(1981) 09 MAD CK 0012

In the Madras High Court

Case No : A.A.O. No. 446 of 1979

K. Narayanaswamy APPELLANT

Vs

Deputy Director, Enforcement Directorate, Madras and Another RESPONDENT

Date of Decision : 17-09-1981

Acts Referred:
Foreign Exchange Regulation Act, 1947 — Section 5(1)

Citation : AIR 1983 Mad 53

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

Bench : Division Bench

Advocate : V. Venkatasami, for the Appellant; K. Swamidurai, for K.N. Balasubramaniam, for the Respondent

Judgement

Ramanujam, J.—This appeal is directed against the order of the Foreign Exchange Regulation Appellate Board, upholding the order of the

Deputy Director of Enforcement, holding that the appellant has contravened S. 5(1)(aa) of the Foreign Exchange Regulation Act, 1947 hereinafter

referred to as the Act, and imposing a personal penalty of Rs. 5,000/- and confiscation of the sum of Rs. 15,000/- which was taken from the

person of the appellant on 10-5-1975 when he was apprehended on suspicion by the Enforcement Directorate.

2. The appellant and one Varadaraj were found to carry a sum of Rs. 15,000/- and Rs. 10,000/- respectively when they were apprehended near

the Customs House, Madras on 10-5-1973. On suspicion that they were involved in foreign exchange violations, the amounts held by them were

seized and statements from each of them were taken. In the statement given by the appellant, dated 10-5-1973 , he has stated that he came to

Madras on the instructions of one Manickam Reddiar of Gopalapuram in Virudhunagar and received from one Sri Shafeek at No. 42 Moore

Street, Madras a sum of Rs. 25,000/- out of which Rs. 10,000/- was given to his friend Varadaraj, who was accompanying him. A similar

statement has also been given by Varadaraj, who was carrying the said sum of Rs.10,000/- given by the appellant. On the basis of the statement

given by the appellant and Varadaraj, proceedings were initiated against both of them for violation of S. 5(i)(aa) of the Act and for confiscation of

the amount recovered from them. We are not now concerned with the proceedings initiated against Varadaraj, but we are concerned only with the

proceedings initiated against the appellant. The appellant resisted those proceedings contending that the statement taken from him on 10-5-1973

was under duress, and therefore, the said statement cannot be acted upon. He had also filed a petition on 14-5-1973 before the Deputy Director

of Enforcement, who initiated proceedings, held that the statement given by the appellant and that given by Varadarajan on 10-5-1973 were

voluntary and they clearly establish that the appellant is involved in the foreign exchange violation, and therefore, the sum of Rs. 15,000/- has to be

confiscated and a personal penalty of Rs. 5,000/- has to be imposed.

3. As against the order passed by the Deputy Director of Enforcement imposing a personal penalty of Rs. 5,000/-, an appeal had been filed by the

appellant to the Foreign Exchange Regulation Appellate Board. The Appellate Board also agreed with the view taken by the Deputy Director of

Enforcement that contravention of S. 5(i)(aa) of the Act has been established in this case.

4. In this appeal, directed against the order of the Foreign Exchange Appellate Board, learned counsel for the appellate contends that even if the

appellants statement dated 10-5-1973 is taken as the basis, ignoring his retraction later, an offence under Sec. 5(i)(aa) of the Act cannot be taken

to have been established: that the statement merely refers to an instruction given by one Manickam Reddiar of Gopalapuram in Virudhunagar to

receive the payment and that the said Reddiar, on whose instructions the payment has been received by the appellant, cannot be said to be a

person resident outside India. Learned counsel for the appellant also contends that the appellant''s statement dated 10-5-1973 cannot be relied on without further corroboration, especially when the appellants case is that the said statement was taken under duress.

5. It transpires that there was a raid of Manickam Reddiar''s house about six months later, but nothing was recovered. Therefore, the only material

on the basis of which the appellant was sought to be proceeded against for contravention of S. 5(i)(aa) of the Act is only his own statement dated

10-5-1973 and the statement of Varadaraj of the same date. Therefore, the question to be considered is whether the statements given by the

appellant on 10-5-1973 and the one given by Varadaraj constitute sufficient basis for proceeding against the appellant for contravention of S. 5(i)

(aa) of the Act. A perusal of the statement said to have been given by the appellant on 10-5-1973 indicates that the appellant came to Madras

along with Varadaraj on the instructions of Manickam Reddiar of Gopalapuram in Virudhunagar, that they were instructed by him to go to No. 42

Moore Street, Madras and get the sum of Rs. 25,000/- that Manickam Reddiar gave the portion of a letter received by him from Singapore, that

in pursuance of his directions they came to Madras and received the sum of Rs. 15,000/- from one Shafeek, residing at No. 42 Meera Street,

Madras and that later the appellant entrusted the sum of Rs. 10,000/- to Varadaraj, who accompanied him. The said statement nowhere refers to

the name of the person in Singapore who had instructed Manickam Reddiar to receive the payment. Nor does it establish any connection between

the appellant and the person resident outside India on whose instructions the amount has been directed to be received by Manickam Reddiar. The

question is whether on the basis of the statement alone, without any further corroboration, an offence u/s 5(1)(aa) of the Act can be taken to be

established as against the appellant. Section 5(1)(aa) of the Act says :

No person in or resident in, India shall receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person

resident outside India."" This section makes the receipt of an amount by a person resident in India on the instructions of or on behalf of any person

resident outside India an offence. On the materials on record, we are not in a position to know who is the person resident outside India, who had

given instructions either to Manickam Reddiar or to the appellant to receive any amount. The statement merely indicates that the appellant received a sum of Rs. 25,000/- from a person resident in India on the instructions of Manickam Reddiar of Virudhunagar, who is also a resident in India.

The mere receipt of an amount on the instructions of a person resident in India cannot constitute the contravention of Section 5(1)(aa) of the Act.

The essential ingredient which can constitute the contravention of S. 5(1)(aa) of the Act is the receipt of the amount by the person resident in India

on the instructions of or on behalf of a person resident outside India. Before it could be found that there is a contravention of S. 5(1)(aa) of the

Act, we must know as to who is the person on whose instructions or on whose behalf the amount was received and whether he is resident outside

India. In this case, we know the person who has received the amount. But, we do not know the person resident outside India on whose instruction

and on whose behalf the amount is said to have been received. The statement of the appellant merely indicates that he received the amount by

order or on behalf of Manickam Reddiar. Manickam Reddiar is, admittedly, a person resident in India and, therefore, any amount received on his

instructions cannot amount to contravention of S. 5(1)(aa) of the Act.

6. Learned counsel for the respondents would refer to the fact that the appellant''s statement dated 10-5-1973, refers to a portion of the letter said

to have been received from Singapore. The slip has not been recovered and produced. Even assuming that the slip, which was handed over by

Manickam Reddiar to the appellant, can be taken as the basis, it has not been shown that the slip formed a letter written by a person resident

outside India, for it is possible that the letter might have been written from Singapore by a person resident in India, but who has gone there as a

visitor. A person resident outside India has a definite connotation and a mere visitor cannot be taken to be a resident outside India. In this case, the

department has not established that the slip which has been referred to in the statement, is from a specified person outside India. As a matter of

fact, the Department is not able to name the person resident outside India from whom instructions had been received by Manickam Reddiar. In this

view of the matter, it is not possible to say that the Department has established any nexus between the appellant and the person resident outside

India, who is said to have instructed the appellant or Manickam Reddiar to receive the amount. Therefore, on the materials on record, we cannot say that the contravention of S. 5(1)(aa) of the Act has been established as against the appellant. Accordingly, the appeal is allowed and the orders

of the Deputy Director, Enforcement Directorate as also the Appellate Board are set aside. No order as to costs.

7. Appeal allowed.