

(1986) 07 MAD CK 0018

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 211 of 1981

V. Kader Ibrahim

APPELLANT

Vs

The Deputy Director, Enforcement Directorate and Another

RESPONDENT

Date of Decision : 10-07-1986

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 2, 23, 54

Citation : (1987) 13 ECC 139

Hon'ble Judges : Sathiadev, J; Maheswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sathiadev, J.—This appeal is preferred u/s 54 of the Foreign Exchange Regulation Act, 1973 against an order of the Appellate Board in A.

No. 355 of 1979 dated 30-10-1980 by one V. Kader Ibrahim as against whom, two charges were framed to the effect that he had contravened

Section 5(1)(c) read with Section 23-B of the Act in attempting to make a payment of Rs. 50,000 to one Veerappan by order or on behalf of a

person resident outside India, and hence, to show cause as to why the said currency notes seized on 4-5-1973 be not confiscated u/s 23(1B), and

secondly, contravened Section 5(1)(c) by making a payment of Rs. 25,000 to a person in India by order and on behalf of a person resident

outside India. It was claimed by respondents that appellant was employed under one Jamal Mohamed, who was carrying on business of making

compensatory payments at No. 185, Angappa Naicken Street, Madras-1, on a monthly salary of Rs. 100 and that he was making compensated

payments along with the son-in-law of his master. At 11 a.m. on 4-5-1973, one Veerappan phoned his master stating that he had received a chit

from Kuala Lumpur for payment of Rs. 50,000 to him, and that the said amount may be delivered at No. 7/5, Thatha Muthiappan Street, Madras.

Hence, the appellant was entrusted by his employer with a sum of Rs. 50,000 in currency, and he took the amount to the premises of Veerappan,

where a search was going on by the Enforcement Directorate, and therefore, the amount was seized by the authorities from the hands of the

appellant. He had also earlier made a payment of Rs. 25,000 to Veerappan against a chit given by him. The said amount of Rs. 50,000 had been

sent by his elder sister's son R. M. Karuppiah, who was running a hotel at No. 343, Salan Ipoh Road, Malaysia, and his wife was Muthayee

Ammal. Karuppiah was sending monies to Veerappan through banks as well as unauthorised channel, and whenever, it was sent through

unauthorised channel, code numbers like ""20 dhothies"", which denote Rs. 20,000, and ""50 years old"" which stood for Rs. 50,000 were written in

letters sent to Veerappan. One such letter received by him was dated 23-4-1973 which was written by Muthayee Ammal from Kuala Lumpur

addressed to Veerappan's brother's son Chockalingam at Puzhal, and which was in fact intended only for Veerappan, and it was based on the

said letter, the amount of Rs. 50,000 was carried by the appellant as stated above to be delivered to Veerappan. These factual particulars came to

the knowledge of the respondents on two statements recorded on 4-5-1973 from the appellant and Mr. Veerappan. The amount of Rs. 50,000

was seized under a mahazar in the presence of witnesses. Two charges were framed based on these factual particulars. On 5-5-1973, the

appellant addressed the Director of Enforcement retracting the statement made by him on the previous day, and likewise, Veerappan also by letter

dated 8-5-1973 retracted his statement, and both of them claimed that they were taken from them under threat and coercion.

2. Deputy Director by his order dated 30-8-1979, imposed a penalty of Rs. 2,000 on the first charge and Rs. 1,000 on the second charge, and

also directed confiscation of the amount of Rs. 50,000. On appeal, the appellate authority confirmed it, and therefore, this appeal is filed claiming

that the following substantial questions of law arise for consideration:

1. Could Muthayee be treated as a non-resident?
2. Were not the authorities in error in holding that the statements of appellant

and Veerappan are voluntary and their contents could be acted upon in spite of apparent discrepancies?

3. When appellant was only a carrier and no instruction having been received by him from a non-resident outside the country, are not the charges framed illegal?

4. Could hearsay evidence be acted upon to punish the appellant?

3. On the first point, Veerappan's elder sister's son Karuppiah was running a hotel in Kuala Lumpur, and his wife was Muthayee Ammal. It was

stated by Veerappan that a money lending firm in her name was being carried on at door No. 7/5, Thatha Muthiappan Street, Madras, the place

where the seizure was effected. Therefore, nothing prevented the appellant to prove that she is not residing with her husband at Kuala Lumpur, and

that she was a resident of India, who would fall within the definition of Section 2(p) of the Act.

4. Respondents having relied on the statement given by appellant and Veerappan, which corroborated on material particulars, and Veerappan

being the close relation of Muthayee Ammal, it could have been easily proved by him as to whether she was a resident of India or not. No doubt,

the burden is upon the respondents, but they had relied upon the corroborating statements on material particulars. To dispel the inference drawn on

the contents of those statements, appellant having not produced any material, there was no error of law or fact committed, in proceeding on the

basis that she was a non-resident. It is contended by Mr. Kareem, learned Counsel for the appellant that in the show cause notice, no name of the

non-resident having been given, and in spite of a specific request having been made in para. 3 of the reply issued by the appellant's counsel, it was

not proper to proceed on the basis that she was a non-resident, and that, herself and her husband had been instructing for remittance of money

through unauthorised channels in this country. The manner in which the proceedings has gone through and the explanation offered go to show that

there was no difficulty experienced by not mentioning the name of the non-resident in the show cause notice. Hence, no prejudice had been caused

on this score to the appellant.

5. On the second point, according to the appellant, on 4-5-1973, the employer had been phoned by Veerappan, and it is thereafter, he was asked

to take Rs. 50,000 to be delivered to him. Veerappan had stated that on 2-5-1973 when he was in his shop, a Muslim gentleman came to him,

and asked whether he had received any instructions from Kuala Lumpur, and at that time, he showed the letter dated 23-4-1973, and that he had

taken away that portion of the letter containing the code numbers saying that Rs. 50,000 would be delivered by 4th or 5th of May, 1973. It is

pleaded that there is a material contradiction on this aspect. But, as could be seen, it was another person, who was sent on 2-5-1973 to collect

information from Veerappan. On 4-5-1973, appellant heard his employer speaking to Veerappan that he had received a chit from Kuala Lumpur.

This would mean that after the earlier enquiry made by another person on 2-5-1973, Veerappan had tried to find out from appellant's employer

on 4-5-1973, as to whether the amount is ready for being handed over. The exact conversation between the parties had not been reproduced, but

appellant having stated in a general manner of what he had overheard regarding the receipt of chit, there is no material contradiction resulting in the

destruction of the charges framed against the appellant. No circumstance is made out to show that the two statements were not voluntarily made.

6. On the third point, it is claimed that, he was only a carrier, and he was not responsible for the contravention alleged to have been committed.

Appellant having carried the amount, knowing quite well that it was a compensatory payment made in an unauthorised manner, and no doubt at the

behest of the master, but taking all the responsibility for the consequences for what had been done by him, it had resulted in contravention of

Sections 5(1)(c) and 23(1B) of the Act.

7. The next point taken is regarding the hearsay evidence about what appellant had heard at 11 a.m. on 4-5-1973 when Veerappan had phoned

up to his employer. It is only pursuant to the conversation, appellant had carried the amount of Rs. 50,000 to the place mentioned by Veerappan

over the phone, and the seizure took place at that place. It is not disputable that a sum of Rs. 50,000 was recovered from the appellant at the

place where Veerappan was carrying on business for Muthayee Ammal. Hence, what he had claimed to have heard is substantiated from what

was subsequently followed, and which tallies with the instructions received by Veerappan regarding the amount to be sent to him. The conversation

heard by him at the time of the phone call will not fall within the ambit of "hearsay evidence" as envisaged in *Abdul Kareem v. Director,*

Enforcement Directorate 1977 II MLJ 47 and therefore, this point also fails.

8. Mr. Kareem, also touched upon the aspect of coercion and threat being extended in recording the two statements from the appellant and

Veerappan. On the next day itself, the appellant had retracted the statements. That by itself would not disentitle the respondents from relying upon

the contents of the statements because the two statements corroborate on material particulars. Appellant had carried a huge amount of Rs. 50,000

in currency, and for which he had not placed any material immediately thereafter to show as to how and for what lawful purpose he had carried the

amount on that day. It is only after six years, an attempt had been made to produce certain account books, and both the authorities having

concurrently held that they are fabricated documents, the finding arrived that the statements are voluntary requires to be upheld. The material

particulars furnished by both of them fit in with the ultimate act of the appellant in carrying huge amount of Rs. 50,000 to the place of business of

Veerappan whom he had never known earlier. If really these statements were extracted by threat or coercion, and there was any valid reason for

appellant carrying the said amount on that day, a mention would have been made in the reply sent through his counsel that the cash belonged to

appellant out of his earnings and not otherwise. Hence, the plea of threat and coercion is only an opportunistic claim to avoid the consequence

which appellant deserves for what he has done.

9. One other plea put forth is that the appellant was not allowed to cross-examine. As held in *Kanungo and Company Vs. Collector of Customs*

and Others, no right exists in appellant in adjudication proceedings to require such persons to be cross-examined.

10. Both the authorities have relied upon the statements given by appellant and Veerappan, and the appellant had furnished the name and address

of his employer. There is no explanation forthcoming from respondents as to why no action was taken against the named person, and what steps

were taken to find out as to whether such a person was carrying on business at No. 185, Angappan Naicken Street or not. It is by leaving out the

persons who are mainly responsible for commission of these offences, such

contraventions go unabated. This Court expresses its displeasure that in spite of clear disclosure about a person, who was mainly responsible for what had happened, such a person had been left out from being proceeded against.

11. As none of the points involve any error of law substantial in nature, this appeal is dismissed with costs.