(1969) 04 BOM CK 0016

Bombay High Court

Case No: Criminal Revision Application No"s. 282 to 284, 357 to 360 and 363 of 1969

M.R. Pillai		APPELLANT
	Vs	
Motilal Vrijbhukhandas and Others		RESPONDENT

Date of Decision: April 24, 1969

Acts Referred:

- Constitution of India, 1950 - Article 14
- Criminal Procedure Code, 1898 (CrPC) - Section 103, 15(4), 165, 173, 197
- Evidence Act, 1872 - Section 45
- Foreign Exchange Regulation Act, 1973 - Section 19(3), 19A
- Forward Contracts (Regulation) Act, 1952 - Section 17, 18, 2, 20, 20(1)

Citation: AIR 1970 Bom 324 : (1969) 71 BOMLR 619 : (1970) CriLJ 1216 : (1970) ILR (Bom) 184

Hon'ble Judges: Vaidya, J

Bench: Single Bench

Advocate: Raghavendra A. Jahagirdar, in Cri. Rev. appln. Nos. 282 and 283 of 1969, G.A. Thakkar and Ashok Desai, Malvi Ranchhoddas Ramesh, instructed by Shroff and Co., P.P. Khambata and Raghavendra A. Jahagirdar, in Cri Rev. applns. Nos. 282, 283 and 284 of 1969 K.D. Shah, for the Appellant; Raghavendra A. Jahagirdar, Honorary, Asst. to Govt. Pleader in Cri. Rev. Appln. Nos. 282, 283, 284, 357 to 360 and 363 of 1969, for the Respondent

Judgement

1. The above 8 applications are filed by "the accused against whom 8 cases are pending In the Court of the Presidency Magistrate, 28th Court, Esplanade, Bombay.

The petitioners pray in these revision applications that the order passed on March 22, 1969 rejecting the application filed by the accused in case No. 957/P of 1968 and the charge framed by the Presidency Magistrate on March 25, 1969 against the respective accused in 8 cases should be set aside and the petitioners should be discharged. As these petitions involve common points and relate to common facts, they can be disposed

of by one judgment.

2. The particulars of the charges framed against the petitioners in the 8 cases may be summarised and stated as in a tabular form as follows:--

No. of Criminal Revision Application	No. of the case in the Court ot Presidency Magistrate.	Names of the accused (Petitioners)	Charges under what sections of the Forward Contracts (Regulation) Act, 1952	Brief Particulars of the Charge

1. 282 of 1869	957/P of 1868	1. Messrs. Motilal Vrijbhukhandas. 2. Shantilal Narayandas Sonawala. 3. Pushpavati Hariyant lal Sonawala.	1. 21 (i), 21(a) and 22.	1. Between January 1968 and April, 2, 1968 owned OR kept a place at 155, Shaikh Memon Street, Bombay 2, other than place of a recognised association and used for transacting forward contract in silvoc in contravention of section 17.

				2. 21 (1), 21 (c), 22	2. Accused Nos. 1, 2 and 8 managed or controlled the said place.
2. 288 of 1969	958/P of 1968	-do.		1. 20 (e), 22	1. For entering into a prohibited forward contract in silver on Feb. 14, 1968 with Mahendra Champaklal for the purchase of 2 bars of silver at the rate of Rs. 522.25 pec kg.

2.	20(e),22	2. For entering into a prohibited forward contract in silver on Jan. 15, 1968 with Ishwarlal Kantilal for tbe purchase of 2 bars of silver at the rate of Rs. 589.44 per kg.

3. 284 of 1969	956/P of 1968	1. Shantilal Narayandas Sonawala. 2. Jayanti Kapurchand Shah. 3. Pranjivandas Shambhar Lal Bhatt. 4. Natverlal Mathuradaa Shah.	21 (i) and 21 (f)	For all of them joining together at 155. Shaikh Memon Street, Bombay, 2 owned by Messrs. Motilal - Vrijbhukhandas for entering into forward con-tracts in silver.

4.	357 of 1969	960/P of 1968	1. M/s. Rasiklal Man. Mansuklal & Co. 2. Deoraj Kathodbbai. 3. Chandrakant Deorajbhai.	1. 21 (i), 21 (a), 22	1. For using 95, Shaikh Memon Street, for transacting forward contracts in silver between January 1968 and April 2, 1968.
			4. Shyamsunder Shivprasad Kabra.	2. 21 (i), 21 (c) and 22	2. Partners accused Nos. 2, 8 and 4 and their firm accused No. 1 con. trolled and kept the above place.

5.	858 of 1969	962/P of 1968	-do-	1. 20(e),22	1. For entering into Teji option with Moti VriJ. Vrij Bhushan for 25 units of silver between March 24, 1968 and April 1. 1968.
				2. -do-	2. For entering into Mandi option with Divan during the same period.

6. 859 of 1909	963/P of 1968	1. M/s. Jamnadas Talkchand. 2. Thakordas Gordhandas 3. Bhagwandas Gordhandas. 4. Vailabhadas Gordhandas.	1. 20 (e), 22 read with 19	1. For entering into "Jota" option with V. Navnit for 2 units of silver on February 29, 1968.
			2. 20(e),22 read with 19	2. For entering into "Jota" option with Sunder Tulsi for 2 units of silver on February 19, 1968.

				3. 20(e),22 read with 19	3. For entering into "Jota" option with Keshav Chunilal for 2 units on February 19. 1968.
7. 860 of 1969	961/P of 1968	1. M/S. Rasiklal Man Mansuklal & Co. 2. M/s. Dcoraj Kathedbhai. 3. Chandrakant Deorajbhai. 4. Shyamsunder Shiv. prasad Kabra.		S. 20(e) and 22	For entering into for-ward contract with Jothibai Pattodia on March 4, 1968.

8. 868 of 1969	959/P of 1968	1. Devraj Kathedbhai. 2. Gordhandas Khatedbhai. 3. Ramnarayan Rarndhan Karamji. 4. Badrinarayan Hceralal.	S. 21(i) and S. 21(f)	For joining together on April 21, 1968 at 95, Shaikh Memon Street, an unauthorised place, for transacting forward contracts.

When the charges were framed against the accused, the accused pleaded not guilty and the hearing of the cases has been stayed by this Court after admitting the above revision applications filed by the accused.

3. The material common facts relevant for the purpose of disposing of these revision applications are as follows:--

On January 9, 1963, the Government of India issued a notification prohibiting forward contracts for sale or purchase of silver. On April 2, 1968 upon a complaint filed by the complainant, the Enforcement Officer of the Forward Markets Commission constituted under the Forward Contracts (Regulation) Act, 1952, Sub-Inspector of Police, Crime Branch (Drugs Control), C. I. D. Bombay suspecting mat certain firms of bullion traders of Zaveri Bazar were conducting illegal forward trading in silver in contravention of Section 17 of the Forward Contracts (Regulation) Act, 1952 read with the aforesaid notification, raided the premises belonging to 8 firms suspected to be contravening the Act. During the raid, 47 persons including the petitioners were arrest-ed, several documents found on the premises or with the persons arrested were seized and the accused were released on bail by the police. Thereafter the documents seized were scrutinised by the officers of the Forward Markets Commission and one Pradhan designated as Research Officer sent reports to the police alleging that the documents scrutinised disclosed that the firms of the petitioners were entering into forward contracts in contravention of Section 17 of the Forward Contracts (Regulation) Act, 1952. The rest of the persons arrested on the basis of the documents seized from them had merely settled their transactions entered into by

them by payment of differences. On perusal of the reports submitted by the Research Officer Pradhan and all the papers and on recording the statement of Pradhan, the police filed 8 charge-sheets against the petitioners on October 31, 1968, In the meanwhile, the police applied to the Court for extension of the period of bail of all the accused from time to time After filing the aforesaid chargesheets, on November 15, 1968, art application was made on behalf of the police to discharge 38 of the 47 accused on the ground that there was no sufficient evidence to substantive any charge against them. The learned Magistrate immediately discharged the said 38 persons.

4. On March 5, 1969, the accused in criminal case No. 958/P of 1068 who are also the accused in case No. 957/P of 1968 filed an application for discharging the accused firstly on the ground that neither the prosecution nor the Court could discriminate between the 38 persons who were already discharged and the present petitioners who were all arrested in connection with the same kind of offences at the same time and place, secondly on the ground that the search and the seizure of the documents in the case were made without proper authority of search warrants u/s 22A of the Forward Contracts (Regulation) Act, 1952 and hence all proceedings consequent upon that search were illegal, and thirdly on the ground that the allegations and charges made in the chargesheets were groundless. It was also grayed in the said applications that the questions raised by the accused were important questions or the validity of the prosecution in view of Part III of the Constitution of India and hence the case should be referred to the High Court u/s 432 of the Code of Criminal Procedure. The application was supported by Counsel appearing for all the accused in all the other cases and it was treated as an application common to all the petitioners by the learned Magistrate.

5. By his order passed on March 22, 1968 the learned Presidency Magistrate rejected the application filed by the accused and proceeded to frame charges in 8 cases. On March 25, 1969, he framed charges in the 8 cases against the respective accused, the particulars of which are briefly stated above, for contravening the provisions of the Forward Contracts (Regulation) Act, 1952.

6. The very contentions which were urged before the learned Presidency Magistrate are urged in the above revision applications challenging the said order dated March 22, 1968 and praying for quashing the charges framed against the accused.

7. The first contention raised is that the prosecution of the petitioners in the aforesaid 8 cases after the discharge of the 88 persons referred to above is hit by the vice of discrimination prohibited under Article 14 of the Constitution. Apart from any authorities, it is clear that Article 14 of the Constitution of India requires the State not to deny any person equality before the laws or equal protection of laws in the territory of India. It is difficult to appreciate how the petitioners who are being prosecuted under the Forward Contracts (Regulation) Act can contend that they are denied equality before the law or equal protection of the law merely because some other persons are not prosecuted. Reliance was placed, however, on the decision of the Supreme Court in Budhan

Choudhry and Others Vs. The State of Bihar, where the scope of the protection afforded by Article 14 was discussed in the context of an attack on Section 80 of the Criminal Procedure Code which empowered the State Government in certain areas to invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death and it was held by the Supreme Court that Section 30 of the Code or Criminal Procedure did not infringe the fundamental right guaranteed by Article 14 of the Constitution after laying down the test of permissible classification for purposes of legislation. Their Lord- ships did observe in that case at p. 1049 (of SCR) = (at p. 193 of AIR).

"It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

Counsel for the accused also relied on Matajog Dobey Vs. H.C. Bhari, in which the question or the validity of Section 197 was challenged on the basis of discrimination and once again the Supreme Court considered the scope of the protection afforded by Article 14 and held that Section 197 of the Criminal Procedure Code could not be challenged on the ground that it violated Article 14 of the Constitution of India and it was held further that Article 14 did not render Section 197 o■ the Code of Criminal Procedure ultra vires as the discrimination on the part of the Government to grant sanction against one public servant and not against another was based on rational classification.

8. In the instant cases, in my opinion, no question of discrimination arises because the 38 accused who were discharged cannot be said to be similarly placed or situated! as the petitioners. The Police had not filed any charge-sheet against those 38 persons. In their application for discharge of those 38 persons the police stated that there was no evidence on the basis of which they could be prosecuted. That is not the case so far as the petitioners were concerned. The police have not only filed the charge-sheets and supplied the statements and documents on which they relied but contended that the present petitioners ought to be prosecuted. It is argued, that in their application for discharging the 38 accused it was stated as follows:--

"It is ascertained that some of the accused mentioned in the margin have entered into weekly delivery contracts in silver and settled them by payment of differences instead of actual delivery. It was contend-ed that this type of contract amounted to forward contract. On the other hand it was opined by the Attorney General of India that a ready delivery contract cannot be said to be forward contract only because it is not settled by actual delivery. On this point the Forward Markets Commission followed the opinion of the Attorney General of India and advised the police to act accordingly. The papers were then sent to the Chief Police Prosecutor for opinion and we have been advised to hold that the charge u/s 20 (e) cannot be substantiated under these circumstances." The case of the accused is that the papers relied on by the prosecution against the petitioners revealed only weekly delivery contracts and settlement by payment of differences instead of actual delivery. The accused submitted that the conditions and terms on which those contracts

were entered into were identical with the conditions and terms on which the 38 discharged persons entered into contracts and hence the accused were similarly placed with, the other 88 persons and the police could not discriminate against the petitioners by prosecuting them and discharging the 38 persons who had entered into similar contracts.

9. There is no merit in this contention, It is not correct to state that the contracts which the petitioners entered into were weekly delivery contracts settled by payment of differences. The allegations of the police in the chargesheet are that the contracts which the accused entered into were forward contracts and not ready delivery contracts. The police have a discretion in collecting evidence against the accused and n filing a chargesheet. It is now settled hat a court cannot comply the police to Be a chargesheet if the police coma and ell the Court that they are unable to prosecute some persons because they have no evidence. It cannot be said that they have discriminated against the other accused against whom they have collected evidence. Even assuming that the police were wrong and the 38 persons against whom the police did not collect evidence bad also committed offences, it cannot be suggested that the police have discriminated against the present accused because they have collected evidence against them. Similarly, if the police come to the conclusion that they cannot file chargesheets against some of the accused because o■ certain opinion given to them, all that the Court could do was to discharge the accused and this cannot be said to be discrimination. Merely because the police stated their inability to prosecute the said 38 persons, they cannot be prevented from prosecuting the present accused on the basis of the evidence which they have collected. The learned Presidency Magistrate was, therefore, right in overruling the contention raised by the petitioners and in holding that no question of interpretation of Article 14 arose in this case.

10. The second contention raised on be-half of the petitioners is that the prosecution of the petitioners is based on evidence collected during the raid carried out on April 2, 1968 and this raid and search of the papers belonging to the accused was illegal because the police had not applied for a search warrant u/s 22A of the Forward Contracts (Regulation) Act, 1952. The learned Presidency Magistrate overruled this contention following an un-reported judgment dated April 3/6, 1964 by Mr. Justice Chitale and Mr. Justice Palekar in Criminal Appeals Nos. 753, 797, 798, 799, 800 and 801 of 1963 (Bom) in which the conviction of the accused under Sections 20(e)(i) and 21 (f) of the Forward Contracts (Regulation) Act, 1952 was challenged inter alia on the ground that the search made by the police without a warrant issued by the Presidency Magistrate was illegal. On this question Mr. Justice Palekar observed:--

"It was, however, contended on their behalf that the search itself was illegal, because there was no search warrant issued by the Presidency Magistrate as required by Section 22A of the Act, It is true that u/s 22A of the Act, any Presidency Magistrate or a Magistrate of the first class is empowered by warrant to authorize any police officer not below the rank of Sub-Inspector to enter upon and search any place and seize books of accounts and other documents relating to options in goods. It is also not disputed that the

officers who raided the place did not have any warrant issued by the Presidency Magistrate. It is, however, to be noted that the particular offences with which these respondents have been charged were cognizable offences u/s 23 of the Act, and, therefore, when a complaint was filed before the investigating officer with regard to the commission of the offence, the investigating officer was entitled u/s 165 of the Code of Criminal Procedure to search any place for anything which the investigating officer had reasonable ground for believing that it was necessary for the purpose of investigation. We do not, therefore, think that the search conducted by the police officers in this case after information was given of a cognizable, offence was a search unauthorised by law." With respect, I am bound by this decision. Apart from that, I am fully in agreement with the view expressed by Mr. Justice Palekar. Section 5 (2) of the Code of Criminal Procedure lays down that all offence"s under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions, of the Code of Criminal Procedure, but subject to any enactment for the time being in force regu relating the manner or place of investigating, Inquiring into, trying or otherwise dealing with such offences. Section 23 of the Forward Contracts (Regulation) Act, 1952 is as Under:--

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the following offences shall be deemed to be cognizable within the meaning of that Code, namely:--

(a) an offence falling under Sub-clause (ii) of Clause (a) of Section 20 in so far as it relates to the failure to comply with any requisition made under Sub-section (3) of Section 8;

(b) an offence falling under Clause (d) of Section 20;

(c) an offence falling under Clause (e) of Section 20 other than a contravention of the provisions of Sub-section (3A) or Subsection (4) of Section 15;

(d) an offence falling u/s 21. The offences charged against the petitioners in the present cases are, u/s 23, cognizable. There is no provision in the Forward Contracts (Regulation) Act regu- relating the manner or place of investigating of the offences by the police.

11. It is, however, contended by Mr. Thakkar, the learned Counsel appearing for the petitioners in Criminal Revision Application No. 282 of 1969, by Mr. Desai, the learned Counsel for the petitioners in Criminal Revision Application No. 283 of 1969, and by Mr. Shah, the learned Counsel appearing for the petitioners in the other cases, that the police officer cannot exercise his powers under Sections 157 and 165 of the Criminal Procedure Code and search the place of offence without the authority of a warrant issued u/s 22A." Now Section 22A is as under:--

"(1) Any Presidency Magistrate or a Magistrate of the first class may, by warrant, authorise any policy officer not below the rank of sub-inspector to enter upon and search

any place where books of account or other documents relating to forward contract or options in goods entered into in contravention of the provisions of this Act, may be or may be reasonably suspected to be and such police officer may seize any such book or document, if in his opinion, it relates to any such forward contract of option in goods.

(2) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure made under Sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued u/s 98 of the said Code."

The contention raised on behalf of the defence is sought to be supported by a decision of a single Judge of the Allahabad High Court in The Bullion and Agricultural Produce Exchange Private Limited Vs. The Forward Markets Commission, Bombay and Others, where the learned Judge dissented from the aforesaid decision of Mr. Justice Chitale and Mr. Justice Palekar on the ground that the matter was not discussed in detail and he was unable to endorse the view point expressed by this Court. With utmost respect, the learned Judge was not right when he said that the matter was not discussed. The passage from the judgment quoted above shows that this Court has discussed the contention and arrived at its conclusion after taking into consideration the provisions of the Criminal Procedure Code and the Forward Contracts (Regulation) Act, 12. Apart from that, in my opinion, the view expressed in the Allahabad decision is not only contrary to the plain terms of Section 5(2) of the Code of Criminal Procedure but is inconsistent with the aim and object of the Forward Contracts (Regulation) Act in making certain offences under that Act cognizable. The enactment of Section 22A in that Act was clearly intended to enable a Magistrate to issue a search warrant authorising any police officer not below the rank of a Sub-Inspector to enter upon and search any place where books of account and other documents relating to forward contracts or options in goods enter-ed into in contravention of the provisions of that Act may be or may reasonably be suspected to be. But for this section, a Magistrate could issue a search warrant only under the provisions of Section 96 or 98 of the Criminal Procedure Code which perhaps, would not cover a case of a place where books of account or other documents relating to forward contracts or options in goods might be or might reasonably be suspected to be. Section 22A must be harmonised with Section 23 which makes the offences mentioned therein cognizable, which means that not only can the police arrest the accused without warrant but investigate the offences under Chapter XIV of the Criminal Procedure Code, In the absence of any specific provisions in the Forward Contracts (Regulation) Act preventing the police from exercising their powers of search u/s 157 or 165 of the Criminal Procedure Code and in the absence of any other provision regu relating the manner of investigation by the police, contained in the Act, I find it impossible to agree with the view expressed in the Allahabad case.

13. Moreover, Mr. Justice Satish Chandra who decided that case, with utmost respect, appears to have assumed that Section 22A is a specific provision relating to the search of places by the police, which it is not. As stated above, Section 22A is only an enabling provision enabling the police to arm themselves with a warrant from the Magistrate if the

police consider it necessary to avoid allegations being made against them. It confers a power on the Magistrate to issue a warrant which he could not have perhaps issued under the provisions of the Criminal Procedure Code. The learned Judge has referred to a decision of the Supreme Court in The State of Rajasthan Vs. Rehman, in which the accused was acquitted because he was prosecuted after a search which was in contravention of the provisions of Section 165 of the Criminal Procedure Code and that acquittal was confirmed by the Supreme Court. A contention was raised before the Supreme Court that the breach of the provisions of Section 165 was merely an irregularity and not an illegality, But that contention was not allowed to be raised because it was not raised in the two Courts below. (See para 10 at p. 213.) In Radhakishan Vs. State of U.P., a larger Bench of the Supreme Court held that a search in contravention of the provisions of Section 103 and 165 of the Code of Criminal Procedure could be resisted by the person whose premises were sought to be searched and because of the illegality of the search, the Court may examine carefully the evidence regarding the seizure, but beyond these two consequences, no further consequences ensued.

14. It is difficult to appreciate how the decision of the Supreme Court in The State of Rajasthan Vs. Rehman, could be relied on for the conclusion of the learned Judge that Section 165 of the Criminal Procedure Code was pot available for an investigation by the police of an offence under the Forward Contracts (Regulation) Act, 1952. The learned Judge has further referred to The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, and Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others, which lay down the principles of interpretation of statutes regarding the question as to whether certain provisions are mandatory or directory in the context of the words like "shall" or "may" and has held that although the word "may" is used in Section 22A of the Forward Contracts (Regulation) Act, 1952, it should be construed as a mandatory provision. With the greatest respect, I must say that I cannot follow how this conclusion can be arrived on the basis of the two decisions of the Supreme Court relied upon by the learned Judge.

15. In my view, therefore, Section 22A of the Forward Contracts (Regulation) Act does not debar the police from exercising the powers u/s 165 of the Criminal Procedure Code.

16. Mr. Thakkar further argued that the decisions of the Supreme Court in State, by Nilratan Sircar, Enforcement Officer Vs. Lakshmi Narain Ram Niwas, , Delhi Administration Vs. Ram Singh, and decision- of this Court in Emperor v. Kaitan Duming Fernad ILR (1907) 31 Bom 438 : 6 Cri LJ 60 supported his contention that Section 22A excluded the operation, of Section 165 of the Criminal Procedure Code.

17. Now State, by Nilratan Sircar, Enforcement Officer Vs. Lakshmi Narain Ram Niwas, was under the Foreign Exchange Regulation Act under which the Director of Enforcement was entitled to retain articles seized by him u/s 19A and it was held that the Magistrate cannot exercise his powers under the Criminal Procedure Code in connection with properties seized under Sub-section (3) of Section 19 of the Act. There is "a clear and

specific provision u/s 19A with regard to the manner of dealing with articles seized by the Director of Enforcement; and in view of Section 5 (2), of the Criminal Procedure Code, it was patent that this specific provision "excluded the powers of the Magistrate to order disposal of the articles under the Criminal Procedure Code.

18. In the Delhi Administration Vs. Ram Singh, the Court was concerned with the investigation by the special police officers under the Suppression of Immoral Traffic in Women and Girls Act, 1956, which contains special mandatory provisions regarding the investigation of the offences under that Act and hence it was held that the ordinary police officer could not exercise the powers under the Criminal Procedure Code and investigate the offences under that Act.

19. In (ILR 1907) 31 Bom 438 : 6 Cri LJ 60 the question was whether the presumption under the Bombay Prevention of Gambling Act was properly raised and this depended on the question as to whether the search was made in accordance with the provisions of that Act which contained a special provision with regard to the search of places where gambling was going on or where gambling was suspected to be going on.

20. All these cases are, in my opinion, easily distinguishable because in these cases there were special provisions under the respective special enactments which would override the general provisions of the Criminal Procedure Code. That is not the case under the Forward Contracts (Regulation) Act, 1952 which lays down that certain offences are cognisable which necessarily implies that the police can investigate those offences under Chapter XIV of the Code of Criminal Procedure; and there is no provision made in the Act regu relating the manner of investigation" by the police. Hence the contention of the petitioners that the prosecution of the petitioners is illegal because no warrant was issued u/s 22A of the Act must be rejected.

21. The third contention strenuously urged by the Counsel for the petitioners is that u/s 251A (2) of the Criminal Procedure Code, it was the duty of the Magistrate to discharge the petitioners as the charges levelled against them in the respective chargesheets were groundless. It was contended that under Clause (3) of Section 251A a charge could be framed by the Magistrate if on a consideration of all the documents referred to in Section 173 and such further examination being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate was of the opinion that there was a ground for presuming that the accused had committed offences under the Forward Contracts (Regulation) Act, 1952. But in all these cases, the only documents that were filed along with the chargesheet u/s 173 were the statement of the Research Officer and reports submitted by him with annexure and these reports and annexure of statements of accounts according to the Counsel for the accused, did not afford any ground for prosecuting the accused. Mr. Thakkar drew my attention to these statements of accounts and contended that there was nothing therein from which the Court could infer or presume that the accused had entered into forward contracts in contravention of the Act. He submitted that the statement of the complainant at whose instance the search was

carried out was not supplied to the accused and there was no material other than the report of the Research Officer relied upon by the police in filing the chargesheet. He further contended mat even the Research Officer in his report had stated that the entries in the accounts which were seized showed the delivery dates in respect of the contracts and in view of that, it could not be said that the contracts that were recorded in the statements of accounts were a forward contracts. With reference to the inference made by the Research Officer that merely because the delivery of silver was not made or payment of the price was not made within 11 days and the transactions were carried forward by cross transactions, it does not cease to become a forward contract, he argued that it could not be necessarily argued on the basis of these facts that the contracts were forward contracts. Mr. Desai further contended that the inference of the Research Officer that the transactions were carried forward was itself not correct as they appeared to be independent transactions. It was submitted that in any event, the Court would not be justified in framing a charge merely relying on the opinion of a Research Officer which, according to them, would not be relevant or admissible u/s 45 of the Indian Evidence Act or under any other provision of law.

22. There is no substance in any of these contentions. It is not possible at this stage to decide finally whether the contracts which are recorded in the statements of accounts annexed to the reports made by the Research Officer are forward contracts or ready delivery contracts as defined by Forward Contracts (Regulation) Act, 1952. It is true that the charges appear to have been framed relying on the statement of the Research Officer and the reports as well as the statements of accounts. Now "forward contract" is defined in Section 2(c) of the Act to mean a contract for delivery of goods at a future date and which is not a ready delivery contract. "Ready delivery contract" is defined in Section 2(i) of the Act as follows:--

"Ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise."

According to the prosecution, the statements of accounts annexed to the report of the Research Officer do not show that any delivery of the silver or payment of the price was to be made within 11 days after the date of the contract because the course of transactions revealed by these statements of accounts shows that the price of the silver bars or units sold and bought were never credited or debited. What were credited and debited were merely the quantity of silver and the price or the rate; and further at no time were the contracts settled by payment of the price or the delivery of the goods. The petitioners only settled the differences to be paid or received and hence although in some of the statements of accounts delivery dates are indicated, the contracts were not ready delivery contracts as they neither provided for the delivery of goods nor the payment of

price therefore either immediately or within a period not exceeding 11 days after the date of the contract.

23. Mr. Thakkar, however, on the other hand, repelled these contentions on the ground that merely because delivery was not made or price was not paid or only differences were paid and the contracts were carried forward, it could not be said that they were not ready delivery contracts as defined under the Act. He submitted that what the Court has to consider is whether the contracts provided for the delivery of goods and the payment of price therefore either immediately or within such period not exceeding 11 days after the date of the contract and the fact that the quantity is mentioned along with the price and it is credited or debited was enough to show that the payment of the price was contemplated and the fact that the delivery date was admittedly mentioned in these statements of accounts further showed that delivery of goods was also contemplated. Mr. Desai supplemented this argument by further urging that merely because subsequent to the date of the contract the parties have entered into new contracts and settled the rights and liabilities under the old contracts by payment of differences would not justify the Court in imputing an intention to the parties to enter into a forward contract on the date of the contract.

24. All these contentions deserve to be considered carefully when the prosecution has led evidence and the defence statements or evidence, if any, are recorded in support of their contentions. At present I am only concerned with the question as to whether the learned Presidency Magistrate was justified in framing the charges against the accused on the basis of the documents, statements and papers before him filed with the chargesheets and I have no doubt that he was fully justified in framing the charges and enquiring further into the matter giving an opportunity to both the parties to lead evidence in accordance with taw. Although there are 8 cases, the charges framed are substantially based on the entries in the Sauda books and other books seized from the respective accused at the premises and the presence of the accused at the two premises situated at 155 Memon Street and 95 Shaikh Memon Street. I have carefully considered all the entries and I find that the learned Magistrate was right In holding that there was ground for presuming that the accused had committed offences charged against them. At present, apart from the contention of the accused that the contracts were ready delivery contracts, there is nothing on the record which would justify the Court in holding that the contracts were ready delivery contracts, because none of these entries shows prima facie, that delivery and payment were contemplated within 11 days from the date of the contract. Merely because the word ''delivery'' is written in some of the entries with a date, the contracts cannot become ready delivery contracts. In State of Gujarat Vs. Manilal Joitaram and Co., the Supreme Court considered certain transactions on paper in the context of the provisions of Section 18 of! the Forward Contracts (Regulation) Act and Section 20(1) and Mr. Justice Hidayatullah, as he then was observed:

"It is also clear that the contracts, although they appeared to be non-transferable specific delivery contracts were not intended to be completed by delivery immediately or within a

period of 11 days from the date of the contract. In fact week after week contracts were cancelled by cross-transactions and there was no delivery. Instead of payment of price, losses resulting from the cross-transactions were deposited by the operators in loss with the Association. Further, on the due date also, there was no delivery but adjustment of all contracts of sales against all contracts of purchase between the same parties and delivery was of the outstanding balance. Even this delivery was often avoided by entering into fresh contracts at the rate prevailing on the due date, as part of the transactions in the next period. There is evidence also to establish this. In other words the transactions on paper did seem to comply with the regulations but in point of fact they did not and the Association arranged for settlement of the entire transactions (barring an insignificant portion, if at all) without delivery."

In view of these facts and circumstances, the Supreme Court set aside an order of acquittal passed by the Gujarat High Court and convicted the accused in that case under Clauses (b) and (c) of Section 21.

25. With respect, these principles of Ending out the real nature of the transactions have to be applied to the facts of the present case and the learned Presidency Magistrate will have to find out what is the true nature of the transactions in the statements of accounts which are annexed to the reports of the Research Officer filed along with the chargesheet, It is open to the accused to point out and, if necessary, to lead evidence to show that whatever has been recorded by them relate only to ready delivery contracts. It is also open to the prosecution to prove in accordance with law that all the entries made were relating to the transactions prohibited under the Forward Contracts (Regulation) Act The Court will have to consider the real nature of the transactions and the real intention of the parties at the date of the transactions front the contracts as well as all the surrounding circumstances. See Modi and Co. Vs. Union of India (UOI), .

26. For these reasons, I find that the orders passed by the learned Presidency Magistrate are proper and in accordance with the law and dismiss all the revision applications. The stay granted by this Court is vacated and the rule is discharged. Record and proceedings to be sent down immediately.

27. Order accordingly.