(1986) 07 MAD CK 0020

In the Madras High Court

Case No : C.M.A. No. 753 of 1981

P.N. Rangaswamy APPELLANT

Vs

The Deputy Director, Enforcement Directorate RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:

Citation : (1987) 11 ECC 242

Hon'ble Judges : Sathiadev, J;Maheswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appeal is preferred against an order imposing a penalty of Rs. 3,000 on the appellant for the contravention of Section 5(1)(aa) of the

Foreign Exchange Regulation Act, 1947. Initially the first authority imposed a penalty of Rs. 5,000 and also confiscated the amount of Rs. 30,000

which was seized from the custody of the appellant, u/s 23(1B) of the said Act. On appeal, the order of confiscation was confirmed ; but the

penalty alone was reduced to Rs. 3,000.

2. It was claimed that the appellant had received a sum of Rs. 30,000 on 4-9-1971 from an unknown person in India by order of his friend, Ramu

Thevar from Singapore without the permission of the Reserve Bank of India. When the appellant''s premises was searched on 8-9-1971, the

amount of Rs. 30,000 in Indian currency was seized along with a foreign aerogram dated 21-8-1971. He also gave a statement on 8-9-1971

disclosing the manner in which the amount had come into his hands from Ramu Thevar. Acting on this statement, the appellant was found guilty of

having contravened Section 5(1)(aa) of the Act. No doubt an attempt was made to show that he had borrowed this amount under two loans from

two different persons; but in the appellate stage, this defence was not put forth. The statement made by him having remained unrestricted for more

than five months and evidently realising that the evidence adduced had clearly shown that he had received the said amount without the prior

permission of the Reserve Bank of India, in this appeal it is contended that the main impact, is confined to the order passed u/s 23(1B).

3. Therefore, the substantial question of law advanced by the learned Counsel for the appellant is that when Section 23(IB) gives a discretion to

the authority to either confiscate or not, were not the authorities below in error in not giving the reasons for ordering confiscation ?

4. Mr. Abdul Gani, learned Counsel for the appellant states that, when the said amount had admittedly been received for starting a business and it

being confined to a sole transaction and there being no evidence that the appellant is a racketeer or carries on business in compensatory payment

and the like, were not the authorities enjoined to take into consideration the relevant factors before ordering confiscation ? The entire amount being

confiscated, is excessive, disproportionate, unreasonable and hence, he submits that either this Court may give relief or the matter be remitted to

the appellate authority which may take into account the relevant circumstances and give reasons for passing the order of confiscation.

5. Once it is established that by way of compensatory payment, the sum of Rs. 30,000 had been received by the appellant, it having been done in

contravention of the provisions of the Act and which had prevented the Government from getting the foreign exchange under the said transaction,

the entire amount being confiscated cannot be characterised as unjust. If the said amount, admittedly received unauthorisedly, is allowed to be

retained in full or a portion of it is allowed to used by appellant, it would result in only a nominal penalty being paid and the balance utilised in spite

of the illegality committed by the appellant. It is to avoid such contravention being indulged in, provision having been made for confiscation, and in a

matter of this nature, by taking into account factors which are now pleaded, if the appellant is allowed to retain any portion, it would result in the

Court permitting him to retain the illegally received amount. This would be against the intention of the Act. For this reason, this Court considers that the authorities, bearing in mind the circumstances under which the amount had been received by the appellant, and as it had resulted in the

contravention of Section 5(1)(aa) of the Act, had not chosen to permit the appellant to retain any portion of the said amount.

6. As for the other contention that reasons must be given, the order having proceeded to deal with the manner in which the amount had been

received and how the contravention had taken place, had given reasons of composite nature and hence necessarily it led to a finding of guilt and

also to order confiscation. Whatever reason had been given in the order deals with both the sections. Hence they would apply to the finding

rendered on the aspect of the confiscation. Hence, there was no need to give any separate reason justifying the imposition of the penalty of

confiscation.

7. Hence, the appeal is dismissed with costs.

8. The learned Counsel for the appellant made an oral application for leave to appeal to Supreme Court. But we do not think there is any question

of law, much less substantial question of law of general importance, to be decided by the Supreme Court in this case. Hence, leave is refused.