**(2007) 11 P&H CK 0091**

**In the Punjab And Haryana At Chandigarh**

Pran Nath APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 19-11-2007

**Acts Referred:**
Foreign Exchange Regulation Act, 1973 — Section 40, 51, 63, 64, 9

**Citation :** (2007) 11 P&H CK 0091

**Hon'ble Judges :** M.M. Kumar, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

M.M. Kumar, J.—The instant petition is directed against order dated 4.5.2007 (Annexure P.5) passed by the Appellate Tribunal for Foreign Exchange-respondent No. 2. It has been ordered vide order dated 4.5.2007 that the petitioner should deposit the penal amount of Rs. 10 lacs failing which his appeal against order dated 6.4.1998 passed by the Director of Enforcement- respondent No. 3 was to be dismissed. It has further been ordered by respondent No. 3 that the amount of Rs. 19,73,200/-seized from the petitioner was to be confiscated. The operative part of the order passed by respondent No. 3 reads as under:

I, therefore, impose the following penalties:

I) Shri Pran Nath

For contravention of Section 9(1)(b) and 9(1)(d) r/w 64 of FERA 1973 Rs. 10,00,000/-(Rs. Ten lakhs only)

I also order confiscation of Indian currency of Rs. 19,73,200/ (nineteen lakhs seventy three thousand and two hundred only) u/s 63 of FERA, 1973, seized from Shri Pran Nath by the Police, as it forms part of the amount which was to be distributed.

The penalties as imposed above should be deposited in the office of the Deputy Director, Jalandhar, Zonal Office, Enforcement Directorate at 5, Green Model

Town, Jalandhar, by means of Demand Drafts to be drawn in favour of the Pay and Accounts Officer, Pay Accounts Office Department of Revenue, Ministry of Finance, New Delhi within 45 days from the date of receipt of this order.

2. The appellate Tribunal - respondent No. 2 declined the prayer of the petitioner for dispensation with the deposit of penal amount on the ground that neither there was any prima face case in his favour nor the recovery of the huge currency amounting to Rs. 19,73,200/-has been denied. The contention that Chief Judicial Magistrate has acquitted the appellant in criminal proceedings has not weighed with the appellate Tribunal -respondent No. 2.

3. A perusal of the written statement shows that in the statement made by the petitioner u/s 40 of the Foreign Exchange Regulation Act, 1973 (for short ''the FERA'') in his own handwriting in Urdu language on 25.7.1994 and 26.7.1994 does not leave any doubt that the amount of Rs. 19,73,200/-was received by him on 24.7.1994 from two persons namely Baba and Anil on the instructions of his son Dalip Kumar residing in USA. The amount was to be distributed to persons in India from whose relations his son had collected foreign currency in USA. The petitioner had also disclosed the names and addresses of other persons from India from whom he had been receiving Indian currency for distribution of compensatory payments since March, 1994. The statement of two such persons namely Afrik Singh and Balbir Singh @ Billa were recorded in which Afrik Singh inter-alia stated that he knew the petitioner and his son Dalip Kumar. He further explained the modus operandi adopted in conducting Hawala transaction. There were enquiries made by respondent on the basis of documents received from the petitioner from the persons who were to receive the Indian currency in India and the fact of receiving some sums of money in lieu of foreign exchange already paid abroad by their kith and kin in USA. The petitioner also stated that he received and distributed compensatory payments to the tune of Rs. 1,50,00,000/-. He was arrested on 26.7.1994 and was produced before the Court on 27.7.1994. The respondents had initiated proceedings u/s 51 of FERA alleging contravention of Section 9(1)(b) and 9(1)(d) read with Section 64 of FERA. Accordingly respondent No. 3 had imposed a penalty of Rs. 10 lacs on the petitioner in addition to confiscation of Indian currency amounting to Rs. 19,73,200/-on 4.5.2007. The application of the petitioner for dispensing with the deposit has been dismissed.

4. After hearing learned Counsel we are of the considered view that no intervention of this Court would be warranted in the facts and circumstances of the case because there are serious allegations of wholesale violation of the provisions of FERA and huge amount of money is involved in Hawala transaction. In the face of these allegations it cannot be concluded that the petitioner has prima facie case and that the discretion exercised by the Appellate Tribunal suffers from any legal lacuna. The writ petition is therefore without any merit and is thus liable to be dismissed. Nothing observed herein shall have any bearing on the merit of the appeal For the reasons recorded above, this petition fails and the

 

same is dismissed.