(1977) 05 CAL CK 0039

In the Calcutta High Court

Case No : Criminal Appeal No. 149 of 1975

S.N. Singh APPELLANT

Vs

P.B. Venkatasubramaniam RESPONDENT

Date of Decision : 05-05-1977

Acts Referred:

Foreign Exchange Regulation Act, 1947 — Section 23, 23(1), 23E, 4, 4(1)

Citation : (1978) 2 ILR (Cal) 232

Hon'ble Judges : Anil K. Sen, J

Bench : Single Bench

Advocate : Abani Mohan Chatterjee and Biswanath Sanyal, for the Appellant;S.M. Sanyal, for State, P.K. Ghosh and R.K. Mazumdar for Union of India, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—This is an appeal u/s 23(ee) of the Foreign Exchange Regulation Act, 1947, (hereinafter referred to as the said Act). In an adjudication made u/s 23(1)(a) of the Act, the Appellant was subjected to varying amounts of penalties totalling Rs. 22,000 by the Director of Enforcement by an order, dated March 14, 1972. He preferred an appeal to the appellate board u/s Section of the said Act which was allowed in part and the penalty was reduced to a total amount of Rs. 2,000. Feeling aggrieved by the appellate order, the Appellant has preferred a further appeal to this Court u/s 23(ee) as aforesaid.

2. Initially, charges on eight counts were framed as against the Appellant on eight show-cause notices for violation of different provisions of the said Act. In an adjudication before the Director of Enforcement he was acquitted of two of the charges out (sic) of the rest. Such conviction Having been set aside, re-adjudication was directed and on such re-adjudication on six charges he was convicted of five. The five charges of which the Appellant was convicted were shortly as follows:

(i) that the Appellant borrowed a sum of ? 600 from Messrs Geoffrey Turner Company of London and thus acquired foreign exchange in contravention of Section Section of the said Act;

(ii) that the Appellant received two cheques of ? 500 each which was collected through his bank account and which was held by him in violation of the provision of Section 9 of the said Act;

(iii) the Appellant maintained and operated three foreign bank accounts in contravention of Sections 4 and 5 of the said Act;

(iv) that the Appellant borrowed from two persons the sums of ? 750 and ? 200 respectively and thus acquired foreign exchange in violation of Section 4 of the said Act.

(v) that the Appellant paid a sum of Rs. 50,000 to a person at Karachi in Pakistan without the permission of the Reserve Bank of India.

3. On the appeal before the appellate board, Appellant was acquitted of the last of the five charges, as aforesaid. His conviction on the other charges were upheld though penalties imposed were materially reduced. It is the order of the appellate board which is under challenge now before me in this appeal. This appeal, however, is limited only to questions of law.

4. So far as the first charge is concerned, it had been well proved by a letter dated April 28, 1965, recovered from the possession of the Appellant that he obtained a loan of ?600 from Messrs Geoffrey Turner on a promise to repay the same within 12 months. The document well establishes the position, that the Appellant acquired foreign exchange by borrowing contrary to the provision of Section 4(1) of the said Act. On behalf of the Appellant, however, it was sought to be contended before the Tribunals below that the transaction represented by the letter, as aforesaid, was not a loan, It was merely an advance to him by the so-called lender for defraying his expenditure for rendering certain services to the said company. Reliance was sought to be placed on a letter from the Chairman of the Turner Morrison and Group of Companies stating that the said advance of ? 600 had all been adjusted against the Appellant''s expenses and his promissory note to the London office stood cancelled. This defence was not accepted by the Tribunals below and Mr. Chatterjee appearing on behalf of the Appellant has contended once more before me that when the appellate boards had not disbelieved the evidence adduced on behalf of the Appellant in respect of this charge the transaction could not have been held to be a loan so that the Appellant cannot be charged of having acquired any foreign exchange by borrowing in contravention of Section 4 of the said Act. The appellate board has not disbelieved the Appellant''s defence that the aforesaid amount of ? 600 was later adjusted against his expenses incurred for services rendered by him nor has the said board disbelieved the letter of the Chairman of the Turner Morrison and Group of Companies but it has taken the view that such subsequent adjustment did not change the original character of the transaction so that when the amount

was first taken it was simply borrowed and at that stage there was no indication that what was being advanced was not by way of a loan but towards the expenses. In my view, the Tribunal was right in its conclusion. The letter dated April 28, 1965, clearly establishes, contrary to the Appellant''s present claim that the sum of ? 600 was being given to the Appellant on a clear promise to repay. It was nothing but a loan and as such constitutes borrowing within the mischief of Section 4 of the said Act. Later on, this loan might have been adjusted against the expenses incurred by the Appellant for rendering certain services to the lender company but that by itself does not change the original character of the transaction. Hence, when the foreign exchange of ? 600 was acquired under the disputed transaction it was acquired by borrowing in contravention of Section 4 of the said Act and hence, the Appellant''s conviction on this charge and the penalty imposed therefore by the appellate board must be upheld.

5. So far as the second charge is concerned, it is not in dispute that two cheques of ? 500 each were credited to the Appellant''s account. The Appellant''s specific defence was to the effect that these amounts were not acquired by him and he had no beneficial interest therein. His account was merely used by the drawers of those cheques for the purpose of convenient encashment. Such a defence on facts was accepted by the appellate board and the board found that the Appellant did not benefit personally by those cheques and that he was only a conduit pipe for the amounts being passed to a foreign company. But nonetheless the appellate board took the view that once the foreign exchange represented by the said two cheques were credited to the Appellant''s bank account he became the holder of the said foreign exchange and as such, he contravened the provision of SectionSection of the said Act. The appellate board, therefore, in that view upheld the conviction but reduced the penalty to a nominal figure.

6. Mr. Chatterjee appearing, in support of this appeal, has assailed the correctness of the view taken by the appellate board. He has very strongly contended that on the facts found in respect of this charge, the Appellant could not have been held to have held the foreign exchange in contravention of Section Section of the said Act.

7. Section Section provides that the Central Government may by a notification order any person who owns or holds foreign exchange to offer it or cause it to be offered for sale to the Reserve Bank on behalf of the Central Government or to such other person as the Reserve Bank may authorise. There is no dispute that such an order in a notification was issued by the Central Government. But it has been contended by Mr. Chatterjee that when on the finding of the appellate board the Appellant''s bank account was used by others for encashment of these two cheques only, it cannot be said that the Appellant was owning or holding the foreign exchange represented by those two cheques. In my view, there is some substance in this contention of Mr. Chatterjee. The foreign exchange represented by the said two cheques can never be said to be owned by the Appellant since the Appellant at no point of time did acquire any title to that money. The only

question which needs to be considered is as to whether it can be said that the Appellant was holding those foreign exchange within the meaning of Section Section of the said Act, as held by the appellate board only because the cheques were credited to the Appellant''s account and could be further endorsed only by him. In my view however, the term ''holds'' in Section Section of the said Act has to be read in its context. As I have indicated hereinbefore, a.9 contemplates that one who owns or holds any foreign exchange may be by an order be directed to sell the same to the Reserve Bank or to the Reserve Bank''s nominee. A person who owns foreign exchange can certainly be made to sell to the Reserve Bank the foreign exchange so owned by him. So far as a person holding foreign exchange, his holding must be with such incidence of rights as would entitle him to sell the same to the Reserve Bank. The Legislature could not have contemplated a situation where a liability to sell was being imposed on a person who had not the capability to do so. Such being the position, it cannot brat be held that on die finding of the appellate board when the disputed cheques were merely encashed through the bank account of the Appellant it can never be said that the Appellant was holding the foreign exchange covered by those two cheques with any incidence of right to sell the same to anybody far less the Reserve Bank or its nominee. Such being the position. I am of the opinion that the appellate board was clearly in the error in its interpretation of Section Section when it held that the Appellant was holding the foreign exchange that, was collected by use of his bank account on collection of the two cheque referred to in this charge. The Appellant''s conviction on this count must necessarily be set aside, so also the penalty.

8. So far as the third charge is concerned, it is not in dispute that the Appellant maintained and operated three foreign bank accounts. It has been found by the Tribunals below that foreign exchange from time to time was credited in favour of the Appellant and the Appellant too made payment out of those bank accounts. The Appellant''s defence before the Tribunals below was that these were merely book-maker''s account. But, in my view, the appellate board was right in its conclusion that whatever the nature of the account when foreign exchange was credited in favour of the Appellant in these accounts and that the Appellant also made payments out, of it, there was a clear contravention of Section Section of the said Act.

9. The next charge as against the Appellant was his acquiring foreign exchange by borrowing two sums of ? 750 and ? 200 in contravention of Section Section of the said Act. Borrowing of such amounts had been well established by the documents proved in the proceeding and is also not seriously disputed. The Appellant''s only defence was that such loans were due to certain book-maker''s transaction. But, in my opinion, the appellate board Was right in its conclusion that whatever the reason for which the loans were incurred when the Appellant did acquire foreign exchange by borrowing but in contravention of Section Section of the said Act, he was clearly infringing the said provision.

10. So far as the last charge is concerned, the Appellant had been acquitted of the said charge by the appellate board and the same does not constitute a part of the present appeal.

11. In the result, the appeal succeeds in part and the Appellant''s conviction on the second charge, as aforesaid which was covered by the show-cause notice No. 4, is set aside along with the penalty of Rs. 1,000 imposed by the appellate board. The Appellant''s conviction on the other charges as upheld by the appellate board and the penalties imposed thereon are affirmed. The penalty of Rs. 1,000 as aforesaid, if realised, be refunded to the Appellant.

