

(2011) 02 CAL CK 0034
In the Calcutta High Court
Case No : C.R.R. 1891 of 2004

ITC Limited

APPELLANT

Vs

Sri S.K. Mukherjee, Enforcement Officer, Enforcement
Directorate

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 56, 68, 8(1), 9(1)

Citation : (2011) 02 CAL CK 0034

Hon'ble Judges : Syamal Kanti Chakrabarti, J

Bench : Single Bench

Advocate : Anindya Mitra, Bhaskar Sen, Joymalya Bagchi and Kaushik Gupta,
for the Appellant; Maloy Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Syamal Kanti Chakrabarti, J.—In the instant revisional application u/s 482 Code of Criminal Procedure the legality and propriety of the proceeding in case No. C-2481 of 2002 now pending before the learned Metropolitan Magistrate, 9th Court, Calcutta under Sections 56 and 68 of the Foreign Exchange Regulation Act, 1973 has been assailed.

2. Heard the learned lawyer for both the parties present.

3. The instant criminal proceeding was initiated against the Petitioner company on the basis of a complaint filed by the opposite party dated 31.05.2002 for committing the alleged offence of international commodity trading transactions amongst various overseas entities without lawful authorities. It is further submitted that payment of one overseas entity to another overseas entity under a contractual understanding between the parties does not amount to acquisition of foreign exchange as alleged in the FIR. Moreover, the complaint has now lost its relevancy since during subsequent stage the departmental proceeding on identical charges have reached its finality absolving all the persons involved

therein. A comparative chart has also been placed before me showing the allegations made in the petition of complaint and the allegations made in the show-cause memorandum of the departmental proceedings being No. T-4/18-C/97 SCN-XVIII dated 31.03.1998. It appears from the supplementary affidavit filed by the Petitioner on 09.12.2010 and the comparative chart placed before me that there are altogether 14 items of charges which are also the subject matter of the departmental proceeding adjudicated on 30.04.2008 with the conclusion that the same are based on presumptions and surmises and not specific as required under the established legal position and as such the departmental proceeding has already been dropped by order of the Special Director dated 30.04.2008 passed in accordance with the provisions of Foreign Exchange Regulation Act, 1973 read with the Foreign Exchange Management Act, 1999. From the result of such departmental proceeding it is crystal clear that the company was not involved in any transaction which allegedly culminated in the violation of Sections 8(1) and 9(1a) of the Foreign Exchange Regulation Act, 1973 and as such further continuation of the proceeding against the present Petitioner will be merely an abuse of the process of law as there is no chance of success of the prosecution in this case to prove the charges u/s 56 read with Section 68 of the Foreign Exchange Regulation Act, 1973. Therefore, I hold that there is sufficient merit in this revisional application which is allowed to prevent the abuse the process of law and as such the instant proceeding is quashed and the Petitioner is discharged.

4. Urgent photostat certified copy of this order, if applied for, be given to the parties as early as possible.