
(1981) 09 KAR CK 0006
In the Karnataka High Court
Case No : MFA No's. 166 and 181 of 1979

Sudershan Boury and Another

APPELLANT

Vs

Director of Enforcement, New Delhi

RESPONDENT

Date of Decision : 25-09-1981

Acts Referred:

Foreign Exchange Regulation Act, 1973 (FERA) — Section 4 (1), 52 (3), 54, 9

Citation : (1983) 54 CompCas 103 : (1982) 1 KarLJ 62

Hon'ble Judges : S.G. Doddakale Gowda, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : K.R.D. Karanth, for the Appellant; K. Shivshankar Bhat, for the Respondent

Judgement

Sabhahit, J.—These two appeals are directed against the common order, dated October 18, 1978, passed by the Foreign Exchange Regulation Appellate Board, in Appeal Nos. 1464/1977 and 142/1978, on its file, reducing the penalty against the husband from Rs. 6,925 to Rs. 4,000 and against the wife from Rs. 4,025 to Rs. 2,000.

2. Kulbhushan Boury was born in Kenya and was carrying on business in that country which he had to abandon in 1970 due to political upheaval. Though a holder of a British passport and a person residing and working for gain in Nairobi for near half century, his business licence was not renewed by the Kenya Govt. and he along with his family landed in India for consideration of permanent residence. Kulbhushan Boury and Smt. Sudershan Boury were having joint bank accounts and in England subscribing to a life insurance policy. The Deputy Director of Enforcement, Madras, after holding adjudication proceedings found both of them guilty of contravention of ss. 4(1) and 9 of the Foreign Exchange Regulation Act, 1973, and imposed penalty of Kulbhushan Boury, at Rs. 6,925 and against his wife, Smt. Sudershaan Boury, at Rs. 4,025. Aggrieved by the said orders, they went up in appeals before the Board in Appeals Nos. 1464/1977 and 142/1978. In the appeals which were heard together by the Member of the

Board, the learned Member has observed.

"The transactions do not smack of compensatory payments or any other money spinning adventure and hence "in terrorem" outlook towards penalty is not called for in this case and I find that ends of justice would be met by reducing the penalty on Shri Kulbhushan Boury from Rs. 6,925 to Rs. 4,000 and on Smt. Sudershan Boury from Rs. 4,025 to Rs. 2,000".

3. Aggrieved by the quantum of penalty levied in the two cases the above appeals are instituted by Kulbhushan Boury and Smt. Sudershan Boury, before this court.

4. Learned counsel, Sri K. R. D. Karanth, submitted that both the Deputy Director of Enforcement, Madras, and the Board having found that the transactions were not aimed at money spinning and as such a deterrent attitude was not necessary, have still imposed rather heavy penalties and hence he submitted before us that the penalty should be reduced. As against that Sri Shivshankar Bhat, learned senior standing counsel for the Central Govt., submitted that no appeal could be instituted before this court, unless a question of law was involved and there was no question of law as such involved in these appeals and, therefore, the appeals were not maintainable. He further submitted that the penalties imposed could not be considered as heavy.

5. The points, therefore, that arise for our consideration in these appeals are :

(1) Whether the appeals are maintainable ?

(2) Whether the penalties require to be reduced ?

6. It is no doubt true that s. 54 of the Foreign Exchange Regulation Act, 1973, reads :

"An appeal shall lie to the High Court only on question of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52.

7. Section 50 of the Foreign Exchange Regulation Act, 1973, speaks of penalties. It reads :

"If any person contravenes any of the [provisions of this Act (other than section 13, clause (a) of sub-section (1) of section 18 and clause (a) of sub-section (1) of section 19), or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government (it either case hereinafter referred to as the adjudicating officer)."

8. Thus, s. 50 speaks of the maximum penalty to be levied, that being five times

the amount or value involved in any such contravention or Rs. 5,000 whichever is more. When the section speaks of the maximum penalty, it is obvious that the authority has the discretion to impose any fine less than that also. This discretion which is conferred on the authority by the section has to be exercised in a judicial manner and the exercise of such discretion is a question of law and it is needless for us to point out that the Supreme Court of India has been at pains to point out in recent years that sentencing is an important branch of law and that it is a complex process involving intricate questions of fact and law. That being so, we are satisfied that the present appeals where the quantum of penalty and the exercise of judicial discretion are concerned involve questions of law and as such the appeals are entertainable by this court (vide *Ramnaresh Pandey Vs. The State of Madhya Pradesh*, *Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh*, *Additional Collector of Customs and Others*,).

9. Adverting to the next aspect, as stated above, while inquiring into the facts both the Deputy Director of Enforcement as well as the learned Member of the Board have concurrently agreed that there are no mala fide intentions in these transactions and they do not represent and money spinning adventure, and as such a liberal and sympathetic view has to be taken, Having said so, the learned Member the husband, and Rs. 4,025 to Rs. 2,000 in the case of the wife, Smt. Sudershan Boury.

10. The learned counsel for the appellants submitted before us that if really a liberal and sympathetic view were to be taken, the Board should have and could have reduced the penalties having regard to the quantum involved in the case. We are persuaded to agree with the submission so made. We feel it just and proper to reduce the penalty of of Rs. 4,000 levied by the Member of the Board against Sri Kulbhushan Boury to Rs. 2,000 and so far as his wife is concerned as she had personally no role to play in the affair, we deem it just and proper to reduce the fine against her from Rs. 2,000 to Rs. 1,000

11. In the result, the appeals are partly allowed. Kulbhushan Boury shall pay a penalty of Rs. 2,000 and his wife, Smt. Sudershan Boury, shall pay Rs. 1,000 as penalty. No costs of these appeals.