

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

ORDERS RESERVED DT : 30.09.2016

ORDERS DELIVERED DT: 01.02.2017

CORAM:

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.815 of 2015

and

M.P.No.1 of 2015

Smt.N.Sasikala

.... Petitioner/A3

Vs.

The Assistant Director,
Enforcement Directorate,
Government of India,
Sastri Bhavan, 26, Haddows Road,
Chennai-600 006

.... Respondent/Complainant

Prayer: This Revision is filed under Section 401 r/w 397 of Criminal Procedure Code, against the order passed in Crl.M.P.No.1268 of 2014 in E.O.C.C.No.17 of 1997 on the file of the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai, dated 18.05.2015 and set aside the same and hold that this complaint against A-3, Petitioner herein is groundless and discharge the petitioner from the case.

For Petitioner : Mr.B.Kumar
Senior counsel
for Mr.A.Asokan

For Respondent : Mr.G.Rajagopalan
Additional Solicitor General
for Mr.M.Dhandapani
Special Public Prosecutor

O R D E R

This petition is directed against the order passed in Crl.M.P.No.1268 of 2014 in E.O.C.C.No.17 of 1997, dated 18.05.2015 by the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai, refusing to discharge the petitioner from the case.

2.The facts leading to the case are as follows:-

The respondent/complainant preferred a complaint under sections 8(1) and 9(1)(a) of the Foreign Exchange Regulation

Act, 1973, punishable under Section 56(1)(i) of the Foreign Exchange Regulation Act, 1973 before the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Madras-8 stating that the accused company, who were telecasting under logo J.Jay TV had hired transponder abroad for their telecast and payments made abroad for the same without getting permission of the RBI and during search, certain incriminating documents were recovered and after examination of the witnesses, charges were framed and the present petitioner/A3 filed a petition under Section 245(1) Cr.P.C to discharge her from the case. After hearing both sides and considering the entire evidence available on record, the learned Additional Chief Metropolitan Magistrate, (EOI), Chennai-8, has dismissed the discharge petition filed by the petitioner holding that there are incriminating materials available to frame charges against the petitioner. Aggrieved by the same, the present revision has been filed by the petitioner/A3.

3.Mr.B.Kumar, the learned Senior counsel appearing for the petitioner would mainly contend that the learned Judge has not considered the various points raised on the maintainability of the complaint and their right to invoke Section 68 of the FERA and serious injustice has been caused to the petitioner by reason of non-reference to those judgments and others and that the learned Judge failed to see that the complaint as filed against A3 is not maintainable and there is no need to invoke vicarious liability under Section 68 of the Act and that the learned Judge failed to see that the company had a Managing Director, who has arrayed A2 and that the petitioner/A3 was only an ordinary Director and that the learned Judge failed to see that to invoke vicarious liability under Section 68 of the Act, the complainant must make averments in the complaint itself, is Director concerned was in-charge of and responsible for the day to day management of the company, where there is no such averment made in the complaint, it is wholly not maintainable against the Director and on that ground alone, the petitioner/A3 ought to have been discharged and that the learned Judge failed to see that none of the prosecution witnesses had spoken or deposed that the petitioner/A3 was in-charge of or responsible to the day today administration of the company and that the learned Judge failed to see that the petitioner had acted as Chairperson and not Chairman, as wrongly described of a meeting of the Board of Directors of the company and no other evidence to show that she ever participated in the affairs of the company in any other manner and that the learned Judge failed to see that acting as Chairperson in a particular meeting of the Board of Directors of the company, cannot, by any reason, show on the Chairperson must be considered as having been in-charge of the day today administration of the company and that the learned Judge failed to see that no material has been produced to show that J.Jay TV ever made TV Broadcast and that the learned Judge failed to see that there are materials to show that J.Jay TV ever broadcast through TV and that the Officer of the

Enforcement has no jurisdiction to go to Malaysia and exercise the power in a country other than India and that all the legislation by the Parliament can only have territorial operation within India.

4.It is further contended that the learned Judge has failed to see that the statement of A3 marked as Exs.P28 to 33 are exculpatory in nature and they could not be the basis to frame charges in this case and that the learned Judge has also failed to see that the statement of A2/V.Baskaran is also exculpatory in nature and that the learned Judge failed to see that the allegations of A3 had made counts to Singapore from her residence is also not established in evidence and that the learned Judge has erred in relying upon the statement of K.Ramachandran and he has not examined as witness in this case and that the learned Judge failed to see that the Enforcement Officer has no jurisdiction to go to Singapore and record any statement as FERA has only territorial operation within India and that the learned Judge failed note the ingredients of Section 8 (1) or 9(1)(a) of the Act and that the learned Judge failed to see that the documents in the form of bank statement in Singapore is also inadmissible in evidence as the same has not been marked through the person connected with documents and that the learned Judge failed to see that in view of the documents that origin in outside India could not be brought on invoking the provisions of Section 166(a) of the Act. In support of his contention, the learned Senior counsel appearing for the petitioner relied upon the following decisions:-

- 01.(2005)8 SCC 89 [S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another];
- 2.(2011)1 SCC 176 [Pepsico India Holdings Private Limited vs. Food Inspector and another];
- 3.(2012)1 SCC 520 [Anita Malhotra vs. Apparel Export Promotion Council and another];
- 4.(1980) 3 SCC 57 [State of Maharashtra vs. Mohd. Yakub and others];
- 5.2010(262)E.L.T. 62 (Mad.) [A.Michael vs. Union of India]
- 6.In an unreported judgment of this court made in CrI.A No.1233 of 2004, dated 06.04.2011 [Union of India vs. Shri A.S.A.Kabir]
- 7.(2011)2 SCC 532 [Kalyan Comber Gogoi vs. Ashutosh Agnihotri and another];
- 8.(1998)7 SCC 337 [Suresh Budharmal Kalani alias Pappu Kalani vs. State of Maharashtra]
- 9.(1994)3 SCC 440 [Directorate of Enforcement vs. Deepak Mahajan and another];
- 10.(2009)6 SCC 65 [Narender G. Goel vs. State of Maharashtra and another]
- 11.2002 CRL.L.J.3026 [J.Jayalalitha and etc., vs. State and others]
- 12.1983(4) Delhi Reported Judgments 272

[Smt. Motia Rani Bhatia vs. Addl. Director of Enforcement & others]

13.(2012)5 SCC 661 [Aneeta Hada vs. Godfather Travels and Tours Private Limited]

14.2013-2-L.W (Crl.)289 [S.Balasubramanian & another vs. The State of Tamil Nadu and others].

15.(2013)12 SCC 17 [State of Maharashtra vs. Kamal Ahmed Mohammed Vakil Ansari and others]

16.1996-2-L.W..637 [T.H.S. Rahmath Fathima vs. T.K.Kader Mohideen]

17.(1981)1 SCC 80 [Ramji Dayawala and sons (P) Ltd., vs. Invest Import.

18.(2003)8 SCC 745 [Narbada Devi Gupta vs. Birendra Comber Jaiswal and another]

19.(2010)4 SCC 491 [Life Insurance Corporation of India and another vs. Ram Pal Singh Bisen]

20.(2010)4 SCC 329 [Tukaram S.Dighole vs. Manikrao Shivaji Kokate].

21.(1986)2 SCC 716 [R.S.Nayak Vs. A.R.Antulay] wherein it has been held that:

"43.As pointed out by the Constitution Bench in the judgment to which reference has been made, the relevant Sections of the Code of Criminal Procedure ('Code' for short) for the trial of a case of this type are Sections 244, 245 and 246, Section 245(1) provides:-

If, upon taking all the evidence referred to in Section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

While Section 246(1), on the other hand requires:

If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Code, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain somewhat different provisions in regard to discharge of the accused. Under Section 227, the Trial Judge is required to discharge the accused if he "considers that there is not sufficient ground for proceeding against the accused" Obligation to discharge the accused under Section 239 arises when "the magistrate considers the charge against the accused to be groundless." The power discharge is exercisable under Section 245(1) when "the magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un rebutted would warrant his conviction". It is a fact that Section 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial court is satisfied that a prima facie case is made out, charge has to be framed.

22.2002 SCC On Line Mad 913 [Karam Chand Thaper and Brothers (Coal Sales) Ltd. vs. T.G.Vasanth Gupta], wherein, it has been held as follows:-

"7.The counsel for the respondent argued that since the company has not been added as an accused, the Managing Director alone cannot be an accused. To this, the revision petitioner replied what is complained against the respondent is the offence of cheating which requires a mental element. A corporate body cannot have a mental status. Further, the complaint by the complainant is only against the misrepresentation made dishonestly by the Managing Director who is the respondent herein. Therefore, non-inclusion of the company as an accused does not affect the case of the petitioner. This argument of the counsel for the revision petitioner is acceptable. It is a case of dishonest representation made by the Managing Director and hence, company need not be an accused.

...

I 10. A reading of the evidence of P.Ws.1 to 4 clearly makes a prima facie case against the respondent. If this evidence remains un rebutted, a conviction can be sustained. The mere fact that ultimately the accused may be acquitted is not a ground to discharge the accused exercising the power under Section 245(1) Cr.P.C. Therefore, at that stage, the Magistrate has no power to assess the evidence and pass a judgment. Therefore, the act of the Magistrate in assessing the evidence and rendering a judgment holding that some evidence cannot be believed in the absence of corroborative evidence. The Magistrate has no right to conclude, especially in the absence of cross-examination that there was no whisper of any telephone call either by P.W.3 or P.W.1 and to hold that absolutely there is no proof to say that the accused made any such promise; such a conclusion can be arrived at only after cross-examining the witness or examining the defence witnesses; that is by way of rebuttal evidence. Therefore, before adducing rebuttal evidence, the Court has to take the evidence on record as a whole. It cannot doubt the statement made in evidence. Therefore, applying the test laid down by the Supreme Court in Antulay's case, the power of the Magistrate under Section 245(1) is only to

see whether a prima facie case has been made out. For that, he has to take the evidence as it is and arrive at a conclusion. Applying this test, the order passed by the Magistrate does not appear to be within the scope of Section 245(1) Cr.P.C. Therefore, the order of the Magistrate is liable to be set aside as it is not warranted for the Magistrate to weigh or assess the evidence. Therefore, the order of discharge is liable to be set aside and accordingly, it is set aside. Revision Petition is allowed.

23.(2008)2 SCC 561 [Onkar Nath Mishra and others vs. State (NCT of Delhi and another)], wherein it has been held as follows:-

"11.It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, discharged the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the materials on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion found on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

24.(2006)4 SCC 659 [State of Maharashtra vs. Momnath Thapa & others], wherein it has been held as follows:-

"32.The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the

materials brought on record by the prosecution has to be accepted as true at that stage.

25.(2009)14 SCC 115 [Ajaykumar Ghose vs. State of Jharkhand & others], wherein it has been held as follows:-

"21.However, in a warrant trial instituted otherwise than on a police report, when the accused appears or is brought before the Magistrate under Section 244(1) CrPC, the Magistrate has to hear the prosecution and take all such evidence as may be produced in support of the prosecution. In this, the Magistrate may issue summons to the witnesses also under Section 244(2) CrPC on the application by prosecution. All this evidence is evidence before charge. It is after all this, evidence is taken, then the Magistrate has to consider under Section 245(1) CrPC, whether any case against the accused is made out, which, if unrebutted, would warrant his conviction, and if the Magistrate comes to the conclusion that there is no such case made out against the accused, the Magistrate proceeds to discharge him. On the other hand, if he is satisfied about the prima face case against accused, the Magistrate would frame a charge under Section 246(1) CrPC. The complainant then gets the second opportunity to lead evidence in support of the charge unlike a warrant trial on police report, where there is only one opportunity.

26.(2001)3 SCC 1 [Bipin Shantilal Panchal vs. State of Gujarat], wherein it has been held as follows:-

"13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection. But the fall out of the above practice is this : Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the Appellate or Revisional Court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the Appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial

Court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves? Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this :

Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided "at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it-clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed).

15. The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may

also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery of expenses.

16. We, therefore make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material of any item of oral evidence."

27.1967 SCC Online Cal 19 [In re, K.K.Ray (Private) Ltd., wherein it has been held as follows:-

"31.The position in made abundantly clear by Section 3 of the DIPLOMATIC AND CONSULAR OFFICER (Oath and Fees) Act, 1948, which this Court's office missed and which provides inter alia as follows:

(1)"Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions administer any oath and take any affidavit and also do any notarial act which any notary public may do within a State; and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be effectual as if duly administered, sworn or done by or before any lawful authority in a State.

(2)Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, of the official character of that persons."

32.Now that being the express statute in India, there is no difficulty here. The Notarial Act of Elizabeth Levy has not only been certified under the seal of the County Clerk and Clerk of Supreme Court, New York, but has also been forwarded under the certificate of the Consulate General of India in New York for legislation of the seal of the Clerk of the County of New York. In that context, I see no difficulty whatever, legal or otherwise, in admitting this affidavit on the records of the court I

need hardly quote R.6 of the Company Rules, 1959 of this Court which says'

"Save as provided by the Act or by these Rules, the practice and procedure of the Court and the provisions of the Code so far as applicable shall apply to all proceedings under the Act and these rules. The Registrar may decline to accept any of the documents which is presented otherwise than in accordance with this rules of the practice and procedure of the Court."

33.As I have said above, admitting this affidavit on the records of this Court will be following the practice and procedure of this Court. That is how I understand the *cursus curiae* of this Court for may years."

5.Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondent would contend that there are sufficient materials available against the petitioner/A3 and the petitioner/A3 has passed the resolution of the company and in pursuance of the resolution passed by her, the company entered into contract with the foreign companies and the petitioner has actively participated in the day today affairs of the company and there are incriminating materials available to frame charges against her. He would further submit that the petitioner has signed in all necessary documents of the company and hence, she is liable under Section 68 of FERA and hence, the argument of the learned Senior counsel for the petitioner that there is no incriminating material available against the petitioner is not at all maintainable in law. Hence, he prayed that the revision filed by the petitioner has to be dismissed.

6.This court has carefully heard the submissions made on either side and perused the entire materials available on record.

7.Admittedly, the petitioner is one of the Directors in J.J TV Private Limited. It is also admitted that the petitioner was acting as Chairperson at a meeting and she signed in all the relevant documents and resolution. It is not in dispute that the petitioner is the resident of India and J.J TV Private Limited is doing Telecommunication work in India during the relevant point of time.

8.The learned Senior counsel for the petitioner has raised one of the grounds that the petitioner had acted as Chairperson and not as Chairman of a meeting of the Board of Directors of the Company and except that, no other evidence available to show that she ever participated in the affairs of the company in any other manner.

9. On reading of the complaint, it is mentioned that the Chairperson and Director of M/s. J. Jay TV. Pvt Ltd., as A3. Mere mentioning in the order as Chairman and Director is not a ground to discharge the petitioner in this case.

10. At this juncture, it is relevant to refer Sections 8 (1), 9 and 68 of FERA, which reads as follows:-

"Section 8(1):- Restrictions on dealing in foreign exchange.

("1) Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer, any foreign exchange:

Provided that nothing in this sub section shall apply to any purchase or sale of foreign currency effected in India between any person and a money changer.

Explanation: For the purposes of this sub section, a person who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person.

(2) Except with the previous general or special permission of the Reserve Bank, no person, whether an authorised dealer a money changer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank.

(3) Where any foreign exchange is acquired by any person, other than any authorised dealer or a money changer, for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, failed to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so complied with, the said person shall, within a period of thirty days from the date

on which he comes to know that such foreign exchange cannot be so used or the conditions cannot be complied with, sell the foreign exchange to an authorised dealer or to a money changer.

(4) For the avoidance of doubt, it is hereby declared that where a person acquires foreign exchange for sending or bringing into India any goods but sends or brings no such goods or does not send or bring goods of a value representing the foreign exchange acquired, within a reasonable time or sends or brings any goods of a kind, quality or quantity different from that specified by him at the time of acquisition of the foreign exchange, such person shall, unless the contrary is proved, be presumed not to have been able to use the foreign exchange for the purpose for which he acquired it, or, as the case may be, to have used the foreign exchange so acquired otherwise than for the purposes for which it was acquired.

(5) Nothing in this section shall be deemed to prevent a person from buying from any post office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

Section 9: Restrictions on payments:

(1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, India shall-

(a) make any payment to or for the credit of any person resident outside India:

(b) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India.

Explanation: For the purposes of this clause, where any person in or resident in India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised dealer) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than

through an authorised dealer.

(c) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actually or contingent) to receive a payment is created or transferred in favour of any person resident outside India:

(d) make any payment to or for the credit of any person by order or on behalf of any person resident outside India.

Section 68; Offences by companies-

1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time of contravention was committed, was in charge of, any was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub section shall render any such person liable to punishment, if he proves that the contravention took place without his knowledge or that he exercise all due diligence to prevent such contraventions.

(2) Notwithstanding anything contained in sub section 1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section--

(i) "company" means any body corporate and includes a firm or other association of individuals; and

form, means a partner in this firm".

Section 72 of FERA, 1973 deals with "Presumption as to documents in certain cases"

Sec.72 of FERA, 1973,

"Where any document-

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any offence under this Act alleged to have been committed by any person, and such document is tendered in any proceedings under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the adjudicating officer, as the case may be, shall--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonable assume to have been signed by, or to be in the handwriting, or any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence'

(c) in a case falling under clauses(i), also presume, less the contrary is proved the truth of the contents of such document."

10. Further, it is useful to refer Sections, 39, 71 and 72 of the Foreign Exchange Regulation Act, 1973 (FERA), which read as follows:-

"39. Power to examine persons.-The Director of Enforcement or any other officer of Enforcement authorised in this behalf by the Central Government, by general or special order, may, during the course of any investigation or proceeding under this Act,-

- (a) require any person to produce or deliver any document relevant to the investigation or proceeding;
- (b) examine any person acquainted with the facts and circumstances of the case.

71. Burden of proof in certain cases.

(1) Where any person is prosecuted or proceeded against for contravening any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him.

(2) Where any person is prosecuted or proceeded against for contravening the provisions of sub-section (3) of section 8, the burden of proving that the foreign exchange acquired by such person has been used for the purpose for which the permission to acquire it was granted shall be on him.

(3) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value 1[fifteen thousand rupees], the burden of proving that the foreign exchange came into his possession lawfully shall be on him.

72. Presumption as to documents in certain cases.—Where any document—

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any offence under this Act alleged to have been committed by any person, and such document is tendered in any proceedings under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the adjudicating officer, as the case may be, shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a

document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

11. On perusal of the entire materials available on record, it is clearly revealed that so many incriminating materials available against the petitioner/A3. It is also revealed that the petitioner/A3 was informed by A2 about the business transaction of the A1 Company then and there.

12. Further, the petitioner/A3 has acted as Chairperson for the Board of Directors of the Company meeting and passed resolution in the Board Meeting and A1 Company entered into contract with some other companies and the subsequent transactions were also informed by A2 to the petitioner/A3. Hence, it is very reasonable to presume that the petitioner/A3 was knowing about the in-charge and responsibility for the conduct of the business. Hence, the argument of the learned Senior counsel appearing for the petitioner/A3 that the petitioner is not in-charge of the company and she does not know about the contravention took place in the day today administration of the company is not at all acceptable, at the present stage, since so many materials were produced on the side of the Enforcement authorities.

13. Further, the learned Senior counsel appearing for the petitioner has submitted that at the time of interrogation by the respondent authorities, the petitioner has denied all the questions and she has specifically stated that she had no knowledge about the business transactions of the company and the day today affairs of the Company. In this regard, this court is of the considered view that the petitioner/A3 denied all the questions raised by the enforcement officials and replied that she did not know about the company day today affairs and hence, this court has to look into the materials and evidences produced on the side of the Enforcement authorities.

14. On verification of the materials available on record, it is presumed that the petitioner/A3 is responsible and liable for the contraventions done by the A1 Company and there are sufficient records and evidences produced on the side of the enforcement authority. Hence, this court is of the considered view that there are prima facie materials available to frame charges against the petitioner/A3 under Sections 8

Act, 1973 and the trial Judge has rightly come to the conclusion that prima facie materials are available against the petitioner and dismissed the discharge petition filed by the petitioner/A3. In view of the above circumstances, this court finds no infirmity or illegality in the order of the trial court, which do not call for any interference by this court.

15. In the result, the criminal revision is dismissed and the impugned order passed by the trial Judge is confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan
Magistrate, E.O.I,
Egmore, Chennai 08.

2. The Chief Metropolitan Magistrate,
Egmore, Chennai 08.

3. The Assistant Director,
Enforcement Directorate,
Government of India,
Sastri Bhavan,
26, Haddows Road, Chennai 06.

+1cc to Mr.S.Senthil, Advocate, S.R.No.6551

+1cc to Mr.M.Dhandapani, Advocate, S.R.No.6631

LRS(CO)
CA(08/02/2017)

Cr1.R.C.No.815 of 2015

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