
(1986) 07 MAD CK 0005

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 51 of 1981

A. Kamal batcha

APPELLANT

Vs

Assistant Director, Enforcement Directorate

RESPONDENT

Date of Decision : 09-07-1986

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 52, 60, 81, 9
General Clauses Act, 1897 — Section 6

Citation : (1987) 13 ECC 135

Hon'ble Judges : Sathiadev, J; Maheswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Maheswaran, J.—This appeal by one Kamal Batcha is preferred against the order of Foreign Exchange Regulation Appellate Board

(Southern Zone), finding him guilty under Sections 5(1)(aa) and 5(1)(c) of the Foreign Exchange Regulation Act, 1947 (for short "the 1947 Act").

A penalty of Rs. 5,000 was imposed by Assistant Director, Enforcement Directorate, Madras-6, for the violation of Section 5(1)(aa) and that was

confirmed by the Board. The penalty of Rs. 500 imposed u/s 5(1)(c) was reduced to Rs. 250 by the Board. The appellant challenges that order of

the Board in this appeal.

2. The gravamen of the charges is that the appellant, a resident of India received Rs. 12,800 from local persons other than authorised dealers in

foreign exchange without the general or special exemption from the Reserve Bank of India under instructions from residents outside India and that

he has also made a payment of Rs. 500 to local persons unauthorisedly under instructions from residents outside India without the permission of

the Reserve Bank of India.

One Jainudeen was also charged against along with the appellant for contravention of Section 9(1)(b) of the Foreign Exchange Regulation Act,

1973 and he was also found guilty and penalty was also imposed. However, he has not chosen to appeal.

Mr. Santhanam, learned Counsel for the appellant, raised at the outset a point which at first appears to be attractive but on closer scrutiny is found

to be untenable. His argument is that the contravention took place during 1966 to 1970 and the proceedings were instituted long after Act, 1947

was repealed by the Foreign Exchange Regulation Act, 1973 (for short "the 1973 Act") and the proceedings taken under the 1947 Act cannot be

saved by the provisions of Section 81 of the 1973 Act.

Section 81(2) of the 1973 Act (Act 46 of 1973) runs thus:

81. (2) Notwithstanding such repeal--

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or notice made or

issued, or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or

instrument executed or any direction given or any proceedings taken or any confiscation adjudged or any penalty or fine imposed) under the Act

hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the

corresponding provisions of this Act;

(b) the provisions of Section 60 of this Act shall apply in relation to the contravention of any of the provisions of the Act hereby repealed or of any

rule, direction or order made thereunder;

(c) any appeal preferred to the Foreign Exchange Regulation Appellate Board under Sub-section (2) of Section 23-E of the Act hereby repealed

but not disposed of before the commencement of this Act and any appeal that may be preferred to the said Board against any order made or to be

made u/s 23 of the Act hereby repealed may be disposed of by any member of the Appellate Board constituted under this Act in accordance with

the provisions of Sub-section (6) of Section 52 of this Act;

Sub-section (3) of Section 81 states that,

The mention of particular matters in Sub-section (2) shall not be held to prejudice or affect the general application of Section 6 of the General

Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

Section 6(c) of the General Clauses Act states that where any Central Act or Regulation made after the commencement of the General Clauses

Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right,

privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed. It is, therefore, manifest that the repeal of the 1947

Act by Act 46 of 1973, will not affect the proceedings taken under the 1947 Act. That disposes of the first objection.

The second objection is that an explanation is added to Section 9(1) of the 1973 Act and that explanation should be read into Section 5(1)(aa) of

the 1947 Act and to that extent there is inconsistency of the provisions of the 1973 Act and no action can be taken against the petitioner. We find

that there is no inconsistency. The explanation added to Section 9(1) is only to explain the section. The inconsistency contemplated u/s 9(1) must

be an inconsistency found in the Act itself. As there is no such inconsistency this contention also should fail.

The third contention is on a question of fact. He pointed out that there is no proof that the amount of Rs. 12,800 alleged to have been received by

the appellant was from residents outside India. This contention again is without substance for the appellant himself has filed a statement on 8-6-

1976. A reading of this statement shows that he has received this amount from various persons. But with regard to certain payments he would say

that the persons from whom he has received the amounts are not known to him and some of them are unknown persons. The various letters seized

from his house by the authorities would show the payments received and the payments made. Those have been extracted in the order of the

Assistant Director of Enforcement. This statement has not been retracted by the appellant. Only in his reply to the show cause notice dated 12-11-

1976 he denies the charge. He would say that the printing press owned by his son-in-law, Tajudeen and M. A. Majeed was sold by M.A. Majeed

in 1969 when he was in India and the sale proceeds of Rs. 6,700 was entrusted to him by M. A. Majeed, and that the receipt of Rs. 6,700 was

not by order or on behalf of Tajudeen. He further denies the contents of the letter. But this denial comes long after his statement dated 8-6-1976.

What more, he has not stated that the statement dated 8-6-1976 was not a voluntary statement or was one procured under duress or coercion. In

the face of the admissions in the earlier statement, it is futile for him to contend that the amounts are not received from persons abroad. Mr.

Santhanam, however, pointed out that these statements which are in the nature of confessions need corroboration. This argument overlooks the

fact that the statements are not made to any police officer and the statements to the officials of foreign exchange are quite admissible in evidence

and can be acted upon so long as they are made voluntarily and were not procured under duress or coercion.

The next charge is that the appellant has violated the provisions of Section 5(1)(c) of the Act. A sum of Rs. 500 was said to have been made by

order and on behalf of Sri Mohammed Ibrahim, a resident outside India. There is also admission with regard to this payment of Rs. 500 in his

statement dated 8-6-1976. As there is no impediment to act on the admission made by the appellant in his statement dated 8-6-1976 we hold that

the appellant is guilty of having violated the provisions of Section 5(1)(c) also. The Foreign Exchange Regulation Board has rightly found the

appellant guilty of having violated both Section 5(1)(aa) and Section 5(1)(c) of the Act. It cannot also be said that the penalty imposed is

excessive. We agree with the findings of the Board and dismiss this appeal with costs.