

(1981) 09 MAD CK 0059
In the Madras High Court

B.M. Ishak Maricar

APPELLANT

Vs

The Special Director, Enforcement, Directorate and Another

RESPONDENT

Date of Decision : 17-09-1981

Acts Referred:

Citation : (1983) CriLJ 1210

Hon'ble Judges : Singaravelu, J;Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—This appeal is directed against the appellate order of the Foreign Exchange Regulation Appellate Board, affirming the finding of the Special Director of Enforcement that the appellant has contravened Section 5 (1) (a) of the Foreign Exchange Regulation Act 1947, hereinafter referred to as the Act, but reducing the penalty imposed on the appellant by the Special Director of Enforcement from Rs. 20,000 to Rs. 10,000.

2. It is not in dispute that the appellant herein, who is a resident in India, had gone to Singapore in Feb. 1959 and stayed there till Jan. 1960 and during his stay at Singapore he had sold a shop" for 40,000.00 Malasian dollars but repatriated only a sum of Rs. 5000 equivalent to 321310 Malasian dollars. As regards non-repatriation of the balance amount of the sale proceeds by the appellant, proceedings were initiated by the Enforcement Directorate against the appellant for violation of Section 5 (1) (a) of the Foreign Exchange Regulation Act. The appellant resisted those proceedings contending that out of the sale proceeds of 40,000-00 dollars he had to necessarily expend a sum of 7000 dollars to his advocate at Singapore and 20,000 dollars to his father"s Malasian wife and children and 11,000 dollars for his journey and expenses of his stay at Singapore, and therefore it was not possible to repatriate the entire sum. However, based on the admission made by the appellant that he had disbursed certain amounts out of the sale proceeds to persons in Singapore without the permission of the Reserve Bank of India the Enforcement Directorate held the appellant to have contravened Section 5 (1) (a) of the Act. For such

contravention the Special Directorate of Enforcement has imposed a personal penalty of Rupees 20,000.

3. The appellant took the matter in appeal to the Foreign Exchange Regulation Appellate Board. The Appellate Board, however, confirmed the finding of the Special Director, Enforcement Directorate, that the appellant had, in fact, contravened Section 5 (1) (a) of the Act. But, taking note of the fact that non-obtaining of the permission of the Reserve Bank which, if the appellant had applied for, would have been granted, is a technical contravention, the Board felt that the penalty of Rs. 20,000 should be reduced to Rs. 10,000. The Board accordingly reduced the penalty to Rs. 10,000.

4. In this appeal the learned Counsel for the appellant does not dispute the fact that there has been, in fact, a contravention of Section 5 (1) (a) of the Act in that the appellant had effected payments out of the sale proceeds of the shop to parties resident in Singapore without the requisite permission of the Reserve Bank of India. But what the learned Counsel contends is that as the contravention has taken place only because the appellant was not aware of the requirement of permission of the Reserve Bank of India for the disbursements made to parties in Singapore out of the sale proceeds, the contravention of Section 5 (1) (a) cannot be taken serious note of. It is also pointed out by the learned Counsel that the order of the Appellate Board, proceeds on the basis that the appellant has committed only a technical violation of Section 5 (1) (a) and that for such a technical violation the penalty of Rs. 10,000 even as reduced by the Appellate Board is not justified. The learned Counsel for the appellant also contends that the expenditure of 11,000 dollars incurred by the appellant for his journey to and stay at Singapore cannot attract the mischief of Section 5 (1) (a) of the Act and, therefore, the appellant cannot be said to have contravened Section 5 (1) (a) so far as the sum" of 11,000 dollars spent on himself, is concerned. In support of this contention, the learned Counsel relies on the decision of N. S. Ramaswami J. in M.S.M. Syed Mohammad Bukhari Vs. The Director of Enforcement, New Delhi and Others, . In that case it has been held that Section 5 (1} (a) will apply only in respect of payments made to third parties residing in a foreign country, but that section will not apply to amounts spent by the party on himself in that country. The learned Counsel for the appellant, therefore, appears to be right in his submission that in respect of the 11000 dollars alleged to have been spent on himself, Section 5 (1) (a) cannot come into play, as the said amount has not been paid to any third party but has been spent on himself. However, the fact remains that in respect of the 20,000 dollars paid by the appellant to his stepmother and her children and the sum of 7000 dollars paid to the advocate at Singapore, admittedly no permission from the Reserve Bank had been obtained and, therefore, there is a clear violation of Section 5 (1) (a) of the Act. Merely because the appellant has succeeded in establishing his case as regards a part of the amount, it cannot be said that in respect of the other amounts Section 5 (1) (a) cannot be invoked. Further, the learned I counsel for the appellant would say that the violation of Section 5 (1)

(a) in this case is merely technical and if the appellant had applied for permission of the Reserve Bank it would have been automatically granted, and in support of that submission the learned Counsel refers to the observation of the Appellate Board that "had the appellant applied to the Reserve Bank for permission, such permission was likely to be granted". But we are not inclined to share that view. If the appellant had applied to the Reserve Bank for permission, the Reserve Bank would have naturally caused an enquiry to be made and it would have granted the permission only if it was satisfied about the genuine need for the payments to be effected. We cannot, therefore, accept the contention of the learned Counsel that the violation of Section 5 (1) (a) in this case is merely technical and, therefore, it calls for only a nominal penalty. We are not also inclined to agree with the learned Counsel that in this case as there was no mens rea the violation of Section 5 (1) (a) should be treated lightly, with a nominal penalty. We do not see how the appellant can escape the consequences of the contravention of Section 5 (1) (a) merely by saying that he had no mens rea at the time of the contravention. If the law requires that permission has to be taken from the Reserve Bank for making certain payments to a person outside the country, and if such a permission has not been obtained but payments had been made without obtaining such permission, the appellant cannot escape the consequences of not getting the requisite permission by merely saying that he was not aware of the requirement and that there was no mens rea. Ignorance of law is no excuse is the legal maxim. Therefore, the appellant cannot escape the consequences of the contravention of Section 5 (1) (a) merely on the ground that he was not aware of the statutory provisions.

5. The learned Counsel for the appellant would say that since contravention has not taken place in respect of 11000 dollars, out of about 37000 dollars, the penalty should correspondingly be reduced. But this contention of the learned Counsel obviously overlooks the provision in Section 23 (1) (a) of the Act which enables the imposition of a penalty for contravention of Section 5 (1) three times the foreign exchange involved in the contravention. In this case, the penalty imposed by the Appellate Board is only Rs. 10,000, which is far below the limit contemplated by Section 23 (1) (a). We are not, therefore, inclined to interfere with the penalty imposed by the Appellate Board. The appeal therefore fails and is dismissed. There will, however, be no order as to costs.