

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 3507 OF 2005

Nitin Hemchand

..Applicant.

Versus

B. V. Survase, Asstt. Director of Enforcement
and another.

..Respondents

WITH

CRIMINAL APPLICATION NO. 3508 OF 2005

Nitin Hemchand Trading Company Pvt. Ltd.

..Applicant.

Versus

B. V. Survase, Asstt. Director of Enforcement
and another.

..Respondents

Mr. Sushanth Murthy a/w. Mr. Anagh Pradhan i/b. Divya Shah
Associates for Applicant in both Applications.

Mr. H. S. Venegavkar, for Respondent No.1 in both applications.

Mrs. Veera Shinde, APP for State/Respondent No.2.

CORAM : M. G. SEWLIKAR, J.

DATE : 20th JULY 2022.

PC :

1. Rule. Rule made returnable forthwith in both the applications with the consent of the parties. Both the Applications are taken up for final hearing together and common order is passed.

2. Heard.

3. The Appellant had exported the goods to Belgium. Because of some irregularities, the Foreign Exchange Regulation Authorities imposed penalty of Rs.9,00,000/- on the company and Rs.1,00,000/- on the Directors. The Appellant preferred Appeal before the Foreign Exchange Management board agitating his grievance that the amount of penalty is excessive. In the meanwhile, prosecution was launched before the learned Metropolitan Magistrate by the authorities under Foreign Exchange Regulation Act, 1973 (hereinafter referred to as 'FERA').

4. Since the Appellant had moved FERA board, the applicant moved Learned Metropolitan Magistrate for stay of the proceeding, which was rejected by the learned Metropolitan Magistrate. Against that order these Criminal Applications are preferred. In the meanwhile, Foreign Exchange Regulation Act came to be repealed by Foreign Exchange Management Act (FEMA). The FEMA Tribunal upheld the contention of the applicant and reduced the penalty to 40%. The Appellate Tribunal in its operative order observed that 40% penalty has already been paid.

5. Learned counsel submits that, since the penalty imposed by the Tribunal has been paid, the Rule may be made absolute.

6. In terms of Section 57 of the FERA, if the penalty imposed by the adjudicating Officer, or the Appellate Board or High Court is not paid, it is punishable with imprisonment for a term which may extend to two years or with fine or with both.

7. Since the penalty was not paid, the Respondent initiated prosecution against the Applicant before the learned Metropolitan Magistrate. The subsequent events show that FEMA Tribunal upheld the contention of the Applicant and reduced the penalty to 40%. It is further observed by the Tribunal that the reduced amount of penalty has already been paid by the applicant.

8. The prosecution U/s.57 of FERA can be initiated only if the penalty imposed by the adjudicating officer or the Appellate Board or High Court is not paid. In the case at hand, after imposition of the penalty by the adjudicating officer the applicant preferred an Appeal. During the pendency of this appeal the Respondent initiated prosecution against the applicant.

9. The Appellate board has imposed penalty which has already been paid by the applicant. Therefore, the question of continuing the prosecution does not arise. The offence U/s.57 cannot be said to be made out.

10. In this view of the matter, the proceeding initiated by the Respondent needs to be quashed. Shri. Venegavkar, Learned counsel for the Respondent – Enforcement Department submits that the Appeal was preferred first in point of time and thereafter prosecution was initiated. Having regard to the subsequent developments, it cannot be said that offence U/s.57 of the FERA now FEMA is made out.

11. In this view of the matter, Rule in both the applications is made absolute in terms of prayer clause (a). No costs.

(M. G. SEWLIKAR, J.)