Form J(2) **IN THE HIGH COURT AT CALCUTTA**
Criminal Appellate Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

C.R.A. 46 of 2021

Enforcement Officer, Enforcement Directorate
Vs.
Laxmi Narayan Roy

For Appellant: Mr. Ranjan Roy

For the Respondent: Mr. Mritunjoy Chatterjee
Mr. Debapriya Majumder

Heard on : 07.02.2022 & 09.02.2022

Judgment On : 09.02.2022

Bibek Chaudhuri, J.

This is an appeal filed by the competent officer of Enforcement Directorate under Foreign Exchange Regulation Act, 1973 assailing the judgment and order of acquittal passed by the learned Metropolitan Magistrate, 11th Court at Calcutta from the charge punishable under section 56 of Foreign Exchange Regulation Act (hereafter described as FERA) for violation of Section 9(1)(b) and 9(1)(d) and 63 of the said Act.

One D.N. Poddar in his official capacity as Enforcement Officer, Enforcement Directorate of FERA lodged a complaint before the learned Chief Metropolitan Magistrate at Calcutta alleging, inter alia, that on 24th April, 1996, on the basis of a source information the officers of the Enforcement Directorate conducted a search at the residence and office of the respondent and recovered Indian currency notes amounting to Rs.21.80 lakhs. They also seized some other documents under proper seizure list at the spot in presence of independent witnesses. It is further stated by the complainant that in pursuance to a notice under Section 40 of FERA the accused gave voluntary statements on 24th April, 1996 stating, inter alia, that he was engaged in receiving and making payments from and to different persons in India on commission basis at the rate of Rs.200/- on each one lakh rupees against Bangladeshi currency notes under the instruction of Bangladeshi nationals namely, Osman Ali Lomex, Chand Ali Sk. and Nirmal Kumar Saha. The accused also admitted that he is not an authorized dealer in foreign exchange. He was doing such business without any licence required under FERA. It is further stated by the complainant that during the period between September, 1995 to 23rd April, 1996 the accused received a sum of Rs.91,12,300/- from different persons and made payments of Rs.69,32,300/- under the instruction of the above named three Bangladeshi nationals. Thus, the accused illegally accumulated a sum of Rs.21.80 lakhs from the commission for conversion of Bangladeshi currency notes to Indian currency notes and payment of the same to different persons.

On the basis of the said complaint the learned Chief Judicial Magistrate took cognizance of offence under Section 56 of the FERA for violation of the provisions of Section 9(1)(b) and 9(1)(d) and 63 of the said Act and sent the case record to the 11th Court of the learned Metropolitan Magistrate, Calcutta for trial and disposal.

The learned Magistrate, 11th Court at Calcutta framed charge against the accused. He pleaded not guilty when the charge was read over and explained to him. Subsequently, trial of the case commenced. During trial three witnesses were examined on behalf of the complainant. The accused was examined under Section 313 of the Code of Criminal Procedure. He also adduced evidence as D.W.1. It is the specific defence of the accused that he was engaged in construction business at the relevant point of time. He was developing a plot of land by raising construction. The amount which was seized by the officers of the Enforcement Directorate was earned by him by carrying on construction business.

The learned Magistrate on consideration of the evidence on record and the respective cases of the parties held that the complainant failed to establish the charge against the accused and, therefore, he passed an order of acquittal.

The said judgment and order of acquittal passed in Complaint Case No.1479 of 2001 is assailed in the instant appeal.

Mr. Roy, learned advocate on behalf of the Enforcement Directorate, the appellant herein, has made a very short but pertinent submission, which requires due consideration of this Court. According to Mr. Roy, the accused made a confessional statement before the competent officer under FERA in his own hand writing admitting his guilt that he was engaged in conversion of foreign currency notes and used to receive commission at the rate of Rs.200/- per lakh. It is also admitted by him that he is carrying on such business under the instruction of three Bangladeshi nationals. It was his job to convert Bangladeshi currency notes to Indian currency notes and make payment of such money to different persons. He also used to maintain a record of payment of money by his own hand writing in a notebook. In the same notebook payment of money to different persons was recorded by him in symbolic manner which he mentioned before the Enforcement Directorate. It is submitted by Mr. Roy that the said document was marked exhibits during trial of the case. The learned trial Judge failed to appreciate the extra judicial confession made by the accused and the explanation given by the accused in his statement before the Enforcement Officer stating the manner in which the money was transacted and payment was made to different persons.

It is further submitted by Mr. Roy that the accused undoubtedly retracted from his previous confessional statement in course of his examination under Section 313 of the Code of Criminal Procedure. On the other hand, he took a specific plea that he earned the said money which was seized by construction business. According to Mr. Roy, when the accused took the specific alibi of receipt of money from construction business and not as commission for foreign exchange in violation of FERA, it was the duty of the accused to prove such alibi during trial of the case. However, the accused failed to discharge his prudence to prove such alibi.

Learned trial Judge acquitted the accused relying on the defence plea that the accused had earned the seized money by construction business.

Mr. Roy further submits that the Learned Magistrate refused to rely on the evidence of the witnesses on behalf of the complainant on the ground that they are the Officers and Police personnel attached to Enforcement Directorate. Placing reliance of a decision of the Hon'ble Supreme Court in the case of ***C. Ronald & Anr. –Vs.- U.T. of Andaman & Nicobar Islands*** reported in ***AIR 2011 SC (Supp.)***

673 it is submitted by Mr. Roy that there is no principle of law that a statement made in Court by a Police personnel has to be disbelieved. It may or may not be believed. It is not that all Policemen will tell lie. There are good and bad people in all walks of life. There are good or bad Police men as well. We cannot assume that every statement of a Policeman is necessarily false. Coming to the instant case, it is submitted by Mr. Roy that the defence failed to show that the witnesses on behalf of the complainant were making false statement in the Court. They had no previous enmity with the accused/respondent. Therefore, the Learned Trial Court erred in law in disbelieving the evidence of the Officers and personnel of Enforcement Directorate.

Mr. Roy also relies on another decision of the Hon'ble Supreme Court in ***State of Haryana –Vs.- Sher Singh & Ors.*** reported in ***AIR 1981 SC 1021***. In the said report, it is held that when an accused pleads alibi, the burden is on him to prove it under Section 103 of the Evidence Act. In the instant case, the accused failed to prove the alibi which he took during trial after retracting his previous confessional statement. Thus, it is submitted by Mr. Roy, Learned Counsel for the appellant that the Learned Magistrate erred both in law and fact in recording the order of acquittal in favour of the respondent.

The Learned Advocate for the respondent, on the other hand, submits that the case of the complainant was that a sum of Rs.21.80 lakh was seized from the possession of the accused in presence of independent witnesses. During trial, prosecution failed to examine in all the independent witnesses to prove search and seizure. The offence under FERA is essentially based upon search and seizure of currency notes. Under such circumstances, non-examination of independent witnesses is fatal for the prosecution.

Learned Advocate for the respondent further submits that the accused while examination as D.W. 1 has proved by filing series of documents that he was engaged in construction business. Exhibit – 'A' to 'L' are the documents from which it was proved beyond all shadow of doubt that the accused entered into an agreement of development of land. He purchased the land with other persons. Thereafter, it was developed. He accumulated money for development of land by selling ornaments of his wife and other near relations. The sale receipt of the ornaments were exhibited during trial of the case as Exhibit - 'H' to Exhibit – 'L' and accordingly, he was able to prove by filing statement of account, the source of money amounting to Rs.21.80 lakh which was seized by the Enforcement Directorate.

Section 9(1)(b) of FERA, 1973 prohibits any person in, or resident in, India to receive, otherwise than through an authorized dealer any payment by order or on behalf of any person resident outside India. Clause (d) of Sub-Section 1 of Section 9 prohibits a person in, or resident in India to make payment to or for the credit, of any person by order or on behalf of any person resident outside India. Section 63 of the said Act speaks of confiscation of currency, security etc.

At the risk of repetition, let me recapitulate the complaint case. It is alleged by the Enforcement Directorate that the accused under the instruction of Bangladeshi nationals made payment of Indian currency notes to various persons and received commission at the rate of Rs.200/- per one lakh. In order to prove such offence under Section 9(1)(a) of the said Act it was incumbent upon the complainant to produce the persons to whom such payment was allegedly made. The complainant did not take any attempt to produce the persons to whom payment was allegedly made by the accused persons under the instruction of three Bangladeshi nationals.

Prosecution case is entirely based on confessional statement. It is submitted by Mr. Roy that the accused not only made the confessional statement before the Enforcement Directorate but he made a statement in writing where he clearly admits his guilt. It is needless to say that the authorities under the FERA are not Police Officers and in confessional statement made by an accused before the Enforcement Directorate is admissible in evidence.

However, admissibility and probative value of a particular statement are two different aspects which requires to be considered in the instant appeal. It is needless to say that confessional statement is not a substantive piece of evidence. It is corroborative in nature. Moreover, when a confessional statement is retracted its evidentiary value loses in view of the fact that the Court is required to weigh the probative value of two statements – one in the nature of confession and another in the nature of retraction. During trial of the case, the accused took a plea that his confessional statement was recorded by force and coercion. It is also specifically pleaded by the accused that he accumulated the seized money from his construction business. In order to prove that he is engaged in construction business, the respondent submitted series of documents during trial of the case. The Learned Trial Court accepted the defence version.

It is needless to say that in the instant case two views are apparent on the face of the record. First, the allegation of accumulation of money by way of illegal foreign exchange and payment of money illegally to different persons and secondly, the accused accumulated money by way of construction business.

It is no longer *res integra* that when two views are possible, the view that help the accused and in favour of him shall be accepted.

For the reasons stated above, I do not find any merit in the instant appeal. Accordingly, the appeal is **dismissed** on contest. The judgment and order of acquittal passed by the Learned Magistrate, 11th Court at Calcutta is affirmed.

The accused is discharged from his bail bond.

Let the Lower Court Record be sent to the Learned Court below.

Office is directed to supply the urgent certified copy of this order to the Learned Advocates for the parties on the usual undertakings.

(Bibek Chaudhuri, J.)

Suman/Srimanta
A.Rs. (Court)