(2009) 01 MAD CK 0235

In the Madras High Court

Case No : Criminal R.C. No. 1646 of 2008 and Criminal O.P. No. 30608 of 2008 and M.P. No. 1 of 2008

A. Abdul Samadh APPELLANT

Vs

The Chief Enforcement Officer, Directorate of Enforcement RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 247
Foreign Exchange Regulation Act, 1973 — Section 51, 56(1), 61(2), 8(1)

Citation : (2009) 01 MAD CK 0235

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : S. Selvathirumurugan, for the Appellant; R. Dhanapalraj, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Regupathi, J.—The petitioner in the above cases is A-1 among three accused in E.O.C.C. No. 443 of 2004 (Old E.O.C.C. No. 1164 of

1994), taken on file by the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai, for the offence punishable u/s 8(1) read with

56(1)(i) of the Foreign Exchange Regulation Act (in short ''FERA'').

2. The case of the prosecution is that, on 15.07.1993, the Enforcement Authorities conducted search at the residence of the petitioner/accused and

foreign currencies to the value of crores of rupees came to be seized in the presence of two independent witnesses; that, on interrogation, the

petitioner stated that his friend by name Haja Alauddin, who is residing at Singapore, sent gold and silver through some passengers from Singapore

to Madras to the petitioner, who, in turn, on the instruction of the said Alauddin, sold the same to A-2 and A-3 and converted the sale proceeds into foreign currencies; that the currencies seized were of various denominations of different countries and a portion thereof was despatched to

Alauddin and the balance retained by the petitioner at his residence; that though he confessed to the offence committed by him, after release on

bail, he retracted the confession statements through letters and the retraction letters of the accused were properly replied by the enforcement

authorities; that A-2 pleaded guilty and he was convicted by the trial judge; that A-3 in the case is absconding, hence, the case against him had

been split up and he is declared as a ''proclaimed offender''; that, insofar as the petitioner is concerned, trial had been taken up in which 6

witnesses were examined on the side of the prosecution, 25 documents marked and after questioning the accused, the case was posted for

defence examination; and that, in such circumstances, the petitioner preferred a petition u/s 247 Cr.P.C. before the trial court. Since the attention

of this Court is very much drawn to the said petition in M.P. No. 1635/2008, filed before the trial court, with reference to the grounds on which

the prayer has been made, the contents thereof are extracted below:

1. The petitioner / accused humbly submits that the following persons are to be examined by the defence as defence witnesses.

a) Shri. P. Shridhar Assistant Director Enforcement Directorate Chennai to speak about search statements of A1 and A2 and other facts

b) Shri. V. Subramanian Assistant Director Enforcement Directorate Chennai to speak about search at shop premises of A3 Ratna Mohammed

and other facts.

c) Shri. A.K. Banerjee Deputy Director Enforcement Directorate Chennai to speak about the retracted statements of A1 and other facts

d) Shri. D.K. Kayal Chief Enforcement Officer Enforcement Directorate Chennai to speak about the filing of complaints and other facts

e) Shri. S.S. Ranjhen Special Director of Enforcement Enforcement Directorate New Delhi to speak about the adjudication notices u/s 51 FERA

and other facts.

f) Shri. R. Mohandoss, Deputy Director, E.D., Chennai-6, to speak about the reply given to the accused A1 for his representation under right to

information Act.

g) Shri. Sharathkumar Assistant Enforcement Officer Enforcement Directorate

Chennai to speak about to disprove the search and recovery and

other facts.

h) Shri A.K. Panda Assistant Enforcement Officer Enforcement Directorate Chennai to speak about to disprove the search and recovery and

other facts.

i) Shri. Gopal Assistant Enforcement Officer Enforcement Directorate Chennai to speak about the search conducted at Police computer Wing

Chennai

j) Mr. Perumalsamy Inspector General of Police retired CBCID Chennai to speak about granting permission to conduct a search at Police

Computer Wing Chennai

k) Mr. Jambukumar Additional Superintendent of Police retired CBCID Chennai to speak about the search conducted at Police Computer Wing

Chennai

l) The Editor/Chief Librarian (THE HINDU) Chennai to speak about the bullion rates as published in The Hindu during April May June and July

10th to 15th in the year 1993

m) Dr. E. Kesavalu the then Medical Officer Central Prison Chennai to speak about the admission of A1 in Jail Hospital

n) Dr. P. Poonkundran the then Medical Officer Central Prison Chennai to speak about the admission and treatment of A1 in Jail Hospital.

o) Mrs. Rabiyathu Bazaria wife of Haja Allaudeen 2100, Alia Maricar Street Nagappattinam to speak about the search at their residence and to

disprove the nexus between A1 and her husband.

p) Mr. Haja Allaudeen son of Hameed Sultan 2100, Alia Maricar Street Nagapattinam to speak about the search at their residence and to

disprove the nexus between A1 and him.

It is humbly prayed that the above witnesses may be examined by this Court as defence witnesses for the present and some other witnesses whose

names are not furnished below, if necessary will be furnished at a later stage and this Hon''ble Court may also permit such examination at the end of

the examination of all the above named defence witnesses.

The learned trial Judge, after taking into consideration all aspects pointed out on behalf of the petitioner and the arguments advanced on either side, dismissed the petition. Aggrieved against the said order of dismissal, the present revision has been filed.

3. The petitioner also moved a petition in Tr.Cr.M.P. No. 12277 of 2008 before the Sessions Court, Chennai, for transfer of the case from the file

of Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai, to any other Court. By referring to the order, dated 05.03.2008, passed

by this Court in Crl.O.P. No. 19987 of 2006, directing completion of the trial itself by five months from the date of receipt of copy of such order,

the Sessions Court dismissed the petition on 11.12.2008. Seeking to set aside the said order, Crl.O.P. No. 30608 of 2008 is preferred.

4. Since the prayers sought for in both the petitions relate to the proceedings pending before the trial court as against the petitioner, they are taken

up together for hearing and disposed of by this common order.

5. Learned Counsel for the petitioner, with reference to the prayer made in the Revision Case, submitted that examination of the witnesses cited in

the list is absolutely necessary and, by referring to the petition filed before trial court, which is extracted above and by stating that unless those

witnesses are examined, great prejudice would be caused to the accused, it is further submitted that during the course of trial, evidence was not

recorded properly by the learned trial judge and though the accused is entitled to question and cross-examine the witnesses to substantiate his

defence, several questions were disallowed. When certain documents were called for to be marked at his instance, it was refused and only at the

intervention of the higher forum of the judiciary viz., High Court, such course was allowed.

With reference to the prayer in the Criminal Original Petition for transfer of the case, it is again submitted that the accused is entitled to summon any

person or document to substantiate his defence and only in accordance with law, the list of witnesses was furnished to the court but it was

declined. All along the trial court has been adopting an indifferent and hostile approach towards the accused and therefore, the case may be

transferred to some other Magistrate within the Sessions Division, Madras.

6. Per contra, learned Special Public Prosecutor, by pointing out that the petitioner was at the relevant time working as Inspector of Police in

CBCID, Madras, and that the occurrence took place during 1993, would submit that right from 1994, due to the delaying tactics adopted by the

petitioner by incessantly filing frivolous and vexatious petitions not only before the trial court but also Sessions Court and High Court, trial

proceedings are successfully scuttled in spite of the specific direction given by the High Court to complete the trial within a period of five months by

order dated 05.03.2008. The petition for production of the witnesses cited in the list is nothing but one such tactics adopted and the learned trial

Judge has taken into consideration the claim of the petitioner with reference to each and every witness cited in the list and passed a well considered

order. Learned Special Public Prosecutor referred to the reasonings given by the trial court in that regard and the same is extracted below:

...The prosecution in order to prove their case, examined as many as 6 witnesses and marked 25 documents. One Superintendent of Central

Prison, Chennai was also examined as D.W.1 as per the order of Hon''ble High Court of Madras dt.5.3.2008 in Crl.O.P. No. 19987/2006 and

M.P. No. 1/2006. This petitioner wanted to examine one Sridhar who had issued search warrant to conduct search in the premises of the accused

at Mosque Street, Padi, Chennai. The search warrant was already marked as Ex.P.1 and P.W.1 has already examined and cross examined about

the search and seizure. The petitioner sought to examine one V. Subramanian, Assist. Director who had issued search warrant for the business

premises of Ratna Mohamed @ Co., No. 36 Kasi Chetty Street, Madras 79. The search warrant and seizure viz., Ex.P.18 & 19 were marked

through P.W.1. The petitioner further seeks to examine A.K. Banerjee, Dy. Director of Enforcement Directorate as defence witness to speak

about the retraction telegram/letters sent by him and his wife. The said retractions letters and reply of the said officer were already marked as

Ex.P.14 to P.17 through P.W.1. This petitioner sought to examine D.K. Kayal, Chief Enforcement Officer of Enforcement Directorate as defence

witness to speak about the filing of complaint which would not serve any purpose. Further the petitioner wants to examine S.S. Rajhen, Special

Director of Enforcement, New Delhi to speak about the issuance of memorandum ie., show cause notice dt. 29.12.1993 to the accused. The said

show cause notice had been already marked as Ex.P.20 through P.W.1 and when the accused had challenged in the Hon''ble High Court at madras in W.P. No. 19332/1997 while claiming for the return of the foreign currencies seized from his residence, the concerned copy of the

petition by the accused and the original order dt. 23.7.04 of the Hon''be High Court of Madras were already marked as Ex.P.24 and P.25

respectively by P.W.1. The petitioner wants to examine R. Mohandoss, Dy. Director of Enforcement, Chennai, to speak about the Right to

Information Act about the depositing of the seized foreign currencies which was replied by P.W.6 during his cross examination. The petitioner

wants to examine Sharathkumar and A.K. Panda, Asst. Enforcement Officers to speak about the search and seizure of the currencies. The said

witnesses sought to examined have only participated in the search of the premises and P.W.1 to 6 were cross examined about the search and

seizure of the currencies. Whether the evidences of P.W.1 to 6 are true or not will be decided only after the hearing the argument of both the sides.

So the petition to seek the direction of this Court to issue process to some of the Enforcement Officials to speak about the certain facts as stated in

the petition is not at all necessary and also not sustainable.

5. This petitioner is also wanted to examine the CBCID Official regarding the search conducted at Police Computer Wing Chennai. The witnesses

already replied about this facts and no seizure was effected in this premises. The examination of the Editor of the Hindu published on April, May,

June and July in the year of 1993 is also at all very much essential to this case. The above said paper was already filed by the Enforcement

Officials. So it is not necessary to examine the Editor of the Hindu News Paper to prove the news published in the Hindu daily.

6. This petitioner also seek the direction of this Court to send summons to Rabiyathul Bazaria and her husband Haja Allaudeen of Nagapattinam to

speak about the search at the residence and disprove the nexus between A1 and them. But in the counter statement filed by the respondent it is

stated that as per the statement of the accused he had admitted that he had received gold and silver as per the instructions of Haja Allaudeen who

was residing in Singapore and converted the sale proceeds of the gold and silver into foreign currencies. The confession statement of the accused

was retracted later on. So the argument of the prosecution that whether the statement given by the accused is a voluntary one or it was obtained under coercion or threat will be decided later on.

7. This petitioner also wanted to examine Dr. E. Kesavalu, the Medical Officer, Central Prison, Chennai, to speak about the admission of the

accused A1 in Jail Hospital and one Dr. Poonkundran, the Medical Officer, Central Prison, Chennai, to speak about the admission of the A1 in the

Jail Hospital. But the Special Public Prosecutor objected that since the Superintendent of Central Prison, was already examined as defence witness

about the admission of the accused in the Jail Hospital and there is no necessity for the defence to examine them as defence witnesses.

8. The prison hospital detained registers (xerox copies) for the period from 18.7.1993 to 7.8.1993 was also marked as D.1 through D.W.1.

Whether the accused was admitted at the Hospital on 17.7.1993 and was taking treatment in the Jail Hospital are to be decided on the basis of the

document already marked as Ex.D.1. Considering the facts and circumstances of the case and also the petition and counter statement, I am of the

opinion that it is not at all necessary to allow this application.

Learned Special Public Prosecutor has also drawn the attention of this Court to the following proceedings/petitions initiated by the petitioner to stall

the progress of the trial.

a) Writ petition in W.P. No. 8326 of 1994 was filed before the High Court to quash the show cause notice and it was dismissed on 01.03.1995;

b) W.P. No. 19332/97 was filed before the High Court seeking for issuance of a writ of mandamus directing the Department to return the foreign

currencies and the petition was dismissed on 23.07.2004;

c) A Miscellaneous Petition filed before the trial court for discharge was dismissed and Crl.R.C. No. 85 of 2000 filed before the Sessions Court,

questioning the jurisdiction of the trial court, was dismissed on 28.08.2003;

d) W.P. No. 33880/03 filed before High Court for prohibiting the respondent from using the statement of the accused was dismissed on

24.11.2003;

e) Crl.M.P. No. 10962 of 2004 in Crl.O.P. No. 35117 of 2004 filed before High Court, for quashing the criminal proceedings on the ground that

no opportunity was given to him u/s 61(2) of FERA, was dismissed;

f) A petition filed before the trial court seeking permission to examine the

Superintendent of Central Prison, Chennai, and for production of some

medical records was dismissed and aggrieved over the same, a petition was filed before High Court in Crl.O.P. No. 19987 of 2006, wherein, by

order dated 01.08.2006, examination of the Superintendent of Central Prison, was allowed, however, it was proved before the trial court that such

exercise was a futile attempt.

Learned Special Public Prosecutor points out that it was the defence of the petitioner that the foreign currencies were not recovered from his

residence but from the shop run by one of the co-accused at Burma Bazar; thus, all along, the petitioner disowned his ownership to the currencies,

however, by engaging an Advocate, he addressed a letter to the Enforcement Authorities claiming ownership to the seized currencies and seeking

return of the same. Further, as adverted to above, a writ petition has also been filed before the High Court seeking for a direction to the

respondent/Department to return the foreign currencies to the petitioner. It is finally submitted that the petitioner/accused, who was an Inspector of

Police, has been adopting delaying tactics by filing vexatious petitions, with the result, the trial could not be completed though the occurrence had

taken place during 1993 and the proceedings commenced in 1994.

7. I have meticulously perused the materials on record with reference to the submissions made on either side.

The petitioner/accused is a former Inspector of Police attached to CBCID Wing. Foreign currencies to the value of crores of rupees were seized

from his residence while he was in service. In the initial statement given before the authorities, commission of offence, petitioner''s complicity therein

and recovery of currencies were all admitted. One of the co-accused in the case viz., A2, from whom the petitioner received the foreign

currencies, pleaded guilty. It is curious to note that though initially, when proceedings were initiated against the petitioner, he disowned ownership

to the currencies, however, later on, he forwarded a letter through an Advocate to the Enforcement Authorities for return of the currencies and

further, a writ petition was also filed before this Court for a direction to return the currencies in deposit with the trial court. Thus, at one point of

time, when he was under the close grip of investigation, he disclaimed ownership to the currencies and also proceeded to state that nothing was recovered from his residence, but, at a later point of time, he not only claims his ownership to the seized currencies but also initiates proceedings

for return of the same in his favour. Several witnesses/officials attached to the Enforcement Directorate have been summoned with an idea to prove

that no search was conducted and recovery effected at his residence. The learned trial Judge elaborately considered the genuineness of the

petitioner''s plea with reference to each one of the witnesses sought to be examined and found that it is nothing but a dilatory tactics to prolong the

proceedings and rightly dismissed the prayer. Similarly, the learned Sessions Judge dismissed the petition for transfer, filed on flimsy grounds.

It could be seen that rights and privileges given to the accused by the Constitution and the Procedural Law are taken for granted and frivolous

petitions have been filed lavishly; with the result, the respondent/Department was driven from pillar to post to file counters before different judicial

forums including High Court. Ultimately, at the fag end of the trial, nearly after one and half decade, Crl.O.P. No. 30608 of 2008 has been filed for

transfer of the case. No doubt, it is absolutely necessary that sufficient opportunity must be given before convicting an accused, for, an accused is

presumed to be an innocent till he is proved guilty beyond reasonable doubt, but, there are bounds and limits for leniency. Easy access to justice

should not be misused as a licence to file misconceived and vexatious petitions. A litigant is expected to approach the Court not only with clean

hands but with clean mind, clean heart and with clean objectives. Here is a classic example where the petitioner/accused, a former Inspector of

Police entrusted with the task of enforcing law, has taken the law of the land for granted and continued to abuse the criminal judicial system to such

extent that, if not prevented at least now, he would succeed in making it a laughingstock. He has been approaching the High Court at the drop of a

hat whenever the trial could move in a swift pace, by seeking to challenge orders passed at different stages of criminal trial and each of such

challenge is then carried forward at multi-levels of judicial scrutiny. It must be borne in mind that no litigant should be allowed to exhaust the Court

time and public money for pointless and frivolous litigation in order to have his case settled at the time and in the manner he wishes.

Though a positive direction was issued by the High Court, by order dated 05.03.2008, passed in Crl.O.P. No. 19987/06, to complete the trial within a period of five months, such direction could not be complied with; for which, the petitioner/accused is wholly responsible. When the

petitioner was enlarged on bail, it was promised by him that he would abide by all conditions and co-operate with the authorities for early

completion of the proceedings. This Court feels that, in order to set an illustrious example to the like-minded persons, who aimlessly rush to the

courts with ulterior motives taking the legal system and courts for granted in order to derive cheap gains at the cost of valuable judicial time,

exemplary costs should be imposed; accordingly, costs of Rs. 1,00,000/- (Rupees one lakhs only) is imposed on the petitioner/accused, who shall

deposit the said amount with the trial court within a period of two weeks from to-day so that the same is paid to the respondent/Department as

they were all along shuttled from one forum to another by virtue of the clever tactics adopted by the petitioner; failing which, the trial court is

directed issue non-bailable warrant against the petitioner and commit him to custody till the end of the trial.

Accordingly, both the petitions are dismissed.

