13.4.2017
Item No.1
akd & PA to
J. Bagchi, J.

C.R.A.N. No.1493 of 2017
in
C.R.R. No.164 of 2015

Union of India & Anr.
Vs.
State of West Bengal & Ors.

Mr. Kaushik Chandra, learned Addl. Solicitor General
Mr. Manas Kumar Das
Mr. Jitinder Singh Dhatt
...for the petitioner

Mr. Ashis Sanyal
Mr. Raj Dip Ray
Ms. Mousomee Shome
...for the O.P. No.2/Applicant

Mr. Saswata Gopal Mukherjee, learned P.P.
...for the State

Opposite party no.2-applicant has approached this Court seeking clarification that condition no.3 imposed in the order dated 6th October, 2015, directing the Income Tax Department to refund money, if any, to him upon completion of assessment proceeding to be made in new currency notes and not in the seized old currency notes which since 8th November, 2016 are no longer legal tender.

It appears that a sum of Rs.2,37,34,200/- in old currency notes was seized by the Income Tax department from the opposite party no.2-assessee and an application was made before the learned Magistrate on behalf of the Department to take custody of the seized cash. Learned Magistrate by order dated 26th March, 2013 permitted such prayer, however, subject to an undertaking to be furnished by the Department. Being aggrieved by such order, the Department approached this Court whereupon a learned Single Judge by order dated 6th October, 2015, directed the seized cash to be handed over to the Income Tax Department subject to the following conditions:-

> *"1) the petitioner representing the I.T. Department is permitted to complete the assessment proceedings in respect of the seized money in accordance with law;*
>
> *2) that the original seized currency notes shall not be altered or substituted by the department, and shall be made available as and when required for the purpose of trial;*
>
> *3) that after completion of assessment proceedings the refundable money, if any, shall be returned to the party entitled in accordance with law.*

Mr. Asish Sanyal, learned senior counsel appearing for the opposite party no. 2-assessee submits that in terms of condition no.3 his client is entitled to refund, if any, of the seized money upon completion of the assessment proceeding in accordance with law. He further submits that in view of the notification issued by the Government of India on 8th November, 2016, the currency notes seized by the Income Tax Department are no longer legal tender and in view of Section 3 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 (hereinafter referred to as the 'Act of 2017') the Central Bank, that is, Reserve Bank of India would not have any liability in respect of such currency notes on and from 31st December, 2016. Hence, appropriate order be passed directing the Department to refund money, if any, to the opposite party no.2 in new currency notes and not in the old currency notes seized in the aforesaid search and seizure.

Mr. Kaushik Chanda, learned Additional Solicitor General appearing for the petitioner-Union of India submits that in terms of condition no.2 of the aforesaid order, the Department is prohibited from altering or substituting the old currency notes and such notes have to be made available in any proceeding which may ensure from the aforesaid search and seizure. He further submits that in view of such condition, complications may arise to refund the money, if any, in new currency notes.

I have considered the submissions of the parties. Section 3 of the Act of 2017 provides for extinguishment of liability of Reserve Bank of India in respect of specified currency notes, that is, old currency notes of denomination of Rs.500/- and Rs.1000/- existing prior to 8th November, 2016, after the appointed date, that is, 31st December, 2016. Section 5 of the Act of 2017, *inter alia*, prohibits any person from holding, transferring or receiving any specific currency note save and except under conditions set out in the proviso of the said section.

Sections 3 and 5 of the Act of 2017 read as follows:-

> *"3. On and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O.3407(E), dated the 8th November, 2016, issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the*

guarantee of the Central Government under sub-section (1) of Section 26 of the said Act."

"5. On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note:

Provided that nothing contained in this section shall prohibit the holding of specified bank notes-

(a) by any person-

(i) up to the expiry of the grace period; or

(ii) after the expiry of the grace period.-

(A) not more than ten notes in total, irrespective of the denomination; or

(B) not more than twenty-five notes for the purposes of study, research or numismatics;

(b) by the Reserve Bank or its agencies, or any other person authorized by the Reserve Bank;

(c) by any person on the direction of a court in relation to any case pending in the court.

Section 5(a)(ii) Clause (c), *inter alia*, permits a person to hold, old currency notes pursuant to a direction given by a Court of law in relation to a case pending before the Court. Condition no.2 imposed by this Court in the order dated 6.10.2015 prohibiting the Department to alter or substitute the old currency notes during the proceeding in this case may be treated as a condition envisaged under the aforesaid proviso.

In the light of the authority vested in the Court to permit a person to hold on to old currency notes on or after the appointed dated, that is, 31st December, 2016, I hold that the Court giving such direction has incidental power to give liberty to such person to deposit such notes so held by him with the Central Bank after the appointed date and upon such deposit the Bank shall be under an obligation to replace the said notes with new currency notes.

As in this case preservation of the specified current notes is not a *sine qua non* for the assessment and/or allied proceedings and in view of the relief presently sought for, I am of the opinion that the condition no.2 imposed in the order dated 6th October, 2015 requires to be varied and the Department may be given liberty to replace the specified notes with new notes at the earliest point of time.

Extinguishment of liability of the Reserve Bank in respect of any specified currency note under section 3 of the Act of 2017 is subject to a direction issued by a Court of law permitting a person to hold on to specified currency notes in connection with a pending proceeding and the Bank cannot deny its liability in such cases if the said person deposits the specified notes in the Bank after the appointed date with leave of the Court. It is trite law that an act of Court cannot prejudice any one and, therefore, any person who is holding on to specified notes after the appointed date in terms of a Court order, such person cannot be disadvantaged and denied liability by the Bank if such notes are subsequently deposited with the leave of the Court.

Accordingly, I direct the Department to make an inventory of the seized currency notes in the presence of the representative of the petitioner and to videograph the entire exercise. Such inventory along with the videography shall be treated as primary evidence in the assessment proceeding or any other proceeding arising out of such search and seizure. Upon completion of such exercise, the Department shall deposit the seized old currency notes in the Reserve Bank of India and the Bank shall credit an equivalent value in favour of the Department who shall retain it till completion of the assessment proceeding, and refund, if any, shall be made to the opposite party no.2-assessee in new currency notes or equivalent financial instrument in accordance with law. The entire exercise of inventory, videography and replacement of the specified notes, as aforesaid, shall be undertaken as early as possible and not later than 30th April, 2017.

With this aforesaid direction, C.R.A.N. No.1493 of 2017 is disposed of.

Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Joymalya Bagchi, J.)