
(1984) 01 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal Order No. 47 of 1982

W.R. Bouri

APPELLANT

Vs

Chairman, Foreign Exchange Regulations Appellate Board

RESPONDENT

Date of Decision : 27-01-1984

Acts Referred:

Foreign Exchange Regulation Act, 1947 — Section 4(1)

Foreign Exchange Regulation Act, 1973 — Section 54, 59, 8(1), 9(1), 9(2)

Citation : (1984) 3 ECC 84 : (1985) 19 ELT 369

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

Bench : Single Bench

Advocate : Jagdish Singh Kehar, for the Appellant; Ashok Kumar, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This is a second appeal u/s 54 of the Foreign Exchange Regulation Act, 1973, (hereinafter called the Act), against the order of the Foreign Exchange Regulation Appellate Board (hereinafter referred to as the Board), dated May 20, 1982.

2. The Enforcement Directorate, Jullundur, issued two memoranda dated December 29, 1980 (hereinafter referred to as SCN I and SCN II, respectively), to the appellant. The gravamen of the charge in SCN I was that the appellant, a person in or a resident in India, transferred ₹500/- to a person not being an authorised dealer in foreign exchange without the general or special permission of the Reserve Bank of India and, thereby, contravened the provisions of Section 8(1) of the Act. The gist of the complaint in SCN II is that the appellant, a person in or resident in India, otherwise transferred ₹100/-, ₹75/- and ₹100/- during the year, 1972 and 1973 to a person not being an authorised dealer in foreign exchange without the previous general or special permission of the Reserve Bank of India and, thus, contravened the provisions of Section 4(1) of the Foreign Exchange Regulation Act, 1947. Not being satisfied with the explanation given by

the appellant, proceedings were initiated against him under the above-said Acts. The * Adjudicating Officer held that the appellant contravened the aforesaid provisions and, therefore, imposed a consolidated penalty of Rs. 1,500/- upon him. In appeal, the Board found that the conduct of the appellant was undoubtedly bona fide, but at the same time, it also observed that the fact remained that he had contravened the aforementioned provisions in not obtaining the permission of the Reserve Bank of India which was a must in this case. Thus, the penalty of Rs. 1,500/- imposed on the appellant was reduced to Rs. 500/-. Dissatisfied with the same, the appellant has filed second appeal in this Court.

3. The learned counsel for the appellant contended that the case of the appellant was not covered under the provisions of Section 9(1)(b) of the Act, as found by the authorities below as his case fell within the Exception u/s 9(2)(b) of the Act, which reads,-

"9.(1) * * * * (a)to(b) * * * Explanation.- * * * (c)to(g) * * * * * (2) Nothing in Sub-section (1) shall render unlawful,-

(a) * * * * * (b) the making of any payment with foreign exchange received by way of salary or payment for services not arising from any business in, or anything done while in India.

*(3)to(5) * * * * * " It is surprising that in spite of the explanation furnished by the appellant to the notice issued to him wherein it was stated inter alia that Section 9(2)(b) of the Act, conferred on him the right to transfer his foreign exchange without permission, and which has been extracted by the Assistant Director in his order dated April 30, 1981, neither the Assistant Director, nor the Board in appeal, has given any finding thereon. It is the case of the appellant that he retired as a Station Master in the year 1961 from Kenya which was under the British Empire and, therefore, his pension was being deposited in the Standard Chartered Bank Ltd,. London. Thus, according to the appellant, his case was covered by Exception contained in Section 9(2)(b) of the Act. In any case Section 59 of the Act, provides for the presumption of culpable mental state. It further inter alia provides that it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence. As observed earlier, the Board found as a fact that the conduct of the appellant was undoubtedly bona fide. Once it was so held, then the appellant could not be held guilty because there was no mens rea as provided u/s 59 of the Act.

4. In this view of the matter, this appeal succeeds and is allowed. The order of the Board is set aside. The appellant is not found guilty of any charge framed against him and he is, thus liable to no penalty.