

(2009) 09 DEL CK 0420
In the Delhi High Court
Case No : Writ Petition (C) 11161 of 2009

Mohd. Muslim

APPELLANT

Vs

Enforcement Directorate

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0420

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Shailendra Bhardwaj and Mohd. Saleem, for the Appellant; Rajdipa Behura, for the Respondent

Judgement

Sanjiv Khanna, J.—By the impugned order dated 16th July, 2009 Appellate Tribunal for Foreign Exchange has disposed of the application filed by the petitioner for waiver of pre-deposit of penalty amount of Rs. 3 crores (1.5 crores in two cases) with a direction to deposit 10% of the penalty amount, i.e., Rs. 30 lacs.

2. Learned Counsel for the petitioner submits that the petitioner has been acquitted in the criminal case. He further states that the petitioner has retracted his statement and the diary relied upon and referred to in the adjudication order is inadmissible in evidence and does not justify imposing the huge penalty of Rs. 3 crores. It is stated that no recovery was made from the petitioner. Learned Counsel for the petitioner has also drawn my attention to the income tax returns as well as statement of bank accounts of the petitioner and his wife which were filed pursuant to the direction issued by this Court.

3. Income tax returns reveals that the petitioner has a shop in the Meena Bazar, Jama Masjid area, Delhi. The petitioner has declared income between Rs. 60,000/- to Rs. 1,30,000/- p.a. from the said shop during the Assessment years 2005-06 to 2009-10. As per the income tax return for the assessment year 2009-10 the petitioner claims that he had sales of Rs. 7,18,000/- and had made

purchases of Rs. 6,60,000/- during the said year. The petitioner has also filed a sale deed dated 12th February, 1998 by which the petitioner had purchased property No. 2063- 64(entire first floor), Gali Qutabuddin, Kala Masjid, Bazar Turkman Gate, Delhi measuring 88 sq.yds. for Rs. 70,000/-. It is impossible to believe that a property measuring about 900 sq.ft. in old Delhi could have been purchased for Rs. 70,000/- only.

4. The case against the petitioner is that he was involved in hawala transactions and had violated the provisions of the Foreign Exchange Regulation Act, 1973. His statement was recorded on 09.09.1998. In his statement he had stated that he had visited Pakistan in 1990-91 and at that time he got in touch with Mr. Rijwan of Lahore who introduced him and inducted him into the hawala trade. He used to earn profit of Rs. 200 per transaction for a transaction of Rs. 1 lac. The petitioner admitted that he knew Mr. Jasvinder Singh and one Mr. Qazi who had introduced him with Mr. Jasvinder Singh. In his statement, the petitioner gave details of various transactions in which he was involved and the name of persons with whom he had entered into hawala transactions. No doubt that the petitioner has retracted his statement but this aspect has to be examined in the appeal keeping in view the facts stated in the statement and corroborative evidence otherwise available to support the admissions. The criminal case against the petitioner and others was on account of recovery of Rs. 47 lacs made from a truck. The allegation was that the said money had link with terrorist organizations. Discharge or acquittal in the said case per se does not make the adjudication order passed under the Act as void and bad. It is well settled that standard of proof and parameters involved in criminal cases and civil cases are different. Prima facie some material exists against the petitioner and the adjudication order is not per se illegal. Of course merits and the question of quantum of penalty imposed is pending before the appellate tribunal. On the question of quantum of penalty, learned Counsel for the petitioner has drawn my attention to the averments in the adjudication order that the petitioner was entitled to small commission on the entire value of the transaction and states that his financial status is not such that he can make payment of Rs. 30 lacs. It is submitted that the petitioner will not be able to deposit Rs. 30 lacs and thus will be deprived to his right to appeal. In this regard it may be appropriate to reproduce para 8 of the judgment of the Supreme Court in *Monotosh Saha Vs. Special Director, Enforcement Directorate and Another*,

8. It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/

authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake citizens' faith in the impartiality of public administration, interim relief can be given.

5. In view of the legal position, the facts of the present case and also to ensure that the petitioner has access and fair opportunity to challenge the penalty order, the impugned order dated 16.07.2009 is partly modified and the petitioner is given liberty to deposit Rs. 15 lacs in three installments of Rs. 5 lac each. The first installment will be paid on or before 31st October, 2009. The second and third installment will be paid on or before 31st December, 2009 and 1st of March, 2010. On the said deposit being made, the appeal of the petitioner will be heard on merit. In case there is default and failure to deposit the installments, the appeal of the petitioner will be disposed of as per law. The observations made in this order are prima facie and tentative and will not influence the Appellate Tribunal while deciding the appeal on merits.

No costs.