

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 532 of 2008 & Crl.M.A. No. 7563 of 2008 (for stay)

Reserved on: November 20, 2014

Decision on: November 27, 2014

JATINDER SINGH MADAN @ J.S.MADAN Appellant
Through: Ms. Sangita Bhayana, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Ms. Rajdipa Behura with
Ms. Monica Gupta, Advocates.

And

CRL.A. 573 of 2008 & Crl.M.A. No. 8034 of 2008 (for stay)

SATBINDER SINGH MADAN @ S.S. MADAN Appellant
Through: Ms. Sangita Bhayana, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Ms. Rajdipa Behura with
Ms. Monica Gupta, Advocates.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

27.11.2014

1. These two appeals are directed against the common order dated 17th April 2008 passed by the Appellate Tribunal for Foreign Exchange ('AT') dismissing Appeal Nos. 195 of 2005 and 196 of 2005 filed by Mr. Jatinder Singh Madan @ J.S. Madan (Appellant in Criminal

Appeal No. 532 of 2008) and by Mr. Satbinder Singh Madan @ S.S. Madan (Appellant in Criminal Appeal No. 573 of 2008) thereby confirming the Adjudication Order ('AO') dated 24th January 2005 passed by the Special Director, Enforcement Directorate ('ED') holding the Appellants guilty for the contravention of provisions of Section 9 (1) (b) and 9 (1) (d) read with Section 63 of Foreign Exchange Regulation Act 1973 ('FERA') and imposing a penalty of Rs. 10 lakhs each for the contravention of Section 9 (1) (b) FERA and another 10 lakhs each for contravention of Section 9 (1) (d) FERA on both of them. The ED by the same order dated 24th January 2005 held that an amount of Rs. 3 lakhs seized from J.S. Madan at New Delhi Railway Station and Rs. 54,000 seized from his residential premises, both on 4th April 1997, stood confiscated in terms of Section 63 of FERA.

2. The background to these appeals is that based upon information received by the ED, J.S. Madan, a resident of 4-D/5, Old Rajinder Nagar, New Delhi was supposed to have indulged in receipts and payment of Indian currency on the instructions of persons residing outside India and that on 4th April 1997, he was to go to Jaipur by Shatabdi Express with substantial amount of Indian currency, the officers of the ED kept surveillance at New Delhi Railway Station. J.S. Madan was apprehended by the officers and his personal search resulted in seizure of Indian currency of Rs. 3 lakhs and certain documents in the form of loose sheets pages. His residential premises and office premises were also searched which resulted in seizure of documents, Indian currency of Rs. 54,000 and small notes of foreign

currency.

3. The statement of J.S. Madan under Section 40 FERA was recorded on 4th and 5th April 1997. He *inter alia* disclosed that his brother Inder Pal Singh Madan (I.P Singh) and sisters Saranjit Kaur and Baljeet Kaur are residents in Bangkok, Thailand and two other brothers - Mr. Iqbal Jeet Singh and Mr. Satbinder Singh - were residing in Kirti Nagar and were engaged in export business in the name and style of M/s. Roma International at Karol Bagh, New Delhi. Both, J.S. Madan and his younger brother S.S. Madan had been in the business of receiving and making payments in India on the instructions of I.P. Singh at Bangkok for the past one and half years.

4. As regards the amount seized from him, J.S. Madan stated that he was leaving for Jaipur with the amount on the instructions of I.P. Singh of Bangkok by Shatabdi Train and that the amount was meant for payment to Mr. Poonam Chand Jain and was to be collected by one Anil Jain on his behalf.

5. J.S. Madan also explained the details of amounts in Indian currency received by him as well as his brother, S.S. Madan and payments made out of the amounts so received as per instructions of I.P. Singh of Bangkok. He disclosed that he had been using the premises of M/s. Roma International at Karol Bagh to carry out the dealings during the past one and half years during which J.S. Madan and S.S. Madan had been making profit of Rs. 6,000 to Rs. 10,000 apart from the expenses of distribution. Importantly, he disclosed that he had received

payments totalling to Rs. 1.51 crores out of which barring the sum of Rs. 3,54,000 seized by the officers of the ED, the balance amount of Rs. 1.47 crores had been paid to the various persons also on the instructions of I.P. Singh.

6. S.S. Madan also made a statement under Section 40 FERA on 4th and 5th April 1997 on the same lines as the statement of J.S. Madan.

7. Besides the statements of the Appellants, the ED also recorded the statements of Vinod Goel, Kulvinder Pal Singh @ K.P. Singh, Bibi Rani Nangia, Santosh Kumar Shroff, Barjinder Singh Bhatia @ Pappu Bhatia, D.S. Anand and J.P. Saxena, all of whom had received payments by the above method.

8. On the basis of the information gathered, a show cause notice-cum-memorandum dated 3rd April 1998 was issued to the Appellants for contravention of the provisions of Section 9 (1) (b) and 9 (1) (d) read with Section 63 FERA.

9. The ED in the impugned order dated 24th January 2005 concluded that the case against the Appellants was proved and proceeded to impose a penalty in the manner indicated. The AT in its order dated 17th April 2008 concurred with the findings of the ED.

10. This Court has heard the submissions of Ms. Sangita Bhayana, learned counsel for the Appellants and Ms. Rajdipa Behura, learned counsel for the Respondents.

11. It was first submitted by learned counsel for the Appellants on merits that the confession of J.S. Madan was in fact retracted and therefore, could not be relied upon. Ms. Bhayana referred to para 2 (b) wherein it was stated that he had already retracted from his statement under Section 40 FERA before the learned Additional Chief Metropolitan Magistrate ('ACMM') on 5th April 1997 and likewise S.S. Madan had also retracted his statement. However, this Court finds that no copy of such retraction has been placed before the ED, AT or this Court. It is, therefore, not possible to confirm that there was any such retraction.

12. In any event apart from the statement of the two Appellants under Section 40 FERA, submission of several persons recorded confirms that the Appellants were actively involved in the business of receiving and making payments on the instructions of persons residing abroad. As noted by the AT, even retracted statements are admissible provided that they are corroborated by other independent evidence. In the present case, the statement of 7 persons who were beneficiaries in the transactions fully corroborated the case of the ED.

13. Referring to ground 'C', learned counsel for the Appellants pointed out that the Appellants have family responsibilities and they were facing financial crises. Mr. J.S. Madan had already undergone three months' custody under COFEPOSA.

14. Considering that the approximate value of the illegal transactions was well over Rs. 1.5 crores, the penalty of Rs. 10 lakhs imposed on

each of them cannot be said to be excessive. It must be remembered that the FERA which is a repealed Act was still in force at the time of commission of offence and penalty up to 5 times of the amount involved can be imposed in terms of Section 50 FERA. Going by that standard, the fine imposed by the ED in the present case cannot be said to be disproportionate.

15. No ground has been made out for interference with the impugned order of the AT as well as the order of ED.

16. The appeals and the applications are dismissed, in the facts and circumstances of the case, with no orders as to costs. The interim order dated 16th March 2010 staying the operation of the impugned orders shall stand vacated.

17. It was further urged by Ms. Sangeeta Bhayana, learned counsel for the Appellants that no prosecution was initiated against the Appellants, and their passports were also released. The Appellant, Mr. S.S. Madan was suffering from hyper tension and was in a very poor financial condition while Mr. J.S. Madan who was 69 years old was also in a very poor financial condition and was a patient of diabetes and hyper tension. The medical certificates have also been enclosed with the written submissions.

18. Although, the approximate value of the illegal transaction was for

Rs.1.5 crores, the Court is of the view that considering the stringent circumstances pointed out by the learned Counsel for the Appellants; the penalty amount imposed on each of them is reduced from Rs.20 lakhs to Rs.10 lakhs each.

19. Except the reduction in the penalty amount as indicated above, the impugned order of the AT as well as the AO passed by the Special Director, ED is maintained.

20. The Appeals and all pending applications are disposed of with the above terms with no orders as to costs.

S. MURALIDHAR, J.

NOVEMBER 27, 2014

Rk