IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Appeal No.670 of 2015

Between :-

Special Public Prosecutor
For Enforcement Directorate,
Rep.by its Asst.Director
3rd Floor, Shakar Bhavan,
Basheerbagh, Hyderabad .. Appellant

and

M.Mishan Rao and another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 21st July, 2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of Judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.670 of 2015

JUDGMENT:

The *de facto* complainant is the appellant. The respondents No.1 and 2, who are A.1 and A.2, were acquitted by the learned Special Judge for Economic Offences, Hyderabad, in C.C.No.205 of 2001 for the offence punishable under Section 56 of the Foreign Exchange Regulation Act (for short 'the Act'), for contravening the provisions of Section 8(1) read with Section 9(1)(a) and Section 14 of the Act against A.1 and A.2, and for abetting the contravention of the above provisions by A.1, under Section 56 read with Section 64(2) of the Act. Hence, the appeal by the prosecution.

2. The case of the prosecution is that A.1 received huge amounts from the group of Companies of M/s.Rolls Royce Plc of United Kingdom, as commission, outside India, during the years 1993 to 1995, but failed to repatriate the said amount into India within the stipulated period of 90 days as provided under Section 14 of the Act. It is also further alleged that A.1 established a Company by name M/s.Towanda Services Ltd., in British Virgin Islands i.e., outside India and also opened and operated a bank account in the name of the said Company, in Geneva and Switzerland, for the purpose of receiving the said commission and also transferred huge amounts to various accounts of other persons outside India without any prior approval of Reserve Bank of India as provided for under the Act. Search was conducted in the residential premises of A.1 and certain documents were recovered from the said premises. The Office of A.1 was also searched on 26-04-2003 and certain documents were recovered there from. Summons was issued to A.1 and his statement was recorded on 26-04-2002 wherein *inter alia* he stated that he is running M/s.Jaya Food Industries and that they have established Spectrum Power Generation Ltd., a company which operates power project at Kakinada for generation of electricity and that he is the Managing Director of Jaya Food Industries and Spectrum Power Generation Ltd., and that they have entered into EPC and O&M Contracts

with Rollys Royce Group of Companies of United Kingdom for Spectrum Power Generation Ltd. He also explained about the documents seized. Summons was also issued to A.2 and his statement was recorded on 03-05-2002 wherein he stated that he has not signed the agency agreements that were entered into by M/s.Towanda Services Ltd., and that Rolls Royce Group of Companies and that he does not know who signed the said agreement and that he was not educated and not familiar with the technical matters. He furnished copies of some documents during the course of recording the said statement. In a letter, dated 27-04-2002, addressed to the Asst.Director of Enforcement, Hyderabad, A.1 stated that his statement, dated 26-04-2002, was recorded under threat and that he was compelled to make the said statement. The said retraction of A.1 was replied by the Asst. Director of Enforcement by virtue of letter, dated 09-05-2002, refuting the averments of A.1. A show-cause notice was issued to A.1 and A.2, dated 28-05-2002. A.1 in his reply to the said show cause notice, issued a letter denying the charges. A.2 also stated that he did not commit any offences.

3. Cognizance was taken and the case was registered as C.C.No.205 of 2002 by the Special Judge for Economic Offences, Hyderabad. Charges for the offence punishable under Section 56 of Foreign Exchange Regulation Act, for contravening the provisions of Section 8(1) read with Section 9(1)(a) and Section 14 of the Act against A.1 and against A.2 for abetting the contravention of the above provisions by A.1, under Section 56 read with Section 64 (2) of the Act were framed., and on their denial, the trial was taken up. On behalf of the prosecution, P.Ws.1 to 3 were examined, Exs.P.1 to P.27 were marked. The accused were examined under Section 313 Cr.P.C., where they denied the evidence on record. No defence was produced.

4. Upon perusing the oral and documentary evidence on record, by the impugned Judgment, the learned Sessions Judge found the respondents/accused not guilty of the charges and acquitted them. Aggrieved by the same, the prosecution preferred the appeal.

5. Learned Public Prosecutor appearing for the appellant submits that the trial Court erred in acquitting the respondents/accused even though absolutely there was legally admissible evidence and all the witnesses supported the case of the prosecution. Learned Public Prosecutor submits that the entire case rests on documentary evidence and the prosecution has proved its case beyond reasonable doubt and the learned trial Court has not properly appreciated the evidence in proper perspective and has acquitted the respondents/accused.

6. On the other hand, learned Counsel appearing for the respondents/accused submits that the learned trial Court has properly appreciated the oral and documentary evidence in proper perspective and has found the respondents/accused not guilty. Learned Counsel submits that there are no merits in the appeal and the same is liable to be dismissed.

7. Heard arguments of both sides.

8. The point for consideration is as to whether the Judgment of the trial Court needs to be sustained, modified or varied?

9. In nutshell, the case of the prosecution is that the respondents/accused have established a Company in the name of M/s.Towanda Services Ltd., in British Virgin Islands and by opening and operating an account in the name of said Company outside India without obtaining any permission from the Reserve Bank of India, acquired foreign exchange to a tune of about Rs.1.5 Million U.K.Pounds and US $ 19.3 Million. The said amount was received from M/s.Rolls Royce Industrial Power (India) Ltd., U.K., and M/s.Parsons Turbine Generators Ltd., U.K. The accused are also alleged to have transferred certain amounts to persons also in India instead of repatriating the said foreign exchange within the stipulated period. The 2nd respondent/A.2 is the son of A.1 and he is said to have abetted his father-A.1 in commission of the offences.

10. The case was tried by the learned Special Judge for Economic Offences, Hyderabad, and by the Judgment, dated 11-01-2010, in

C.C.No.205/2002, the respondents/accused were acquitted. Upon considering the oral and documentary evidence on record, the learned trial Court held that there was no proper authorization to PW.1 to conduct investigation since Ex.P.23 which authorised the Enforcement Officers to file the complaints is only a Xerox copy and the prosecution failed to produce the original Gazette Notification.

11. Learned trial Court also found that the search conducted by the Department and recovery of the incriminating documents has not been properly established. The prosecution also failed to establish any nexus between the accused and the documents seized. It is also found that the seizure panchanama Ex.P.5 do not contain the requisite particulars and except for mentioning that documents 1 to 54 were seized, no detailed list of the documents specifying the nature of the documents and the place from which they were respectively seized was not prepared. It is also found that the evidence of PW.1 do not show that the evidence was placed before the Director of Enforcement as mandated and the documents that were seized were not even confronted to PW.2 for identification. Therefore, the alleged search and seizure becomes doubtful. The prosecution has failed to establish the genuineness of the documents seized.

12. The prosecution relied upon the statement said to have been made by A.1 which he, however, retracted the very next day. Ex.P.7 is the said statement. It shows A.1 only testified about the seizure of some documents from pages 1 to 14 which pertain to the suit filed by him, however, the prosecution failed to secure the original documents from the authorities.

13. Ex.P.22 is said to be a document which was produced by the accused to PW.1 and it consists of a written statement of Alexander Hynd filed in the High Court of Justice, Chancery Division. A perusal of Ex.P.22 does not, in any way, show that it is the accused who have committed any offence. Ex.P.22 also consists of the copy of the Judgment by the High

Court of Justice, Chancery Division and a perusal thereof creates any amount of doubt about the case of the prosecution against the accused.

14. The prosecution also failed to place on record that the information that was received by PWs.1 and 2 was placed before the authorities. In the face of the existence of hostilities in between the accused and PW.2 and when it is specifically contended that such information was furnished to the Department by PW.2, it was incumbent on the part of the prosecution to place on record as to what was the source of the information. It is also admitted that the panchanama Ex.P.5 and the documents seized do not contain the signature of PW.1. Similarly, even the evidence of PW.2 does not show that there is any documentary evidence about placing of the seized records before the authorities. The prosecution also failed to prove by satisfactory evidence that the documents that were seized from the possession of the accused are the same documents which are being relied upon by the prosecution.

15. A perusal of the evidence of PW.1 clearly shows that the main basis for launching the present prosecution is a civil dispute in between PW.3 and the accused. The so-called confession said to have been made by the accused was retracted, no satisfactory evidence is placed on record to render corroboration but what is contained in the confessional statement of the accused.

16. The entire evidence on record has been properly and minutely observed by the learned trial Court and it having found to be not substantiating the charge against the accused beyond reasonable doubt, the accused were acquitted.

17. Yet another aspect which is crucial is about the adjudicatory proceedings initiated before the authorities as contemplated under the Act. For the violations of the provisions of the Act, there is a provision for launching criminal prosecution under Section 56 of the Act and the adjudication proceedings under Section 51 of the Act. Both are independent and there is no dispute that one do not affect the other. In the instant case, the adjudicating authority by his order, dated 17-04-

2009 found the accused guilty of the contravention of provisions of Sections 8(1) and 9(1)(a) of the Act and imposed penalty of Rs.69.5 crores on A.1 and Rs.5 crores on A.2. The order of the adjudicating authority is appealable and accordingly both the respondents/accused preferred appeals bearing Nos.81/2009 and 82/2009 before the appellate Tribunal which is constituted under the Act with an authority of confirming, modifying or setting aside the order under appeal. The appellate Tribunal after making a thorough enquiry with regard to the findings and conclusions of the adjudication proceedings and the documents that were relied upon the appellate Tribunal quashed and set aside the adjudication order by allowing the appeals preferred by the respondents/accused, by its order, dated 21-08-2009.

18. It may be placed on record here that the nature of evidence, both oral and documentary, and the contentions of both the parties namely the prosecution and the accused before the adjudicating authority and the appellate Tribunal are in *paramateria* and they are same insofar as the present prosecution is concerned. The appellate Tribunal has adverted to each and every aspect and held against the Department. The appellate Tribunal also found that the search memo prepared after conducting the search on 26-04-2002 at the house of A.1 herein do not mention the details of the recovered court letters or other correspondence but the recovery memo has described by a mere blank reference to the pages i.e., from 1 to 54. The appellate Tribunal also found that the Judgment of the High Court of Justice, Chancery Division, England has observed that M/s.Towanda Services Ltd., is beneficially owned by A.1 but it does not show that A.1 herein was either a shareholder or a Director or Promoter of M/s.Towanda Services Ltd. The appellate Tribunal further found that the Judgment of the High Court of Justice, Chancery Division, England, do not show how the foreign currency is deposited in the bank account of M/s.Towanda Services Ltd., by A.1 and as to how he owns it. The Tribunal further held that M/s.Towanda Services Ltd., is a separate legal entity and that there is no evidence to show that A.1 was either a Director

or a shareholder of the Company. The Tribunal held that mere opening and operating of bank account in the name of M/s.Towanda Services Ltd., including depositing of foreign currency in that account may in the absence of permission from Reserve Bank of India amount to a contravention committed by M/s.Towanda Services Ltd., but not by the accused since no sufficient evidence is placed for holding that the appellants are vicariously accountable. The Tribunal also held that without finding out the names of Promoters or shareholders or Directors of M/s.Towanda Services Ltd.,, the Enforcement Directorate cannot choose to lable the accused herein as beneficiary owners.

19. With reference to the confessional statements made by the accused before the authorities, the appellate Tribunal found it to be weak and shaking. It also found that there is no corroboration worth the name to the so-called confessional statements.

20. Taking into consideration the above facts and circumstances, the appellate Tribunal has exonerated the appellants in those appeals who are the respondents/accused herein.

21. A careful perusal of the order of the appellate Tribunal, dated 21-09-2009, and the Judgment of the learned Special Judge for Economic Orffences, dated 11-01-2010, it is evident that the entire material on record placed either before the Special Court or before the appellate Tribunal is the same and both the authorities namely the appellate Tribunal as well as the Special Judge for Economic Offences has categorically delivered the findings that the prosecution failed to prove its case.

22. In **RADHESHYAM KEJRIWAL v. STATE OF WEST BENGAL**[1], a three Judge Bench of the Supreme Court held that in a case of exoneration on merits in such adjudication proceedings, where the allegations are found to be not sustainable at all and person concerned is held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, underlying principle being

the higher standard of proof in criminal cases. The Supreme Court held that where allegations in both proceedings are identical and exoneration in adjudication proceedings is not on technical grounds but on finding that there was no contravention of the provisions of the Act held that such findings are relevant in criminal proceedings and prosecution of person concerned would be unjust and abuse of process of Court. The Supreme Court quashed the criminal proceedings on the ground that the appellant having been exonerated in adjudication proceedings on merits cannot be prosecuted in criminal proceedings.

23. The above authority of the Supreme Court is clearly applicable to the facts of the present case. In the instant case also, as already stated, the nature of allegations, the evidence both oral and documentary, the contentions of the prosecution and the respondents/accused were one and the same. The proceedings went on parallel one before the adjudicating Tribunal and the criminal prosecution before the Special Judge for Economic Offences. Both the appellate authority in the adjudicating proceedings and the Special Judge for Economic Offences in criminal proceedings have held that the respondents/accused are not liable for any punishment.

24. In view of the above, the present appeal by the Department questioning the acquittal of the respondents/accused does not have any merits and the same is liable to be dismissed. The point is accordingly answered.

25. In the result, the Criminal Appeal fails and the same is liable to be dismissed. Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

M.S.K.Jaiswal, J

21st July, 2015

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[1] (2011) 3 SCC 581