



1974 Legal Eagle(SC) 415

IN THE SUPREME COURT OF INDIA

Equivalent Citations : 1975 AIR(SC) 1223 : 1975 (2) SCC 208 : 1975 (3) SCR 1

Before : M.H.Beg : V.R.Krishna Iyer : P.K.Goswami

**Firm of Pratapchand Nopaji
Versus
Firm of Kotrike Venkata Setty and Sons**

Case No. : 2382 , 2384 of 1968

Date of Decision : 12-Dec-1974

Advocates Appeared:

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HEADNOTE :

Contract Act, 1872--Section 23 -- Illegal contract -- Place of contract -- Effect of -- The object of contract prohibited in the State where one of the parties were situated -- Contract is illegal. The mere fact that the contracts between the plaintiff and the defendants were entered into at Kurnool in the State of Andhra Pradesh would also not make any difference in principle if the objects of contracts which were to be carried out at Bombay were of such a kind as to be hit by Section 23 of the Act. The principle which would apply, if the objects are struck by Section 23 of the Contract Act, is embodied in the maxim: "Qui facit per alium facit per se" (What one does through another is done by oneself). To put it in another form, that which cannot be done directly may not be done indirectly by engaging another outside the prohibited area to do the illegal act within the prohibited area. It is immaterial whether, for the doing of such an illegal act, the agent employed is given the wider powers or authority of the "pucca adatia", or, as the High Court had held, he is clothed with the powers of an ordinary commission agent only.

Contract Act, 1872--Section 23 -- Void contract -- Forbidden contract -- Agreement for entering into forward contracts, prohibited under the law -- Contract is illegal

If an agreement is merely collateral to another or constitutes an aid facilitating the carrying out of the object of the other agreement which though void, is not in itself prohibited within the meaning of Section 23 of the Contract Act, it may be enforced as a collateral agreement. If on the other hand, it is part of a mechanism meant to defeat what the law has actually prohibited, the Courts will not countenance a claim based upon the agreement because it will be tainted with an illegality of the object sought to be achieved which is hit by Section 23 of the Contract Act. It is well established that the object of an agreement cannot be said to be forbidden or unlawful merely because the agreement cannot be said to be forbidden or unlawful merely because the agreement results in what is known as a "void contract". A void agreement, when coupled with other facts, may become part of a transaction which creates legal rights, but this is not so if the object is prohibited or "mala in se".

Contract Act, 1872--Sections 23 and 222 -- Contract for illegal act -- Contract for forwarding trading prohibited by law -- Contract is enforceable irrespective of the status of the party agreeing to it, whether as an Agent or the Principal.

The question whether the parties through whom the plaintiff actually alleged carrying out of

the contract set up between the plaintiff and the defendants could themselves be regarded as principals or agents of the plaintiff will become quite immaterial if the objects of the contracts are found to be tainted with the kind of illegality which is struck by Section 23 of the Contract Act.

Contract Act, 1872--Section 30 -- Wagering contract -- Speculation on future -- Effect of -- Necessity of mutual intention of wagering.

If we substitute "goods", in respect of which forward contracts are made, for "securities", we get the exact nature of the transactions set up by the plaintiff in each case. They are nothing short of contracts for speculation in rise and fall of prices of goods purchases only nationally without any intention to actually deliver them to the purchasers. In such a transaction, a purchaser is not at all expected to make a demand for actual delivery of goods ostensibly sold. There could be no agreement in the nature of a wager between the principal and the agent whatever may have been intentions of the principal. It was held that, in a wagering contract, there the gain of one party would be the loss of the other on the happening of the uncertain event which is the subject -- matter of a wager. Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential.

STATUTES REFERRED:

1. Contract Act, 1872, Section 30
2. Contract Act, 1872, Section 23
3. Contract Act, 1872, Section 222
4. Contract Act, 1872, Section 224
5. Essential Supplies (Temporary Powers) Act, 1946, Section 224

JUDGMENT/ORDER:

Beg, J.:-

The three consolidated appeals before us by grant of special leave are directed against a common, Judgment of the High Court of Andhra Pradesh, by which the plaintiff's appeals in three suits, filed on similar facts were dismissed. They can be decided by us on the question whether the contracts set up by the plaintiff appellant were struck by the provisions of Section 23 of the Contract Act. The section reads as follows:

" 23. The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another ; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void".

The appellant, firm of Pratapchand Nopaji, is the plaintiff in all the three suits, but the defendants of each suit the respondents before us, are different. The plaintiff claimed Rs. 78,201/15 ans, in original suit No. 106 of 1954, Rs,13,978/4 ans, in original suit No. 107 of 1954 and Rupees 91,697/4 ans. in original suit No. 114 of 1954, as amounts due to indemnify him under Section 222 of the Contract Act on the strength of Payments said to have been made by the plaintiff to third parties on behalf of the defendants who are alleged to have directed the plaintiff to enter into "badla" transactions for

them. Three other suits, claiming amounts alleged to have been borrowed, also filed by the same plaintiff, were tried together with these three suits; but, we are not concerned here with the other three suits from the dismissal of which no appeal was preferred.

2. The character of the contract set up in each case is brought out by paragraph 3. of the original suit No. 106 of 1954 where the plaintiff said:

"The defendants are big merchants and have been carrying on trade outside Dhone, even in places like Bombay. They wanted to do the business of purchasing and selling groundnut seeds and oil seeds in Bombay market and for this purpose engaged the plaintiffs as commission agents to contact with Bombay Commission Agents, who were entering into contracts with customers for purchasing or selling groundnut seeds and custom oil seeds, according to the orders of the defendants which the plaintiffs were communication to them. The Bombay commission agents used to give intimation to the plaintiffs of the fact of having executed the orders (the contracts of sale or purchase) and the terms, the rate etc., of the contracts. The plaintiffs were immediately communicating the information to the defendants. The business was according to the custom prevailing in the Bombay Market, viz the custom of Badla. The defendants not only agreed in general to abide by the custom of Badla, but specifically consented to every such Badla. At the request of the defendants the transactions were settled after undergoing a few badlas. Such settlement were beneficial to the defendants as the market was falling and delay would have meant greater loss: when the market was falling the Bombay agents were pressing for cash settlement on pain of declaring them as defaulters which will result in a disability to do any further business. The defendants knew this state of affairs and the realised that a settlement was the only course beneficial to them. So they specifically told the plaintiffs that they must at any cost preserve their reputation in the Bombay market and with plaintiffs. The defendants hence agree to pay the amount and on their request and on their behalf the plaintiffs paid all amounts due to the Bombay Commission Agents according to the Patties sent by the Bombay Agents in respect of the transactions relating to the defendants. The defendants also agreed to pay to the plaintiff interests on the amounts so advanced by the plaintiffs for payment to the Bombay agents. The Bombay Commission agents were sending patties of transaction to plaintiffs. As already stated , at the request of the defendants to repay all such amounts to the plaintiffs with interest. The extracts of the accounts filed with this plaint show the transaction and the amount paid by the plaintiffs at the request of and on behalf of the defendants."

3. The plaintiff's case was that the authority to engage in Badla transactions on forward contracts, which are contracts for the delivery of specified goods on future dates, implied what is known as "continuation or "carrying over" in the terminology of the Stock Exchange. The meaning of such a transaction is given, in Hals bury's Laws of England- 3rd Edn. Vol 36 at p. 547 (para 842) as follows:

"If a purchaser of securities during a dealing period does not wish to complete his purchase during the next following settlement period he may arrange to resell for the current account the securities which he has agreed to buy for that account and to purchase for the new account. Conversely, a seller of securities during a dealing period when does not wish to deliver during the next following settlement period may arrange to repurchase for the current account the securities which he has agreed to sell, and to sell for the new account. Such an agreement is known as a continuation or carrying over.

This is explained further and distinguished from a loan (at page 548 - para 845) :

"Continuation or carrying- over is in form and in law a sale and repurchase, or a purchase and resale, as the case may be. It is a new contract, and not merely getting further time far the performance of the old contract.

A continuation being a contract of sale and repurchase and not a loan, the original seller becomes again the absolute owner of the securities carried over, and is not bound to redeliver the identical

securities but an equal amount of similar securities. If, therefore, he sells the securities taken in by him and makes a profit thereon, he may retain it to his own use. In the case of a loan, however, if the lender sells the securities deposited, the borrower may charge him with the price obtained for them if he finds it to his interest to do so."

Under the Defence of India Rules, the definition of Badla provides that, it "includes a Contango and a backwardation and any other arrangement whereby the performance of any obligation under a contract to take or give delivery of securities within a stipulated period is postponed to some future date in consideration of the other charges."

4. "Carrying-over" or "continuation" is also given as one of the meanings of the term "contango" or "backwardation" in Halsbury's Laws of England- 3rd Edn. Vol 36 at p. 548. If we substitute "goods," in respect of which forward contracts are made for "securities", we get the exact nature of the transactions set up the plaintiff in each case. They are nothing short of contracts for speculation in rise and fall of prices of goods purchased only nationally without any intention to actually deliver them to the purchasers. In such a transaction, a purchaser is not at all expected to make a demand for actual delivery of goods ostensibly sold.

5. We find considerable force in the plaintiffs' contention that at least contract between the plaintiffs and defendants were not wagering contracts although we think, in agreement with the High Court, that each party knew that their object was to indulge in speculation. In *Bhagwandas Parsaram (A firm) v. Burjorji Ruttonji Bomanji*, (1918) 45 Ind App 29 at p. 33=(AIR 1917 PC 101 at p. 106), after examining the facts of a case in which a firm of "pucca adatias" was authorised, by a defendant intending to speculate in differences, to sell and then to re-sell for the purpose of making profits, it was found that, as the plaintiff could not be said to either lose or benefit correspondingly from variations in price, there could be no agreement in the nature of a wager between the principal and the agent whatever may have been intentions of the principal. It was held that, in a wagering contract, there has to be a mutuality in the sense that the gain of one party would be the loss of the other on the happening of the uncertain event which is the subject matter of a wager. It was pointed out there (at p. 33):

"Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential. No such intention has been proved".

We, therefore, accept the contention of the appellant that there was no wagering contract between the plaintiff and any of the defendants.

6. The next question we may consider is whether the contracts set up could be said to be collateral contract quite unaffected by the objects or intentions of defendants in entering into these contracts which involved making of other contracts which may or may not be wagering contracts but were not "prohibited". Strong reliance was placed upon *Gherulal Parakh v. Mahadeodas Maiya*. (1959) Supp 2 SCR 406 at p. 431 = (AIR 1959 SC 781 at P. 792), where the object of a contract or partnership was to enter into forward contracts for the purchase and sale of wheat so as to speculate in rise and fall of price of wheat in future. The object of the partnership was held to be not illegal. Within the meaning of Section 23 of the Contract Act, although the business for which the partnership was formed was held to involve wagering. The position was thus summarised there (at p. 431):

"The aforesaid discussion yields the following results:

(1) Under the common Law of England a contract of wager is valid and therefore both the primary contract as well as the collateral agreement in respect thereof are enforceable; (2) after the enactment of the Gaming Act. 1845, a wager is made void but not illegal in the sense of being forbidden by law, and thereafter a primary agreement of wager is void but not illegal in the sense of being forbidden by law, and thereafter a primary agreement of wager is void but a collateral agreement is enforceable; (3) there was a conflict on the question whether the second part of Section 18 of the

Gaming Act, 1845, would cover a case for the recovery of money or valuable thing alleged to be won upon any wager under a substituted contract between the same parties: the House of Lords in Hill's case (1921) 2 KB 351) had finally resolved the conflict by holding that such a claim was not sustainable whether it was made under the original contract of wager between the parties or under a substituted agreement between them; (4) under the Gaming Act, 1892 in view of its wide and comprehensive phraseology, even collateral contracts, including partnership agreements, are not enforceable; (5) section 30 of the Indian Contract Act is based upon the provisions of Section 18 of the Gaming Act, 1845, and though a wager is void and unenforceable, it is not forbidden by law and therefore the object of a collateral agreement if not unlawful under Section 23 of the Contract Act; and (6) partnership being an agreement within the meaning of Section 23 of the Indian Contract Act, it is not unlawful, though its object is to carry on wagering transactions. We, therefore, hold that in the present case the partnership is not unlawful within the meaning of S. 23 (a) of the Contract Act.

Re. (ii) Public Policy: The learned Counsel for the appellant contends that the concept of public policy is very comprehensive and that in India, particularly after independence, its content should be measured having regard to political, social and economic policies of a welfare State, and the traditions of this ancient country reflected in Srutis, Smritis and Nibandhas. Before advertent to the argument of the learned Counsel, it would be convenient at the outset to ascertain the meaning of this concept and to note how the Courts in England and India have applied it to different situations Cheshire and Fifoot in their book on "Law of Contract", 3rd Edn., observe at page 280 thus:

"The public interests which it is designed to protect are so comprehensive and heterogeneous, and opinions as to what is injurious must of necessity vary so greatly with the social and moral convictions, and at times even with the political views, of different judges, that it forms a treacherous and unstable ground for legal decision..... these questions, have agitated the Courts in the past, but the present state of the law would appear to be reasonably clear. Two observations may be made with some degree of assurance.

First, although the rules already established by precedent must, be moulded to fit the new conditions of a changing world, it is no longer legitimate for the Courts to invent a new head of public policy. A judge is not free to speculate upon what, in his opinion, is for the good of the community. He must be content to apply either directly or by way of analogy, the principles laid down in previous decisions. He must expound not expand, this particular branch of the law.

Secondly, even though the contract is one which prima facie falls under one of the recognized heads of public policy, it will not be held illegal unless its harmful qualities are indisputable. The doctrine, as Lord Atkin remarked in a leading case, should only be invoked in clear cases in which the harm to the public is substantially incontestable and does not depend upon the idiosyncratic inferences of a few judicial minds In popular language. . . . the contract should be given the benefit of the doubt".

7. If an agreement is merely collateral to another or constitutes an aid facilitating the carrying out of the object of the other agreement which, through void, is not in itself prohibited, within the meaning of Section 23 of the Contract Act, it may be enforced as a collateral agreement. If on the other hand, it is part of a mechanism meant to defeat what the law has actually prohibited, the Courts will not countenance a claim based upon the agreement because it will be tainted with an illegality of the object sought to be achieved which is hit by Section 23 of the Contract Act. It is well established that the object of an agreement cannot be said to be forbidden or unlawful merely because the agreement results in what is known as a "void contract". A void agreement, when coupled with other facts, may become part of a transaction which creates legal rights but this is not so if the object is prohibited or "mala in se". Therefore, the real question before us is: Is the agreement between the parties in each case, which was to be carried out in Bombay so connected with the execution of an object prohibited by either a law applicable in Bombay or a law more widely applicable so as to be hit by Section 23 of the Contract Act?

8. A question which has been raised before us is whether the plaintiff, who entered into contracts

with third parties, who appeared as witnesses in the cases now before us so that these third parties made the purchases and settlements in Bombay, the payments for which are the subject-matter of suits was dealing with them as a principal to principal. The High Court had found that the relationship between the plaintiff and the third parties he employed to conclude the transactions was that of a principal to principal. The question whether the parties through whom the plaintiff actually alleged carrying in out of the contract set up between the plaintiff and the defendants could themselves be regarded as principals or agents of the plaintiff will become quite immaterial if the objects of the contracts are found to be tainted with the kind of illegality which is struck by Section 23 of the Contract Act. Again, the mere fact that the contracts between the plaintiff and the defendants were entered into at Kurnool in the State of Andhra Pradesh would also not make any difference in principle if the objects of contract which were to be carried out at Bombay were of such a kind as to be hit by Sec. 23 of the Act. The principle which would apply, if the objects are struck by Section 23 of the Contract Act, is embodied in the maxim: "Qui facit per alium facit per se" (What one does through another is done by oneself). To put it in another form, that which cannot be done directly may not be done indirectly by engaging another outside the prohibited area to do the illegal act within the prohibited area. It is immaterial whether, for the doing of such an illegal act, the agent employed is given the wider powers or authority of the "pucca adatia", or, as the High Court had held he is clothed with the powers of an ordinary commission agent only.

9. In view of the opinion already expressed by us, that, at any rate, the initial contracts between the plaintiff and the defendants were not really wagering contracts, we need not deal with the provisions of the Bombay Act No. 3 of 1865 for Avoiding Wagers which are declared void by Sec. 30 of the Indian Contract Act. We will, however, consider the applicability of the provisions of Bombay Forward Contracts Control Act, No. 64 of 1947 (hereinafter referred to as the 'Bombay Act') and of the Oilseeds (Forward Contracts Prohibition) Order, 1943, (hereafter referred to as the Control Order), which was kept alive by the provision of Section 17 of the Essential Supplies (Temporary Powers) Act, 1946 (hereinafter referred to as 'the Central Act').

Section 2, sub-sec. (2) of the Bombay Act says:

"Contract" means a contract entered into, made or to be performed in whole or in part in any notified area relating to the sale or purchase of any goods to which this Act applies:

Provided that the Provincial Government may by notification in the Official Gazette direct any contract or class of contracts to be excluded from the provisions of this Act, subject to such conditions as the Provincial Government may deem fit to impose"; Section 2, sub-section (3) lays down:

" Forward Contract, means a contract for the delivery of goods at a future date and which is not a ready delivery contract;"

Section 2, sub-section (4) enacts:

" 'Goods' means any kind of moveable property and includes securities but does not include money or actionable claims;"

Section 2, sub-s. (7) reads:

" 'Option in goods' means a contract for the purchase or sale of a right to buy, or a right to sell or a right to buy or sell goods in future and includes a guilty, a teji, a mandi or a teji-mandi in goods;"

Sec. 2, sub-s. (9) says:

'Ready delivery contract' means a contract which provides for delivery and payment of price either immediately or within such number of days not exceeding seven after the date of the contract and

under such conditions as the Gazette specify in this behalf in respect of any particular goods";

Sec. 2, sub-s. (1) provides:

" 'Recognised association' means an association which is for the time being recognised by the Provincial Government as provided in Sec. 3"; The recognition of associations is governed by Sec. 3 of the Act and Section 6, sub-s. (1) gives the power to every recognised association to "subject to the sanction of the Provincial Government, make and from time to time, add to, vary or rescind bye-laws for the regulation and control of forward contracts in goods for which such association has been recognised".

10. Section 6, sub-sec. (2) (f) refers specifically to the power of the recognised Association to lay down, "the terms, conditions and incidents of contracts and the forms of such contracts as are in writing"; and, Sec 5. sub-section (2) (g) covers:

"regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members, or between a commission agent and his constituent or between a broker and his constituent or between a jatha- wala' or muccadam and his constituent or between a member of the recognised association, and a person who is not a member, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents, muccadums and brokers not parties to such contracts"; Section 6, sub-sec (2) (i) indicates that "the method and procedure for settlement of claims and disputes including settlement by arbitrations"; Section 6, sub-sec. (3) says:

"The bye-laws may provide that the contravention of any of the bye- laws shall-

(i) make a contract which is entered in to made or is to be performed otherwise than in accordance with the bye-law void or illegal;

(ii) render the member liable to expulsion, suspension, fine or other non-monetary penalty"..

Section 8 of the Bombay Act deals with the illegality of the contracts and its consequences as follows:

"(1) Every forward contract for the sale or purchase of, or relating to any goods, specified in the notification under sub-section (3) of Sec. 1 which is entered into, made or to be performed in any notified area shall be illegal if it is not entered into, made or to be performed-

(a) in accordance with such bye- laws, made under Section 6 or 7 relating to the entering into, making or performance of such contracts, as may be specified in the bye-laws, or

(b) (i) between members of a recognised association,

(ii) through a member of a recognised association, or

(iii) With a member of a recognised association, provided that such member has previously secured the written authority or consent, which shall be in writing if the bye laws so provide, of the persons entering into or making the contract,

and no claim of any description in respect of such contract shall be entertained in any civil Court .

(2) Any person entering into or making such illegal contract shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both".

Section 9 of the Bombay Act lays down:

"(1) Notwithstanding anything contained in this Act or in any other law for the time being in force on a notification being issued by the Provincial Government in the Official Gazette, options or such kinds of options in such goods and in the whole of the Province of Bombay or such part thereof as may be specified in the notification shall be illegal.

(2) Any person entering into any option made illegal under sub-sec. (1) shall on conviction, be punishable with imprisonment which may extend to six months or with fine or with both."

11. The Andhra Pradesh High Court had reached the conclusion that it was not necessary to decide the question whether provision of Section 8 clause 1 (a) had been contravened probably because no bye-law made under Section 6 or 7 of the Bombay Act had been placed before it. No such bye-law has been pointed out to us. We are, therefore, not in a position to hold that there has been an infringement of any bye-law. The High Court had, however, held that there had been a contravention of Section 8 (1) (b) of the Bombay Act inasmuch as only one of the third parties, namely, Shivdanmal Agarwal & Co., whose partner Ganga Ram was examined as P. W. 1 was shown to be a member of a recognised association. We do not consider it necessary to decide this question either as it appears to us that the Andhra Pradesh High Court was correct in holding that the forward contracts under consideration violated the provisions of the two orders set out below:

(1) No. 7561/33-D (4), which reads:

"In exercise of the powers conferred by the proviso to clause (2) of Section 2. of the Bombay Forward Contracts Act, 1947 (Bom. LXIV of 1947), the Government of Bombay is pleased to direct that the following contracts shall be excluded from the provisions of the said Act namely:

Forward contract for specified delivery of any variety of oil seeds for specified price the delivery order railway receipts or bill of lading against which are not transferred to the third parties, made or entered into before 19th December, 1950, and outstanding on that date".

(2) No. 7561/33-D (2) which says

"In exercise of the powers conferred by sub-section (1) of Section 9 of the Bombay Forward Contracts Control Act, 1947 (Bom. LXIV of 1947) the Government of Bombay is pleased to direct that all options in all varieties of oil seeds shall be illegal in Greater Bombay".

12. Moreover, as regards oil seeds, we find that the Central Act enacted for the control of production supply, and distribution of essential commodities, covers "food-stuffs" which, under Section 2 (c). "include edible oilseeds and oils". Section 3 (2) (c) to (g) of the Central Act authorises the Central Government to pass orders for the purposes given as follows:

"(c) for controlling the prices at which any essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution disposal, acquisition use or conscription of any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in order;

(g) for regulating or prohibiting any class of commercial or financial transactions relating or financial transactions relating to foodstuffs or cotton textiles, which in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental, to public interest;"

Section 7 (2) of the Central Act provides that:

"If any person contravenes any order under Section 3 relating to food- stuffs,

(a) he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine, unless for reasons to be recorded the court is of opinion that a sentence of, fine only will meet the ends of justice and

(b) any property in respect of which the order has been contravened or such part thereof as to the Court may seem fit shall be forfeited to the Government....."

As already indicated, Section 17 of the Central Act keeps alive the provisions of Oil- seeds (Forward Contracts Prohibition) Order, 1943. The provisions of this Control Order appear to be so important for the decision of question before us that we reproduce it below in toto. It runs as follows:

" 1.(1) This order may be called the Oilseeds (Forward Contracts Prohibition) Order, 1943.

(2) It extends to the whole of British India.

(3) It shall come into force at once

2. In this order-

(i) "contract" means a contract made, or to be performed in whole or in part in British India relating to the sale or purchase of oilseeds;

(ii) "forward contract" means a contract for the delivery of oilseeds at some future date.

(iii) "oilseeds" means any of the oilseeds for the time being specified against the first column of the schedule to this Order;

(iv) 'specified date' relation to any oilseeds means the date specified against those oilseeds in the second column of the schedule to this Order.

3. No person shall, after the specified date for any class of oilseeds, enter into any forward contract in any of those oilseeds.

4. Notwithstanding any custom, usage or practice of the trade, or the terms of any contract or any regulation of an association relating to any contract-

(1) every forward contract in any class of oilseeds outstanding at the close of business on the specified date shall be deemed to be closed out at such rate as the Central Government may by notification in the Official Gazette fix in this behalf, and different rates may be fixed for different classes of contracts;

(2) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed as aforesaid and the seller shall not be bound to give and the buyer shall not be bound to take delivery;

(3) payment of all differences legally due from a member of an association to another member of such association in respect of any forward contract closed out under this clause shall be made to the clearing house of the association and for the purposes of calculating such differences the rate fixed by the Central Government under sub-clause (1) shall be deemed to be the settlement rate fixed by the association under its bye-laws or other regulations which shall, for the relevant purpose, continue

to have effect subject to the provisions of this Order.

(4) The Central Government may, by Notification in the official Gazette, exclude any contract or class of contracts from the provisions of this Order. (Noti.No. P and SC 75 (1)/43. dated 31st May, 1943)."

13. A Notification was issued on 31-5-1943 under S. 5 of the above mentioned Order, the relevant part of which reads as follows:

"I Forward Contracts for groundnut, linseed, mustard seed, rapeseed or toriaseed of specified qualities or types and for specific delivery at a specified price not transferable to third parties are excluded from the provisions of this Order (Noti.No.P & S.C. 75 (2)/43, dated 31st May, 1943).

II. No. P. & S.C. 75 (A)1/43. In exercise of the powers conferred by clause 5 of the Oilseeds (Forward Contracts Prohibition) Order, 1943. the Central Government is pleased to exclude the following class of contracts from the provisions of the said Order, namely:

"Forward contracts for castor seed, cotton seed or sesamum (til or jinjil) of specific-qualities or types and for specific delivery orders, railway receipts or bills of lading against which contracts are not transferable to third parties."

14. Learned Counsel for the appellant contended that the contracts under consideration for groundnut seeds and castor seeds are excluded under the above mentioned notification because they satisfy, in each case, the first of the two alternative conditions of exclusion. These conditions for contracts for sale of groundnut seeds are: (1) they must relate to specified qualities or types for specific deliveries at a specified price; and, (2) they should not be transferable to third parties. Excluded forward contracts for castor seeds must (a) be in respect of specified qualities or types; and(b) be for specific delivery orders, railway receipts, or bills of lading against which are not transferable to third parties. The Trial court had accepted the contention that it is enough that one of the two conditions are satisfied and had read the word 'and' in the above mentioned notification as the equivalent of the disjuncture 'or'. The contention Court rightly held that the word "and" cannot be converted into an "or" and that both the Conditions must be satisfied. for an exemption, appears to us to be correct. We, therefore, hold that the contracts under consideration before us were prohibited under the provisions of the Essential supplies Act read with the Central Order of 1943. They were not shown to be covered by the conditions for their exemption from prohibition.

15. Having regard to the objects of the prohibition imposed by the Central Government on contracts on, inter alia. Ground-nut seeds and oil-seeds, in the the general public, so that the supply at reasonable price of commodities essential to the life and well being of masses of the people is not jeopardized, the absolute terms of the prohibition, the penalties imposed for its infringement, and the careful manner in which only those contracts are excluded from the prohibition which are for actual delivery and supply to bona fide purchasers, we agree with the High Court that the contracts under consideration are tainted with an unlawfulness of their object and are forbidden by law.

16. The High Court had given very good reasons for accepting the view of the Trial Court that the contracts under consideration could not possible are for actual delivery. It observed that the total quantity of groundnut seeds alone shown to have been originally purchased on behalf of the defendants was 950 tons which would have required two special goods trains to transport them from Bombay to Kurnool when such a huge quantity of groundnut seeds could not possibly be required. Indeed, Kurnool itself has so much of groundnut seeds that far from importing any, it exports them. The plaintiff did not specifically set up any case of contracts for actually intended delivery. On the other hand, contracts set-up were for Badla transactions, which are not, as we have already indicated, understood to be contracts for actual delivery. To assume an intention to demand actual deliveries from the mere form of the contracts, would be to believe, very naively, that they were contracts for the proverbial carrying of coals to Newcastle. If, as both the ' Trial Court and the High Court have

rightly held the contracts were not for genuine or actual delivery but only for speculation on differences in price, even the first condition for exclusion of these transactions from the purview of the control order, which contemplates actually intended delivery, would not be satisfied. Hence, we have no doubt in our minds that the contracts were not merely void but illegal in the sense that their objects are forbidden.

17. We think that the High Court correctly distinguished and refused to apply authorities recognising the enforceability of agreements collateral to what are 'merely void agreements. It rightly relied on decisions holding agreements collateral to prohibited contracts also to be unenforceable because a taint attaches them which makes them also contrary to public policy. Such agreement fall within the class of cases mentioned in Gherulal Parakh's case, (AIR 1959 SC 781) (supra) where harmful results of permitting the contracts, in terms of injury to the public at large, are evident and indisputable.

18. In Shivnarayan Kabra v. The State of Madras, (1967) 1 SCR 138 at p. 144 = (AIR 1967 SC 986 at p. 989) this Court dealing with the objects of similar legislation contained in the Forward Contracts (Regulation) Act, 1952, said at page 144:-

".....the Act was passed in order to put a stop to undesirable forms of speculation in forward trading and to correct the abuses of certain forms of forward trading in the wider interests of the community and in particular, the interests of the consumers for whom adequate safeguards were essential. In our opinion, speculative contracts of the type covered in the present case are included within the purview of the Act".

19. The result is that we think that the objects of contracts set up by the plaintiff cannot be carried out merely entering into them outside Bombay or engaging third parties sub-agents, or, in any other to execute them. The provisions of Control Order are applicable throughout India and are not confined to forward contracts entered into or meant to be carried out in any particular part of India. Their violation is a criminal offence. A claim for fraction, under Section 223 Act, is only maintainable if the acts do specifically dismissed which the agent is employed to are lawful. Agreements to commit criminal acts are expressly and excluded by Section 224 of Contract Act, from the scope of right to an indemnity. These are therefore, liable to be on merits, but inasmuch as both sides to the unlawful agreement are in "Pari delicto": we set aside the decrees for costs awarded to the defendants and direct that the parties will bear their own costs throughout. Subject to this modification of decrees for costs we dismiss the three appeals before us.

Appeals partly dismissed