

(1996) 02 MAD CK 0052
In the Madras High Court
Case No : A.A.O. No. 736 of 1993

S.P. Sarangapani

APPELLANT

Vs

The Assistance Director, Enforcement Directorate, Shastri
Bhavan Haddows Road, Madras-6 and another

RESPONDENT

Date of Decision : 08-02-1996

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 2, 54
Penal Code, 1860 (IPC) — Section 2

Citation : (1996) CriLJ 4120

Hon'ble Judges : P. Sathasivam, J; Abdul Hadi, J

Bench : Division Bench

Advocate : P.M. Junna Khan, for the Appellant; S. Veeraraghavan, Additional
Central Government Standing Council, for the Respondent

Judgement

Abdul Hadi, J.—This appeal u/s 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "the new Act") is against the

concurrent order of the 2nd respondent-Appellate Board; confirming the three different penalties levied on the confiscation made by the 1st

respondent-Directorate under the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as "the old Act"). The appellant was found guilty

by the said Authorities below on three different charges. One is u/s 5(1)(c) of the old Act read with Section 23-B of the said Act, which provides

that no person in India, save in accordance with any exemption granted by the Reserve Bank, shall "make any payment to or for the credit of any

person by order or on behalf of any person resident outside India". Under this charge, the payment in question was not actually made, but was only

attempted to be made and that is why the charge is under the abovesaid provision read with Section 23-B of the old Act, according to which, even

an attempt to contravene any of the provisions of the said Act, shall be deemed to be contravention of the said provision itself. The said attempted

payment by the appellant, according to the finding is in July, 1966 and the payment was Rs. 2,000/- to one Mrs. B. David by order or on behalf of

one Ahamed of Malaysia with the approval of the Reserve Bank of India. On this charge, the concurrent penalty that was levied was Rs. 8,000/-.

2. The second charge is also u/s 5(1)(c). But, it related to several payments made by the appellant to various parties in India, totalling Rs. 12,500/-

during the period 1966-67 by order or on behalf of the same Ahamed without the approval of the Reserve Bank of India. On the said charge also,

the appellant was found guilty by both the authorities below and penalty of Rs. 15,000/- was concurrently levied.

3. The third charge is u/s 5(1)(aa) of the old Act, which provides that no person in India, save in accordance with exemption granted by the

Reserve Bank, ""receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India."" In

this case, the concurrent finding by both the authorities below is that during the same period 1966-67, the appellant received payments aggregating

to Rs. 14,500/- from a person other than an authorised dealer in foreign exchange, by order or on behalf of the abovesaid Ahamed of Malaysia

himself without the approval of the Reserve Bank of India and the concurrent levy of penalty in this case is for a sum of Rs. 5,000/-.

4. Apart from the above penalties levied, concurrent order of confiscation was also passed, confiscating the bank draft for Rs. 2,000/- issued by

the appellant, seized from the appellant in the search made on 12-12-1967, of the premises of the appellant at Madras. In the abovesaid search,

one money order acknowledgment for Rs. 330/- and one pocket note book were also seized and confessional statement dated 12-12-1967 was

also obtained from the appellant. In the said statement, the appellant inter alia admitted the receipt of amounts roughly aggregating to Rs. 14,000/-

and payment of amounts totalling Rs. 15,500/- to various parties and a draft for Rs. 2,000/- to one Mrs. Mary David. Then, three show cause

notices, all dated 23-10-1968, in relation to the said three charges were given to the appellant and the appellant no doubt denied the charges in his

belated reply dated 28-3-1969, though he did not therein refer to the abovesaid confessional statement dated 12-12-1967, or specifically

retracting the same. No doubt, it must also be stated that the abovesaid show-cause notices also did not refer to the abovesaid confessional

statement. Only when personal hearing was given to him much later in September, 1976, he appears to have retracted the abovesaid confessional statement dated 12-12-1967.

5. One argument of learned Counsel for the appellant is that there is no proof to hold that the abovesaid relevant payments or other attempted

payment, was by order or on behalf of any person resident outside India. In other words, according to the said learned Counsel, there is no

evidence to hold that the abovesaid Ahmed was a person resident outside India. Coupled with this argument he also argued that even the show

cause notice did not refer to the alleged confessional statement of the appellant made on 12-12-1967 and that it cannot be said that there was

delay in retracting the said confessional statement, the retraction having come only at the time of the hearing in September, 1976. Therefore,

according to learned Counsel, the said retracted statement cannot be relied on without corroboration.

6. On the other hand, learned Counsel for the respondents reiterates the reasonings of the authorities below and submits that the concurrent order

of the authorities below should only be confirmed.

7. We have considered the rival submissions. We are unable to see any good reason for interfering with the concurrent order or the authorities

below u/s 54 of the new Act for the following reasons :- We shall first take up the question how far above referred to confessional statement dated

12-12-1967 could be relied on. Admittedly the said statement was retracted only 9 years later at the time of the hearing before the Directorate in

September, 1976. No doubt, learned Counsel for the appellant points out that even the abovesaid show cause notices of 1968 did not even refer

to any such confessional statement and that unless the alleged confessional statement is disclosed to the appellant, he cannot be charged with delay

in retracting the alleged statement of 12-12-1967. No doubt, there was no reference to the confessional statement in the show cause notices. But

the order of the first Authority mentions thus :-

It was admitted by the advocate that a copy of the statement of Sri Sarangapani (appellant) had been made available to him

No doubt, it is not mentioned therein as to when actually the said copy was given to the appellant. But, it must be noted that even learned Counsel

for the appellant could not point out, from any available record, as to whether at any time, the appellant has stated that he did not at all give any

such confessional statement or that no such statement was at all obtained by the Enforcement Directorate. So, it has necessarily to be concluded

that a confessional statement was made on 12-12-1967 by the appellant. If that is so, even when he sought to retract the said statement in

September 1976 at the hearing before the first Authority, it is not his case that under any threat or coercion by the department, the said statement

was obtained from him unlawfully. That is why the first Authority also says in its order thus :-

It has not been alleged at any stage by Sri Sarangapani or on his behalf that threat, coercion or undue influence was exercised by the officer

before whom the statement was recorded. There is no reason why Sri Sarangapani should have given a statement incriminating himself when no

threat or compulsion was used in recording the statement unless it be that the statement was given by Sri Sarangapani voluntarily. Furthermore the

statement contains several details which could not have been within the knowledge of the officer who recorded the statement

The Appellate Authority also observe thus :-

There is not even a suggestion that this statement has been given under coercion or threat, or that it was not voluntary.

8. Further, when according to the first authority's order, the appellant has admitted that a copy of the abovesaid confessional statement had been

made available to him (against which observation of the first Authority, not even a single ground was taken in the appeal before the Board), no

explanation is forthcoming as to why a statement in writing was not submitted to the Authority concerned, retracting the earlier confessional

statement, either by saying that the said statement was obtained illegally by the Enforcement Directorate by using threat, etc., or by invoking any

other valid ground of objection. We may also in this connection point out that there is no violation of principles of natural justice as contended by

learned Counsel for the appellant since copy of the original confessional statement has been admittedly given to the appellant as found by the first

authority in its order. Whiles, there is no scope at all for relying on the decisions in Indian Airlines Corporation and Another Vs. N. Sundaram,

and S.L. Kapoor Vs. Jagmohan and Others, . In the above circumstances, we are unable to see any error of law in the finding of both the

authorities below, holding that the above said confessional statement was voluntary one.

9. Then, the other argument that there is no proof that the abovesaid Ahmed was a ""person resident outside India"" spoken to in Section 5(1)(c) or

Section 5(1)(aa) of the old Act, also has no merit. Once the abovesaid confessional statement dated 12-12-1967 is held to be voluntary, taking

into the above features it could be easily concluded that the said Ahmed, would satisfy the meaning of the abovesaid term ""person resident outside

India"". Inter alia, we find the following passages in the said confessional statement :-

10. That apart, in all the three show-cause notices dated 23-10-1968 in the very first paragraph itself it is mentioned that the said Ahmed of

Siramban of Malaysia is a person resident outside India. It must be noted that as against these-show cause notices, the reply from the appellant

comes very much belatedly only in March, 1969. No doubt in the said reply, it is stated thus :-

I do not know who the said, Mr. Ahamed of Seraman (Malaysia). I feel that the said Ahamed is an imaginery person invented by the department

to cook up a case against me.

But, this statement cannot at all be believed, once it has been held that the abovesaid confessional statement dated 12-12-1967 was made by the

appellant voluntarily. Further the ground raised in the first appeal before the Board is only as follows :-

The Assistant Director has not given any valid reason for holding that one Ahamed is a person resident outside India.

No positive ground to the effect that the said Ahamed is actually not a person resident outside India, has been taken. Taking all these features into

account, it is clear to us that the Directorate has proved that the said Ahamed was a person resident outside India, as found in the above referred

to relevant statutory provisions.

11. The decision cited by learned Counsel for the appellant this regard, viz. K.

Narayanaswamy Vs. Deputy Director, Enforcement Directorate,

Madras and Another, has no application to the present case. There, the confessional statement itself does nowhere refer to the name of the

concerned person in Singapore who had given the instruction concerned to receive payment. In that context the observation of the said Division

Bench is as follows :-

On the materials on record, we are not in a position to know who is the person resident outside India, who had given instructions either to

Manickam Reddiar or to the appellant to receive any amount.

Thus on the facts of the said case it was found that there was no material to hold that the concerned person was resident outside India. But, that is

not the case here. Likewise, the other unreported Division Bench Judgment dated 14-2-1990 in A. S. M. Abdul Wahid v. The Deputy Director,

Enforcement Directorate, Shastri Bhavan, Madras-6 (C.M.A. No. 278 of 1982) is also distinguishable. There too, in the alleged confessional

statement, the appellant only admitted that an "unknown person" called on him and delivered the amount as per the instructions of "one of his

friends "who lived in Malaysia". That is why, the argument of learned Counsel for the appellant there was that the said alleged confessional

statement itself did not disclose any particulars with regard to non-resident person on whose behalf the payment was made. In that context, the

said Division Bench followed K. Narayanaswamy Vs. Deputy Director, Enforcement Directorate, Madras and Another, and no doubt finally

concluded that there was no contravention of the relevant provision of the new Act. In our opinion the relevant facts and features in the present

case being different, there is no warrant for our interference.

12. No doubt, learned counsel for the appellant points out that there was no definition under the old Act, of a "person resident outside India" and

of a "person resident in India" as found in Section 2(q) and 2(p) respectively under the new Act. But, even under the old Act, the Supreme Court

has held in Shanti Prasad Jain Vs. The Director of Enforcement, that the term "resident in India" used in the said Act would only mean "resident of

India". Further, the Supreme Court has also held in Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and

Others, in dealing with the interpretation to a provision under the Foreign

Exchange Regulation Act, as follows :

I have to construe an Act which was enacted in the interest of the national economy. A deliberate large-scale contravention of its provisions would

affect the interests of every man, woman and child in the country. Such an Act, I apprehend, should be construed so as to make it workable, it

should, however, receive a fair construction, doing no violence to the language employed by the Legislature. It was said that if two constructions

are possible the one that is in favour of the subject should be accepted. It is not necessary to pronounce on this proposition for I have come to the

conclusion that there is one true construction of S. 12(1). But, I should not be taken to be assenting to this proposition in so far as it is applicable to

an enactment like the Exchange Act, for no subject has a right to sabotage the national economy.

Viewed in the light of the abovesaid decisions also, taking into consideration what is stated in the appellant's statement, the abovesaid Ahamed

cannot be considered as a resident of India. Therefore also, we think that he could be easily characterised only as a person resident outside India.

No doubt, it appears that under the old Act, the Reserve Bank of India was giving certain guidelines to determine the residential status. Only in that

connection learned Counsel for the appellant sought to place before us the notification of the Reserve Bank of India"" dated the 14th August, 1947

as amended up to 23rd November, 1966"" which is said to have been issued u/s 20(1)(a) of the old Act and in supersession of an earlier

notification dated 25-3-1947. But, that notification only says that ""any subject of His Majesty other than a person domiciled in India who has been

resident in India but who leaves India and becomes resident in any country or territory for the time being specified in the Scheduled annexed to this

notification, shall be treated as being resident in the country or territory to which he has gone."" Thereafter, the schedule lists out certain countries in

which Malaysia no doubt does not figure. But, in our view, the said notifications has no application to the present case. That only deals with a

particular situation and does not give a comprehensive meaning regarding the abovesaid residential status.

13. The other argument of learned Counsel for the appellant that there was no corroboration in the present case for holding the appellant guilty as

aforesaid, also has no merit. In fact, a Division Bench of this Court has held in *Saleem Khan v. The Deputy Director Enforcement Directorate*,

1985 (5) SCC 146 thus :

We are of the view that so far as the retracted statements are concerned, though strictly there may not be any need for corroboration in law, it will

all depend on the facts and circumstances in each case. Wherein there is a retraction, we are put on caution in accepting such statements. Unless

the circumstances clearly show that there is intrinsic truth in the statement itself, it would be advisable to need corroboration in such matters.

In the above Division Bench case, the confessional statement was obtained on 25-10-1979 and immediately thereafter on 31-10-1979 itself, the

appellant therein, through his Counsel wrote a letter informing the Enforcement Officer that the statement obtained on 25-10-1979 was by inducing

and by illegal methods. In that context, after making the abovesaid observation, this Court on the facts therein, held thus :-

On the facts we are satisfied that apart from the statement of the appellant dated 25th October, 1979, there is no other evidence on which the

respondents could have relied on in finding him guilty. That statement was retracted and though there was enough scope for a detailed enquiry and

proving that the retraction was not justified the respondents have not taken any steps to prove that the statement originally given by the appellant is

true In the circumstances, therefore, we are unable to accept the uncorroborated statement as enough for finding the appellant guilty.

14. But, as we have, already seen, the facts are different in the present case. There was no immediate retraction in the present case. The retraction

was only at the time of the personal hearing long after the original confessional statement. Further, as pointed out already, there are also other

distinguishing features. It can also be concluded that there is intrinsic truth in the abovesaid confessional statement itself, taking into account all the

different detailed statement made therein. Further even according to the abovesaid Division Bench decision "strictly there may not be any need for

corroboration in law, it will all depend on the facts and circumstances in each case.

15. The other decision relied on, viz. *M.S.M. Syed Mohammad Bukhari Vs. The Director of Enforcement, New Delhi and Others*, has no

application at all to the present case, since the said case also turned on its own facts. No doubt, I find the following observations in the said decisions.

Coming to charge No. 1, I am of the view that on the facts available the charge cannot be held to have been proved. The Director has found the appellant guilty of that charge on the statement made on 11th May, 1963 and also upon a plea of guilty said to have been made by the appellant. If the appellant had shown cause against a particular charge then the duty of the Director is to conduct an inquiry into the charges and give a finding on the evidence placed before him. There is no provision in the Act or in the relevant rules (after initiating adjudication proceedings upon the person concerned showing cause against a particular charge) to find the person guilty on his own plea".

This statement cannot be taken to mean that in no case, penalty could not be levied without corroboration of the confessional statement. The law is clearly laid down in the earlier referred Division Bench decision, and following the said division bench decision it is clear to us that the present case does not call for our interference u/s 54 of the new Act.

16. One other argument of learned Counsel for the appellant is that one Abdulla, to whom a draft for Rs. 3000/- was given by the appellant was not found guilty and let off recording his alleged contravention of having received the said sum and that hence the appellant also must be found not guilty. This argument has no merit at all. No doubt, in this regard, in the impugned order of the first authority herein it is stated that the said Abdulla succeeded in getting the benefit of doubt from the Foreign Exchange Regulation Appellate Board. The further observation of the first authority is as follows :

Here however we are only concerned with the fact whether or not Sri Sarangapani had sent the money order under foreign instructions. Since the fact of receipt of the money by Abdulla is established and since Sri Sarangapani himself has admitted that the money was sent under foreign instructions, it is clear that the money has been sent in contravention of the provisions of Section 5(1)(c) of the FERA 1947.

The said reason of the authority is quite correct.

17. The net result is, there is no merit at all in this appeal and accordingly the

appeal is dismissed with costs.

18. Appeal dismissed.