

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.Nos.957, 974 & 975 of 2001

The Chief Enforcement Officer,
Enforcement Directorate,
Government of India,
Shastri Bhavan,
Chennai-600 006.

...Appellant/Complainant in all Crl.A.Nos

Vs.

- 1 H.M.Nazar ... Respondent in Crl.A.974/2001
- 2 H.Ammer ... Respondent in Crl.A.957/2001
- 3 H.Kamal Batcha ... Respondent in Crl.A.975/2001

Common Prayer: Criminal Appeal filed under Section 372 (2) of Cr.P.C. r/w Section 56(1)(i) of the Foreign Exchange Regulation Act, 1973, praying for enhancement of sentence and modify the order passed in E.O.C.C.No.69 of 1996 dated 19.02.2001 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences-II, Madras.

For Petitioner in all Crl.As : No appearance

For Respondents in all Crl.As : No appearance

COMMON JUDGMENT

The Enforcement Directorate, Government of India is the appellant in all these appeals. The appellant filed a complaint in UO.CC.No.69 of 1996 on the file of the learned Additional Chief Metropolitan Court/Economic Offences-II, Egmore, Chennai against accused the complaint was filed for the offences under Sections 9[1][b], 9[1][d] read with 64[2] of the Foreign Exchange Regulation Act, 1973, punishable under section 56[1][i] of the said Act.

2 The learned Trial Magistrate found that the accused were guilty of the offence and convicted them by the impugned judgment dated 19.02.2001 and they were sentenced to imprisonment till rising of Court and A-2 was sentenced to pay a

fine of Rs.10,000/- and the first and third accused were sentenced to pay a fine of Rs.10,000/- each, in default to undergo six months. The accused in this case have remitted the fine amount. It is the contention of the appellants that the Trial Court erred in not imposing a minimum term of imprisonment of six months and challenging the same, these three appeals have been filed.

3 None appeared before this Court to argue the appeals and none appeared for the convicted respondents also. Since, these are criminal appeals, this Court will not be justified in dismissing them for non prosecution. Hence, this Court proceeds to dispose of appeals on merits on going through the record.

4 It is true that as per Section 56(1) of the Foreign Exchange Regulation Act, 1973, the sentence of imprisonment will have to be for a term which shall not be less than six months and which may extend upto seven years with fine. Of course, the Court may for any adequate and special reasons to be mentioned in the judgment, impose sentence for a term of less than six months. Thus, the jurisdiction to award a sentence less than the minimum sentence of six months is very much available. The question is whether in this case the said jurisdiction was properly exercised. The Trial Court took note of the fact that no substantial harm was caused to general public or any individual and that no loss is caused to the Government and that they have been attending the trial for over five years and therefore, in the interest of justice, the trial court felt that imposing the sentence of imprisonment till rising the Court would be suffice.

5.This Court has no doubt whatsoever that the contention raised by the appellant in these appeals, are not sustainable in law.Further, this Court will have to borne in mind that more than 22 years have lapsed since the institution of the complaint. The accused, viz., H.Kamal Batcha was shown as aged 68 years; Mr.H.Ammer was shown as aged 59 years and Mr.H.M.Nazar was aged 44 years when the appeals were filed in the year 2001 and the fact remains that all of them have now become senior citizens. The department itself has not chosen to appear before this Court to prosecute these appeals.

6.Considering the long lapse of time, this Court does not propose to interfere with the impugned judgment. Hence, these appeals are disposed of.

rpl

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

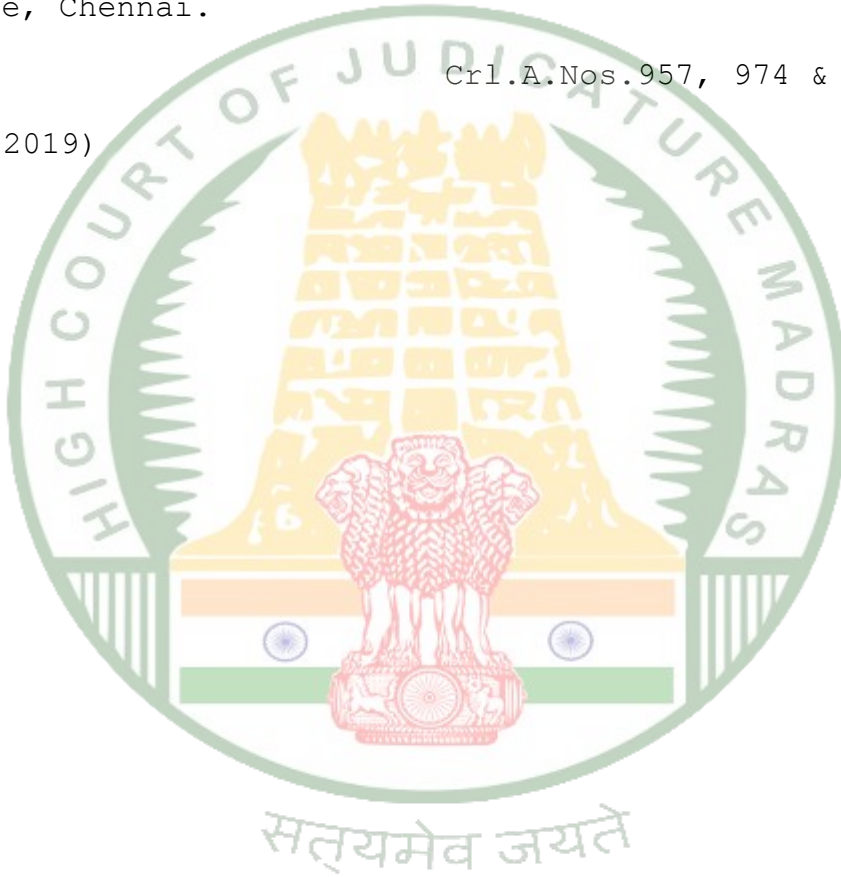
The Chief Enforcement Officer,
Enforcement Directorate,
Government of India,
Shastri Bhavan, Chennai-600 006.

Copy to:-

The Addl.Chief Metropolitan
Magistrate Court/
Economic Offences -II,
Egmore, Chennai.

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