
(1985) 09 DEL CK 0005
In the Delhi High Court
Case No : Criminal Appeal No. 109 of 1975

Mehar Singh

APPELLANT

Vs

The Appellate Board Foreign Exchange

RESPONDENT

Date of Decision : 18-09-1985

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 54

Citation : (1986) 1 Crimes 561 : (1986) 10 DRJ 19

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Advocate : Amar Singh, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) This is an appeal u/s 54 of the Foreign Exchange Regulation Act, 1973, challenging the legality of the order dated 15th February, 1975, of the Foreign Exchange Regulation Appellate Board whereby the order of the Director of Enforcement finding the appellant guilty of contravening the provisions of Section 5(1)(aa) and section 5(1)(c) of the Foreign Exchange Regulation Act, 1947, was upheld. It is not necessary to notice the facts of the case in detail as, in my view, the appeal is liable to be decided on the short ground that the appellant's applications made to the Director of Enforcement and before the Appellate Board during the pendency of the appeal to summon four witnesses for cross-examination, were not dealt with by the authorities below.

(2) A bare reading of the order under appeal shows that the statements recorded u/s 164 of the Code of Criminal Procedure of S/Shri Tarlochan Singh, Balbir Singh, Ujagar Singh have been read as evidence in the case against the appellant herein. According to the statements of those witnesses some amount by way of "compensatory amount" had been paid to them by the appellant. It is the appellant's case that he had made an application before the Director of Enforcement during the adjudication proceedings to summon those witnesses

and also another witness, namely, Bhanwar Lal from whom, according to the prosecution, the amount which was to be distributed by the appellant, had been received by him. It is submitted by Ch. Amar Singh, learned counsel for the appellant that during the pendency of the appeal before the learned Appellate Board he made another application on 12th February, 1974, seeking that in the interests of justice those four witnesses be summoned and for that purpose the case be remanded to the Director. As the plea contained in the application has a bearing on the decision of this case it is useful to quote the said application which is at page 43 of the Appellate Board's record :

"1. That the above appeal is pending in the Board. 2. That the affidavits as well as statements u/s 164 Cr. P.C. have been submitted by the prosecution of Balbir Singh, Ujagar Singh and Trilochan Singh, 3. That the statements as well as affidavits are doubtful and have not been prepared and done as laid down by the law and false. 4. That the petitioner submitted before the Director to call these witnesses to be examined but their request was declined. 5. That Bhanwar Lal Jain from the house of which it is alleged that the applicant had collected the currency notes has not been summoned and his evidence is indispensable in this case. It is, Therefore, prayed that in the interests justice Trilochan Singh, Baibir Singh and Ujagar Singh to whom it has been alleged that compensatory amount have been paid and as well as Bhanwar Lal Jain be summoned for the evidence and case be remanded to the Director for this purpose".

(3) The above application has been marked as Ex-24.

(4) With the assistance of Ch. Amar Singh I have gone through the impugned order of the Appellate Board. It is apparent that the above application was not kept in view. Instead one of the findings against the appellant is that he had made no request to summon these witnesses for purposes of cross-examination or otherwise. That finding is contained in the last paragraph of the judgment. It reads :

"The charge against the appellant of making payments to persons in India by order of persons resident abroad is thus clearly established by the statements of the recipients. The testimony of these individuals was not challenged by the appellant before the learned Director by requesting that they should be summoned for purposes of cross-examination or otherwise"

(5) This finding is against the record of the case, which shows misapplication of mind. Non-summoning of the said witnesses for purposes of cross-examination has resulted in miscarriage of justice.

(6) In the result I allow this appeal and set aside the impugned order dated 15th February, 1975. I remand the case to the Appellate Board for deciding it afresh in accordance with law. The application dated 18th February, 1974 (Ex. 24) be decided after affording an opportunity to the parties of being heard.

(7) The record of the Appellate Board be returned immediately.