IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 2121 of 2006 (O&M)
Decided on : 15.10.2015.

Kasturi Lal Dhir ....Petitioner

Versus

State of Punjab and another ....Respondents

Coram: Hon'ble Mr. Justice Jitendra Chauhan

Present: Mr. Jitender Dhanda, Advocate, Amicus Curiae.

Mr. Luvinder Sofat, AAG Punjab

Ms. Ranjana Shahi, Advocate, for respondent No.2.

JITENDRA CHAUHAN, J.

This revision petition has been filed against the judgment dated 30.09.2006, passed by the Additional Sessions Judge, Jalandhar whereby, judgment of conviction and order of sentence 18.03.2005, passed by Chief Judicial Magistrate, Jalandhar vide which the accused was convicted and sentenced was upheld. The order reads as under:-

Offence	Sentence	Fine	In default
Under Section 56 of the Foreign Exchange Regulation Act.	RI for one year	Rs.2000/-	RI for one month

The proceedings in the present case were launched on a complaint filed by the Assistant Director, Enforcement

Directorate under Section 56 of the Foreign Exchange Regulation Act, 1973 (for short "the FERA"). It was alleged in the complaint that the residential premises of the accused were searched and it resulted in the seizure of £ 2540, US $ 5637.22 alongwith the incriminating documents containing the name and telephone number of one Mohd. Ashraf Baba of Srinagar and one envelope addressed to accused from him. During the course of search of the residential premises, one Ranjit Singh, Mohd. Ashraf Baba was found in the said premises. The search of premises of Ranjit Singh resulted in seizure of Rs.2880/-, three loose sheets and Indian Airlines ticket in the name of Mohd. Ashraf Baba. The tickets depicted that he had travelled from Srinagar to Amritsar on 01.03.1989. The three loose sheets seized from him depicted certain telephone numbers. A Panchnama dated 04.03.1989 was also prepared on the spot. Thereafter, the accused was summoned under Section 40 of the FERA. After completion of the search, the accused appeared in the office of Enforcement Directorate, Jalandhar on 04.03.1989 and his statement was recorded wherein, the accused, inter alia, stated that since 1984, he was engaged in the sale/purchase of the foreign currency and sale/purchase of foreign marked gold biscuits; that in the year 1985, he was apprehended at Srinagar along with foreign currency worth Rs.2,25,000/- and stated that he had earlier purchased the seized currency from Mohd. Ashraf Baba resident of Saidan Kadal, Srinagar and that in connection with the said seizure, he was detained under the COFEPOSA Act for 8/9 months. In the year 1988, he was apprehended at Dasuya and 25 gold biscuits of foreign origin were recovered from him. Thereafter, the officers of Enforcement Directorate searched his residence and seized documents, US $ 85,837.22 and £ 2540/- on 3.3.89 from Sh. Ramesh Gupta alias Meshi r/o Gowshala Bazar, Hoshiarpur and he had to sell the same to Sh. Darshan Lal resident of Suranjan Chowk, Hoshiarpur. On the same day, he went to the residence of Sh. Darshan and told Mohd. Ashraf Baba to come on the following morning for taking the delivery of gold biscuits. Mohd. Ashraf Baba came to his residence on 3.3.1989 with Sh. Ranjit Singh of Jalandhar and both of them stayed there for the night. Moreover, he stated that he has so far purchased foreign currency worth Rs. 25,00,000/- from Ramesh Gupta and Mohd. Ashraf Baba. When examined, the accused, inter alia, stated that page numbers 10 & 11 of the loose sheets related to transactions in foreign currency and he also decoded the code used by him. Further, in his statement dated 04.03.1989 Ranjit Singh, inter alia, stated that he came to the residence of accused on 3.3.89 and stayed there for a night and he has no connection with the business of the accused and that he only visited the accused for the purpose of taking Rs. 3000/- from him. So it appears that during the years 1985 to 1989, the accused being an unauthorised dealer in foreign exchange in India, bought/sold from/to/with foreign exchange worth Rs. 25,00,000/-. If a person not being an authorised dealer in foreign exchange, without the previous; general or special permission of the Reserve Bank of India, indulges in buying /acquiring

/borrowing / selling / transferring / exchanging any foreign exchange from / to / with any person, then he is said to be in contravention of Section 8 (1) of the FERA. Therefore, the accused by buying, selling and exchanging the said foreign exchange in the aforesaid manner, appears to have contravened the provisions of the above-mentioned section and has rendered himself liable to be prosecuted under Section 56 of the FERA. A show cause notice was issued to the acccused on 24.1.1989 by Sh. S.P.S Pundia, Special Director, Enforcement Directorate, Loknayak Bhawan, Khan Market, New Delhi, to show cause in writing, within 30 days of the receipt of the memorandum, why adjudication proceedings as contemplated under Section 51 of the FERA should not be held against him for contravention of Section 8 (1) of the FERA, for which the accused was liable to be prosecuted u/s 56 of the FERA and why the seized foreign exchange as mentioned above should not be confiscated by the Central Government as contemplated u/s 63 of the FERA.

The accused was summoned and on his appearance, the copy of complaint and other documents were supplied to him.

In the pre-charge evidence, the prosecution examined CW1 Sh. Harbhajan Dass, Despatch Clerk, CW2 Sh. Ishwar Singh, Supdt/Central Excise, who proved the copy of opportunity notice Ex.P1, entry of despatch register Ex.P2, postal receipt Ex.P3, copy of panchnama dated 04.03.1989 Ex.C1, copies of loose sheets relating to transactions in the foreign currency Ex.C2 to Ex.C14, statement of the accused Ex.C15, show cause notice Ex.C16, copy of adjudication order dated 27.03.1991 Ex.C17.

The charge under Section 56 of the FERA was framed against the accused to which he did not plead guilty and claimed trial.

The complainant produced both the witnesses in post charge evidence.

Statement of accused was recorded under Section 313 Cr.P.C and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded his false implication.

DW-1 Sh. Roshan Lal Sharma was examined in defence evidence.

After appraisal of evidence, learned trial Magistrate, vide the impugned judgment and the order convicted and sentenced the accused as narrated above.

Feeling dis-satisfied, the accused preferred an appeal before the Additional Sessions Judge, Jalandhar which was dismissed vide the judgment dated 30.9.2006.

Still feeling aggrieved, the accused has filed the present revision petition assailing both the impugned judgments which was admitted on 15.12.2006 and on the same day the sentence of the petitioner was suspended.

Learned counsel for the petitioner contends that the alleged recovery witness, Roshan Lal, was not examined by the prosecution. He was examined as DW-1. While appearing as DW-1, Roshan Lal has falsified the story propounded by the prosecution. He further contends that as the foreign currency was recovered from a pillow cover, the accused cannot be said to be in conscious possession of the same. Since the contraband was not found from the conscious possession of the accused, he cannot be saddled with the offence of having contravened the provisions of Section 8(1) of the FERA.

On the other hand, learned counsel for the respondent as well as learned counsel for the State contend that the prosecution has well established its case against the accused. The house of the accused was raided and as per the Panchnama, incriminating documents and foreign currency were recovered from the house of the accused. Notice under Section 40 of the FERA was issued to the accused and the accused voluntarily got recorded his statement.

I have heard learned counsel for both the parties and have gone through the case file.

The first contention of learned counsel for the petitioner that as the alleged recovery witness Roshan Lal was not examined by the prosecution, therefore, the story of prosecution becomes doubtful, carries no weight in the light of positive evidence of CW-1, Harbhajan Dass, Clerk and CW-2, Ishwar Singh, Enforcement Officer. CW-1, Harbhajan Dass has proved the copy of opportunity notice (EX.P1) sent through registered post (Ex.P3) and the entry of the despatch register Ex.P2. CW-2, Ishwar Singh, deposed that on 04.03.1989 he was posted as Enforcement Officer, Jalandhar. On that date, he along with his team went to Hoshiarpur and searched the residential premises of the accused which resulted into recovery of foreign currency and incriminating documents. A Panchnama was prepared on the spot. He produced the original panchnama along with copy thereof (Ex.C1). He also produced the original incriminating documents along with its copies (Ex.C2 to Ex.C14). It has also come in his deposition that the accused was summoned to explain the source of foreign currency recovered from him and the accused made his statement in his own handwriting (Ex.C15) and admitted the fact of possession of the foreign currency and de-codified the numbers of the documents and explained their meanings. Accused was issued a show cause notice (Ex.C16) and the matter was adjudicated by the Special Director (Ex.C17). CW-2, Ishwar Singh was cross-examined but in the cross-examination, nothing could be elicited to shake his veracity. Further, Panchnama dated 4.3.1989 Ex.C-1 bears the signatures of Enforcement Officer Ishwar Singh. It was signed by the accused. There is complete detail in the Panchnama regarding the incriminating document and foreign currency.

Now reverting to the second contention, that when the raid was conducted, Mohd. Ashraf Baba and Ranjit Singh were present in the house, along with the family members of the accused, so the alleged currency could belong to anyone of the occupants of the house. The recovery was effected from the house. The accused was the owner of the house from where the recovery was effected, moreover, the other persons, namely, Ranjit Singh and Mohd. Ashraf Baba do not hail from Hoshiarpur. They were not the owners of the house. If the incriminating documents and foreign currency belonged to them, in that eventuality, it is for the accused to prove as to how and by whom the said currency was possessed. Except pleading false implication in his statement under Section 313 Cr.P.C., the accused has not produced any evidence on record. The recovery is admittedly from the house of the accused. Therefore, the Courts below have rightly held the accused to be in possession of the recovered documents and foreign currency. There is no illegality or perversity in the judgments passed by the Courts below. Keeping in view the fact that the illicit trade of foreign currency derails the economy of the country, therefore, this Court is not inclined to reduce the sentence.

No other point was urged.

In view of the observation made above, the present revision petition is dismissed. The impugned judgments and order are upheld. The accused is on bail. He be taken into custody to undergo the remaining part of the sentence.

15.10.2015. **(JITENDRA CHAUHAN)**
SN **JUDGE**