(1982) 09 KAR CK 0016

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1395 of 1979

Syed Fareed Sahib — APPELLANT

Vs

Foreign Exchange Regulation Appellate Board — RESPONDENT

Date of Decision : 15-09-1982

Acts Referred:

Foreign Exchange Regulation Act, 1947 (FEMA) — Section 5 (1) (c)

Citation : (1984) 56 CompCas 438 : (1982) 2 KarLJ 591

Hon'ble Judges : P.A. Kulkarni, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : C.N. Kamath, for the Appellant; Shivshankar Bhat, for the Respondent

Judgement

Jagannatha Shetty, J.—This appeal is directed against the order of the Foreign Exchange Regulation Appellate Board made in Appeal No. 478 of 1977, by which a penalty of Rs. 3,600 was imposed on the appellant.

2. In the appeal, the notice regarding admission was issued in October, 1979. It has taken almost three years to effect service on the respondents. Today it is listed again for admission, but we would like to dispose of the same on merits since both the parties are represented by counsel.

3. The facts are these :

The appellant, Syed Fareed Sahib, has a son called Syed Ismail. he is pursuing his higher students in Canada. He had no many to go to Canada. So, he borrowed some amount from one money-lender, Shankarlal, at Bangarpet, and went to Canada. It appears that he is now employed there. He has sent two drafts, one for 250 U.S. Dollars and another for 385 U.S. Dollars to his father for onward transmission to Syed Meer. Both the drafts were drawn in the name of Syed Meer. This Syed Meer has nothing to do with the transaction between Shankarlal and Syed Ismail. Syed Fareed delivered the drafts to Syed Meer and in return received Rs. 5,080 in Indian currency and paid the same to Shankarlal.

4. The receipt of the drafts and the money was admitted by Fareed in his statement before the Asst. Director of Enforcement. The payment to Shankarlal was also admitted.

5. With these facts, the question is whether there was any violation of the Foreign Exchange Regulation Act of 1947 or 1973.

6. There were as many as five charges framed against Syed Fareed. Simultaneously, Syed Meer was also proceeded against. A penalty of Rs. 500 was imposed on him for receiving the foreign currency drafts from Syed Ismail. That matter, however, is not before us. On syed Fareed, a penalty of Rs. 7,200 was imposed by the original authority and that has been reduced to Rs. 3,600 by the Board.

7. The counsel for the appellant contends before us that Syed Farred is not at all liable to pay any penalty since he simply received Indian currency from Syed Meer for discharging the debt due by his son to Shankarlal and that is not a contravention under the FER Act.

8. We do not think that the contention urged is sound. Section 5(1)(c) of the 1947 Act makes it an offence : the payment to or for the credit of any person by order or on behalf of any person resident outside India, without the permission of the Reserve Bank. When Syed Fareed paid the amount to Shankarlal on behalf of his son in Canada and discharged his debt, he has contravened s. 5(1)(c) of the FER Act, 1947. He has paid that money admittedly without the permission of the Reserve Bank, after receiving the same from Syed Meer in lieu of the drafts sent by his son from Canada in foreign currency. He cannot, therefore, escape the penalty, though his intention was bona fide and his action was what it ought to be. The legislative intent under s. 5(1)(c) of the Act is not that the debt due by the person in foreign country should not be discharged by a local man. The intention, as we understand, is that the Reserve Bank should be kept informed about the transaction concerned with a person outside the country and the device adopted to discharged is loan by persons here or elsewhere.

9. The four other charges levelled against the appellants are totally extraneous to the matter and the combined penalty imposed, therefore, is disproportionate to the only count proved.

10. Apart from that the actual offender, i.e., Syed Meer, who has received the two drafts has been leniently dealt with by imposing a penalty of Rs. 500 only. There is no reason why a heavy penalty should be imposed on the go-between. We feel that the ends of justice would be met if on the appellant also a penalty of a Rs. 500 is imposed.

11. In the result, the appeal is allowed in part. The penalty of Rs. 3,600 is reduced to Rs. 500 only.

