

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2168 OF 1990**

1. M/s. Siraj & Sons
2. A. G. Siraj
3. N. V. Siraj
4. V. G. Siraj
5. D. G. Siraj

All of them having office at
26, Govind Mahal, 86-B,
N.S. Road, Mumbai-400 002

...Applicants

Versus

1. N. S. Kulkarni,
Asst. Director of Enforcement,
Enforcement Directorate,
Dockyard Road, Ballard Estate,
Mumbai.

2. The State of Maharashtra

...Respondents

Mr. N. K. Thakore for the Applicants

Ms. Priyamvada Singhania h/f Mr. H. S. Venegavkar for the Respondent
No.1

Mr. Vinod Chate, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 29th JANUARY, 2018

ORAL JUDGMENT :

1 Heard learned counsel for the applicants.

2 By this application, the applicants have impugned the order of issue process, passed by the learned Metropolitan Magistrate, in case No. 241/S/1989, now pending before the learned Additional Chief Metropolitan Magistrate, 8th Court at Esplanade, Mumbai, as against the applicants.

3 Learned counsel for the applicants submits that the learned Magistrate had clearly erred in law by issuing process as against the applicants for the offence punishable under Section 57 of the Foreign Exchange Regulations Act, 1973 (for short, 'FERA'). He submitted that despite the fact, that the applicants had filed an appeal against the order of the Adjudicating Officer before the Appellate Board and despite the fact, that the appeal was pending before the Appellate Board, the Enforcement Directorate filed a complaint, being case No. 241/S/1989, as against the applicants, alleging an offence punishable under Section 57 of FERA. He

submitted that under Section 52 of FERA, the complaint filed by the Enforcement Directorate in the trial Court was not maintainable and that the said complaint filed was premature. He submitted that during the pendency of this application, the Appellate Board decided the applicants' appeal and exonerated the applicants of all the offences, with which, they were charged and as such, no penalty was due and payable.

4 The matter was adjourned on several occasions at the instance of Mr. Venegavkar. Even today, he is not present.

5 Perused the papers. The applicants were facing prosecution for contravention of the provisions of Section 16(1) and 9(1)(c) r/w Section 68(1) of the FERA pursuant to a complaint lodged by the Directorate of Enforcement. The Adjudicating Officer was pleased, vide order dated 30th September, 1983, to impose penalty of Rs. 3,40,000/- on the accused No.1 i.e. applicant No. 1 and a penalty of Rs. 34,000/- on each of the accused i.e. applicant Nos. 2 to 5 respectively, under Section 50 of the FERA. Vide the said order dated 30th September, 1983, the applicants were directed to pay the penalty within 45 days from the date of service of the said notice.

6 Admittedly, Section 52 of the FERA provides for appeal to the Appellate Board. Sub-section (2) of Section 52 provides that any person aggrieved by such an order i.e. of the Adjudicating Officer, may, after depositing the sum imposed by way of penalty under Section 50 and within forty-five days from the date on which the order is served on the person committing the contravention, prefer an appeal to the Appellate Board. The proviso to sub-section (2) provides that the Appellate Board may entertain any appeal after the expiry of the said period of forty-five days, but not after ninety days, from the date aforesaid, if it is satisfied that the applicants were prevented by sufficient cause from filing the appeal in time. Similarly, the second proviso to sub-section (2) of Section 52 provides that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the applicants, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

7 The grievance of the learned counsel for the applicants is that the Adjudicating Officer could not have given a direction to deposit the

penalty amount within 45 days of the receipt of the order. According to the learned counsel for the applicants, the said direction was contrary to the provisos to sub-section (2) of Section 52 of the FERA. He submitted that the said order takes away the discretionary powers of the Appellate Board to dispense with the condition of deposit either unconditionally or subject to certain conditions, if the Appellate Board is of the opinion that the order of deposit will cause undue hardships to the applicants. According to the learned counsel, the prosecution initiated by the Directorate of Enforcement during the pendency of the appeal before the Appellate Board seeking to prosecute the applicants under Section 57 of the FERA was, therefore, unjustified. He submitted that even otherwise, now the applicants have been exonerated by the Appellate Board vide order dated 3rd February, 1992 and as such the prosecution initiated by the Directorate of Enforcement would have to be quashed and set-aside.

8 For want of assistance of the learned counsel for the respondent No.1-CBI, it is not necessary to go into whether the Adjudicating Authority could have directed the applicants to deposit the penalty amount within a specific period i.e. within 45 days. Suffice to

state, and admittedly what is not in dispute is, that the Appellate Board was pleased vide order dated 3rd February, 1992 to exonerate the applicants of the charges, and the order of penalty was set-aside, and the Adjudicating Authority was directed to refund the penalty amount, so deposited by the applicants. It is not in dispute that the present prosecution i.e. Case No. 241/S/1989 was filed by the Enforcement Directorate when the applicants' appeal was pending before the Appellate Board. It is also not in dispute, that during the pendency of this application, the Appellate Board exonerated the applicants.

9 Considering the aforesaid, the application is allowed and the impugned order issuing process passed by the learned Metropolitan Magistrate in Case No. 241/S/1989 (now pending before the learned Additional Chief Metropolitan Magistrate, 8th Court at Esplanade, Mumbai), as against the applicants, is quashed and set-aside. The Adjudicating Authority shall refund the amounts with accrued interest, if any, to the applicants forthwith and in any event, within two weeks from the date of receipt of this order.

10 Rule is made absolute in the above terms. Application is accordingly disposed of.

11 All concerned to act on the authenticated copy of this judgment.

REVATI MOHITE DERE, J.