

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 14th September, 2010

Date of Order: September 21, 2010

+CRL. A. NO. 1099 OF 2010, Crl. M.A. No. 15052-15053/2010

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21.09.2010

ANIL KUMAR MAHAJAN

... Appellant

Through: Ms Urmil Sharma, Advocate.

Versus

UOI & ORS.

... Respondents

Through: Mr Atul Nanda, Central Govt.
Standing Counsel with Ms Rameeza
Hakeem, Advocate for respondent UOI

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. Present appeal has been preferred by the petitioner against an order dated 15th June, 2010, passed by the Appellate Tribunal for Foreign Exchange ('FEAT' for short) whereby the appeal of the appellant against adjudication order dated 23rd July, 1992, passed by Additional Director, Enforcement Directorate, New Delhi, was dismissed.

2. The facts relevant for the purpose of deciding this appeal are that some foreign currency was recovered from the accused and it was found that accused had been dealing with foreign currency unauthorisedly. Adjudicating proceedings were initiated and a penalty of ₹ 50,000/- was imposed on the appellant vide order dated 23rd July, 1992. A perusal of record shows that the appellant

preferred an appeal against this order on 20th August, 1992. Along with the appeal, he filed an application for dispensing with prior deposit of the penalty amount as demanded in the adjudication order. This appeal and the application remained pending for about 18 years. In the mean time the department initiated proceedings against the appellant under Section 57 of Foreign Exchange Regulation Act (FERA) because of failure of the appellant to pay the penalty imposed by the Adjudicating Officer and a criminal case was filed against the appellant before the Court of Additional Chief Metropolitan Magistrate (ACMM) in the year 1993. The cognizance of the offence under Section 57 of the FERA was taken on 1st September, 1993. It appears that it was not brought to the notice of learned ACMM that an appeal preferred against the order of Adjudicating Officer imposing penalty on the appellant, was pending. It was also not brought to the notice of learned ACMM that no order was made by the FEAT on application made by the appellant for hearing the appeal without pre-deposit. The proceedings under Section 57 of FERA continued against the appellant and the appellant was convicted for non-payment of penalty amount of ₹ 50,000/- vide judgment of learned ACMM dated 20th September, 2000, copy of which has been placed on record. The learned ACMM on conviction, sentenced the accused to pay a fine of ₹ 50,000/-, in default, to undergo Simple Imprisonment for one year. It is contended by accused that his request for paying fine in installments was turned down and he had to pay the fine of ₹ 50,000/- in lump sum before the Court of ACMM.

3. When the appeal was taken up by the FEAT in April, 2010, the Tribunal first dealt with the application for waiving the condition of pre-deposit and vide order dated 12th April, 2010, the Appellant Tribunal (FEAT) dismissed the

application. Order dated 12th April, 2010 shows that it was not brought to the notice of the Appellate Tribunal that the appellant has already been convicted for nonpayment of the penalty and had been sentenced to pay a fine of ₹ 50,000/- i.e. equivalent to penalty amount and he has paid this fine. The Appellate Tribunal considered the application on other grounds and dismissed it directing that full amount of penalty be paid by the appellant within 30 days. This payment was not made by the appellant. The appellant did not even challenge the order of 12th April, 2010. Ultimately, since this penalty amount, as pre-condition for hearing appeal, was not paid, the appeal was dismissed vide order dated 15th June, 2010. The appellant has assailed the order dated 15th June, 2010, whereby the appeal was dismissed and imposition of penalty of ₹ 50,000/- by Adjudicating Officer was upheld.

4. The case reveals the plight of the appellant due to mis-guidance and improper advice by counsel and mis-handling of his case. In any case, since the appellant had already been convicted under Section 57 of FERA for nonpayment of the penalty amount as imposed by the Adjudicating Officer, it is directed that no further penalty shall be recovered from the appellant as a result of dismissal of his appeal. In fact he was prosecuted by the department assuming as if he has not filed any appeal. In view of his conviction and payment of fine, the penalty amount as upheld by the Tribunal in its order dated 15th June, 2010 cannot be recovered again from the appellant. This petition is disposed of with this direction.

September 21, 2010
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SHIV NARAYAN DHINGRA, J.