

(2002) 02 DEL CK 0131

Delhi High Court

Case No: Criminal Appeal No. 187 of 1995

Enforcement Directorate

APPELLANT

Vs

Ravi Sharma

RESPONDENT

Date of Decision: Feb. 19, 2002

Acts Referred:

- Customs Act, 1962 - Section 108
- Foreign Exchange Regulation Act, 1973 - Section 54, 8(1)

Citation: (2003) 156 ELT 180

Hon'ble Judges: R.S. Sodhi, J

Bench: Single Bench

Advocate: Rahul Sharma, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Sodhi, J.

This criminal appeal is directed against the order of the Foreign Exchange Regulation Appellate Board, dated 10-4-1995, whereby the Appellate Board has set aside Order No. SDE(R)III/219/90, dated 22-8-1990 of the Special Director of Enforcement and has left the question of further proceedings u/s 13(2) of the Act open.

2. The facts of the case as have been noted by the Appellate Board are:

"on the basis of information gathered from the documents seized after search of one Baligur Rehman of Hong Kong at Delhi Airport on 14-11-1984, the premises of Shyam Kishan Sharma (S.K. Sharma) were searched by the officers of DRI. The search resulted in the recovery and seizure of incriminating documents, contraband gold and Indian currency. The statements of Baligur Rehman, S.K. Sharma and Ravi Sharma, son of S.K. Sharma who also resided with his father, were also recorded u/s 108 of the Customs Act, 1962. It would also appear that S.K. Sharma and the

appellant were detained under COFEPOSA. After their release from the prison, the Enforcement officers issued summons u/s 40 of the Act sometimes in August, 1987. They appeared in response to the summons after obtaining anticipatory bail. None of them admitted anything which they had confessed before the officer of DRI in their statements u/s 108 of the Customs Act."

3. From the evidence on record the Appellate Board came to the conclusion that the charge framed u/s 8(1) of the Foreign Exchange Regulation Act for abetment was not made out although it is possible that there can be a charge u/s 13(2) of the Act. However, on a consideration of the material the Appellate Board gave a finding which is as follows :

"12. The statements recorded u/s 108 of the Customs Act can not ipso jure constitute evidence for the purpose of the adjudication proceedings under the Foreign Exchange Regulation Act, 1973. That apart, the appellant has disputed that statement as involuntary and not true and relied on the report of his medical examination made in Tihar Jail where he was lodged soon after the statements. The learned Special Director has recorded that in his Statement u/s 40 of the Act, which is a relevant piece of evidence the appellant disowned his statement u/s 108 of the Customs Act. This means that there is no valid evidence of any admission of facts Constituting the charge. The appellant's statement u/s 108 of the Customs Act could not be taken in evidence because the cross-examination of the officer who recorded the statement was denied. Moreover, even the statement u/s 108 of the Customs Act does not have adequate evidentiary value to substantiate the facts stated therein as those factual particulars are contradicted by the letter of the Hong Kong Customs authorities in respect of the dates of the appellant's visit to Hong Kong and the amount of foreign exchange declared on those visits. The foreign exchange mentioned in the statement is US dollars while in the said letter it is "assorted". Moreover, that letter, even if taken in evidence indicates the taking out of foreign exchange. It does not indicate the delivery of foreign exchange to Baligur Rehman.

13. It is stated in the impugned order that SCN was issued in November, 1988 after completion of investigation. There is nothing to indicate whether any investigation was made after the statement of the appellant was recorded u/s 108 or after the receipt of the letter of Hong Kong Customs in November, 1984. No attempt seems to have been made to get at the correct factual details of the appellant's visits to Hong Kong, by checking with the Indian authorities at Delhi Airport and the Airlines, in spite of factual variance in that regard in Hong Kong Customs' letter and the appellant's statement u/s 108 of the Customs Act, 1962.

14. As regards the admissibility of Baligur Rehman's statement against the appellant it is to be noted that this statement being in the nature of a third party's testimony, is not admissible in evidence in view of the denial of his cross-examination in spite of the assertion of that right in reply to the SCN as well as during the adjudication proceedings.

15. The impugned order also shows that the learned Special Director took into consideration the statement purported to have been made by the appellant in August, 1987 though this statement was not relied on in the SCN. This is not legally permissible. The learned Special Director records that the charge further gets substantiated by the revelations of Baligur Rehman, that the said revelations of Baligur Rehman stand corroborated by virtue of declarations made by Shri Ravi Sharma at Hong Kong airport regarding carrying of the foreign currencies, that this fact has been confirmed by Customs and Excise Deptt. of Hong Kong vide letter dated 27-11-84, that the said Ravi Sharma had confirmed his visits in his earlier statement and subsequent statement dated 24-8-87. These conclusions, in so far as they relate to the appellant, are contrary to facts on record. Baligur Rehman's statement does not implicate the applicant in respect of the charge. Hong Kong Customs" letter does not confirm appellant's visit in June, 1984; nor does it corroborates the amount and nature of foreign currency. Apparently, the investigating agency was aware of the inadequacy of the evidence to bring home the charge as they have relied on the statements (though not admissible) for proving the transfer of the foreign exchange and on the Hong Kong Customs" letter for proving the amount (though it is contrary to the statements) as this letter does not prove the transfer of foreign exchange. It appears from the discussion of the so called evidence in the impugned order that the learned adjudicating officer has not correctly appreciated the arguments of admissibility of evidence and evidentiary value of a piece of evidence as also the legal implications of these two concepts."

4. It is evident that the statement made u/s 108 of the Customs Act by the accused does not find corroboration from the letter obtained by the appellant from the Hong Kong Customs Authorities, in which event this statement is inaccurate and not worthy of reliance as it is contradicted by the evidence placed on record by the Department. In that view of the matter, I find that the reasoning of the Appellate Board cannot be faulted with. I, Therefore, affirm the same.

Crl. A. 187/1995 is dismissed.