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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 287/2018 & CM No.1197/2018**

BIMAL KUMAR JAIN

..... Petitioner

Through: Mr Naveen Malhotra,
Advocate.

versus

THE DIRECTORATE OF
ENFORCEMENT

..... Respondent

Through: Mr Amit Mahajan, CGSC for
UOI with Ms Mallika,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.01.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 03.01.2018 (hereafter 'the impugned order') passed by the Special Director, Directorate of Enforcement (FEMA) in the case of *Assistant Director, Enforcement Directorate (FEMA) v. Naresh Kumar Jain & Ors* (bearing file no. T-4/04/FEMA/DLZO/SDE(CR) dated 11.01.2016 (SCN) and file no. T-3/CP/34/DZ/2009/AD (SB) (complaint)).

2. By the impugned order, the respondent (Special Director, the Directorate of Enforcement) has rejected the petitioner's application

for cross-examination of Mr Manoj Garg (the Investigating Officer), the complainant, Mr A.K. Verma, Mr Mohan Singh, Mr Preetam Singh and Satbir Singh, Assistant Director who were signatories to the *Panchnama*. The petitioner had also sought an opportunity to cross-examine Mr V.K. Gogia and Mr S. Bhatnagar who had witnessed the *Panchnama*. The relevant extract of the impugned order reflecting the reasons for denying the petitioner's request for cross-examination, reads as under:-

“I find that the grounds mentioned by the noticees no. 1, 2 & 3 for cross-examination pertain to substantive nature of transactions as revealed during the course of investigation and all these transactions are based on documents seized during various search operations as mentioned in the complaint. Merits and demerits of the allegations contained in the SCN/Complaint and replies filled by noticees are duly taken into account at the stage of Adjudicating Proceedings, besides providing adequate opportunities to the noticees for making oral and written arguments/submissions during the course of personal hearings.

Therefore, the request of the noticees to seek the cross-examination is required to be considered having regard to provisions contained in the said adjudication rules as elaborated above and it cannot be considered as a matter of right.”

3. The learned counsel appearing for the petitioner contended that the cross-examination of witnesses is an integral part of the principles of natural justice and the same could not be denied. He relied on the

decision of the Division Bench of this Court in *Shahid Balwa v. The Directorate of Enforcement: LPA 79/2013* and another connected matter decided on 29.05.2013.

4. Mr Amit Mahajan, the learned counsel appearing for the respondent contended that the decision of the Division Bench of this Court in *Shahid Balwa v. The Directorate of Enforcement* (*supra*) was carried in appeal before the Supreme Court and by an order dated 10.09.2013, the said decision has been stayed. He submitted that in the given circumstances, the said decision has no precedent value. He further submitted that without prejudice to the aforesaid contention, the facts in the present case did not warrant cross-examination of any individual.

5. I have heard learned counsel for the parties.

6. The Assistant Director, Enforcement Directorate had filed a complaint dated 08.01.2016 under Section 16 (3) of the Foreign Exchange Management Act, 1999 (hereafter 'FEMA') alleging contravention of certain provisions of FEMA read with Regulations made thereunder. Subsequently, a Show Cause Notice dated 11.01.2016 was also issued to the petitioner as well as other noticees, *inter alia*, calling upon them to show cause as to why adjudication proceedings as contemplated under Section 16 of FEMA not be held against them.

7. It is the petitioner's case that there is no evidence or any material on record, which implicates the petitioner in any manner. A

plain reading of the application filed by the petitioner seeking cross-examination of certain individuals named above also indicates that the petitioner had reiterated its contention that the material or evidence on record does not substantiate the allegation made against him. At the outset, the petitioner had denied all the allegations made against him in the complaint filed against him. The only reason provided by the petitioner for seeking cross-examination of Mr Manoj Garg, Investigation Officer and the complainant is that they can be confronted with the documents in question.

8. As stated above, according to the petitioner, the documents do not implicate or establish any offence on the part of the petitioner. The documents referred to by the petitioner are not documents that have been created or initiated by the investigating officer or the complainant; the documents have been found during the search and seizure operations conducted by the concerned officers. In the circumstances, this Court is not persuaded to accept that there is any ground to permit cross-examination as sought for by the petitioner. Similarly, there is also no ground to permit cross-examination of signatories to the *Panchnama* and the *Panch* witnesses either.

9. In the case of *Shahid Balwa v. The Directorate of Enforcement* (supra), the Division Bench after referring to various decisions had observed as under:-

“29. The legal position that would follow is that normally if the credibility of a person who has testified or given some information is in doubt or if the version

or the statement of the person who has testified is in dispute normally right to cross-examination would be inevitable. If some real prejudice is caused to the complainant, the right to cross-examine witnesses may be denied. No doubt, it is not possible to lay down any rigid rules as to when in compliance of principles of natural justice opportunity to cross-examine should be given. Everything depends on the subject matter. In the application of the concept of fair play there has to be flexibility. The application of the principles of natural justice depends on the facts and circumstances of each case.”

10. In the facts of the present case, it is apparent that the case set up against the petitioner is not based on any testimony of the investigating officer but on documents. In the aforesaid circumstances, this Court finds no infirmity with the decision to reject the petitioner's application for cross-examination.

11. The petition and the pending application are, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 29, 2018

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