
(1986) 07 MAD CK 0050

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 348 of 1981

A. Naina Mohamed

APPELLANT

Vs

The Deputy Director, Enforcement Directorate

RESPONDENT

Date of Decision : 10-07-1986

Acts Referred:

Citation : (1987) 13 ECC 337

Hon'ble Judges : T. Sathiadev, J;G. Maheswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T. Sathyadev, J.—This appeal is preferred against the concurrent findings arrived at by both the authorities that the appellant had contravened Sections 5(1)(aa) and 5(1)(c) of the Foreign Exchange Regulation Act, 1947, hereinafter referred to as the Act.

2. Two show cause notices were issued, resting on a statement made by the appellant claiming that a sum of Rs. 80,000 had been received from a person other than an authorised dealer in foreign exchange by order or on behalf of one Shahul Hameed, Singapore, a person resident outside India. A search warrant was issued on 14-2-1972, but the search of the appellant's premises was effected on 3-5-1972, when he had given a detailed statement. The search resulted in taking custody of three sheets of papers containing names of individuals and amounts paid to them and certain other documents. Both the authorities found that in respect of Rs. 49,000, items 33 to 81 in the list tallied with the three chits recovered from the custody of the appellant, and therefore there could be no area of dispute in respect of those items. The appellant also realising the inescapable situation in which he had been placed had conceded before the Appellate Board that in respect of the disbursement of Rs. 49,000, the accounts sheets seized are against his contentions. Therefore, what was left for consideration was with regard to the receipt and disbursement of Rs. 31,000. It was reasoned by both the authorities that the receipt and disbursement

pertaining to this amount being reflected in items 1 to 32 which formed part of the statement which contained particulars for Rs. 49,000, it would necessarily lead to an irresistible conclusion that the petitioner had received and disbursed this much of amount also in the same manner in which he had dealt with the amount of Rs. 49,000 for each of 3 amounts u/s 5(1)(aa) of the Act and for contravention of Section 5(1)(c) a penalty of Rs. 500 for each of the 63 payments. The total penalty was Rs. 46,500. Though the Appellants Board agreed with the findings of originate authority, it reduced the penalty to Rs. 7,500 at the rate of Rs. 2,500 in respect of each of the three receipts and to Rs. 15,750 at the rate of Rs. 250 per payment in respect of the 63 payments.

3. Mr. Abdul Ghani, learned Counsel for the appellant, submitted that the substantial question of law for consideration is "whether the authorities are in error in presuming the same mode of transaction regarding Rs. 31,000 in the absence of any proof of disbursement of the amount by way of recovery of chits?" In the course of his submissions, he laid considerable stress on the issue of two show cause notices and in the notice issued relating to Section 5(1)(aa) contravention, not only the statement of the appellant, but the seized documents were also relied upon, whereas in the show cause notice which invokes Section 5(1)(c) and which relates to disbursement, no seized document had been relied upon, except the statement of the appellant. Hence, he submits that in imposing penalty for disbursement, the receipts having not been relied upon at the show cause notice stage, the finding as arrived at, is illegal. On the imposition of penalty also he points out that, in respect of Ganniyar Ameer Thayar, the amount involved was only Rs. 50 and the penalty could not be in excess of three times of the said amount. On the statement made by him on 3-5-1972, he states that it is a vague statement lacking precision, and the contraventions held against him having been held only based on the statement in regard to Rs. 31,000 it cannot form the basis for finding him guilty.

4. For the total amount of Rs. 80,000 no doubt the appellant's statement had formed the main basis. He had stated that the items 33 to 81 related to Rs. 49,000 and as pointed out earlier, there is no area of dispute over this amount. As for Rs. 31,000 in the statement taken, it covers items 1 to 32. If the subsequent items could be accepted and acted upon, no valid reason is made out as to why the earlier entries could be differently understood and treated as not acceptable. He had admitted that thrice he had received money from Singapore for disbursement, and he had informed Shahul Hameed as to how he had disbursed the amounts to the persons named by him. It is true that from the receipts recovered, they had direct link with regard to items 33 to 81, but as the appellant was in custody of the particulars of transactions which he had carried out, there was no error committed by the authorities in holding that the whole of it could be understood only in one manner, and there lies no valid ground for treating the earlier items differently.

5. On the question of imposition of penalty in excess of the amount involved, this

contention applies only to the solitary item pointed out, and to this extent the petitioner would be entitled to relief.

6. Yet another plea raised is that though the receipt of the amount could be claimed to be made out by the statement, as far as the disbursement is concerned, in the show cause notice, no document having been relied upon and in the absence of receipts linking these transactions, that part of the penalty u/s 5(1)(c) could not have been imposed at all. Merely because there is a slight difference between the transactions covered by Rs. 49,000 from the transactions covered Rs. 31,000, it cannot be held that the amounts are not disbursed, on the instructions of Shahul Hameed. The names of the persons and the amounts have been made available when the statement was made. It had not been retracted. Only when the reply was sent on 18-3-1974, for the first time a stand had been taken that it had not been made voluntarily. In matters of this nature, such unrestricted statements could be accepted or acted upon.

7. Hence, except to grant a limited relief of reduction of penalty from Rs. 250 to Rs. 150 regarding Ganniyar Ameer Thayar transaction, in other respects, the appeal is dismissed with costs.