IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-909-SBA-2006
Reserved on:21.03.2023
Date of Pronouncement:22.03.2023

Asstt. Director, Enforcement Directorate …Appellant

vs.

Waryam Singh …Respondent

Coram : Hon'ble Mr. Justice N.S. Shekhawat

Present : Mr. Arvind Moudgil, Senior Counsel, Govt. of India
for the appellant.

Mr. A.S.Gill, Advocate
for the respondent.

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N.S.Shekhawat J.

The present appeal is directed against the judgment dated 06.10.2004 passed by the Chief Judicial Magistrate, Jalandhar, whereby, the respondent was ordered to be acquitted of the charge under Section 56 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred at as 'the Act'). The learned trial Court held that there was no other evidence against the respondent except his statements Ex.CW2/A and Ex.CW2/B and no material was available on record to connect the appellant with the commission of the alleged crime and the prosecution had miserably failed to prove the case against him. Challenging the impugned judgment, the Enforcement Directorate has preferred the instant appeal before this Court.

The brief facts of the case are that on 22.01.1990, the residential premises of Balwinder Singh Sandhu S/o Kundan Singh were searched by the officials of the Enforcement and the said raid resulted into seizure of 88 US $, 2315 UAE Dirhams, Indian currency of Rs.1,10,880/- and various other documents, in which there were some lists giving the details of certain parties. Certain amounts in code were mentioned against those persons, which indicated the payments to them. During this course of search at the residential premises, Waryam Singh, respondent/accused was found present and during the search, one more person, who disclosed his name as Shamsher Singh S/o Swaran Singh, also entered the said premises and his personal search was conducted. During his search, certain documents depicting the names and addresses of certain people, were also found. Balwinder Singh Sandhu was questioned and he stated that he was running a shop at Dubai and had come to India on 07.01.1990 and thereafter the officers of Enforcement Directorate (ED) had raided his house and seized 88 US $ and 2315 UAE Dirhams, which had brought with himself from Dubai on 07.01.1990 and he was fully aware of the contents of the documents, which were seized from his residence and he had knowledge about the documents, which were used in the distribution of the money in India. He was collecting Dirhams in Dubai and the same were remitted into India through channels other than banking channels and he promised to get the payment made in India of Rs.1,000/- against 180 Dirhams and he earned 6 Dirhams per hundred rupees, paid in India. He collected amounts in Dirhams at Dubai, from those persons, who wanted to remit money to their relation in India. The Dirhams collected by him at Dubai were given by him to J.S. Bedi at Dubai and Indian currency @ Rs.100/- for 174 Dirhams was provided to his persons in India by Mr. J.S. Bedi residing at Delhi. Mr. B.S.Bedi and Mr. I.S. Bedi frequently visited Dubai and they were in India at present. He further stated that when the money reached India, he communicated the details for making payments in India to his brother-in-law Waryam Singh alias Babli, respondent/accused, who resided in his house at Jalandhar for the last three years. He also conveyed to respondent to go to Delhi and collect money and make payments and the same was followed by the respondent. He was engaged in the said job since 1988 and the last payment was made by him on 21.01.1990. Satnam Singh S/o Waryam Singh, respondent was also engaged for the said distribution of payments in India and he was in Dubai since November, 1989. Till date, they had distributed a sum of Rs.60 lacs in India under instructions from abroad and out of the said amount, Rs.1,10,900/- were seized from their house. In fact, that was the amount received from Delhi for distribution in Punjab to the relations of the persons, who had made payments in Dirhams to him at Dubai. The statement of the respondent was also recorded on 22.01.1990, who also stated that he had gone to Dubai and stayed with his brother-in-law Balwinder Singh Sandhu and returned to India in May, 1989 and was living with his sister in Jalandhar. While he was in Dubai, his brother-in-law suggested to him to distribute money in India and he agreed with the proposal. The money used to be sent to him in India under the instructions of Balwinder Singh sandhu, who used to instruct him by making telephonic calls as well as by writing letters. He used to bring Indian currency from Delhi, from Inderjit Singh Bedi, who used to deliver him money at Manav Guest House, Karol Bagh, Delhi. Till 22.01.1990, he had gone to Delhi nine times and total money amounting to Rs.20 lacs was collected from there. Balwinder Singh Sandhu, his brother-in-law used to send him the details of distribution of money from Dubai and he had distributed Rs.20 lacs in India on the instructions of Balwinder Singh Sandhu. The Enforcement Directorate also recorded his statement to the effect that during the search of the house of his brother-in-law Balwinder Singh Sandhu, he was found there and his brother-in-law used to pay a sum of Rs.1,000/- per month to him for the said job. Even the bunch of chits seized were the receipts, which were obtained from the persons, to whom he had distributed money in India. Further, the statements of Shamsher Singh and several other persons were also recorded. The statement of the respondent was also recorded on 24.01.1990, in which he stated that he knew two women, namely, Surinder Kaur and Joginder Kaur and they were the same persons, to whom the payments of Rs.25,000/- and Rs.15,000/- respectively, were made under the instructions of Balwinder Singh Sandhu. He used to send money through bank drafts and the payments were made as per the instructions of Balwinder Singh Sandhu. Consequently, it was apparent that during the year 1988-90, without the general or special exemption of the Reserve Bank of India, Balwinder Singh Sandhu remitted from Dubai into India payments to the tune of Rs.60 lacs in such a manner that the remittances were received in India through channels other than the bank channels and also got the said amount distributed in India on behalf of the persons residing in Dubai. It was further alleged that the respondent appeared to have received payments to the tune of Rs.20 lacs during the period 1989-90 from the persons, who were residing in

India, by order/on behalf of the person residing outside India and also made the payments of Rs.20 lacs to the persons residing in India by order/on behalf of the persons residing outside India without any general or special exemption from the Reserved Bank of India. This all was done in contravention of the provisions of Section 9(3) of the Act. He had also contravened the provisions of Section 9(1)(b) and 9(1)(d) of the Act and thereby rendered himself liable for the proceedings under Section 50 of the Act. A show cause notice dated 10.01.1991 was issued to him by Special Director, Enforcement Directorate, New Delhi to show cause in writing as to why adjudication proceedings as contemplated by Section 51 of the Act be not taken against him for contravening the above sections of the Act and for which, the respondent/accused was liable to be prosecuted under Section 50 of the Act. The adjudication proceedings were ultimately initiated against the respondent and vide adjudication order dated 17.01.1992, he was held liable and a penalty of Rs.4 lacs was imposed on him for contravention of the provisions of Sections 9(1)(b) and 9(1)(d) of the Act. Apart from that an opportunity notice dated 08.02.1993 was issued to the accused by the Assistant Director, Enforcement Directorate, Jalandhar to show cause and to produce the evidence within 15 days to prove as to whether he had the permission of Reserve Bank of India for making payments to any person in or resident in India and to receive payments and making payments by a person not a resident in India otherwise through an authorize dealer as alleged above. Since the accused failed to produce any evidence or document, he had committed the offence as provided under Sections 9(1)(b) and 9(1)(d) of the Act punishable under Section 56 of the Act.

Since the complainant was the Assistant Director of the Enforcement Directorate and the complaint was filed by him in his official capacity, the summoning order was passed by the learned trial Court.

After his appearance, in pre-charge evidence, A.K. Kaushal, Enforcement Officer was examined as CW-1, whereas Ishwar Singh, Superintendent, Central Excise, Chandigarh was examined as CW-2. After consideration of pre-charge evidence, learned trial Court found that a *prima facie* case under Section 56 of the Act was made out against the accused and was charge-sheeted, to which he had pleaded not guilty and claimed trial. After the framing of charges, again the witnesses were produced for cross-examination further.

After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., whereby all the incriminating evidence was put to him. In defence, he placed on record a copy of the order dated 11.12.1993 of Foreign Exchange Regulatory Board as Ex.D1, release order of retention Ex.D2 and the judgment of the Appellate Tribunal dated 23.12.2003 as Ex.D-3.

I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

Learned counsel for the appellant vehemently argued that the prosecution had proved the case against the respondent by leading cogent and unimpeachable evidence. During the course of raid, enough incriminating material including foreign currency were seized from the residence of the Balwinder Singh Sandhu, where the respondent was residing and the statements of Balwinder Singh Sandhu and Waryam Singh were sufficient to make out a case against him.

The said submissions have been opposed by the learned counsel appearing on behalf of the respondent by contending that the house in question did not belong to the respondent and there was no incriminating evidence on record to connect the appellant with the commission of the crime.

I have considered rival submissions made by learned counsel for the parties and find no substance in the arguments raised by learned counsel for the appellant. Even CW-2 Ishwar Singh, Superintendent, Central Excise, Chandigarh admitted in his cross-examination that the house, which was raided, did not belong to the accused. Further, he admitted that Balwinder Singh Sandhu and his wife were present in the house at the time of raid. But surprisingly, Balwinder Singh Sandhu was not arrayed as an accused in the instant case, who was the person against whom all the allegations were levelled. Apart from that, it was apparent that the panchnama Ex.C1 did not bear the signatures of the accused, which was also admitted by CW-2 Ishwar Singh, Superintendent, Central Excise, Chandigarh and the learned trial Court rightly extended the benefit of doubt to the respondent and acquitted him.

Learned counsel for the appellant further argued that the complainant was not a part of the raiding party and his non-examination would have no impact on the present case and the respondent has been wrongly acquitted. Learned counsel for the respondent has referred to the findings recorded by the learned trial Court and submitted that the non-examination of the most material witness has caused prejudice to the case of the respondent. I agree with the submissions made by learned counsel for the respondent. The complaint was filed by Mr.D.K.Mitra, Assistant Director, Enforcement Directorate, Jalandhar. However, for the reasons best known to the prosecution, he was not examined and non-examination of the complainant, who had instituted the complaint in his official capacity, had caused serious prejudice to the case of the prosecution and he was deprived of the opportunity of cross-examining the most material witness of the prosecution, who had launched the prosecution against him.

Even otherwise, I have carefully perused the findings recorded by the learned Trial Court and the learned Trial Court has recorded valid and substantial reasons for acquitting the present respondent. In the instant case, the raid was conducted by Ishwar Singh, who had appeared as CW-2 in the instant case. He admitted that at the time of raid, no independent witness was joined. Apart from that a panchnama Ex.C1 was prepared and as per the testimony of CW2 Ishwar Singh, panchnama Ex.C1 was signed by the respondent/accused. However, during his deposition, the panchnama was put to him and he admitted that it did not bear the signatures of the respondent. Apart from that, A.K Kaushal was examined as CW1 and he also admitted that two independent witnesses were associated, but had not been examined. He further admitted that panchnama did not bear the signatures of the accused and the premises in question belonged to Balwinder Singh Sandhu. He further admitted that the accused belonged to Batala and did not reside at Maqsudan, from where the recoveries had allegedly taken place. Apart from that, it has been shown that the respondent had suffered two statements Ex.CW2/A and Ex.CW2/B and it was alleged that the statements were voluntarily made by the respondent. However, the prosecution could not place on record any orders/notice asking the respondent to appear and make the statements. This fact alone proves that the statements made by the respondent were not voluntarily. Apart from that, the learned trial Court has correctly recorded that there is no evidence against the respondent/accused except his own statements Ex.CW2/A and Ex.CW2/B. Even the prosecution could not lead any evidence to connect the respondent with the alleged chits Ex.C2 to Ex.C14 and the findings recorded by the learned trial Court are liable to be upheld. Apart from that, even the complaint was premature as the same was launched on the strength of the orders Ex.CW2/C and the appeal preferred by the respondent against the said order was stated to be pending before the Appellate Tribunal. Thus, it is apparent that the very basis i.e the order Ex.CW2/C had not even attained finality and the complaint was preferred in a tearing hurry without any valid explanation.

Hon'ble the Supreme Court in the matter of "**State of Maharashtra Vs. Fazal Rehman Abdul", 2014 (7) SCC (Crl) 1** has observed as under:-

> *"This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court*

had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

Considering the facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is wholly misconceived, bereft of merits and without any substance; thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations, the present appeal stands dismissed. Pending application(s), if any, shall also stand disposed of.

The trial Court record be sent back forthwith.

(N.S.SHEKHAWAT)
JUDGE

22.03.2023
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Whether speaking/reasoned : Yes
Whether reportable : Yes