

Brij Trading Co. Vs. Enforcement Directorate

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Court : Delhi

Decided On : Jan-31-2014

Judge : S. Muralidhar

Appellant : Brij Trading Co.

Respondent : Enforcement Directorate

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL. A. No.91 of 2008
Reserved on: January 24, 2014 Decision on: January 31, 2014 BRIJ TRADING
CO. Through: Appellant Mr. Pavan Narang, Mr. Anish Dingra, Mr. Lohitaksh
Shukla, Mr. K.R. Dogra and Ms. Vasundhara Chauhan, Advocates. versus
ENFORCEMENT DIRECTORATE Respondent Through: Mr. Subhash Bansal
and Mr. Shashwat, Advocates for Enforcement Directorate. Mr. Jatan Singh,
CGSC for UOI. WITH CRL. A. No.92 of 2008 RAMESH KUMAR CHOPRA
..Appellant Through: Mr. Pavan Narang, Mr. Anish Dingra, Mr. Lohitaksh Shukla,
Mr. K.R. Dogra and Ms. Vasundhara Chauhan, Advocates. versus
ENFORCEMENT DIRECTORATE Appellant Through: Mr. Subhash Bansal and
Mr. Shashwat, Advocates for Enforcement Directorate. Mr. Jatan Singh, CGSC for
UOI. WITH CRL. A. No.93 of 2008 LEKH RAJ CHOPRA Crl. A. Nos. 91 of 2008,
92 of 2008 & 93 of 2008 ..Appellant Page 1 of 15 Through: Mr. Pavan Narang, Mr.
Anish Dingra, Mr. Lohitaksh Shukla, Mr. K.R. Dogra and Ms. Vasundhara
Chauhan, Advocates. versus ENFORCEMENT DIRECTORATE Appellant
Through: Mr. Subhash Bansal and Mr. Shashwat, Advocates for Enforcement

JUDGMENT

3101.2014 1. These three appeals are directed against the common order dated 27th December 2007 passed by the Appellate Tribunal for Foreign Exchange (AT) dismissing Appeal Nos. 691, 692 and 693 of 2004 hereby affirming the adjudication order (AO) dated 18th May 2004 passed by the Special Director (SD), Enforcement Directorate (ED).

2. Criminal Appeal No.91 of 2008 is by Brij Trading Co. (BTC), Criminal Appeal No.92 of 2008 is by Mr. Ramesh Kumar Chopra and Criminal Appeal No.93 of 2008 is by Mr. Lekh Raj Chopra.

3. The background to these appeals is that prior to 1st December 1978, BTC was a partnership firm, of which Mr. Lekh Raj Chopra and Mr. Ganesh Das Chopra were partners. With effect from 1st December 1978, Mr. Ramesh Kumar Chopra was inducted as a partner. In April 1979, Mr. Lekh Raj Chopra ceased to be a partner and thereafter, Mr. Ganesh Das Chopra and Mr. Ramesh Kumar Chopra continued as partners of BTC.

4. On 28th July 1980, simultaneous searches were conducted by the officers of the ED at various premises, including those of Mr. Mukund Lal Khanna, from where a briefcase bearing an Air India identification slip with the name Pritam Lal of Kabul was recovered. The briefcase contained documents and accounts, and, on being questioned, Mr. Mukund Lal Khanna affirmed that the briefcase belonged to Mr. Pritam Lal of Kabul. Incidentally, Mr. Pritam Lal is also known as Mr. Brij Lal, who had also filed a separate Appeal which was dismissed by the AT by the same common order, dismissing the Appeals of the Appellants herein. Mr. Brij Lal has filed a separate Criminal Appeal No.161 of 2008, which is not listed along with the present Appeals.

5. Further searches were conducted on 27th/28th August 1980 by the ED at the premises of BTC as well as the residential premises of Mr. Brij Lal and Mr. Lekh Raj Chopra. Among the documents recovered were three letters in Urdu and Persian written by Mr. Deep Raj and addressed to Mr. Ramesh and Mr. Manjesh,

c/o BTC. According to the ED, the said letters contained coded instructions for receiving payments in India and making of hawala payments therefrom against receipt of corresponding payments in Kabul. The briefcase also contained general hawala slips addressed to one Babla Sahe/Bedi Saheb, stated to be the code names of Mr. Niranjana Singh, against whom also the proceedings were initiated by the ED, who happened to be an employee of BTC.

6. The statements of Mr. Niranjana Singh under Section 40 of the Foreign Exchange Regulation Act, 1973 (FERA) were recorded on various occasions. He, inter alia, confirmed that the slips in the briefcase were hawala receipts slips, against which, on receipt of instructions from Kabul and Peshawar, hawala payments were made in India. These instructions were received at the shop of BTC at Delhi. After making of the payments, Mr. Niranjana Singh used to handover the Rukka to Mr. Brij Lal Chopra.

7. The statement of Mr. Ganesh Das Chopra under Section 40 of FERA was also recorded by the ED. Mr. Ganesh Das Chopra also stated that the accounts seized in the briefcase were written mainly by Mr. Niranjana Singh. The statement of Mr. Shiv Saran Kakkar was recorded on 15th February 1980. He, too, admitted to having received hawala payments as shown in the documents found in the briefcase. On 23rd December 1980, Mr. Brij Lal submitted an affidavit before the First Secretary, Indian Embassy, Kabul asserting that the documents in the briefcase recovered from the residence of Mr. Mukund Lal Khanna belonged to him and that he had left the said briefcase with Mr. Mukund Lal Khanna for safe custody before he left for Kabul.

8. On 22nd August 1981, a memorandum was issued by the ED to BTC as well as Mr. Ganesh Dass Chopra and Mr. Ramesh Kumar Chopra, addressed as partners of BTC, Mr. Brij Lal, Mr. Lekh Raj Chopra, Mr. Mukund Lal Khanna and Mr. Niranjana Singh, requiring the firm, BTC, to show cause as to why the adjudication proceedings should not be held against them under Section 51 of the FERA for contravention of Section 9(1) (b) (d) and (f) read with Section 64(2) and 68(1) of the FERA. The said Memorandum referred to the documents seized from the briefcase of Mr. Brij Lal of Kabul, the documents seized from the premises of BTC

and those seized from the premises of Mr. Niranjan Singh as well as Mr. Shiv Charan Kakkar. Further, the Memorandum referred to the books of accounts of BTC; the transcripts of the accounts of BTC maintained with the Canara Bank, Chandni Chowk; the statements dated 14th, 15th, 19th September 1980 and 14th October 1980 of Mr. Niranjan Singh; the statements dated 27th August, 21st, 25th, 26th and 30th September 1980 of Mr. Mukund Lal Khanna; the statements dated 28th August, 3rd, 21st, 25th September 1980 and 1st, 31st October 1980 of Mr. Ganesh Dass Chopra and the statement dated 16th April 1981 of Mr. Ramesh Kumar Chopra.

9. An order dated 10th April 1986 was passed by the SD holding BTC, Mr. Lekh Raj Chopra and Mr. Ramesh Kumar Chopra guilty of having contravened the provisions of Section 9(1)(d) of the FERA with regard to the payments totaling Rs. 10,90,91,640; guilty of the contravention of Section 9(1)(b) with regard to the receipt of payments totaling Rs. 5,44,96,315 and of contravention of Section 9(1)(f) with regard to the payments received to the extent of Rs. 5,81,45,286, as detailed in annexures 1, 2 and 3 respectively to the show cause notice. The SD also held that Mr. Lekh Raj Chopra would be liable under Section 68(1) of the FERA for the transactions of BTC between the period 3rd January 1978 to 31st March 1979 and Mr. Ganesh Dass Chopra and Mr. Ramesh Kumar Chopra in terms of Section 68(1) FERA. It was held that Mr. Ramesh Kumar Chopra was guilty of the contravention of Section 9(1)(b)(d) and (f) read with Section 68(1) of the FERA for the violation by BTC of the provisions contained in Section 9(1)(b)(d) and (f) of the FERA. As regards the penalty, the SD levied a penalty of Rs. 45,00,000 on BTC, Rs. 45,00,000 each on Mr. Ganesh Dass Chopra, Mr. Brij Lal Chopra and Mr. Lekh Raj Chopra, a penalty of Rs. 2,00,000 on Mr. Mukund Lal Khanna, Rs. 1,00,000 on Mr. Ramesh Kumar Chopra and Rs. 20,000 on Mr. Niranjan Singh.

10. Aggrieved by the aforementioned order of the SD, the Appellants approached the AT, which, by an order dated 19th May 2003, set aside the said order of the SD and remanded the Appeals to the SD to inquire into whether the entries relating to illicit transactions were made during the course of the business of the firm and with the concurrence and knowledge of the firm.

11. Thereafter, the SD again dealt with the Appeals of the Appellants and passed an order on 18th May 2004, holding the Appellants to be guilty of violating the provisions of the FERA. The SD imposed a penalty of Rs. 2,00,00,000 on BTC for contravention of Sections 9(1)(b)(d) and (f) of FERA. Likewise, a penalty of Rs. 1,00,00,000 each was imposed on Mr. Ganesh Dass Chopra, Mr. Ramesh Kumar Chopra and Mr. Lekh Raj Chopra. A personal penalty of Rs. 1,00,00,000 was also imposed on Mr. Pritam Lal @ Mr. Brij Lal.

12. Aggrieved by the second order of the SD, the Appellants again approached the AT, which dismissed the said Appeals on 27th December 2007. By the impugned order, the AT held that the order of the SD was correctly passed and that the penalty imposed was also commensurate with the violations found to have been committed by the Appellants. It was held that the penalties were sufficient to create deterrence from violation of regulatory statute and were, therefore, not harsh and excessive, particularly when we look to the decrease in the value of money by inflation in the society.

13. This Court has heard the submissions of Mr. Pawan Narang, learned counsel for the Appellants and of Mr. Subhash Bansal, learned counsel for the ED.

14. It is first submitted by Mr. Narang, learned counsel for the Appellants that the SD had not complied with the specific directions issued in the order dated 19th May 2003 passed by the ED. In other words, it is submitted that the SD, ED failed to determine whether the alleged illegal acts of BTC were, in fact, performed in the course of its business. It is submitted that the infractions of the law committed by the partners can allegedly result in penalty being imposed on the firm only if such infractions are committed on behalf of the firm.

In the instant case, the alleged illegal acts could not be said to have been committed on behalf of the firm, and even if there was a violation by the individual partners of Sections 9(1)(b)(d) and (f), such violation remained as one committed by the firm itself. It is submitted that in the entire record of the case, there is nothing to indicate that the infractions were committed by BTC. It is submitted that the finding of the SD which has been affirmed by the AT is contrary to Section 68 of FERA, which applies to companies. It is submitted that, unless it is shown that

the individual partners acted illegally on behalf of the firm or in furtherance of its objects, a firm should not be penalized under FERA for the acts of its partners. Section 26 of the Indian Partnership Act, 1932 (Partnership Act) does not apply since it was nobody's case that in the ordinary course of business, BTC was indulging in hawala transactions. Further, under Section 28 of the Partnership Act, a firm cannot be held liable for the acts of Mr. Niranjana Singh, who was only an employee of the firm and not its partner.

15. Secondly, it is submitted that Mr. Niranjana Singh was an alleged accomplice and his evidence could be accepted only if it was reliable and corroborated in material particulars. Reliance is placed on the decisions in *Sarwan Singh v. State of Punjab* AIR 1957 SC637 and *Bhiva Doula Patil v. State of Maharashtra* 1962 SCR830. Additionally, Mr. Narang also placed reliance on the decision in *Vinod Solanki v. Union of India* (2008) 16 SCC537 which reiterated that the evidence brought on record pointing at a confession which stood retracted, must be substantially corroborated by either independent or cogent evidence. Further, the burden was on the prosecution to show that the confession made by Mr. Niranjana Singh was voluntary in nature.

16. Relying on the decision in *Central Bureau of Investigation v. V.C. Shukla* (1998) 3 SCC410 Mr. Narang submitted that the entries in the rukkas could alone not be sufficient to charge a person with the liability and, at best, they could only be corroborative evidence. In terms of Section 34 of the Evidence Act, 1872, it has to be shown that the documents seized from the firm reflected the entries that were made in the course of business of the firm. The statement made by a party to the proceedings as an admission can be proved against him, but not against the others who are being jointly tried, unless it amounted to a confession. Reliance is also placed on the decision in *K.T.M.S. Mohd. v. Union of India* (1992) 3 SCC178. Mr. Narang also referred to the statements made by Mr. Niranjana Singh and Mr. Ganesh Dass Chopra, which did not show that BTC was itself involved in any illegality. Lastly, Mr. Narang submitted that with the ED not having appealed against the order dated 10th April 1986 of the SD, it was not open to the SD, on remand, to enhance the penalty awarded to the Appellants.

17. In reply to the above submissions, Mr. Subhash Bansal, learned counsel for the ED first submitted that once the original order dated 10th April 1986 was set aside by the AT by the order dated 19th May 2003, no reliance could be placed on it for any purpose whatsoever. There was nothing, therefore, that prevented the SD, ED from examining the matter afresh and imposing a higher penalty, if so warranted in law. Referring to Section 50 of the FERA, he pointed out that a penalty could be as high as five times the amount involved in the contravention and, therefore, the penalty imposed by the SD by the order dated 18th May 2004 was justified.

18. Mr. Bansal referred to the decision in *Telstar Travels Private Limited v. Enforcement Directorate* (2013) 9 SCC549 and submitted that even a retracted confession could be relied upon as long as it was corroborated.

19. The Court has considered the above submissions. The specific case of the ED, as set out in the Memorandum dated 22nd August 1981, was that the documents seized from the briefcase of Mr. Pritam Lal @ Mr. Brij Lal as well as the documents seized from BTC, as explained by Mr. Niranjana Singh and Mr. Ganesh Dass Chopra in their respective statements, were that compensatory payments were being made to the beneficiary parties in India by BTC, the details of which were reflected in the day to day accounts written in various account books/sheets date wise, written and maintained at Brij Trading Co., Delhi which fact is further corroborated with the corresponding entries appearing in the account books/sheets maintained in Kabul at the shop of Brij Lal & Lekh Raj from where these instructions were on the respective dates when these transactions actually took place.

20. One of the criticisms of the learned counsel for the Appellants is that despite the order dated 19th May 2003 of the learned AT specifically requiring the SD, on remand, to examine whether the entries relating to the illicit transactions were made in due course of business of BTC, and with the concurrence and knowledge of its partners, the SD has, in the subsequent order dated 18th May 2004, merely repeated the earlier order.

21. Having carefully perused both the orders of the SD, this Court is unable to agree with the above submission. It is correct that by its order dated 19th May 2003, the AT specifically required the SD to consider the following questions: (i) Whether the breaches of the provisions of the statute were committed by Mr. Niranjan Singh as an employee of BTC with the knowledge and concurrence of BTC?. (ii) Whether the entries relating to illicit transactions were made in due course of the business of BTC and with the concurrence and knowledge of BTC?.

22. The tenor of the order dated 19th May 2003 of the learned AT is that if the violations of the law were committed by individuals, without the knowledge of the firm or its partners, then the firm could not be held liable for such violations. There was, in terms of the aforementioned order of the AT, no question of any fresh material being produced before the SD. In other words, the SD was required to pass a fresh reasoned order on the basis of the existing material.

23. A perusal of the order dated 18th May 2004 of the SD shows that the precise role of BTC in the transactions has been exhaustively discussed. The SD has analysed the writings on the rukka slips and has decodified the writings on the basis of the statements made by Mr. Niranjan Singh, Mr. Ganesh Dass Chopra and certain others. In para 17 of the said order, the SD has listed out the connectivity/link of the transactions, as recorded in the documents seized from the briefcase of Mr. Brij Lal. There are as many as thirty four such specific instances listed. This was a far more detailed and exhaustive analysis than that undertaken on the very same material in the earlier order dated 10th April 1986 of the SD. In a separate section titled Discussion and Findings, the SD has, in the order dated 18th May 2004, set out the reasons for holding that the BTC as well as its partners were responsible for the violation of Sections 9(1)(b)(d)(f) FERA.

24. It was sought to be urged by Mr. Narang that the statements made by Mr. Niranjan Singh had clarified that although some of the letters were addressed to Mr. Ramesh Kumar Chopra, he was at the relevant time only a school going student of barely 18 years of age and that the letters were actually meant for Mamaji which meant Mr. Brij Lal. However, the fact remains that Mr. Ramesh Kumar Chopra was already a partner in the firm since 1st December 1978. He was

authorized to operate bank accounts of the firm and was one of the signatories of the cheques issued by the firm. It was not as if he was a sleeping partner with no responsibility at all.

25. In the order dated 18th May 2004, the SD has put forth the following analysis of the evidence in support of his conclusion that the firm and its partners were actively involved in the hawala transactions:

Both Shri Ramesh Kumar Chopra and his father Shri Lekh Raj Chopra were partners of the firm. Shri Ramesh Chopra was staying in India whereas Lekh Raj Chopra was frequenting between Delhi and Kabul. Brij Trading Co. was operating from Delhi with partners as Ganesh Das Chopra, Lekh Raj Chopra and Ramesh Kumar Chopra and they were organizing hawala payments in India on the basis of instructions received from abroad and particularly from Kabul and the office at Kabul was also being run by Shri Lekh Raj Chopra and Brij Lal as has been stated by Shri Ramesh Kumar Chopra in his statement dated 16.4.81. Whatever hawala transactions was being conducted in India was on the basis of the instructions being received from abroad and the link between the abroad and Delhi Office is through Lekh Raj Chopra and Brij Lal at Kabul and the three partners namely S/Shri Ramesh Chopra, Ganesh Chopra and Lekh Raj Chopra in India. Such an elaborate hawala network can only run on the basis of networks/contacts abroad which was among the partners. It has never been the case of the department nor at any point of time has it been brought through evidence that any of the employees were having hawala transaction independently through their separate contact abroad. Therefore, on the facts of the case it is very clear that the said hawala network between Indian and Kabul/Peshawar etc. was due to the contact of the partners and the employees were only working as per the directions received from these partners from time to time. The documents found in the briefcase also contained several letters written by Shri Lekh Raj from Kabul addressed to Shri Brij Lal (Brij Lal was available in India most of the time) containing instructions for making and receiving payments in India. Part of the accounts found in the briefcase was written by Shri Lekh Raj as stated by Niranjana Singh. Therefore, without the Kabul connection which was provided by Shri Lekh Raj, Brij Trading Co. could not have transacted hawala business and it is also

worthwhile mentioning that Shri Ramesh Kumar Chopra was only the son of Shri Kekh Raj and both were active in making the hawala transactions in India (Lekh Raj was also most of the time available in India).

26. Thereafter, the SD has analysed the accounts found in the briefcase along with the other documents recovered, including the books of accounts and bank accounts statements of BTC and set out in a tabulated form Corroboratory evidence linking various transactions as recorded in the documents seized on 27.08.1980 from the samsonite briefcase found at the residence of Sh. Mukand Lal Khanna with corresponding entries as recorded in the regular books of accounts of Brij Trading Co. as also those in the account of the company with Canara Bank, Chandni Chowk, Delhi The chart contains three columns titled Documents of Samsonite Brief Case, Books of Accounts of M/s Brij Trading Co.

and Account of BTC with Canara Bank.

The specific descriptions of the transactions and the corresponding amounts are set out under the columns.

27. Mr. Narangs comment on the above tabulated chart was that it does not necessarily indicate that the entries were coded. He submitted that there was no way of knowing whether the so-called decodification actually reflected the correct position, particularly since BTC prepared and filed audited accounts on a regular basis.

28. The above submission overlooks the fact that the order of the SD refers to the material recovered from the briefcase as well as the statements made during the course of the investigation in great detail. It is not possible for the SD to have arbitrarily and randomly prepared the above detailed tabulation. The statements of Mr. Niranjn Singh were helpful in the decodification exercise, as has been noted in the order of the SD.

29. The other tabulated statement enclosed contains a detailed analysis of the entries of miscellaneous/regular nature in respect of the expenses incurred for various noticees. In the above context, it was submitted by Mr. Narang that of the

twenty two noticees whose names figured in the receipts, and to whom hawala payments were allegedly made, only six were examined. The six persons examined did not support the case of the ED. In other words, six persons denied receiving any hawala payments. Therefore, according to him, the case of the ED was not proved. He further submitted that nothing prevented the ED from examining the remaining witnesses whose names figured in the rukkas.

30. The Court has examined the statements of Mr. Niranjana Singh and Mr. Ganesh Dass Chopra. The Court finds that they give definite particulars which support the case of the ED as regards the hawala undertaken by BTC as well as its partners. For instance, Mr. Ganesh Dass Chopra admitted to receiving rukkas and making payments and to receiving letters addressed to Mr. Lekh Raj Chopra, Mr. Brij Lal and Mr. Ganesh Dass Chopra. The statements of Mr. Niranjana Singh and the documents recovered from him completed the transactions involved in the case. He was examined and cross-examined by learned counsel for the noticees, including the Appellants herein. The SD has analysed the further documents tendered by Mr. Niranjana Singh on 11th December 1982 during the course of adjudication proceedings and those seized from the residence of Mr. Ganesh Dass Chopra on 8th February 1994. The probative value of these and the other evidence on record has been exhaustively discussed in the order dated 18th May 2004 of the SD. The fact that BTC itself was involved in the transactions and that all the four transactions took place with the knowledge and participation of its partners and in particular Mr. Lekh Raj Chopra and Mr. Ramesh Kumar Chopra, has been fully brought out in the above documents which have been thoroughly analysed in the order of the SD.

31. On the question of retracted confession, the position that emerges from an analysis of the evidence in the present case is that there is adequate corroboration of the statements of Mr. Niranjana Singh to be found in the documentary evidence gathered in the present case. It cannot be said that the guilt in the present case is based only on the statement of Mr. Niranjana Singh without any corroboration from the documentary evidence on record. As rightly pointed out by the learned AT in the impugned order dated 27th December 2007, there is nothing brought on record by the Appellants to show that the statements of Mr. Niranjana Singh were

made under threat or coercion. The Court concurs with the view expressed by the learned AT in the present case that the statements made by Mr. Niranjana Singh were both voluntary and corroborated in material particulars and, therefore, could safely be relied upon for the purposes of determining the guilt of the Appellants.

32. With the evidence on record clearly pointing to the involvement of BTC and with the involvement of its partners also being demonstrated, there was no error committed by SD in proceeding to hold BTC and its partners guilty of contravention of Sections 9(1)(b)(d) and (f) of the FERA. There was no misapplication of Section 68 of the FERA which, in principle and by analogy, could be extended to contravention by the partnership firms. This is in consonance with Section 25 of the Partnership Act. Once it was established that the illegal acts were committed by the firm itself, then there was no difficulty in applying Section 68 of the FERA.

33. The decision in *Telstar Travels Private Limited v. Enforcement Directorate* has dealt with the decision in *K.T.M.S. Mohd. v. Union of India* and distinguished the decision in *Vinod Solanki v. Union of India* to explain the legal position that even a retracted confessional statement could be relied upon as long as it was corroborated.

34. Lastly, on the issue of penalty, Mr. Bansal rightly submitted that once the original order dated 10th April 1986 of the SD was set aside by the AT by its order dated 19th May 2003, there had to be a fresh adjudication on the basis of the show cause notice and, therefore, the question of penalty had to be determined afresh.

35. The order of the SD may not have explained the precise basis for arriving at the penalty amount of Rs. 2,00,00,000 imposed on BTC and Rs. 1,00,00,000 each on Mr. Lekh Raj Chopra and Mr. Ramesh Kumar Chopra. However, Section 50 of the FERA does envisage a penalty five times the amount involved in the violation. In the present case, that amount is in excess of Rs. 10,00,00,000 and, therefore, on the basis of the parameters set out in Section 50, it cannot be said that the penalty imposed on BTC and the two Appellants, i.e., Mr. Lekh Raj Chopra and Mr. Ramesh Kumar Chopra is excessive or unreasonable or illegal. The penalty

imposed in the order dated 10th April 1986 by the SD did not preclude him, on remand, from determining afresh the penalty amount.

36. For the aforementioned reasons, this Court does not find any merit in any of the grounds urged by the Appellants and upholds the order dated 18th May 2004 passed by the SD as well as the impugned order dated 27th December 2007 passed by the AT.

37. The Appeals are accordingly dismissed with costs of Rs. 5,000 in each Appeal.
S. MURALIDHAR, J.

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