IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.1371 of 2023 and
Crl.MP.No.11437 of 2023

Manoj Kumar M.Lulla ... Petitioner

Versus

The Enforcement Officer,
Enforcement Directorate,
Government of India,
Shashtri Bhavan,
Chennai 600 006 ... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records pertaining to the impugned order passed in Crl.MP.No.6180 of 2022 in EOCC.No.68 of 1998 by the learned Additional Chief Metropolitan Magistrate(EO-1) Court, Egmore, Chennai dated 05.07.2023 and set aside the same.

For Petitioner : Mr.P.R.Raman,
Senior Counsel
for M/s.Raman and Associates

For Respondent : Mr.P.Rajnish Pathiyil,
Special Public Prosecutor for ED

ORDER

This criminal revision case has been preferred against the order passed in Crl.MP.No.6180 of 2022 in EOCC.No.68 of 1998 by the learned Additional Chief Metropolitan Magistrate(EO-1) Court, Egmore, Chennai dated 05.07.2023, thereby dismissed the petition filed for seeking to discharge the petitioner.

2. The respondent filed complaint alleging that the accused company and its sister companies failed to realise the export proceeds in respect of garments exported to USA – M/s.Eplosifinc, New York for more than Rs.40 crores as on 31.12.1995. During the course of search, on 09.09.1996, no one was present except for the General Manager. Subsequently, on 13.09.1996, search was conducted in the residential premises of the third accused and some documents were seized. In pursuance to the seizure, the third accused was examined under Section 40 of the Foreign Exchange Regulation Act, 1973 (hereinafter called as 'the Act') and he stated that he is the Managing Director of the Group of Companies called M/s.Kiran Fasion Private Limited, M/s.Kiran Styles Private Limited, M/s.Mistry Apparels Private Limited and M/s.Kiran Creations Private Limited. They have been exporting readymade lady garments

to USA. Due to certain financial difficulties of M/s.Takeway Styles Private Limited, the banker of the said company in USA requested another accused to take over the said company. Accordingly, it was taken over and a new company was started in the name and style of M/s.Xplosif INC and the said company was involved in importing readymade garments from the accused companies. When State of India, Overseas Branch started pressing for payments in respect of the exports made to the company in USA, one of the accused who took over the said company had utilised the funds of M/s.Xplosif INC started by him in USA for paying outstanding bills of another company to the tune of 5.2 million US dollars and the payments toward the exports sent to that company remain unpaid. Therefore, due to their failure to realise the full export proceeds of the goods of the value of 9,06,527.92 US dollars and by not doing or / and by not taking any action or refrain from taking any action to secure the payment for the goods in the prescribed manner within the stipulated period, without the permission of the Reserve Bank of India, the companies have contravened the provisions of Section 18(2) of the Act r/w 18(3) of the Act. Therefore, they are liable to be prosecuted under Section 56(1) (i) of the Act. The Directors are also liable to be prosecuted under Section 68 (1) of the Act. Before framing of charges, the petitioner, who is arrayed as the third accused in the complaint, filed petition to discharge himself from the charges under the Act. However, the trial court dismissed the said petition and aggrieved by the said dismissal, the present criminal revision case has been filed.

3. The learned Senior Counsel appearing for the petitioner would submit that there are totally three accused, in which the petitioner is arrayed as A3 in EO.CC.No.68 of 1998. His father had been arrayed as A2, however pending this proceeding he died. The first accused is the company and the petitioner is shown as the Managing Director of the first accused company. The adjudication proceedings was initiated against the company and its directors for the contravention of provisions under Section 18(2) of the Act r/w Central Government Notification No.F-1/EC/67/73-1 dated 01.01.1974 and Section 18(3) of the Act for failure to realise export proceeds. The directors of the companies were charged in terms of Section 68 of the Act. In the adjudication proceedings, the Special Director of Enforcement, Enforcement Directorate, Government of India by order dated 31.07.2003 held that by the circumstances as evidenced from the material on record, the charges against Shri Kiron Kumar M. Lulla are upheld as established under Section 68 of the Act whereas the charges against the other two Directors i.e. Shri Manoj Kumar K.Lulla and Smt.Rani K. Lulla are held as not proved. Accordingly, fine was imposed against the charged Director. Therefore, the petitioner was discharged from

charges by the adjudicating authority. Hence, he cannot be prosecuted once again for the contraventions which were already adjudicated by the adjudicating authority.

4. He further submitted that the Hon'ble Supreme Court of India held that in case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases. However, relying on the dissenting view taken by the minority of the Judges of the Larger Bench, the trial court unfortunately dismissed the petition to discharge the petitioner.

5. Per contra, the learned Special Public Prosecutor for ED appearing for the respondent would submit that the Hon'ble Supreme Court of India held in the case of ***Radheshyam Kejriwal Vs. State of West Bengal and another*** reported in ***(2011) 3 SCC 581*** that adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution. The standard of proof in a criminal case is much higher than that

of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. He relied upon also the judgment of the Hon'ble Supreme Court of India in the case of ***Standard Chartered Bank and others Vs. Directorate of Enforcement and Others*** reported in ***(2005) 4 SCC 530***, in which the Hon'ble Supreme Court of India held as follows:

> *29. The contention of the appellants is that when an offence is punishable with imprisonment and fine, the court is not left with any discretion to impose any one of them and consequently the company being a juristic person cannot be prosecuted for the offence for which custodial sentence is the mandatory punishment. If the custodial sentence is the only punishment prescribed for the offence, this plea is acceptable, but when the custodial sentence and fine are the prescribed mode of punishment, the court can impose the sentence of fine on a company which is found guilty as the sentence of imprisonment is impossible to be carried out. It is an acceptable legal maxim that law does not compel a man to do that which cannot possibly be performed (impotentia excusat legem). This principle can be found in Bennion's Statutory*

Interpretation, 4th Edn. at p. 969. "All civilized systems of law import the principle that lex non cogit ad impossibilia...." As Patterson, J. said "the law compels no impossibility". Bennion discussing about legal impossibility at p. 970 states that: "If an enactment requires what is legally impossible it will be presumed that Parliament intended it to be modified so as to remove the impossibility element." This Court applied the doctrine of impossibility of performance (lex non cogit ad impossibilia) in numerous cases.

30. As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. The offences mentioned under Section 56(1) of the FERA Act, 1973, namely, those under Section 13; clause (a) of sub-section (1) of Section 18; Section 18-A; clause (a) of sub-section (1) of Section 19; sub-section (2) of Section 44, for which the minimum sentence of six months' imprisonment is prescribed, are serious offences and if committed would have *serious financial consequences affecting the economy of the country. All those offences could be committed by company or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences, if these offences involve the amount or value of more than Rs one lakh, and that they could be prosecuted only when the offences involve an amount or value less than Rs one lakh.*

31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in costruing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale *financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.*

5.1 Therefore when the company cannot be prosecuted and imprisoned, the Managing Director who represents the company can be very well prosecuted. Therefore, the complaint is very much maintainable and the trial court rightly had taken cognizance and the trial court is yet to frame charges against the petitioner. As per Section 68(1) of the Act, the petitioner can very well be prosecuted as he is the Managing Director of the Company.

6. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

7. The only point for consideration in this criminal revision case is whether the petitioner, who is the Managing Director of the first accused company, can be prosecuted when the adjudicating authority exonerated him from the very same set of charges.

8. On perusal of records, it is revealed that by the proceedings dated 31.07.2003, the adjudicating authority i.e. The Office of Special Director of Enforcement, Enforcement Directorate, Government of India exonerated the petitioner from the very same set of charges. The relevant portion of the said order is extracted hereunder:

> *"50. As regards the charges against the individual noticees, viz., S/Shri Kiron Kumar M.Lulla, Manoj Kumar K.Lulla and Smt.Rani K.Lulla, the material brought on record during the course of the investigations and at the adjudication stage unambiguously reveals that Shri Kiron Kumar Lulla was the Director responsible for and in control of the activities of the noticee companies and taking all the business decisions whereas Shri Manoj Kumar Lulla and Smt.Rani K.Lulla, not being involved in the companies' affairs. In the given circumstances as evidenced from the material on record and the discussion in the preceding paras, the charges against Shri Kiron Kumar M.Lulla are held as established in terms of Section 68 of the FERA, 1973. The charges against the other two Directors viz. Shri Manoj Kumar K.Lulla and Smt.Rani K.Lulla are held as not proved."*

9. For the very same set of charges, the respondent lodged complaint in EO.CC.No.68 of 1998 for the contravention of provisions under Section

18(2) of the Act r/w Central Government Notification No.F-1/EC/67/73-1 dated 01.01.1974 and Section 18(3) of the Act, in which the petitioner is arrayed as the third accused. His father was arrayed as A2 and pending the complaint, he died. Before framing of charges, the petitioner filed the petition to discharge him from the charges by relying upon the order passed by the adjudicating authority dated 31.07.2003. On perusal of the order passed by the trial court, it is revealed that by relying on the dissenting view taken by the two Judges of the Larger Bench and dismissed the petition. On perusal of the judgment of the Hon'ble Supreme Court of India in the case of ***Radheshyam Kejriwal Vs. State of West Bengal and another*** reported in (2011) 3 SCC 581, it is found that majority of the judges held as follows:

> *"38. The ratio which can be culled out from these decisions can broadly be stated as follows:*
>
> *(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
>
> *(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
>
> *(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
>
> *(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue;

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

10. Therefore, it is clear that the yardstick would be to judge as to whether the allegation in the adjudicating proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merits that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of process of the Court.

11. As stated supra, in the adjudication proceedings against the petitioner, he was exonerated from the very same set of charges in the complaint lodged against the petitioner on merits. Therefore, the continuation of prosecution against the petitioner is nothing but clear abuse of process of the court. Therefore, the judgment relied upon by the learned Special Public Prosecutor for ED appearing for the respondent is not applicable to the case on hand. Further, though the company cannot be prosecuted, as per the adjudication proceedings, fine has been imposed against the company. Therefore, if the company fails to pay the fine, the respondent can very well prosecute the company for non payment of fine amount imposed by the adjudicating authority. Further, the respondent can also proceed with the recovery of fine in the manner known to law against the person who is liable on behalf of the company. However, the respondent cannot prosecute the petitioner who was already exonerated from the very same set of charges by the adjudicating authority.

12. In view of the above, the impugned order is liable to be set aside. Accordingly, the impugned order passed in Crl.MP.No.6180 of 2022 in EOCC.No.68 of 1998 by the learned Additional Chief Metropolitan

Magistrate(EO-1) Court, Egmore, Chennai dated 05.07.2023, is set aside. The petitioner is discharged from all the charges in EOCC.No.68 of 1998 on the file of the learned Additional Chief Metropolitan Magistrate(EO-1) Court, Egmore, Chennai.

13. In the result, this criminal revision case stands allowed. Consequently, connected miscellaneous petition is closed.

16.06.2025
(3/4)

Neutral citation:Yes/No
Index:Yes/No
Speaking/Non speaking order
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To
1.The learned Additional Chief Metropolitan Magistrate(EO-1) Court, Egmore, Chennai
2.The Enforcement Officer,
Enforcement Directorate,
Government of India,
Shashtri Bhavan,
Chennai 600 006
3.Public Prosecutor,
High Court of Madras

G.K.ILANTHIRAIYAN. J,

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