

(1984) 03 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal Order No. 18 of 1983

Union of India (UOI)

APPELLANT

Vs

Exchange Regulation Appellate Board and Others

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 51, 54, 9(3)

Citation : (1984) 3 ECC 69 : (1985) 21 ELT 367

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Ravi Sharma, for the Appellant; None, for the Respondent

Judgement

J.V. Gupta, J.—A Memorandum No. T-4/6-J/80 (SCN III) was issued to Harnam Dass respondent for contravening the provisions of Section 9(3) of the Foreign Exchange Regulation Act, 1973. It was stated therein that he had caused to remit to India from abroad an amount equivalent to Rs. 2,89,123/- in an unauthorised manner, which was in contravention of the said provision. He was, thus, called upon to show cause in writing why adjudication proceedings as contemplated in Section 51 of the Act should not be held against him for the aforesaid contravention. However, ultimately the adjudication officer i.e. Additional Director came to the conclusion as under :

"The funds for the payment in India to the persons who lend this foreign exchange were found by collecting monies from the family of those Indians who were required to deposit 150 Dinars each for getting entry into Jordan. In order to constitute an offence of Sub-section (3) of section 9 there should be a remittance from Jordan into India through unauthorised channels. Here, there is no such remittance by Shri Harnam Dass and, therefore, I acquit him of the charge of having contravened the provisions of Sub-section (3) of section 9 as alleged in Show Cause Notice No. T-4/6-J/80 SCN III, dated 30-12-1980."

2. On appeal by the Director of Enforcement, the Appellate Board affirmed the

said findings of the adjudicating officer and thus maintained the order of acquittal passed by him. Dissatisfied with the same, the Union of India has filed this second appeal in this Court u/s 54 of the Act.

3. No one is present on behalf of the respondents in spite of service.

4. The learned counsel for the appellant referred to the statement of Harnam Dass dated 2nd December, 1980, wherein he has stated.

"He collected total Dinar equal to Indian Rupees 54,583/-. This money was also sent to India by me through Ram Sarup, and amount mentioned on rukkas was collected by persons who received rukkas from Jordan. Thus, I sent, total amount of Rs. 2,89,123/- from Jordan to India during 79-80 through Ram Sarup, my brother."

Thus, argued the learned counsel, the findings given by the authorities below were against the record and, therefore, the orders were liable to be set aside:

5. After hearing the learned counsel for the appellant, I am of the considered view that the case requires to be re-examined by the authorities concerned. The question, therefore, arises whether there can be a re-trial in this matter. There is no doubt that these proceedings are in the nature of quasi-criminal proceedings as has rightly been adverted to by the Appellate Board. Under the criminal law, this Court is empowered to set aside acquittal and order re-trial. On that parity exercising powers u/s 54 of the Act, the appeal is accepted and it is ordered that the matter be retried.

6. Since no one is present on behalf of the respondents in this Court nor the whole record relating to the case has been sent to this Court, it will be in the fitness of things in the interest of justice that the case is retried after notice to Harnam Dass respondent, keeping in view the said statement made by him. From the two orders passed by the authorities below, I find that no reference has been made to that statement. In this view of the matter, both the orders are set aside and the case is sent back to the Additional Director, Enforcement, i.e. the adjudicating Officer, for re-trial and decision afresh after hearing both the parties. The record of the case summoned earlier be sent back forthwith. No costs.