



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL NO. 5003/2014 (FERA)

Between:

Prakash Kumar Iswarlal
S/o B.Iswarlal,
9-6-372, Dhanjibhai Compound,
Mukhyaprana Temple Road,
Mangalore.

...Appellant

(By Sri B.Satish Sundar, Advocate)

And:

1. The Special Director of Enforcement,
Directorate of Enforcement,
Government of India
(Foreign Exchange Regulation Act),
6th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110 003.
2. The Appellate Tribunal For Foreign Exchange
Ministry of Law, Justice and Company Affairs,
Government Of India, 15th Floor,
Hindustan Times House, KG Marg,
New Delhi-110 001.

...Respondents

(By Sri H.Jayakara Shetty, Advocate for R1;
R2 – served and unrepresented)

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by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



This MFA is filed u/s 52 of the Foreign Exchange Act against the order dated 19.05.2014 passed in Appeal No.241/1995 on the file of the Appellate Tribunal For Foreign Exchange, 15th Floor, Hindustan Times House, K.G.Marg, New Delhi, dismissing the Appeal No. 241/1995.

Date on which the appeal was reserved for judgment	28.01.2025
Date on which the judgment was pronounced	21.03.2025

This Appeal, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal filed under Section 54 of the Foreign Exchange Regulation Act challenges the order dated 19.05.2014 of the Appellate Tribunal for Foreign Exchange, New Delhi, in Appeal No.241/1995. On 04.06.2024 the coordinate bench framed the following questions of law for being answered:

- i) Whether the 2nd respondent Tribunal is right in relying on the confession statements of the appellant as substantive evidence in*



proceedings of adjudication which are penal in character?

ii) Whether the 2nd respondent Tribunal committed error in rejecting the retraction of the appellant dated 01.10.1991 and proceeding to hold him guilty on the basis of retracted confessions?

2. Before answering the questions the material facts necessary for deciding the appeal may be traced here.

Appellant is a dealer in spices having his proprietary establishment, M/s Vijaya Agencies at Mangaluru. It has a bank account with Tamilnadu Mercantile Bank. On 26.09.1991 the officers of Enforcement Directorate ('for short 'E.D') searched the premises of Vijaya Agencies and seized Rs.4.38 lakhs of Indian currency and certain other documents. On the same day the statement under Section 40 of the Foreign Exchange Regulation Act, 1973 (for short 'the Act') was recorded. The said statement was to the effect that one K.Abdullah of a place called Nileshwar introduced to the appellant another person



called Abdul Salam who is a native of a place called Kanhangad, Kerala, but was a resident of Abu Dhabi and owned a super market there. On the request of Abdul Salam the appellant agreed for making payments by way of cash, cheques and drafts, to some persons in India and in turn was assured of commission of Rs.100/- per lakh. On this understanding, it is stated that the appellant used to receive money from Abdul Salam and in turn send the money to such persons as Abdul Salam would indicate. On 27.09.1991 the E.D officers obtained the statements of A.M.Muralidharan, the manager of Federal Bank, Suresh Kumar, proprietor of S.N.Traders, R.Dhanabalan, Branch Manager of Tamilnadu Mercantile Bank and Lokesh, the employee of the appellant. On 28.09.1991 statement of Pradeep Kumar, brother of the appellant was recorded. On 29.09.1991 the officers of E.D. searched the house of K Abdullah at Nileshwar and also recorded the statement of K.K.Aboobacker, the son-in-law of K.Abdullah. Appellant was arrested on 28.09.1991. On 01.10.1991 appellant retracted his statement. On 03.05.1995 the first



respondent i.e., the Special Director of Enforcement imposed penalty of Rs.10,00,000/- each (totally Rs.20,00,000/-) on the appellant for contravention of Sections 9(1)(b) and 9(1)(d) of the Act and, ordered for confiscation of Indian currency to the tune of Rs.4.38 lakhs and bank account of M/s Vijaya Agencies, Taj Enterprises, Azad Traders, International Spices, S.N.Traders and fixed deposits totaling Rs.20,83,444/- lying in the name of Vijaya Agencies.

3. The Adjudicating Authority as also the Tribunal have held that the appellant has contravened the provisions of Sections 9(1)(b) and (d) of the Act. Before the Adjudicating Authority and the Tribunal, the contentions urged by the appellant were that he retracted his confession statement no sooner than he was arrested, yet his retraction was ignored; when he retracted his confession, unless there were other corroborating evidence, he could not be implicated of contravening Section 9(1)(b) and (d) of the Act; no reliance can be



placed on the confession of co-accused to initiate action against him; and as he was denied of an opportunity to cross examine the noticees their statements could not have been acted upon. All these contentions were rejected by the Adjudicating Authority and the Tribunal.

4. We have heard the argument of Sri B.Satish Sundar, learned advocate for the appellant and Sri H.Jayakara Shetty, learned advocate for respondent No.1. Sri Satish Sundar has also filed his written arguments placing reliance on some decisions which will be referred to in due course.

5. The main points urged by Sri. B. Satish Sundar are:

(i)The appellant was under continuous control and custody of officers of the first respondent from 26.09.1991 to 29.09.1991 during which time his confession was forcibly obtained without giving him time to exercise his free will. There are



features indicating that statements obtained by appellant were demonstrably false.

- (ii) The appellant retracted his earlier statement at the earliest opportunity on 01.10.1991. The retracted confessions were brushed aside by both the authorities, and the retracted statements cannot be looked into to record findings against the appellant.
- (iii) If the retracted statement is eschewed, the next step is to look for corroboration, but statements of co-accused cannot be looked into in as much as they are not substantive evidence.
- (iv) The authorities of the respondent did not provide an opportunity to the appellant to cross examine the persons whose statements are relied upon by the authorities.
- (v) As it is evident that the enquiry held by the Adjudicating Authority was vitiated on account of violation of principles of natural justice, the Tribunal should not have confirmed the order of



Adjudicating Authority, and for these reasons the appeal deserves to be allowed and the impugned orders set aside.

6. Sri. Jayakara Shetty made the following submissions:

- (i) The Adjudicating Authority and the Tribunal have correctly held against the appellant after being convinced that there were sufficient materials which evidenced contravention of provisions of Section 9(1)(b) and (d) of the Act. The High Court must be loath to interfere with concurrent findings on facts by the two authorities.
- (ii) There is a clear finding that appellant was arrested on 28.09.1991, and his statement was recorded before he was arrested. His confession was considered because it was voluntary and free from inducement. Even though he retracted subsequently, there is other corroborative evidence which falsifies the appellant's retraction.



- (iii) The Indian Evidence Act is not applicable to enquiry under the Act, and therefore there is no bar for acting on the confession statements, including that of co-accused. For the same reason non-cross-examination of some persons enquired by the officers do not vitiate the proceedings.
- (iv) Nothing prevented the appellant from cross examining the persons whose statements have been considered if he really wanted to cross examine them. It is false that he was denied of opportunity of cross examination.

7. Keeping in mind the points of arguments, if the rival contentions are put to analysis in the light of decisions cited by either side, the obtaining picture is as follows:

Section 40 of the Act empowers a gazetted officer of Enforcement to summon any person he considers necessary to give evidence or produce a document during the course of investigation or proceeding under the Act.



Any person includes that person who is suspected to have contravened the provisions of the Act, and obviously, many a time, he is the first person to be enquired. Once a person responds to summons and appears before the Enforcement Officer for the purpose of enquiry, he subjects himself to the authority of such officer and as sub-section (3) of Section 40 states the person so summoned is bound to state the truth.

8. In this case, according to the appellant he was under continuous control and custody of the Enforcement Officer from 26.09.1991 to 29.09.1991, though the date of formal arrest is shown as 29.09.1991 and it is for this reason, it is strongly contended that the statement obtained during prolonged custody period is vitiated. Sri B. Satish Sundar has placed reliance on three rulings on this point. In ***Nathu vs State of U.P [AIR 1956 SC 56]*** referring to Section 24 of the Indian Evidence Act it is held that a prolonged custody immediately preceding the making of confession is sufficient to stamp it as



involuntary unless it is properly explained. In the case of ***Suaibo Ibow Casamma vs Union of India [1995 (80) ELT 762 (Bom)]*** explaining the meaning of the word 'arrest' in the context of withholding a person for investigation, it is held that the moment accused is apprehended and put under complete control of investigating officer with absolute restrictions on his movements the arrest would be complete in law and he should be produced before the Magistrate within 24 hours excluding the journey time. 'Custody' means not necessarily from the time of arrest, but the moment a person's movements are restricted by police or any other officer exercising police powers for the purpose of investigation also amounts to 'custody'. This is now a well established proposition, but whether there were restrictions before formal arrest was effected is a question of fact.

9. The Adjudicating Authority has found the contention of the appellant that he was in custody from



26.9.1991 to 28.09.1991 baseless. Its clear finding is that appellant was merely summoned by the E.D officers and not arrested on 26.09.1991 or 27.09.1991. It is the finding that appellant was summoned to the office for the purpose of interrogation and was not arrested. This conclusion was drawn by the Adjudicating Authority by referring to the statement of Pradeep Kumar, the brother of the appellant who came to Mangaluru from Kannuru after receiving a phone call from his mother. He reached Mangaluru on 27.09.1991 at 9.30 a.m and went to his brother's house. There he came to know from his mother about the search conducted by officers in the office premises of Vijaya Agencies belonging to the appellant. Later the appellant himself came home and told that the officers of Enforcement Directorate seized Rs.4,38,800/- and some documents from his office. This was on 27.09.1991. Therefore the statement of Pradeep Kumar who saw his brother, i.e., the appellant on 27.09.1991 falsifies the appellant's contention that he was under



continuous detention and that his statement was obtained during his detention period.

10. It is true that the appellant retracted his statement by addressing a letter to the Enforcement Officer on 01.10.1991. Perusal of this letter shows that he was taken to the office of the Directorate of Revenue Intelligence at Mangaluru on 26.09.1991 and he was kept there till his production before the court at 4.30 p.m on 28.09.1991. When he was in the custody, he was threatened and assaulted by the officers and he was forced to write to their dictation even though he was not fluent in English. Since his statement was obtained exerting threat, promise and inducement the same did not bind him. He also stated that he did not make any statement voluntarily.

11. It is this retraction which is very much emphasized by the learned counsel for the appellant to argue that when a statement is retracted, the Adjudicating Authority has to look for corroborative evidence. In this



regard he has relied on three judgments, ***Vinod Solanki vs Union of India 2009 [(233) ELT 157 (SC)]***, (2) ***A. Tajudeen vs Union of India [2015 (317) ELT 177 (SC)]*** and (3) ***Commissioner of Customs (Imports), Chennai-I vs Sainul Abideen Neelam [2014 (300) ELT 342 (Mad)]***.

12. In ***Vinod Solanki*** it is held as below :

"22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. {See Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras [(1999) 6 SCC 1]}



13. In **Tajudeen** the following are the observations of the Supreme Court on the facts of that case :

"18. We have no doubt, that evidence could be gathered to substantiate that Abdul Hameed, the person who is alleged to have dispatched the money from Singapore, was a resident of Village Pudhumadam in District Ramanathapuram, to which the appellant also belongs. Material could also have been gathered to show, whether he was related to the appellant from his paternal side. Furthermore, the Enforcement Directorate could have easily substantiated whether or not, as asserted by the appellant, the aforesaid Abdul Hameed had contacted him over telephone from Singapore, to inform him about the delivery of the amount recovered from his residence on 25.10.1989. Additionally, the Enforcement Directorate could have led evidence to establish that the aforesaid Abdul Hameed with reference to whom the appellant made statements on 20.4.1989, 25.10.1989 and 26.10.1989, was actually resident of Singapore, and was running businesses there, at the location(s) indicated by the appellant. Still further, the officers of the Enforcement Directorate could have ascertained the truthfulness of the factual position from Shahib, the shop boy of the appellant – A. Tajudeen, whom he allegedly sent to



hand over a sum of Rs. 60,000/- to Shahul Hameed (a relative of Abdul Hameed) of Village Pudhumadam. Had the statements of the appellant and his wife been corroborated by independent evidence of the nature indicated hereinabove, there could have been room for accepting the veracity of the statements made by the appellant – A. Tajudeen and his wife T. Sahira Banu to the officers of the Enforcement Directorate. Unfortunately, no effort was made by the Enforcement Directorate to gather any independent evidence to establish the veracity of the allegations levelled against the appellant, through the memorandum dated 12.3.1990. We are of the considered view, that the officers of the Enforcement Directorate were seriously negligent in gathering independent evidence of a corroborative nature. We have therefore no hesitation in concluding that the retracted statements made by the appellant and his wife could not constitute the exclusive basis to determine the culpability of the appellant.”

14. The Madras High Court in the case of **Sainul Abideen Neelam** has held as below:

“14. The learned counsel for the Revenue relied on the decision of the Hon"ble Supreme Court in Surjeet Singh Chhabra Vs. Union of India



and others,) and the decision of this court in Roshan Beevi and Others Vs. Joint Secretary to Government of Tamil Nadu and Others,) in support of his contention that statement made before the customs officer u/s 108 of the Customs Act, though retracted later is an admissible evidence and binding. Certainly, there is no quarrel about the said proposition. The admissibility of such statement as evidence is always there. However, the question is whether the authorities can act on such statement alone in the absence of any corroborating materials to substantiate the contents of such statement. Therefore, the admissibility of an evidence cannot and should not be taken to mean its acceptability as well. As we have already pointed out, the statement made by Abdul Razak, especially when retracted subsequently and reiterated the original statement thereafter, certainly raises a doubt with regard to the genuineness of its contents. Therefore, even though such statement made u/s 108 of the Customs Act is admissible in evidence, the authorities are not necessarily bound to accept the same as such in the absence of further materials to substantiate the contents of such statement. Therefore, by applying the facts and circumstances of the present case, the reliance placed on those above two decisions by the Revenue will not help them in any way."



15. The position of law is very clear that whenever a confession is retracted by an accused, the burden is on the prosecution that the confession was free of inducement, threat or promise and it was voluntarily given by the accused. When there is retraction, the confessional statement cannot be based to inculcate the accused without any corroboration. And at the same time the genuineness of the retraction must also be examined keeping in mind the attending circumstances such as the time of retraction, its nature and the manner of retraction. The retraction must have been made at the earliest possible time. In the case of ***Commissioner of Income Tax vs MAC Public Charitable Trust and Others [MANU/TN/7984/2022]***, the Division Bench of the High Court of Madras has held as below:

"63. The statements given to the Assessing officer under Section 132 (4) have legal force. Unless the retractions are made within a short span of time, supported by affidavit swearing that the contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher



officials, the same cannot be treated as retracted. This position laid down in catena of decisions by the various High Courts in CIT vs. Lekh Raj Dhunna [344 ITR 352 (P&H)], Bachittar Singh v. CIT [328 ITR 400 (P&H)], Rameshchandra & Co. v. CIT [168 ITR 375 (Bom.)], Dr. S.C. Gupta v. CIT, [248 ITR 782 (All.)], CIT v. Hotel Meriya [332 ITR 537 (Kerala)], CIT v. O. Abdul Razak [350 ITR 71 (Kerala)]."

16. The Supreme Court in the case of ***K.T.M.S. Mohd. And Others vs Union of India (UOI)***[MANU/SC/0349/1992], delving on voluntary confession statement vis-à-vis retraction, has observed that :

"33. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine quo non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be



rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated. Reference may be made to a decision of the full Bench of the Madras High Court



in Roshan Beevi v. Joint Secretary to the Govt. of Tamil Nadu, Public Deptt. etc; [1984] 15 ELT 289 (Mad)] to which one of us (S. Ratnavel Pandian, J.) was a party.”

17. That means an accused can go back upon his confession statement, but it does not necessarily mean that the disclosure made by him in the confession statement should not be acted upon. Very necessarily the court has to look for corroboration from other sources. If corroboration is available, the obvious inference is that the accused did make confession voluntarily and it is needless to state that the retraction pales into insignificance. If retraction has to be acted upon it must appear that it was made at the earliest point of time and a complaint about obtaining confession statement by exerting threat, inducement or promise must have been made to an officer higher in rank than the officer who obtained confession statement or to the Magistrate when the accused is produced before him after arrest. In the case on hand both the Adjudicating Authority as also the Tribunal have



held on facts that appellant gave his confession statement voluntarily and that the retraction was an afterthought. There was ample opportunity to the appellant to complain before the Chief Judicial Magistrate that he was made to give confession statement forcibly. His complaint dated 01.10.1991 about retraction was not addressed to the higher officer. Moreover the Adjudicating Authority has found corroboration from the statements of others namely Pradeep Kumar and Lokesh, the brother and the employee of the appellant respectively and also some documents seized from the business premises of the appellant.

18. In regard to argument of Sri Satish Sundar that the confession of the co-accused could not have been used to implicate the appellant, it may be stated that such statements cannot be the sole basis for drawing inculpatory inferences against the accused as they do not constitute substantive evidence. The concerned authority must find supporting evidence before acting upon the confession of the co-accused. If there are supporting



materials, it can be inferred that the statements of the co-accused are not bereft of truth. Sri Satish Sundar has placed reliance on the judgment of the Supreme Court in the cases of ***Haroon Haji Abdulla vs State of Maharashtra [1999 (110) ELT 309 (SC)]*** and ***Mohtesham Mohd. Ismail vs Special Director, Enforcement Directorate [2007 (220) ELT 3 (SC)]***. In both these decisions it is held that confession of co-accused cannot be treated as substantive evidence and that the court must seek corroboration from independent sources. There cannot be second word with this proposition. On facts both the authorities below have found corroboration from other sources which does not require reiteration here.

19. The last point of argument was that the appellant was denied of cross-examining the persons who were examined by the E.D officers. It appears that there was no cross-examination of those persons. It has to be stated in this regard that E.D officers are not bound by



Rules of Evidence Act, but nothing prevents them from following the Rules of Evidence Act, and what is more important is that they must strictly adhere to Principles of Natural Justice. Sri Satish Sundar has placed reliance on unreported judgment of the Madras High Court in the case of ***V.Bhaskaran and Others vs Special Director, Enforcement Directorate [W.P.18918/2000 and connected cases]; Telestar Travels Private Limited vs Special Director of Enforcement [2013 (289) ELT 3 (SC)]*** and the judgment of the Delhi High Court in the case of ***Shahid Balwa vs Directorate of Enforcement [2014 (1) JCC 358]***. The purport of these decisions is that accused cannot be denied of an opportunity of cross-examining the witnesses. It is needless to say that cross-examination is the best way of testing the credibility of a witness and if an opportunity is given to cross-examine a witness, it demonstrates the fair play. Though in this case there was no cross-examination, it cannot be said that the findings of the Adjudicating Authority as also the Tribunal suffer from infirmity merely for that reason. Sri Jayakara



Shetty, learned counsel for respondent No.1 has also relied on the judgment of the Supreme Court in **Telestar Travels** where the clear observations are as below:

"18. There is, in our opinion, no merit even in that submission of the learned counsel. It is evident from Rule 3 of the Adjudication Rules framed under Section 79 of the FERA that the rules of procedure do not apply to adjudicating proceedings. That does not, however, mean that in a given situation, cross examination may not be permitted to test the veracity of a deposition sought to be issued against a party against whom action is proposed to be taken. It is only when a deposition goes through the fire of cross-examination that a Court or Statutory Authority may be able to determine and assess its probative value. Using a deposition that is not so tested, may therefore amount to using evidence, which the party concerned has had no opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the right of the citizen. The question, however, is whether failure to permit the party to cross examine has resulted in any prejudice so as to call for reversal of the orders and a de novo enquiry into the matter. The answer to that



question would depend upon the facts and circumstances of each case. For instance, a similar plea raised in Surjeet Singh Chhabra v. Union of India and Ors. (1997) 1 SCC 508 before this Court did not cut much ice, as this Court felt that cross examination of the witness would make no material difference in the facts and circumstances of that case.”

20. If the order of the Adjudicating Authority is perused it becomes clear that the advocate for the appellant urged seven grounds and in none of them, it was contended that appellant was denied an opportunity of cross-examining the noticees and that it resulted in miscarriage of justice. It was for the first time before the Tribunal that ground was taken. Before us also, the same ground has been urged. On this point it may be stated that no doubt the appellant had a right to cross-examine the noticees but he should have exercised that right before the E.D officer. Had he applied for an opportunity to cross-examine and if it was denied, then the appellant is justified in urging that ground before the Tribunal and also before this Court. In all the decisions cited by Sri Satish



Sundar, the accused therein applied for cross-examination but that opportunity was denied. Here the same is not the case. Therefore there is no merit in this point of argument.

21. The above discussion answers the questions of law raised in this appeal. We do not find any infirmity in the order of the Tribunal. Appeal is therefore dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

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List No.: 1 Sl No.: 5