THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.766 of 2005

ORDER:

The petitioner-Accused preferred the present Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Code of Criminal Procedure being aggrieved by the judgment, dated 19.04.2005, passed in Crl.A. No.159 of 2002 by the Metropolitan Sessions Judge, Hyderabad, whereby the learned Sessions Judge dismissed the appeal, confirming the Judgment, dated 23.04.2002, passed in CC No.13 of 2000 by the Special Judge for Economic Offences, Hyderabad, whereby the learned Magistrate found the accused guilty violations made under Sections 18 (2) and 18(3) of Foreign Exchange Regulation Act (FERA), punishable under Section 56(1)(i) of FERA, and accordingly, convicted the 2nd petitioner – A2 to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and the 1st petitioner – A1 to pay a fine of Rs.5,000/- payable by A2, and in default of paying the fine by both A1 and A2, A2 shall suffer simple imprisonment for a period of three (3) months each.

The case of the prosecution is that 1st petitioner - A1 is a Company, 2nd petitioner - A2 is its Managing Director, A3 t A6 are the Directors of the said company. A1 exported 11 consignments of Indian made Carpets to USA and Canada through United Exim in the year 1993-94 and failed to realize the sale proceeds of the said consignment, the total value of which is 2,86,982.43 US dollars. The export bills were raised and loan was also obtained on these exports bill sand all these bills were pending realization and the accused did not take any proper steps for realization of the export bills and the RBI did not give any extension of time for realization of export proceeds and in fact RBI had permitted to re-importation of the said carpets and the accused did not make any complaint against the foreign agent for realization of the pending bills. Therefore, the Enforcement Department asserted that the accused company had realized all the bills and did not credit the same through the collecting Bank and appropriated all the amounts and thereby, failed to comply the statutory obligations as required under Sections 18(2) and 18(3) of FERA and therefore, a show cause notice was issued and after hearing the accused, an adjudication order was passed and the accused were found guilty of contravention of Section 18(2) and 18(3) of FERA punishable under Section 56(1) (i) of FERA.

The case against A5 was split up as he was residing in Germany at that relevant point of time and the case was numbered as CC No.13 of 2000 against A1 to A4 and A6 and the same was proceeded. On appearance of petitioners, the above charges were read over and explained to them, for which, they pleaded not guilty.

To substantiate its case, the prosecution examined PWs.1 and 2 and got marked Exs.P-1 to P-24. On behalf of the petitioners DW.1 was examined and Exs.D1 to 43 were marked.

The trial Court, considering the evidence on record, found the petitioners – A1 and A2 guilty of the above charges, and accordingly, convicted and sentenced them as stated above. The trial Court found A3, A4 and A6 not guilty of the above offences and accordingly, acquitted them. Challenging the same, the petitioners preferred appeal in Crl.A. No.159 of 2002 before the Metropolitan Sessions Judge, Hyderabad, and the learned Sessions Judge dismissed the appeal by confirming the judgment of the trial Court vide judgement impugned. Against the same, the present revision is filed.

Heard and perused the material available on record.

On perusing the judgments of both the Courts below, this Court is of the view that since the findings of both the Courts below are concurrent in nature, this Court is not inclined to interfere with the factual aspects of the case.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioners-accused Nos.1 and 2 submitted that though the charge sheet was filed against the petitioners for not paying the money to be paid to the department concerned, A2 did not take any steps to recover the money for the consignment which he had exported to USA and Canada, and he closed the company due to heavy loss and he is now working as an employee in another company, and restricted his arguments to the quantum of sentence, and prayed that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and since the case pertains to the year 2000, the sentence of imprisonment imposed by the trial Court, as confirmed by the lower appellate Court, can be set aside by imposing additional fine amount on the 2nd petitioner-A2.

In the result, the conviction recorded against the petitioners-accused Nos.1 and 2 by the Special Judge for Economic Offences, Hyderabad, in CC No.13 of 2000, vide judgment 22.04.2002, as confirmed by the Metropolitan Sessions Judge, Hyderabad, in Crl.A. No.159 of 2002, vide judgment, dated 19.04.2005, for offences under Sections 18(2) and 18(3) punishable under Section 56(1)(i) of Foreign Exchange Regulation Act, is confirmed. However, the sentence of imprisonment imposed by the trial Court against the petitioners, for the above offences, is set aside and the 2nd petitioner – A2 is directed to pay an additional fine of Rs.20,000/- on or before 30.08.2016, failing which he shall undergo simple imprisonment for a period of three months.

Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

July 25, 2016.

KTL