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

Date of Order: May 15, 2019

\+ **CRL.M.C. 5077/2017 & CRL.M.A. 19990/2017**

MANI SINGH BHALLA .....Petitioner

Through: Mr. Dhruv Gupta and
Mr. Shaishav Manu, Advocates

versus

ENFORCEMENT DIRECTORATE .....Respondent

Through: Mr. Amit Mahajan, CGSC with
Mr. Dhruv Pande and Ms. Shreya
Sinha, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R
(ORAL)

1. Quashing of revisional court's order of 17th November, 2017 and trial court's orders of 11th May, 2017 and 30th May, 2017 is sought in this petition. Trial court vide order of 30th May, 2017 has put petitioner on trial for the offences under Section 18(2) r/w Section 18(3) of Foreign Exchange Regulation Act, 1973 and under Section 56 of Foreign Exchange Regulation Act, 1973 *(hereinafter referred as 'FERA')*. Petitioner had unsuccessfully challenged the trial court's order before revisional court.

2. The pleas urged in this petition are that in view of the Circular of 5th July, 2001 issued under Section 56 of FERA, there can be no prosecution if the amount involved is less than ₹2 crores. Attention of this

Court was drawn to a decision of a Coordinate Bench of this court in *Rare Creations Limited vs. Union of India* 2010 (170) DLT 234 to submit that there can be no prosecution if the non-realisation of export proceeds is less than ₹2 crores. So, it was submitted that there can be no prosecution, as the offence in question already stands compounded. Reliance was placed upon a report of 22nd May, 2003 of the Directorate of Enforcement to submit that there were six G.R. Forms of the company in question, with which the bank statement had been annexed. According to petitioner's counsel, this indicates that only six G.R. Forms pertaining to the company in question were outstanding and sufficient explanation had been tendered by petitioner in respect of aforesaid six G.R. Forms. So, it was submitted that the instant proceedings against petitioner ought to be quashed.

3. On the contrary, learned CGSC for respondent-Enforcement Directorate submitted that after passing of the impugned order, trial court has already recorded evidence of three witnesses, out of six witnesses and the case is now listed before the trial court on 24th May, 2019 for recording of the remaining evidence and the pleas taken herein are required to be tested at trial. It is submitted that Circular of 5th July, 2001 sought to be relied upon by petitioner, is not traceable and its applicability in case of petitioner is also disputed.

4. Upon hearing and on perusal of impugned orders and the decision cited, I find that since evidence of three witnesses out of six, has been already recorded and the case is now fixed in this month before the trial court for recording of the remaining evidence, therefore, the legality of

the impugned order is not required to be tested, as the trial of the case has fairly progressed and existence of Circular of 5th July, 2001 is yet to be established. Moreover, the submissions advanced on behalf of petitioner are required to be considered, after the evidence is led in this case.

5. Accordingly, this petition and the application are disposed of with liberty to petitioner to urge the pleas taken herein before the trial court at the stage of final arguments. It is made clear that this Court has not expressed any opinion on the merits of the case, lest it may prejudice either side before trial court.

(SUNIL GAUR)
JUDGE

MAY 15, 2019
v