

(1984) 03 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: S.A.O. No. 51 of 1983

Kartar Singh

APPELLANT

Vs

Directorate of Enforcement,
Foreign Exchange Regulation
Act, Government of India

RESPONDENT

Date of Decision: March 23, 1984

Acts Referred:

- Foreign Exchange Regulation Act, 1973 - Section 3(1), 50, 52(6), 54, 71(3)

Citation: (1984) 2 ECC 223 : (1984) 17 ELT 229

Hon'ble Judges: V.P. Gupta, J

Bench: Single Bench

Advocate: R.C. Dogra, for the Appellant; Ashok Aggarwal, for the Respondent

Judgement

V.P. Gupta, J.

This appeal has been filed by Kartar Singh u/s 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter called the Act), against the order of the Appellate Board dated May 2, 1983, whereby the order of the adjudicating officer confiscating the seized foreign currency of the value of U.S. \$ 6,700 and the penalty of Rs. 20,000/-imposed upon him, was affirmed.

2. The officers of the Directorate of Enforcement searched the person of the appellant at the Jullundur City Railway Station on December 22, 1981, and recovered from his brief case the foreign currency of the value of U.S. \$ 6,700. He along with his family consisting of his wife, sons, daughter-in-law and the grand children was on his way to Texas (U.S.A.). He has a son called Mr. Roger Moore alias Dilraj Singh in the U.S.A. who is running a restaurant there under the name and style of "Dutch's Restaurant" in Texas. He is a retired Inspector of Police who went to the U.S.A. along with his wife on January 7, 1981 and returned to India on June 7, 1981. He was again going to the U.S.A. in December 1981. According to the department, the appellant,

who is an Indian national, was found in possession of the foreign currency of the value of U.S. \$ 6,700. He was not an authorised dealer in foreign exchange. Since the value of the foreign exchange seized from him exceeded Rs. 250/-, the onus was on him to prove that he had acquired it legally, as required u/s 71(3) of the Act. He failed to discharge the said onus. Therefore, he was found guilty of contravening the provisions of Section 8(1) of the Act. In reply to the notice issued to him, it was stated by him that the amount seized from him was the savings out of his and his wife's earnings during their stay in the U.S.A., and that his status and that of his wife was that of a person resident outside India and as such section 8(1) of the Act, had no applicability to his case. It was also stated that the amount was legally acquired by him. In support of the contention that the amount was earned in the U.S.A., he produced two statements which are the copies of Individuals Employee's Earnings Records for the year 1981 maintained by the owner of the Dutch's Restaurant, duly subscribed and sworn in on February 16, 1982 by a Notary Public at Texas. On that basis, it was contended that the amount recovered from him was covered by those documents. It was further contended that he did not declare the foreign exchange before the Customs authorities on arrival in India due to ignorance of law. The adjudicating officer after considering all the documents and the contentions of both the parties came to the conclusion that there had been violation of Section 3(1) of the Act by him and, thus, imposed the penalty of Rs. 20,000/- on this count apart from the confiscation of the amount recovered from him. In appeal, the Appellate Board affirmed the said findings of the adjudication officer and, thus, maintained the order passed by him. As observed earlier, dissatisfied with the same, the appellant has filed this appeal in this Court.

3. The learned counsel for the appellant contended that the powers and functions of the Appellate Board could be exercised and discharged by the Benches consisting of two Members as constituted by the Chairman of the Appellate Board, u/s 52(6) of the Act. Under the second proviso thereto, it was competent for the Chairman or any other Member of the Appellate Board authorised by the Chairman, in this behalf, to exercise the powers and to discharge the functions of the Appellate Board in respect of any appeal against an order imposing the penalty of an amount not exceeding Rs. 50,000/-. Thus, argued the learned counsel, there was nothing to show from the order of the Appellate Board that the Member, Shri A. Neelakantan, who exercised the powers of the Appellate Board, was duly authorised by the Chairman in this behalf. According to the learned counsel, the order of the Appellate Board was liable to be set aside on that ground alone. I do not find any force in this contention. The second proviso to Section 52(6) of the Act, provides that it shall be competent for the Chairman to authorise any Member of the Board to exercise the powers and to discharge the functions of the Appellate Board. There is every presumption that if such a power is exercised by a Member, it will be presumed that he was duly authorised by the Chairman of the Appellate Board in that regard. However, it will in the fitness of things that as and when an appeal is heard by a

Member of the Board a specific note is given in the order passed itself to avoid a possible technical objection at a later stage.

4. The learned counsel for the appellant further contended that admittedly, the appellant was a person resident outside India and, thus, such a person who was not a person resident in India, could not be held guilty of the violation of the provisions of Section 8(1) of the Act.

5. After hearing the learned counsel for the parties, I do not find any force in this contention as well.

6. Section 8(1) of the Act, reads,-

"Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer, any foreign exchange:

Provided that nothing in this sub-section shall apply to any purchase or sale of foreign currency effected in India between any person and a money-changer,

Explanation.-For the purposes of this sub-section, ♦ person, who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person."

From an analytical reading of the aforesaid provisions, it would seem that no person in India except an authorised dealer can acquire foreign currency except through an authorised dealer and, similarly, no person resident in India can outside acquire foreign currency except through an authorised dealer. The contention of Mr. Dogra, the learned counsel for the appellant, that since the appellant was a resident outside India, he is outside the purview of the Act is plainly devoid of force, as the term "no person" is wide enough to include all and sundry and all persons including those residents outside India are precluded from acquiring foreign exchange in India except through authorised dealers.

7. Faced with this situation, the learned counsel for the appellant contended that the presumption attaching to such documents u/s 72 of the Act as produced by the appellant has not been raised by the authorities in this case and, therefore, the finding arrived at is vitiated. I do not find any merit in this contention either. Read as a whole they can at the most show that the appellant had earned the amount shown therein in foreign currency, but not that he saved the amount as has been recovered from him. So, even if the presumption had been raised, it could be of no avail to the appellant.

8. Even if the documents produced by the appellant in support of his claim are admitted to be correct, even then, he has failed to discharge the burden placed on

him as contemplated u/s 71(3) of the Act. This aspect of the matter has been duly considered by the authorities below and it has been found that it was not indicated how much foreign currency was brought by the appellant to India and how much was left behind. Therefore, it was concluded that from the circumstantial evidence also, it was clear that the foreign currency of the value of U.S. \$ 6,700 was not brought by the appellant from abroad. It being a conclusion reached on the appreciation of the evidence, could not be interfered with in appeal by this Court as u/s 54 of the Act, an appeal lies to this Court only on a question of law.

9. It was lastly argued by the learned counsel for the appellant, that the violation of Section 8(1), if any, was of a technical nature, and, therefore, the penalty of Rs. 20,000/- levied by the authorities below was unjustified in the facts and circumstances of the present case; particularly, when the foreign exchange was also confiscated from the appellant. To support this contention, the learned counsel relied upon *Sudershan Boury v. Director of Enforcement, New Delhi*, AIR 1982 Karnataka 135. Admittedly, the appellant had opened a non-resident account though the amount deposited therein was much less than the amount recovered from him. This clearly shows that he violated the provisions of the Act, because, according to him, he was ignorant of the relevant law. Though ignorance of law is no excuse, but at the same time, it is a factor to be taken into consideration while imposing the penalty. Section 50 of the Act, inter alia provides for the minimum penalty of Rs. 5,000/-, for the contravention of the provisions of the Act. The exercise of the discretion in imposing the penalty involves the question of law as held by the Karnataka High Court in *Sudershan Boury's* case (*supra*). I find that in the facts and circumstances of the present case, the penalty of Rs. 5,000/- will meet the ends of justice; particularly when the foreign exchange has also been confiscated from the appellant.

10. As a result of the above discussion, this appeal succeeds and is allowed to the extent indicated above. The appellant will be entitled to the refund of Rs. 15,000/- out of the sum of Rs. 20,000/- if already deposited by him by way of penalty.