

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4694-2016 (O&M)
Reserved on: 15.12.2022
Pronounced on: 22.12.2022

Muneesh Suneja @ Goldy

... Petitioner

Vs.

Chief Enforcement Officer, Enforcement Directorate, Jalandhar

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate,
Mr. A.S. Pannu, Advocate
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Pankaj Gupta, Sr. Panel Counsel
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this revision petition is to the judgment dated 08.12.2016 passed by the lower appellate Court, vide which appeal filed by the petitioner against the judgment of conviction and order of sentence dated 31.03.2014, holding him guilty of offence under Section 8(1) & 8(2) of Foreign Exchange Regulation Act (for short 'FERA') and sentencing him to undergo imprisonment for a period of six months and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo R.I. for a period of three months,

was dismissed, whereas another appeal filed by the complainant for enhancement of the sentence was allowed and the petitioner was directed to undergo R.I. for a period of two years and to pay a fine of Rs.5,000/-. In default of payment of fine, to further undergo R.I. for a period of two months under Section 56 of FERA.

Brief facts of the case are that on 18.06.1997, the Punjab Police intercepted one Piara Lal and Madan Lal, who were coming from Delhi to Punjab in Punjab Roadways bus and recovered Rs.2.00 lacs and Rs.1.90 lacs, respectively. Thereafter, FIR No.90 dated 18.06.1997 under Sections 411 & 414 of the Indian Penal Code, 1860 (for short 'IPC') and Section 9 of FERA was registered. Later on, during the investigation of Piara Lal and Madan Lal, a raid was conducted on residence of petitioner Muneesh Suneja @ Goldy and recovery of DM5300, Rs.3.00 lacs in cash, 08 yellow material biscuits of 10 toll each with a foreign mark along with certain incriminating documents was effected. In the meantime, another accused Jagdish Chand was also apprehended by the Enforcement Directorate and from his search, 7360 US dollars, 3295 UK pounds, 4135 Canadian dollars and 360 Australian dollars (total having value of Rs.6,14,283/-) were recovered. In the statement, Jagdish Chand disclosed that said currency was given to him by his employer Sanjay, resident of Ludhiana and he used to purchase foreign exchange from petitioner Muneesh Suneja @ Goldy. In the disclosure statement, the petitioner stated that he used to purchase foreign exchange from co-accused Rakesh Kumar of Adampur and Sanjay used to sent foreign exchange through Jagdish Chand. It

was revealed from the investigation that for the last one and half year, transaction of more than Rs.11.00 crores was done. In the search of premises of co-accused Rakesh Kumar, foreign currency equivalent to Rs.1,04,10,004/- was recovered. It was found that co-accused Madan Lal, Piara Lal and Rakesh Kumar are closely related to each other. Petitioner Muneesh Suneja @ Goldy was found not to be an authorized dealer in foreign exchange, therefore, he violated the provisions of Sections 8(1) & 8(2) of FERA and as such, he is liable to be prosecuted under Section 56 of FERA read with Sections 49(3) and 49(4) of Foreign Exchange Management Act, 1999 (for short 'FEMA'). Thereafter, formal complaint under Section 56 of FERA was filed by authorized person i.e. Chief Enforcement Officer, Jalandhar. The accused were summoned to face the trial vide order dated 21.05.2002.

It is a fact that during the trial, accused Madan Lal and Piara Lal died and accused Jagdish Chand was never arrested and was declared proclaimed offender.

In the trial, which was faced by petitioner Muneesh Suneja @ Goldy, Rakesh Kumar and Sanjay, the complainant examined PW1 HC Harmail Singh, who had registered formal FIR No.90 dated 18.06.1997 in Police Station Payal as Ex.PW1/A.

Enforcement Officer N.K. Dhaka, who conducted the search in the residential premises of petitioner Muneesh Suneja @ Goldy along with two officials I.M. Bhatia and V.P. Gogiya, appeared as PW2 and proved the panchnamas Ex.PW2/A to Ex.PW2/C regarding recovery of foreign currency

Ex.PW2/D and recovery memo of gold Ex.PW2/E.

Assistant Director of Enforcement I.M. Bhatia appeared as PW3 and proved statement of accused recorded under Section 40 of FERA as Ex.PW3/A and Ex.PW3/B.

Assistant Director K.R. Thapar appeared as PW4 and proved the complaint Ex.PW4/A.

The pre-charge evidence of the complainant was closed by the Special Public Prosecutor. On the basis of pre-charge evidence, a formal chargesheet was filed for contradiction of Sections 8(1) & 8(2) punishable under Section 56 of FERA. All three accused did not plead guilty and claimed trial.

After framing of charge, accused were granted permission to cross-examine the witnesses i.e. PW1 to PW4. After completing the cross-examination, Special Public Prosecutor closed the post-charge evidence. Thereafter, statements of the accused were recorded under Section 313 Cr.P.C. and all the incriminating evidence was put to them. The accused denied the same and pleaded their innocence. In defence evidence, petitioner Muneesh Suneja @ Goldy appeared as DW1 and accused Sanjay appeared as DW2.

Thereafter, the trial Court acquitted two accused Rakesh Kumar and Sanjay vide judgment dated 19.02.2011 passed by the Chief Judicial Magistrate, Jalandhar, whereas petitioner Muneesh Suneja @ Goldy was convicted. He preferred an appeal before the lower appellate Court and the Additional Sessions Judge, Jalandhar, vide judgment dated 01.07.2013, set

aside the judgment of conviction and order of sentence and remanded the case back for decision afresh, after affording further opportunity to the accused to lead further defence evidence. In pursuance thereof, petitioner Muneesh Suneja @ Goldy examined DW3 Pankaj Bhai Goswami to prove the bill Ex.D1 and authorization letter Ex.DW3/1, his driving licence Ex.DW3/2, PAN Card Laljibhai Kanjibhai Soni Ex.DW3/3. In cross-examination, this witness stated that gold is a notified item and in this regard, import licence is granted by DGFT, which is to be mentioned in the bill, however, he denied the suggestion that bill Ex.D1 is a forged document.

Shiv Kumar Gupta appeared as DW2 (again marked as DW2, though he was DW4). This witness proved the income tax return as Ex.DW1/A.

Thereafter, the trial Court, vide judgment dated 31.03.2014, held the petitioner guilty of keeping in his possession DM5300, in violation of provisions of Sections 8(1) & 8(2) of FERA, however, it was held that the prosecution has failed to prove that the gold recovered or Rs.3.00 lacs was on account of trading in foreign exchange. Vide order of even date, the petitioner was sentenced to undergo R.I. for a period of six months and to pay a fine of Rs.5,000/-. In default of payment of fine, he was ordered to further undergo R.I. for a period of three months. It was stated that the custody period as undertrial will be set off and the case property will be confiscated, however, the gold in question i.e. 08 biscuits of 10 tola each and Indian currency of Rs.3.00 lacs is to be returned to the accused against receipt, after expiry of period of limitation.

Thereafter, two appeals were preferred before the lower appellate

Court. First appeal was filed by the petitioner challenging his conviction and order of sentence and second appeal was filed by the complainant/Chief Enforcement Officer for enhancement of the sentence. The lower appellate Court, vide impugned judgment dated 08.12.2016, dismissed the appeal filed by the petitioner, however, allowed the appeal filed by the complainant. Resultantly, sentence of 06 months R.I. awarded by the trial Court was enhanced to R.I. for a period of 02 years, however, fine of Rs.5,000/- was retained.

This revision petition is pending since 2016 and is still in motion hearing.

Vide order dated 10.03.2017, sentence of the petitioner was suspended, observing that out of 02 years R.I. awarded by the lower appellate Court, the petitioner has already undergone incarceration for a period more than 07 months.

LCR is requisitioned.

Learned senior counsel for the petitioner has argued that the trial Court recorded the findings in paras No.23 to 27 of its judgment observing that under first point, it was held that no evidence has come forth to establish beyond doubt that there was nexus between purchased gold and use of foreign exchange, therefore, the petitioner cannot be held guilty of violating the provisions under Sections 8(1) & 8(2) of FERA. It is also held that since the accused has not claimed ownership of the recovered gold and he retracted his confession made before PW3, which are on record as Ex.D4 and Ex.D5, stating

that the gold was purchased from M/s Laljibhai Khanjibhai Jewellers, Ahemdabad, therefore, the prosecution has failed to prove that gold was purchased using foreign exchange and the findings at first point were returned in favour of the petitioner.

So far as point No.2 is concerned, it was held that it cannot be concluded that retraction is mere an afterthought and had been influenced by the fact that when he was detained and produced in the Court, he had no availability of legal help and this point was decided in favour of the prosecution.

So far as third point is concerned, it was held that DM 5300 were recovered from the petitioner, as per panchnama Ex.PW3/A, which is a confessional statement. On 4th point, it was held that mere possession of Indian currency is not an offence and decided it in favour of the accused-petitioner.

It is further submitted that once the trial Court recorded a finding that as per statement of DW3 Pankaj Bhai Goswami, jewellery was purchased from M/s Laljibhai Khanjibhai Jewellers of Ahmedabad, as reflected in the Income Tax Return, the lower appellate Court could not have reversed the findings on this aspect.

It is also argued that the lower appellate Court failed to appreciate that the petitioner was in custody and was forced to make confessional statement regarding the recovery, whereas DM 5300 were not proved to be recovered from the residential premises of the petitioner. Learned counsel laid much emphasis that since two co-accused Rakesh Kumar and Sanjay were

acquitted as per judgment dated 19.02.2011, which has attained finality, the petitioner, who was implicated on their disclosure, cannot be convicted, as there is no independent evidence against him. It is submitted that except the voluntary statement of the petitioner, which was later on retracted by him at the first available opportunity, when he got the legal assistance, there is no other evidence on record, therefore, statements of the petitioner recorded by PW2 under Section 40 of FERA were not voluntary and he cannot be held guilty on the solitary statements, which were later on retracted, as the confession was not voluntary in nature. The reliance is placed on the judgment of the Hon'ble Supreme Court in **Vinod Solanki Vs. Union of India and another, 2009 (1) RCR (Crl.) 911**, wherein it is held as under: -

“34. A person accused of commission of an offence is not expected to prove to the hilt that confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction. With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that

the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.

35. In the instant case, the Investigating Officers did not examine themselves. The authorities under the Act as also the Tribunal did not arrive at a finding upon application of their mind to the retraction and rejected the same upon assigning cogent and valid reasons therefor. Whereas mere retraction of a confession may not be sufficient to make the confessional statement irrelevant for the purpose of a proceeding in a criminal case or a quasi criminal case but there cannot be any doubt whatsoever that the court is obligated to take into consideration the pros and cons of both the confession and retraction made by the accused. It is one thing to say that a retracted confession is used as a corroborative piece of evidence to record a finding of guilt but it is another thing to say that such a finding is arrived at only on the basis of such confession although retracted at a later stage.

36. Appellant is said to have been arrested on 27.10.1994; he was produced before the learned Chief Metropolitan Magistrate on 28.10.1994. He retracted his confession and categorically stated the manner in which such confession was purported to have been obtained. According to him, he had no connection with any alleged import transactions, opening of bank accounts, or floating

of company by name of M/s Sun Enterprises, export control, Bill of Entry and other documents or alleged remittances. He stated that confessions were not only untrue but also involuntary.

37. The allegation that he was detained in the Office of Enforcement Department for two days and two nights had not been refuted. No attempt has been made to controvert the statements made by appellant in his application filed on 28.10.1994 before the learned Chief Metropolitan Magistrate. Furthermore, the Tribunal as also the Authorities misdirected themselves in law insofar as they failed to pose unto themselves a correct question. The Tribunal proceeded on the basis that issuance and services of a show cause notice subserves the requirements of law only because by reason thereof an opportunity was afforded to the proceedee to submit its explanation. The Tribunal ought to have based its decision on applying the correct principles of law. The statement made by the appellant before the learned Chief Metropolitan Magistrate was not a bald statement. The inference that burden of proof that he had made those statements under threat and coercion was solely on the proceedee does not rest on any legal principle. The question of the appellant's failure to discharge the burden would arise only when the burden was on him. If the burden was on the revenue, it was for it to prove the said fact. The Tribunal on its independent examination of the factual matrix placed before it

did not arrive at any finding that the confession being free from any threat, inducement or force could not attract the provisions of Section 24 of the Indian Evidence Act.”

It is thus submitted that the statement Ex.PW3/A is an involuntary statement and the petitioner cannot be held guilty on this sole evidence and is entitled to be acquitted, as held by the Hon’ble Supreme Court of India.

It is next argued that it has come in the cross-examination of PW2 that Jagdish Chand was never arrested regarding alleged recovery. PW3, in cross-examination, stated regarding discrimination between accused Jagdish Chand and the petitioner and admitted that no reply was sent to the retraction made by the petitioner, therefore, retracted statements of the petitioner were never disputed by the prosecution. It is submitted that it is evident from cross-examination of PW2 and PW3 that the petitioner has been falsely implicated, as nothing incriminating was recovered from his shop, therefore, there is no violation of Sections 8(1) & 8(2) of FERA. It is stated that the petitioner was carrying on legal business of sale and purchase of electronic goods in New Delhi and in police custody, he was forced to make involuntary statement on 19.06.1997 by the officials of Punjab Police and Enforcement Directorate and again on 20.06.1997, he was forced to make involuntary statement under Section 40 of FERA. It is stated that MLR of the petitioner conducted at the instance of the Court, where he was produced, reflects that he was tortured and beaten.

It is next argued that except the involuntary statements, there is no

other evidence against the petitioner regarding recovery and there are material contradictions in the statements of PW2 and PW3, which are not explained by the prosecution. It is submitted that search of house of the petitioner was not conducted in the presence of respectable persons of the locality and the panchnama was prepared much after search of shop of the petitioner. It is submitted that it is admitted by PW3 I.M. Bhatia and PW2 N.K. Dhaka that Jagdish Chand was never arrested in this case and the entire liability is illegally fixed on the petitioner.

It is further submitted that while enhancing the sentence of the petitioner, the lower appellate Court has not appreciated the legal proposition, as held by the Hon'ble Supreme Court that in an appeal seeking enhancement of the sentence, the Court is to make special grounds for enhancement. Learned counsel has relied upon a judgment in **Shiv Govind Vs. The State of M.P., 1972 AIR (Supreme Court) 1823**, wherein the Hon'ble Supreme Court has held as under: -

*“It seems clear to us that the High Court had overlooked the principles, laid down by this Court repeatedly, which should govern the exercise of powers of the High Court to enhance sentences Imposed by trial courts. In **Bed Raj v. The State of Uttar Pradesh (1955) 2 SCR 583**. this Court observed at page 588-589:*

"A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court

*should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; See for example the observations in **Dalip Singh v. State of Punjab (1954 S.C. Rule 146, 156)** and **Nar Singh v. State of Uttar Pradesh [1955](1) S.C.R. 238, 241**). In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. In our opinion, these principles have not been observed. It is impossible to hold in the circumstances described that the Sessions Judge did not impose a substantial sentence, and no adequate reason has been assigned by the learned High Court Judges for considering the sentence manifestly inadequate. In the circumstances. bearing all the considerations of this case in mind, we are of opinion that the appeal (which is limited to the question of sentence) should be allowed and that the sentence imposed by the High Court should be set aside and that of the Sessions Court restored".*

It is submitted that the trial Court has taken a balanced and objective view, while awarding sentence of 06 months and the lower appellate Court has wrongly enhanced the sentence and prayed that judgment of enhancement of sentence be set aside, as it was set aside by the Hon'ble

Supreme Court in **Shiv Govind**'s case (supra).

It is further submitted that the petitioner has already undergone more than 07 months of sentence; he is facing protracted trial since 1997, therefore, being first offender, he may be granted the concession of probation of good conduct or in the alternative, impugned judgment passed by the lower appellate Court be set aside.

In reply, learned Additional Solicitor General of India has argued that the lower appellate Court has right enhanced the sentence considering gravity of the offence, as sentence of 06 months R.I. awarded by the trial Court was inadequate. It is submitted that the petitioner was found involved in huge transaction of foreign exchange and was dealing in prohibited items i.e. gold biscuits of foreign origin and therefore, it being an economic offence, sentence was right enhanced.

After hearing learned counsel for the parties, considering the limited scope of an appeal against acquittal filed under Section 378 Cr.P.C., this Court finds that the lower appellate Court has patently erred in enhancing the sentence without making out a special case, for the following reasons: -

- (a) The only reason given by the lower appellate Court in para No.35 of the impugned judgment reads as under: -

“Now coming to the question of sentence. Appellant/accused has submitted that he has already remained in custody for a period of 4 ½ months and he is sole bread earner of his family consisting of his wife, his

two children, his old and ailing mother. His children are studying. The mother of the appellant has slip disc and she has severe pain in her knee and in her back. The condition of his mother is very critical and there is no one else to look after the family of the appellant. I have considered the request of the appellant/accused for taking a lenient view on sentence, but the prosecution has duly proved on record the guilt of the accused beyond any shadow of doubt that the documents written in the hands of the accused himself and admitting his guilt with regard to the transaction made regarding the purchase of foreign currency from unauthorized sources and retraction of the same after due deliberation, but the learned trial Court inspite of this fact granted the minimum sentence. In this way, the offence committed by the appellant/accused is of serious in nature. Hence, the sentence announced by the trial Court is modified and is enhanced to undergo rigorous imprisonment for two years and to pay fine of Rs.5000/-. In default of payment of fine, to further undergo rigorous imprisonment for two months under Section 56 of FERA 1973. The fine has already been paid before the Trial Court.”

(b) A perusal of the findings recorded by the lower appellate Court

would show that no special reasons have been assigned to make out a case for enhancement of the sentence. In view of judgement of the Hon'ble Supreme Court in **Shiv Govind's** case (supra), the lower appellate Court was required to record a finding that the trial Court, while awarding the sentence of six months R.I., has not properly exercised its discretion and the lower appellate Court should not interfere to the detriment of an accused, except for strong reasons, which must be disclosed on the face of the judgment, however, no such reasons have been assigned, therefore, this Court finds that enhancement of sentence is not justified.

- (c) As argued on behalf of the petitioner that the petitioner being an accused of commission of offence is not expected to prove that confession was obtained from him by inducement, threat or promise and the burden is on the prosecution to show that confession was voluntary in nature, in view of judgment of the Hon'ble Supreme Court in **Vinod Solanki's** case (supra), both the Courts have recorded a finding that confessional statement is proved by PW3, who recorded the same and during cross-examination, his testimony could not be shattered. Even as per statements of PW1 and PW2, who were the witnesses of the confessional statement, it could not be proved that statement was involuntary, though it was retracted by the petitioner at a subsequent stage.

- (d) The lower appellate Court failed to consider that the initial recovery was from co-accused Rakesh Kumar and Sanjay, who stand acquitted vide judgment dated 19.02.2011 and prosecution never challenged their acquittal before higher Court. The petitioner was nominated on their statements and once they were acquitted, the link to convict the petitioner was not proved. Therefore, the enhancement of sentence was not justified.

In view of the reasons recorded above, present revision petition is partly allowed to the extent that impugned judgment passed by the lower appellate Court, enhancing six months R.I. and fine of Rs.5,000/-, as awarded by the trial Court, to 02 years R.I. and to pay a fine of Rs.5,000/- and in default thereof, to further undergo R.I. for two months, is set aside and that of the trial Court is restored.

As the fine has already been paid and the petitioner, as per the custody certificate, has already undergone 07 months of sentence i.e. over and above 06 months R.I. awarded by the trial Court, no further action is called for, as he has already undergone the entire sentence.

With the aforesaid modifications, present revision petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

22.12.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No