**(2006) 10 DEL CK 0080**

**In the Delhi High Court**

**Case No :** Criminal REV. P. No. 670 of 2003

Sudershan Kumar and Another APPELLANT

Vs

Sh. J.C. Makhija Assistant Director Enforcement Directorate RESPONDENT

**Date of Decision :** 03-10-2006

**Acts Referred:**
Foreign Exchange Regulation Act, 1973 — Section 56, 64, 8

**Citation :** (2006) 10 DEL CK 0080

**Hon'ble Judges :** Badar Durrez Ahmed, J

**Bench :** Single Bench

**Advocate :** R.K. Handoo, for the Appellant; Suresh Kait and M.K. Mata, for the Respondent

**Final Decision :** Allowed

## Judgement

Badar Durrez Ahmed, J.—This revision petition has been preferred by two petitioners who have been charged u/s 8 read with Section 64 of the Foreign Exchange and Regulation Act, 1973. Mr Handoo, the learned Counsel for the petitioners submitted that the charges framed against the two petitioners are completely contrary to the complaint and the material on record. His first submission was that ingredients of Section 8 of the said Act were not made out even as per the case of the prosecution. His other submission is that the charge mentions that a transaction was entered into between the petitioners on the one hand and some ''others'' on the other hand, without the said ''others'' being named and, as such, the charge suffers from vagueness.

2. The prosecution case in brief is that a raid was conducted in the premises of one Jwala Prasad where Jwala Prasad and his two sons Sunil and Kailash were also present. The allegation is that the Jwala Prasad was carrying on the business of dealing in foreign exchange unauthorisedly. When the raid was conducted on 19.11.1985, the present petitioners were also found in the same premises. However, what was recovered from Jwala Prasad was a sum of Rs 2,66,232/- in Indian currency. It is alleged by the prosecution that there was a further sum of

U.S. $ 10,000 which was there in the premises but which had been thrown outside by the one of the sons of Jwala Prasad and which was ultimately taken away by some other person. Therefore, no foreign currency as such was recovered from the premises. It is the further case of the prosecution that the present petitioners had been found in the premises with Indian currency of Rs 12,200/- (in the case of Sudershan) and Rs 12,750/- (in the case of Jiwan Kumar) and these persons had gone to the premises of Jwala Prasad for the purposes of buying foreign exchange. Therefore, according to the prosecution, the ingredients of Section 8 read with Section 64 were clearly made out inasmuch as Section 64 of the said Act even included acts in preparation for or attempts at purchasing foreign exchange in violation of the provisions of the said Act.

3. The learned Counsel for the petitioners submitted that the ingredients of Section 8 were not made out as there was no acquisition of foreign exchange and as there was no foreign exchange recovered from the said premises. All that was recovered was Indian currency from the said petitioners. Thus, it cannot be presumed that they had gone there to purchase foreign exchange.

4. The learned Counsel appearing for the Enforcement Directorate submitted that all the ingredients of Section 8 read with Section 64 of the said Act were made out and the charge was properly framed. The charge framed against the petitioners reads as under:

I, V.K. Maheshwari, ACMM, New Delhi charge you: Sudershan Kumar S/O Sh. Sukhdev as under:

That for the period ending 19-11-85 you along with other entered into transactions of foreign exchange to the tune of Rs 2,66,232/- and 12,200/- in violation of Section 8 r/w 64 of FERA 1973 and thereby you have committed an offence punishable u/s 56 FERA and within my cognizance.

I, V.K. Maheshwari, ACMM, New Delhi charge you: Jeevan Kumar S/o Sh. Jawana Ram as under:

That for the period ending 19/11/85 you along with others entered into transaction of foreign exchange to the tune of Rs 2,66,232/- and 12,750/- in violation of Section 8 r/w 64 of FERA 1973 and thereby you have committed offence punishable u/s 56 FERA and within my cognizance.

5. A reading of the aforesaid charges framed against the petitioners would indicate as if the petitioners were involved with the recovery of said sum of Rs 2,66,232/-. However, upon going through the complaint, it appears that the petitioners were in no way involved with the recovery of sum of Rs 2,66,232/-. The complaint discloses that the accused Sudershan was found at the residence of Jwala Prasad and from his person a sum of Rs 12,200/- in Indian Currency was recovered which, according to the prosecution, was the value of the foreign exchange which he purchased from Jwala Prasad. However, there is nothing in

 

the prosecution case to indicate as to what happened to the foreign exchange which Sudershan is said to have purchased from Jwala Prasad. There is no recovery qua that foreign exchange nor is any indication in the complaint or in the evidence as to on which prior date the said foreign exchange (and, to what extent) was handed over by Jwala Prasad to Sudershan. All that can be said about the raid conducted on 19.11.1985 is that Sudershan was found in the premises of Jwala Prasad and that Sudershan had on his person a sum of Rs 12,200/- in Indian currency. This, to my mind would not make it a case u/s 8 read with Section 64 of the said Act.

6. As regards Jiwan Kumar, the second petitioner, it is alleged in the complaint that he was also found at the residence of Jwala Prasad and from his person a sum of Rs 12,750/- in Indian currency was recovered, which, according to the prosecution, was the amount equivalent to the foreign exchange bought by Jiwan Kumar from Jwala Prasad. There is nothing on record to show that at a prior point of time foreign exchange was delivered by Jwala Prasad to Jiwan Kumar equivalent to sum of Rs 12,750/- which, Jiwan Kumar had allegedly come to repay on 19.11.1985. Accordingly, I find that in the case of Jiwan Kumar also there is no material to constitute a charge u/s 8 read with Section 64 of the said Act.

7. In these circumstances, the revision petition is allowed. The petitioners are discharged.