9, 1996

A. **Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 3(3) — Property which a person notified under S. 3(2) owned or possessed of on the date of the notification shall be attached but that which he acquires thereafter by dint of his labour or services cannot be attached under S. 3(3) — However, income or usufruct of the attached property also liable to be attached**

B. **Interpretation of Statutes — Purposive interpretation — Must be such as to preserve constitutionality of the statute where two interpretations are possible**

The appellant became a notified person under the provisions of Section 3(2) of the Act on 2-7-1992. On 9-10-1994, he was appointed as an advisor by Killick

4 (1974) 3 SCC 81 : 1973 SCC (Cri) 789 : AIR 1973 SC 2221

5 (1974) 4 SCC 754 : 1974 SCC (Cri) 664 : AIR 1974 SC 1256

† From the Judgment and Order dated 14/29-2-1996 of the Special Court, Bombay in Misc P. No 278 of 1995

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Nixon Ltd. with effect from 8-10-1994. By reason of such appointment he became entitled to be paid consultancy fees in the sum of Rs 5000 per month by the said Company. The appellant by his letter dated 7-8-1995 requested a bank to open a new current account in his name to be operated by him. The bank referred the matter to the Custodian appointed under Section 3(1) of the Act. He thereupon filed a petition before the Special Court for a declaration that the income "earned by way of the aforesaid employment is not liable for attachment" and asked for permission "to open a new bank account and operate the same in the normal course". The Special Court dismissed the petition. It proceeded upon the basis that the appellant was "genuinely seeking release of an income which he is earning from his services". However, the Special Court said that if the interpretation which the appellant wanted it to give was accepted, it could result in a very clever method of siphoning off assets which could and must stand attached. Allowing the appeal

Held :

The terms of sub-section (3) of Section 3 are clear. By reason thereof, the property that belongs to a notified person stands attached simultaneously with the issue of the notification that makes him a notified party. The words "on and from the date of notification" indicate the point of time at which the attachment takes effect; this is reiterated by the words "shall stand attached simultaneously with the issue of the notification". This also indicates that no separate notification or order in regard to the attachment is necessary. Neither the words "on and from the date of notification" nor the word 'property' lead to the conclusion that what is attached is not only that property which the notified person owned or was possessed of on the date of the notification but also all such property as he might acquire at any time thereafter. The intention to attach property which did not belong to the notified person on the date of the notification but which he might acquire later would, had it been there, have been clearly expressed and sub-section (3) would have stated that such property would stand attached the moment it was acquired by the notified person. The Act would also have made provision for a subsistence allowance or the like for the notified person. To give to Section 3(3) the wide meaning ascribing such intention would render it perilously close to being held unconstitutional, for it would deprive the notified person, so long as he remained a notified person, from earning a livelihood. Even to say that such interpretation would reduce a notified person to beggary would not be inaccurate because the alms that he received, being his property, would stand attached. (Paras 5 to 7)

If what a notified person obtains by way of purported income or gift or inheritance is really his own money, such money would, upon establishment of the fact, stand attached automatically under the provisions of Section 3(3). In any event, it is for Parliament to enact a law that meets all contingencies. The courts must interpret the law as it reads. While a purposive interpretation is permissible where two interpretations are possible, the purposive interpretation must be such as preserves the constitutionality of the provision. (Para 8)

It must, however, be made clear that the income or usufruct of attached property is also attached property. Thus, if the property be shares, dividends and bonus and rights shares thereon would also be attached property. It is only income generated by a notified person by dint of his own labour which falls outside the net of Section 3(3). In respect of such income, the attachment under Section 3(3) does not operate. (Para 9)

In this case it must be held, particularly since the Special Court had proceeded upon the basis that the appellant was "genuinely seeking release of an income which he is earning from his services", that the same is not subject to attachment under

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Section 3(3) and that he is entitled to open a bank account for the purpose of depositing such income (and such income alone). The custodian shall be entitled to inspect this bank account and take action in such manner as he deems fit against the appellant if it be found that other monies have been deposited in the bank account.

(Para 10)

R-M/16679/S

Advocates who appeared in this case :

S.D. Parekh, Senior Advocate (N.H. Seervai, S.V. Mehta, B.V. Desai and P.J. Mehta, Advocates, with him) for the Appellant;

A. Subba Rao, Advocate, for the Respondents.

The Judgment of the Court was delivered by

BHARUCHA, J.— These are appeals against the judgment and orders of the Special Court constituted under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, ("the Act"), and they relate to the sweep of Section 3(3) thereof. The principal judgment and order gave the appellant liberty to file an application for a subsistence allowance. When the appellant declined to avail of the liberty the final order was passed.

2. The appellant became a notified person under the provisions of Section 3(2) of the Act on 2-7-1992. On 9-10-1994, he was appointed as an advisor by Killick Nixon Ltd. with effect from 8-10-1994. By reason of such appointment he is entitled to be paid consultancy fees in the sum of Rs 5000 per month by the said Company. By a letter dated 7-8-1995, to the Manager, Dena Bank, the appellant applied to open a new current account in his name to be operated by him. On 6-9-1995, the appellant's advocates were informed that the matter had been referred to the Head Office of the bank and by a letter dated 27-10-1995, that the matter had been referred to the custodian appointed under the Act. The petitioner filed a petition on 23-11-1995 in the Special Court and sought a declaration that the income "earned by way of the aforesaid employment is not liable for attachment" and permission "to open a new bank account and operate the same in the normal course".

3. The petition was dismissed by the order under appeal. The Special Court proceeded upon the basis that the appellant was "genuinely seeking release of an income which he is earning from his services". However, the Special Court said that if the interpretation which the appellant wanted it to give was accepted, it could result in a very clever method of siphoning off assets which could and must stand attached. The Special Court noted that even after 3 years monies which had been siphoned off had not been traced. It was thus evident that the notified parties or some of them had monies or assets which were lying in some undisclosed place. One of the simplest methods to bring such moneys into the open and start using them was to ostensibly render services to somebody else who then paid the notified party the purported income or for somebody to give to the notified party a gift or for a notified party to suddenly inherit some assets. This would become a method to defeat the object of the Act and could not be permitted. The

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Special Court then dealt with the provisions of Section 3(3) and held that the words therein "on and from the date of the notification" meant that all assets which were available on the date of the notification and all assets which became available from and after that date stood attached. The term 'property' had a wide connotation and included present and future property. Thus, if some notified party inherited or was gifted some property or earned some income subsequent to being notified, such property or income would stand attached and be available for distribution under the Act.

4. The Act was preceded by an ordinance which established the Special Court for trial of offences relating to transactions in securities that had been entered into between 1-4-1991 and 6-6-1992. Section 3, sub-section (1) empowered the Central Government to appoint one or more custodians under the Act. By reason of sub-section (2), the custodian could, on being satisfied on information received that any person had been involved in any offence relating to transactions in securities between the stated dates, notify the name of such person in the Official Gazette. Sub-section (3) reads thus:

> "3. (3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, moveable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification."

The custodian could, by reason of sub-section (4), deal with property attached under sub-section (3) in such manner as the Special Court directed. Section 4(1) empowered the custodian, if he was satisfied, after such enquiry as he thought fit, that any contract or agreement entered into at any time between the stated dates in relation to any property of the notified person had been entered into fraudulently or to defeat the provisions of the Act, to cancel such contract or agreement, whereupon such property stood attached under the Act. Sections 7, 8 and 9 deal with the jurisdiction of the Special Court in criminal proceedings. Section 9-A deals with the jurisdiction of the Special Court in civil proceedings relating to property that stands attached and arising out of transactions in securities between the stated dates in which a notified person was involved as a party, broker, intermediary or in any other manner. Section 11 deals with the discharge of liabilities and sub-section (1) states that the Special Court may make such order as it may deem fit directing the custodian in the matter of disposal of attached properties; sub-section (2) sets out the order in which liabilities are to be paid or discharged. Section 13 states that the Act has effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law or in any decree or order of any court, tribunal or other authority.

5. In our view, the terms of sub-section (3) of Section 3 are clear. By reason thereof, the property that belongs to a notified person stands attached simultaneously with the issue of the notification that makes him a notified party. The words "on and from the date of notification" indicate the point of

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time at which the attachment takes effect; this is reiterated by the words "shall stand attached simultaneously with the issue of the notification". This also indicates that no separate notification or order in regard to the attachment is necessary.

6. Neither the words "on and from the date of notification" nor the word 'property' lead to the conclusion that what is attached is not only that property which the notified person owned or was possessed of on the date of the notification but also all such property as he might acquire at any time thereafter. The intention to attach property which did not belong to the notified person on the date of the notification but which he might acquire later would, had it been there, have been clearly expressed and sub-section (3) would have stated that such property would stand attached the moment it was acquired by the notified person. The Act would also have made provision for a subsistence allowance or the like for the notified person.

7. It seems to us that to give to Section 3(3) the wide meaning that has been ascribed to it in the judgment and order under appeal would render it perilously close to being held unconstitutional, for it would deprive the notified person, so long as he remained a notified person, from earning a livelihood. Even to say that such interpretation would reduce a notified person to beggary would not be accurate (*sic* in accurate) because the alms that he received, being his property, would stand attached.

8. The apprehension expressed by the Special Court does not appear to be well founded: if what a notified person obtains by way of purported income or gift or inheritance is really his own money, such money would, upon establishment of the fact, stand attached automatically under the provisions of Section 3(3). In any event, it is for Parliament to enact a law that meets all contingencies. The courts must interpret the law as it reads. While a purposive interpretation is permissible where two interpretations are possible, the purposive interpretation must be such as preserves the constitutionality of the provision.

9. It is perhaps necessary to make clear that the income or usufruct of attached property is also attached property. Thus, if the property be shares, dividends and bonus and rights shares thereon would also be attached property. It is only income generated by a notified person by dint of his own labour which falls outside the net of Section 3(3). In respect of such income, the attachment under Section 3(3) does not operate.

10. We must, therefore, hold, particularly since the Special Court has proceeded upon the basis that the appellant is "genuinely seeking release of an income which he is earning from his services", that the same is not subject to attachment under Section 3(3) and that he is entitled to open a bank account for the purpose of depositing such income (and such income alone). The custodian shall be entitled to inspect this bank account and take action in such manner as he deems fit against the appellant if it be found that other monies have been deposited in the bank account.

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11. The appellant may now draw the arrears of his remuneration from the Company.

12. It was sought to be argued on behalf of the appellant that the provisions of Section 3(3) attached only such property as had a nexus to transactions in securities between the stated dates. For the purposes of this appeal, we have found it unnecessary to entertain the argument.

13. The appeals are allowed. The judgment and orders under appeal are set aside. The petition filed by the appellant in the Special Court is allowed to the extent aforestated.

14. There shall be no order as to costs.

(1997) 9 Supreme Court Cases 128

(BEFORE K. RAMASWAMY AND K. VENKATASWAMI, JJ.)

VENKATASWAMAPPA .. Appellant;

Versus

SPECIAL DEPUTY COMMISSIONER (REVENUE) .. Respondent.

Civil Appeals Nos. 1006-25 of 1990†, decided on August 28, 1996

A. **Land Acquisition Act, 1894 — S. 4(1) — Publication of notification in local newspaper earlier to the actual publication in the Gazette — Held, is merely an irregularity and it does not vitiate the validity of the notification published in the Gazette — Publication of notification in Gazette is a mandatory requirement — In the circumstances of the case, there was no infraction of the compliance of the requirement under S. 4(1)**

In this case it was contended that while the notification under Section 4(1) of the Act was published on 23-2-1989 the newspaper publication thereof had come to be made prior thereto, i.e., on 1-2-1989 and, therefore, the mandatory requirement under sub-section (1) of Section 4 has not been complied with. Rejecting the contention

Held :

It is true that normally publication in the newspapers would be preceded by a publication in the Gazette notification. In this case while sending the notification, which was approved by the Government for publication in the Gazette, simultaneously direction was issued to have it published in the Gazette. Therefore, it would appear that before publication in the Gazette was made, it was published in one of the newspapers. This is only an irregularity in the procedural steps required to be taken under the Act. It does not vitiate the validity of the notification published in the Gazette on 23-2-1989. (Para 5)

Publication of the notification under Section 4(1) in the Gazette is a mandatory requirement. (Para 6)

Since the publication of the notification under Section 4(1) was made on 23-2-1989, the intention of the Government to acquire the land for public purpose had been set in motion and it was directed to take the procedural steps in that behalf as mandated under sub-section (1) of Section 4 of the Act. What transpires, therefore, is

† From the Judgment and Order dated 17-7-1989 of the Karnataka High Court in WAs Nos 877-96 of 1989 in WPs Nos 5316-35 of 1989