

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 31 OF 1999

The Union of India	... Appellant.
Versus	
M/s. M/s.Sheila Exports & Ors.	... Respondents.

None for the Appellant.

Mrs.G.P.Mulekar, A.P.P. for the Respondent No.3-State.

CORAM : S.B. SHUKRE, J.

DATED : 17TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 11th March, 1998, rendered in C.C.No.1173/CW/1989 by Chief Metropolitan Magistrate, Explanade, Mumbai, thereby acquitting the respondents of the offence punishable under Section 56(1)(i) of the Foreign Exchange Regulation Act, 1973.

2] Nobody appears on behalf of the appellant. Learned Asst. Public Prosecutor for respondent No.3-State is present. None for respondent No.1 and 2.

3] This is a very old appeal and therefore, as per the mandate of Section 386 of the Code of Criminal Procedure, I have proceed to dispose of it on merits. Accordingly, I have gone through the record including the impugned judgment and order. I have also heard learned Asst. Public Prosecutor for respondent No.3-State, who is present before this Court.

4] In this case the respondent No.1 Ms/Sheila Exports and respondent No.2 Kantilal R. Soni were prosecuted on the allegation that even though they exported certain goods to Dubai they failed to realise the sale proceeds within stipulated period of six months from the date of export and thus, contravened the provisions of Section 18(2) punishable under Section 56(1)(i) of the Foreign Exchange Regulation Act, 1973. It is seen from the impugned judgment and order that in the instant case there has been a violation committed by the appellant/complainant of Section 61 of the Foreign Exchange Regulation Act, 1973, before filing of the complaint. This section requires that an opportunity notice is given to the offender before the

complaint against him is filed. In this case, no acknowledgment receipt/card has been produced in evidence showing that the opportunity notice was duly served upon the respondent No.1. Rather PW-3 P.C. Shah contended that he did not serve the opportunity notice and that he was not aware as to whether or not it was indeed served. Therefore, the learned Magistrate has held that the prosecution launched against respondent No.1 and 2 was vitiated and rightly so. No case is made out for making any interference in the impugned judgment and order.

5] In the circumstances, I find that this appeal deserves to be dismissed and it stands dismissed, accordingly.

(S.B. SHUKRE, J.)