

(2011) 07 KAR CK 0175

In the Karnataka High Court

Case No : Criminal Appeal No. 940 of 2007

The Enforcement officer, Directorate of Enforcement, foreign
exchange Regulation Act 1973

APPELLANT

Vs

Mohammed Akram

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Foreign Exchange Regulation Act, 1973 (FERA) — Section 40, 56 (1)
Foreign Evidence Rule Act, 1974 — Section 3 (c)

Citation : (2013) 1 Crimes 439

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Ravi Jagan, for the Appellant; S.S. Hiremath, for the Respondent

Final Decision : Dismissed

Judgement

1. The Appellant has challenged the acquittal of the Respondent for the charge u/s 56(1) of Foreign Exchange Regulation Act 1973 (hereinafter called as the "FERA" for short) on a trial held by the Special Court for Economic Offences, Bangalore.

2. The facts reveal that the Appellant who is the complainant herein is the Assistant Director in Enforcement Directorate, (FERA), Bangalore and had received information that M/s. Pheroze Framrose, a firm situated in Richmond Circle, is engaged in releasing substantial foreign exchange unauthorisedly by floating the norms and guidelines prescribed by the RBI and in these circumstances, an investigation was being held and the presence of the Respondents and other accused was necessary and thereby the complainant had issued the summons to the Respondent bearing No. T-3/282/FE/BAN/97 dated 23-10-1997 u/s 40 of FERA directing the Respondent and other accused to appear on 24-10-1997 before the Enforcement Officer, Bangalore, An official of the complainant was deputed for personal service of the summons on the

accused at their last known address and as the premises was locked and the accused was not available, the summons was affixed on the outer door of the premises as provided under Rule 3(c) of the FERA. A mahazar was also conducted to that effect. Even thereafter the summons were issued on 27-10-1997, 3-11-1997, 28-11-1997 and 06-03-1998 and despite the summons having been affixed on the conspicuous part of the premises of the Respondent, he did not appear before the complainant for the purpose of enquiry.

3. It is the grievance of the complainant that the Respondent failed to appear before the complainant authority though the summons was duly served and therefore, the Respondent is said to have contravened the provisions of Clause 40 (3) of FERA which is punishable under 56(1)(ii) of FERA and therefore, requested the Court below to take legal action against the accused.

4. Pursuant to the summons issued, Respondent No. 2 accused appeared before the Trial Court and in the trial, the complainant examined P. Ws. 1 to 3 and in their evidence, the documents Exs. P. 1 to P. 4 were marked. The statement of the accused was recorded u/s 313 Code of Criminal Procedure. The accused has taken the defense of total denial. The Trial Court after hearing the complainant and the counsel for the accused/Respondent herein acquitted him for the charge u/s 56(1) of FERA 1973 and aggrieved by the acquittal, the present appeal has been filed.

5. I have heard the Learned Counsel for both the parties.

6. As could be seen from the provisions of Section 40 of FERA, it provides the authority to issue summons to the persons and produce documents. So whenever any Gazetted Officer of the Enforcement Directorate considers it necessary either to give evidence or produce a document, he can issue the summons to the person for his appearance. So in the present case on hand, summons was issued to the Respondent herein to appear before the complainant for the purpose of investigation. Now, as could be seen from Rule 3 of the Foreign Exchange Regulation Rules, 1974, (hereinafter called as "FERR" for short) it prescribes the procedure as to how summons has to be served upon a witness or an accused. For the sake of convenience, the relevant portion of Rule 3 is extracted hereunder:

3. Service of directions, orders or notices made or issued under the Act, or these rules or under any order of notification made thereunder-

a)....

b)....

c) if it cannot be served in any of the manners aforesaid, by affixing it on the outer door or some other conspicuous part of the premises In which that person resides or is known to have last resided or carries on, or last carried on, business, or personally works, or last worked for gain and the written report whereof should be witnessed by two persons.

7. So adopting the procedure prescribed above, as the summons was not personally served on the Respondent, as he was not present in the premises in which he last resided, the complainant had adopted the procedure for substituted service i.e., by affixing the copy of the summons on the conspicuous part of the premises wherein the Respondent last resided. So according to the complainant, this is the proper service of the summons and therefore, he has contravened the provisions of Section 40(3) of FERA and also Rule 3 of FERR.

8. According to the complainant, it is alleged that the Respondent has committed an offence punishable u/s 56(1) sub Clause (ii) of FERA and the relevant portion of the provisions of Section 56 is extracted hereunder for the sake of convenience.

56. Offences and prosecutions: (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act (other than Section 13, Clause (a) of Sub-section (1) of (Section 18. Section 18-A), Clause (a) of Sub-section (1) of Section 19, Sub-section (2) of Section 44 and Sections 57 and 58), or any rule. direction or order made thereunder, he shall, upon conviction by a court, be punishable -

(i) in the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both.

(underlining is mine)

9. So as could be seen from the provisions stated supra, which defines an offence under the provisions of the FERA, it is necessary for the complainant to establish that the accused Respondent has contravened any of the provisions of this Act. So, here is a case where actually the summons was issued in pursuance of the authority vested with the Assistant Director and he had followed the procedure prescribed under Rule 3 to serve the summons. So as could be seen, the grievance made against the Respondent is that he disobeyed the summons issued u/s 40(3) of FERA readwith Rule 3 of FERR. So here is a case at the most, the Respondent disobeyed the summons which was issued by the authority concerned and disobeying the summons is altogether different from contravention of the provisions of FERA. So, the perusal of the provisions of FERA does not reveal that the disobedience to receive the summons is an offence under the provisions of the Act. Therefore, it cannot be said by any stretch of imagination that the requirement of Section 56 (I) to the effect that any person "contravenes any of the provisions of this Act", has not been proved and what

has been proved is that the Respondent disobeyed the summons issued and the disobedience of the summons issued is not an offence under the provisions of this Act. Even the high Court of Kerala in the decision reported in 1992 (58 ELT 172 Ker (Itty v. Assistant Director) has taken the same view and it also held that disobedience of summons for appearance is not equivalent to the contravention of the provisions of the FERA. So when the contravention of the provisions of the FERA is entirely different from the disobedience of the summons, I am of the opinion that the Trial Court was justified in dismissing the complaint and granting an order of acquittal to the Respondent. So taking into consideration these all circumstances, I am of the opinion that the Appellant has not made out any such grounds to warrant interference. In that view of the matter, the appeal is dismissed.