IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 2nd February, 2015
Judgment Pronounced on: 13th February, 2015

CRL.REV.P. 478/2007

MOHD. USMAN ..... **Petitioner**

Through: Mr. D.C.Mathur, Senior Advocate with Mr. E.Ahmad and Mr.Rakesh Bhugra, Advocates

versus

THE STATE & ANOTHER ..... **Respondents**

Through: Mr. P.K.Mishra, APP for the State. Mrs. Bharathi Raju, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 01.12.2006 and order on sentence dated 08.12.2006 passed by the learned Additional Chief Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for a period of six months and fine of Rs.10,000/- for offence under Section 56 of the Foreign Exchange Regulation Act (FERA) and upholding the judgment of conviction and sentence by the learned Additional

Sessions Judge vide judgment dated 24.07.2007, the present revision petition has been filed by the petitioner.

2. Factual matrix, as emerges from the record, is that Sh. Balkar Singh, Assistant Director, Enforcement Directorate filed a complaint under Section 56 of the FERA against the petitioner and another accused Mohd. Arif Sheikh. It was alleged that on 05.01.1988, the petitioner was personally searched outside the entry gate of Departure Wing of Indira Gandhi International Airport during which Pak Rs.2250/- were recovered from the socks worn on left foot of the petitioner. The said currency was seized. Co-accused Mohd. Arif Sheikh admitted that he had given Rs.15,000/- to the petitioner for purchasing US Dollars for him. After holding adjudication proceedings, a penalty of Rs.7,000/- was imposed upon the petitioner which he had deposited. The petitioner had failed to furnish the permission of Reserve Bank of India regarding acquisition and source of purchase of foreign exchange from a person not being an authorized dealer at the prevailing rates prescribed by the RBI.

3. On completion of investigation, complaint under Section 56 of the FERA was filed against the petitioner and co-accused Mohd. Arif Sheikh. Charge under Section 56 was framed against the petitioner. The petitioner pleaded not guilty to the charge framed.

4. To prove its case, the prosecution examined 4 witnesses. After conclusion of prosecution evidence, the statement of the petitioner

was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The learned Additional Chief Metropolitan Magistrate vide judgment dated 01.12.2006 held the petitioner and co-accused Mohd. Arif Sheikh guilty for the offence punishable under Section 56 of FERA and convicted them for the said offence. The order on sentence was passed on 08.12.2006.

5. Thereafter, the petitioner and Mohd. Arif Sheikh filed separate criminal appeals. The learned Additional Sessions Judge vide common judgment and order dated 24.07.2007, confirmed the conviction of the petitioner.

6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.

7. I have gone through the ratio of judgment in case of ***Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665*** in which it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The

High Court is not required to interfere in the concurrent finding of facts. *I am of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.*

8. Mr. D.C. Mathur, learned Senior counsel for the petitioner has confined his arguments on the quantum of sentence only. It has been submitted that the petitioner has been convicted for offence under Section 56 of the FERA and his case would have been covered under Section 56(1)(ii) of FERA where the imprisonment awarded is for the term which may extend to three years with fine or both. He further submitted that the sentence awarded to the petitioner may be modified and he could be awarded the sentence of fine only.

9. On the other hand, learned counsel for Enforcement Directorate has submitted that at the time of apprehension of the petitioner, foreign currency was recovered from him and he had failed to give any explanation regarding its acquisition and source of purchase from a person not being an authorized dealer at the prevailing rates prescribed by the RBI. He further submitted that maximum penalty provided under the FEMA may be imposed upon the petitioner.

10. In the present case, on apprehension of the petitioner from outside the IGI Airport, Pak Rs.2250/- were recovered from him from the socks worn by him. It was revealed that US Dollars were purchased by the petitioner for co-accused from a person other than

an authorized dealer at an unofficial rate of exchange. The petitioner was convicted under Section 56 of FERA and was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.10,000/-. The FERA, 1973 was reviewed and repealed and a new law in the form of FEMA, 1999 came into existence. In the FERA, there was provision of prosecution for the violators. But under the new law FEMA, there is provision of only imposing penalties in case of violation of any rule or order or notification. The petitioner was charged under Section 56 of FERA for contravention of Section 8 of the FERA. Under the new law FEMA, the violation of Section 8 of FERA has been covered under Sections 3, 4 and 9 of FEMA for which only penalties have been provided.

11. Section 13(1) of the FEMA reads as under :

> "If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues."

12. As per Section 13(1) of the FEMA, if there is contravention of any

rule, regulation, notification, direction or order, an accused is liable to pay the penalty up to thrice the sum involved in such contravention where such amount is quantifiable. If the amount is not quantifiable, the accused is liable to pay the penalty up to two lakh rupees. In the present case, the amount of foreign currency recovered from the petitioner has not been quantified.

13. In view of discussion made above, the judgments of conviction passed by Courts below are upheld and sentence is modified with the direction to the petitioner to pay fine of Rs.50,000/- for offence under Section 13 of the FEMA, in default of payment of fine, the petitioner shall undergo simple imprisonment for three months.

14. The petitioner shall appear before the Chief Metropolitan Magistrate (New Delhi) within the period of one month from the date of order to pay the remaining fine, failing to which surrender to serve the sentence in default of payment of fine.

15. The present revision petition is disposed of accordingly.

P.S.TEJI, J.

February 13, 2015
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