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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 20.02.2025

+ **CRL.A. 1064/2016, CRL.M.A. 17473/2016 & CRL.M.A. 18522/2016**

Y S CHOWDARY

.....Appellant

Through: Mr. C. Mohan Rao, Sr. Adv. with Mr. Ramesh Allanki, Mr.R. Chandrachud, Ms. Aruna Gupta, Mr. Dhuli Venkata, Mr. Krishna, Mr.Loheshkr Sharma & Mr. Syed Ahmad Naqvi, Advs.

versus

ENFORCEMENT DIRECTORATE

.....Respondent

Through: Mr. Rakesh Kumar (CGSC-UOI) with Mr. Anupam Sharma, Special Counsel –ED with Mr. Prakash Airan, Ms. Harpreet Kalsi, Mr. Sunil & Mr. Vashisht Rao, Advs.

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+ **CRL.A. 1129/2016 & CRL.M.A. 18532/2016**
SUJANA STEELS LTD

.....Appellant

Through: Mr. C. Mohan Rao, Sr. Adv. with Mr. Ramesh Allanki, Mr.R. Chandrachud, Ms. Aruna Gupta, Mr. Dhuli Venkata, Mr. Krishna, Mr.Loheshkr Sharma & Mr. Syed Ahmad Naqvi, Advs.

versus

ENFORCEMENT DIRECTORATE

.....Respondent

Through: Mr. Rakesh Kumar (CGSC-UOI) with Mr. Anupam Sharma, Special Counsel –ED with Mr. Prakash Airan, Ms. Harpreet Kalsi, Mr. Sunil & Mr. Vashisht Rao, Advs.

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+ **CRL.A. 1131/2016 & CRL.M.A. 18562/2016**



S T PRASAD

.....Appellant

Through: Mr. C. Mohan Rao, Sr. Adv. with Mr. Ramesh Allanki, Mr.R. Chandrachud, Ms. Aruna Gupta, Mr. Dhuli Venkata, Mr. Krishna, Mr.Loheshkr Sharma & Mr. Syed Ahmad Naqvi, Advs.

versus

ENFORCEMENT DIRECTORATE

.....Respondent

Through: Mr. Rakesh Kumar (CGSC-UOI) with Mr. Anupam Sharma, Special Counsel –ED with Mr. Prakash Airan, Ms. Harpreet Kalsi, Mr. Sunil & Mr. Vashisht Rao, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J (ORAL)

1. These are appeals filed under Section 35 of Foreign Exchange Regulation Act, 1973 (“*FERA*”) seeking to challenge the order dated 02.06.2016, passed by the Appellate Tribunal for Foreign Exchange, New Delhi in Appeal Nos. 119/2008; 120/2008 and 121/2008.
2. Briefly stating the facts are that M/s Sujana Steel Ltd. (“*SSL*”) (appellant in CRL.A. 1129/2016) is a company registered under the Companies Act. Mr. Y.S. Chowdary (appellant in CRL.A. 1064/2016) was the chairman of the SSL and Mr. S.T. Prashad (appellant in CRL.A. 1131/2016) was the Managing Director of the SSL.
3. During the period 1998-99, SSL acquired and remitted a sum of US \$13,73,895 to M/s Techno Imports and Exports, Dubai, purportedly for the import of 8707 MT of Heavy Metal Scrap into India. However, no



such material was actually imported. Consequently, an Opportunity Notice dated 14.04.2002 was issued to SSL alleging that SSL contravened sections 8 (3) and 8 (4) of FERA.

4. After the adjudicatory proceedings, the Learned Special Director, ED vide order dated 25.03.2008 imposed a penalty of Rs. 4 crores on SSL and Rs.1 crore each on Mr. Y.S. Chowdary and Mr. S.T. Prashad, being the chairman and the Managing Director of SSL. Thereafter, the appellants preferred an appeal before the Appellate Tribunal for Foreign Exchange, New Delhi.
5. On 02.06.2016, the Appellate Tribunal allowed the appeals and reduced the penalty from Rs.4 crores to Rs.1 crore as far as SSL is concerned, and Rs.30 lakhs each as far as the Chairman and Managing Director are concerned.
6. Admittedly, the penalty as imposed by the Appellate Tribunal for Foreign Exchange, New Delhi has been so deposited.
7. Mr. Rao, learned senior counsel appearing on behalf of the appellants only restricts his prayers to the fact that the word “guilty” has been used in paras 37 and 40 of the order dated 02.06.2016, passed by the Appellate Tribunal for Foreign Exchange, New Delhi which, according to him, cannot be so used as the violation of provisions of FERA cannot be termed as an ‘offence’ within the definition of Section 2 (n) of the Code of Criminal Procedure, 1973. The adjudicatory authorities under the FERA Act are not courts and the proceedings are not criminal proceedings and hence a person cannot be declared “guilty” for violation of section 8(3) and 8(4) of the Act. In this regard, para 37 and 40 of the order dated 02.06.2016 reads as under:-



“37. As regards the liability of the appellants Y.S. Choudhary, Chairman of the appellant company, Shri S.T. Prasad, Managing Director of the appellant company and Jawahar Babu, Chief Executive Officer (Foreign Trade) of the appellant company, we do not agree with arguments advanced by the Ld. counsel for the appellants that the said appellants cannot be held vicariously liable as they were the whistle blowers and were Executives of the appellant company and were not de-facto in-charge of the business of the appellant company. In respect of Jawahar Babu, it has been contended that he was the CEO of the group of companies and not for M/s Sujana Steels Ltd. and was not involved in the disputed transactions. It has also been contended that the affairs of the company were handled by P. Mallikarjuna Reddy, Director of the company who has not been made a notice. The legal position in respect of the appellants has already been discussed in the body of the judgment. Appellant Y.S. Choudhary, Chairman and appellant S.T. Prasad; Managing Director were the persons who were by virtue of their designations supposed to have been involved in the day to day affairs of the company and must have been in-charge of the conduct of the business and cannot be absolved of their liability on the pretext that P. Mallikarjuna Reddy, Director was looking after the affairs of the company in respect of the disputed transactions. Therefore, the findings of the Adjudicating authority in



respect of the said appellant holding them guilty for contraventions under section 8(3 and 8(4), of FERA with the aid of section 68(1) of FERA, 1973, in our view, is legally and factually sound and does not require any interference.

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*40. The appeals are disposed of with the observations that the findings of the Adjudicating Authority holding the appellant Sujana Steels Ltd. (Company) **guilty** under section 8 (3) and 8(4) of FERA and / appellants Y.S. Choudhary and appellant S.T. Prasad respectively **guilty** for contraventions of section 8(3) and 8(4) of FERA r/w with section 68(1) of FERA, 1973 are upheld and affirmed. n While the findings in respect of the appellant Jawahar Babu is set aside and his appeal is allowed. The order of the Adjudicating Authority in respect of imposition of penalties is modified and in case of the appellant M/s Sujana Steels Ltd. the amount of penalty imposed by the Adjudicating Authority i.e reduced from Rs. 4 crores to Rs. 1 crore while in the case of appellant Y.S. Choudhary and appellant S.T. Prasad the amount of penalties is reduced from Rs. 1 crore each to Rs. 30 lakhs each. The amount of penalties, if any deposited, by way of pre-deposit by the said appellants will be adjusted and the balance amount will be paid by the appellants within 2 months from the date of the communication of this order. The amount of pre-deposit, if any, by the appellant Jawahar Babu will be refunded to him*



*after the expiry of the period of appeal by the respondent.
The parties will bear their own costs. ”*

(Emphasis added)

8. He places reliance on the judgment passed by the Hon’ble Supreme Court in ***Director of Enforcement vs. M.C.T.M. Corporation Pvt. Ltd. and Others*** (1996) 2 SCC 471 and more particularly para 7 and 19 which reads as under:

“7. “Mens-rea” is a state of mind. Under the criminal law, mens-rea is considered as the "guilty intention" and unless it is found that the "accused" had the guilty intention to commit the “crime” he cannot be held "guilty" of committing the crime. An “offence” under Criminal procedure Code and the General clauses Act, 1897 is defined as any act or omission "made punishable by any law for the time being in force". The proceedings Under Section 23(1)(a) FERA, 1947 are "adjudicator" in nature and character and are not “criminal proceedings”. The officers of the Enforcement Directorate and other administrative authorities are expressly empowered by the Act to “adjudicate” only. Indeed they, have to act “judicially” and follow the rules of natural justice to the extent applicable but, they are not "Judges" of the “Criminal Courts” trying an “accused” for commission of an offence, as understood in the general context. They perform quasi-judicial functions and do not act as “Courts” but only as “administrators” and “adjudicators”. In the proceedings



before them, they do not try “an accused” for commission of “any crime” (not merely an offence) but determine the liability of the contravenor for the breach of his "obligations" imposed under the Act. They impose "penalty" for the breach of the "civil obligations" laid down under the Act and not impose any "sentence" for the commission of an offence. The expression "penalty" is a word of wide significance. Sometime, it means recovery of an amount as a penal measure even in civil proceedings. An exaction which is not compensatory in character is also termed as a "penalty". When penalty is imposed by an adjudicating officer, it is done so in "adjudicator proceedings" and not by way of fine as a result of "prosecution" of an "accused" for commission of an "offence" in a criminal Court. Therefore, merely because "penalty" clause exists in Section 23(1)(a), the nature of the proceedings under that Section is not changed from "adjudicator" to "criminal" prosecution. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender.

.....

19. So far as the amount of penalty is concerned, the appellate Board, as already noticed, has modified the amount of penalty as imposed by the Directorate of Enforcement. The learned Addl. Solicitor General, Mr. Tulsi, Submitted that the appellant has no objection to the



waiving of the entire amount of penalty in so far as each one of the Directors is concerned, some of whom are reported to have died during the pendency of the proceedings in this Court but that the penalty imposed upon the Company on both the charges does not call for any interference, because of the inordinate delay in repatriation of the foreign exchange, which according to him has not been repatriated even till date as that failure on the part of the Company has deprived this country to use the foreign exchange to subserve the common good, all these years. Learned counsel for the respondents does not controvert that the foreign exchange which was receivable in India from Malaysia has not been repatriated even till date. We, therefore, in view of the submissions made at the Bar set aside the penalty imposed upon each of the Directors of the Company but maintain the penalty imposed upon the Company, as modified by the Appellate Board. The appeal succeeds and is allowed in the above terms. In the peculiar facts and circumstances of the case, the parties shall bear their own costs.”

9. To my mind, the learned senior counsel for the appellants has rightly placed reliance on the judgment in ***Director of Enforcement*** (supra). A perusal of the aforesaid quoted text indicates that the proceedings under the FERA Act are not criminal proceedings but are adjudicatory in nature. The Appellant Tribunal for Foreign Exchange is an adjudicatory body, which performs *quasi-judicial* functions and act as administrators



and adjudicators. They are not ‘courts’. While it is very much within their powers, to impose penalties for non-compliance of provisions of FERA, however, it does not lie within their domain to pronounce a person “guilty” of offences under the FERA Act.

10. I am of the view that pronouncing a person “guilty” has serious consequences and to adjudicate and give a finding of ‘guilty’ lies within the exclusive domain of the competent courts of jurisdiction.
11. In this view of the matter, the penalty imposed by the Appellant Tribunal for Foreign Exchange on the appellants is upheld, however, the word “guilty” used in the entire order 02.06.2016 against the appellants is to be considered as “redacted”.
12. No other contention has been raised.
13. With these observations, the appeals are allowed to the extent of the above findings.
14. The appeals stand disposed of accordingly.

JASMEET SINGH, J

FEBRUARY 20, 2025/pk

(Corrected and released on 28.02.2025)

Click here to check corrigendum, if any