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Court : Chennai

Decided On : Feb-29-1996

Reported in : 1996CriLJ4378

Judge : Abdul Hadi and ;P. Sathasivam, JJ.

Acts : [Foreign Exchange Regulation Act, 1973](#)

Appeal No. : A.A.O. No. 130 of 1988

Appellant : A. Abdullah

Respondent : Foreign Exchange Regulation Appellate Board and Another

Advocate for Def. : S. Veeraraghavan, Standing Counsel

Advocate for Pet/Ap. : M. Abdul Nazeer, Adv.

Judgement :

Abdul Hadi, J.

1. This civil miscellaneous appeal under section 54 of the [Foreign Exchange Regulation Act, 1973](#) (hereinafter referred to as 'the Act'), is against the concurrent orders of the second respondent and the first appellate authority, viz., the first respondent, levying penalty of Rs. 3,000 under section 50 of the Act for the contravention under section 9(1)(b) of the Act and ordering confiscation under

section 63 of the Act, of the Indian currency of Rs. 60,000 seized from the appellant on the personal search made on him by the second respondent's officers in a lodge on January 24, 1985. Apart from the abovesaid Indian currency recovered at the same time, Singapore \$ 50, Japan Yen 100 and Ceylon currency 200 were also recovered from his possession. A statement dated January 24, 1985, was also recorded soon after the said recovery. In that statement, the appellant admitted that the said amount of Rs. 60,000 was received by him from a person resident in India under instructions from his relative resident of Singapore, Mohd. Jinnah, earlier the same day. On the said basis only, he was charged with the contravention under section 9(1)(b) of the Act, according to which, inter alia, no person in India, save in accordance with the exemption granted by the Reserve Bank, shall 'receive otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India'.

2. A show-cause notice dated February 14, 1985, was issued to the appellant regarding the above said contravention. In the said show-cause notice reliance was placed on the confessional statement given by the appellant on January 24, 1985, stating further that the said document could be inspected at the office of the Deputy Director, after fixing an appointment to that effect. To the said show-cause notice he gave his reply dated June 4, 1985, denying the charge and pleading that the said sum of Rs. 60,000 was given to him by his brother, Asaf Ali, for being delivered to his brother, Jalal, in discharge of the debt due from him and for improvement in their house property. The reply also stated that the alleged confessional statement dated January 24, 1985, was not his voluntary statement and that he was also not aware of any person by name Mohd. Jinnah in Singapore. It must also be stated that even as early as January 25, 1985, itself (that is, the very next day after January 24, 1985, when the abovesaid confessional statement was given) a telegram was sent to the Enforcement Officer retracting the abovesaid confessional statement stating that the statement was not voluntary and no copy of the said statement was also given to him. Further, on the same day (January 25, 1985), a letter was also sent to the same Enforcement Officer, detailing how the alleged confessional statement was not voluntary in view of the force and torture exercised by him and three other officers. It is also stated therein that he was detained in the office right from 1.30 p.m. on January 24, 1985,

till 4 p.m. on January 25, 1985, and that on returning from the office he took treatment in the Government hospital as an out patient for the injuries caused by the officers. That apart, therein, it was also stated that on January 28, 1985, when he was asked to appear pursuant to the show-cause notice, he should be allowed to appear along with his advocate in view of his apprehension of similar ill-treatment. To this telegram and letter dated January 25, 1985, though no reply came from the said Enforcement Officer, a reply came from his higher official, viz., the Assistant Director, Enforcement, stating that the alleged ill-treatment by the Enforcement Officer 'appear to be baseless' and that no injury was caused by the officers and that he was allowed to leave the office on January 24, 1985, itself. Further, it is also stated there that he should have appeared before the Enforcement Officer on January 25, 1985, and that, however, he is informed that he should appear in the office of the said Assistant Director 'for which fresh summons will be issued'. It is also added that his advocate cannot be present. It is further stated therein that a copy of his statement dated January 24, 1985, would be given to him after the completion of the investigation.

3. The Adjudicating Officer (second respondent) came to the conclusion that the charge against the appellant was satisfied, and levied the abovesaid penalty and passed the abovesaid confiscation order. The relevant observations in the said order of the first authority regarding the abovesaid retracted statement are as follows :

'Though it is a retracted statement, I consider that the same can be relied upon in the proceedings for the following reasons : It is an admitted fact that the abovesaid lodge belonging to two non-residents, K.K.I. Mohd. Ali and K.K.I. Sowkath Ali of Malaysia is taken on lease by his father and the said lodge, is being run by him (appellant). He is assisting his father in running the lodge. On January 24, 1985, when Shri A. Abdulla gave the statement, he made revelations in his statement that the sum of Rs. 60,000 was received by him as per the arrangements made by his relative, Shri Mohd. Jinna of Singapore, who is doing business there. This fact was within the special knowledge of Shri A. Abdulla and has not emanated from any other source or from the officers. If the officers wanted to get a coerced statement they would have put into the mouth of Shri A. Abdulla, the names of the

two non-residents disclosed by Shri A. Abdulla in the earlier part of his statement. While he was asked to explain about the source for the possession of Rs. 60,000 with him, he gave the details about the arrangements made by Shri Mohd. Jinna of Singapore to receive a sum of Rs. 60,000 by him. I have, therefore, come to the conclusion that the statement given by Shri A. Abdulla on January 24, 1985, was a voluntary one.'

4. The Appellate Board also has confirmed the above said order of the first authority, inter alia, stating as follows :

'The said statement was retracted by the appellant by sending a telegram on January 25, 1985, and also sending a registered letter dated January 25, 1985, to the Enforcement Officer... In that letter the appellant alleged that the statement dated January 24, 1985, had been obtained from him under coercion and torture causing injuries on his face and lip besides pain all over the body... Copies of the accident register and injury report dated January 25, 1985, have been filed by the appellant in support of that allegation. A perusal of the same would show that the appellant was examined in the Government hospital at 4.12 p.m. on January 25, 1985. At that time he gave out that he was assaulted by four known persons at about 10.30 p.m. on January 24, 1985, at the respondent's office. The injuries noted were a small cut over upper lip, pin pricks over left thumb below the nail and pain all over the body. The department denied the said allegation in their letter dated February 2, 1985. .. As observed by the Madras High court in its decision in the case of Salman Khan v. Deputy Director, Enforcement Directorate [1985] 5 ECC 146 relied on by learned counsel for the appellant and referred to above, strictly speaking, there may not be any need for corroboration in law to such a retracted statement. It is, however, to be examined with caution. It will all depend on the facts and circumstances in each case... Unless the circumstances clearly show that there is intrinsic truth in the statement itself, it would be advisable to need corroboration in such matters. The facts of the present case have to be examined in the light of the said position of law. As stated above, the appellant's statement was recorded on January 24, 1985, itself, when a sum of Rs. 60,000 in cash besides some foreign exchange was recovered from his possession. There is nothing to show that in fact the appellant was detained by the respondent's officers

during the night of January 24, 1985, except the allegation made in the letter of retraction dated January 25, 1985. When the statement was recorded on January 24, 1985, under coercion and torture at about 10.30 p.m. as mentioned in the accident register entry referred to above, it is not shown as to why the appellant would have been detained by the respondent's officers during the whole night of January 24, 1985, and then right up to 4 p.m. on January 25, 1985, as alleged in the letter of retraction. The allegation appears to be wholly improbable. It is true that the appellant was examined in the Government hospital at 4.12 p.m. on January 25, 1985, when the injuries referred to above were found on his person. In case the appellant was not detained by the respondent's officers till 4 p.m. on January 25, 1985, as discussed above, the said injuries found on his body at 4.12 p.m. that day could be of no consequence regarding the voluntary nature of the statement dated January 24, 1985, recorded at about 10.30 p.m. The nature of the said injuries also could not rule out the possibility of the same being self-inflicted or caused in any other manner... it was not even suggested that the name of Mohd. Jinnah of Singapore, was known to the respondent's officers since before and was put into the appellant's mouth by them. It was not even, pleaded by the appellant that he did not even know a person by the name of Mohd. Jinnah of Singapore and that he was not his relative. It is to be noted that some foreign exchange was also recovered that such foreign exchange was the left over of the appellant's visit to Singapore in 1984. If they were so, the appellant could not have continued to keep the same in his pocket or in the nylon bag in which it was recovered by the respondent's officers. In view of the above discussion the statement dated January 24, 1985, can be accepted to be intrinsically true in its nature...'

5. Learned counsel for the appellant made the following submissions : Both the authorities below grossly erred in solely relying on the alleged confessional statement dated January 24, 1985, when it has been retracted immediately on January 25, 1985, as stated above and when the injuries suffered by the appellant while the Enforcement Officer illegally extracted the said confessional statement, were also borne out by the above referred to accident register and injury report dated January 25, 1985, obtained from the General Hospital, where the appellant was treated for the said injuries, the reasoning of the first respondent Board that there is nothing to show that in fact, the appellant was detained by the

respondents' officers during the night of January 24, 1985, is absolutely unsound, particularly when the reply dated February 2, 1985, by the Assistant Director of Enforcement to the retraction letter dated January 25, 1985, of the appellant, addressed to the Enforcement Officer, only says that the ill-treatment by the Enforcement Officer 'appear to be baseless' and particularly when the Enforcement Officer has himself neither chosen to reply to the abovesaid appellant's letter dated January 25, 1985, to him, nor has he been examined to speak as to what happened to the appellant on January 24, 1985, and January 25, 1985. Further, he also points out that even the abovesaid letter dated February 2, 1985, informs that the appellant should appear in the office of the Assistant Director for which fresh summons would be issued. He further points out that, however, fresh summons was not at all issued subsequently. (Learned counsel for the respondents also could not point out that any fresh summons was subsequently issued).

6. Learned counsel for the appellant also points out that though in the abovesaid letter dated February 2, 1985, it is stated that a copy of the abovesaid confessional statement dated January 24, 1985, would be furnished to the appellant after completion of the investigation, such a copy was not given at all/given along with the above referred to show-cause notice dated February 14, 1985. He further pointed out that the said copy was given only later. Further, the reasoning of the Appellate Board that the abovesaid injuries could be self-inflicted cannot at all be accepted. It was not so stated even by the first authority. Learned counsel also points out that the observation of the Appellate Board that it was not pleaded by the appellant that he did not even know a person by name Mohd. Jinnah of Singapore, is not correct. He points out that even in the reply to the show-cause notice, it is specifically stated, as already mentioned, that the appellant is 'not at all aware of any person by name Mohd. Jinnah in Singapore'. No doubt, such statement was not made in the above referred to statement dated January 25, 1985, retracting the earlier confessional statement. But, learned counsel points out that a copy of the alleged confessional statement dated January 24, 1985, which alone contained the name of the abovesaid Mohd. Jinnah of Singapore, was not given at all to the appellant, when he made the abovesaid retraction statement on January 25, 1985. Learned counsel also points out the reasoning that the

confessional statement contained the statements, which are within the special knowledge of the appellant, not known to the department officials, is also not a sound reasoning in view of what is observed in *Muthuswami v. State of Madras*, : AIR 1954 SC4 , wherein the observation is as follows (page 5) :

'The only reason the High Court gives for accepting the confession is because the learned judges considered there was intrinsic material to indicate its genuineness. But the only feature the learned judges specify is that it contains a wealth of detail which could not have been invented. But the point overlooked is that none of this detail has been tested. The confession is a long and rambling one which could have been invented by an agile mind or pieced together after tutoring... But unless the main features of the story are shown to be true, it is, in our opinion, unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth.'

7. Further, learned counsel also relies on *Salman Khan v. Deputy Director, Enforcement Directorate* [1985] 5 ECC 146, which also observed that unless the circumstances clearly show that there is intrinsic truth in the confessional statement itself, it would be advisable to need corroboration in such matters. He also relies on *Sevantilal v. State of Maharashtra* : 1979 CriLJ645 , where it was held that the conviction could not be sustained merely on the confession made to the Customs Officer under coercion. Admittedly, there is nothing to corroborate in the present case. In this connection, learned counsel also points out that the Appellate Board erred in its reasoning that some small foreign currencies were also recovered from the appellant. This was not even mentioned in the show-cause notice, nor the first authority gives it as a reason for its order. That apart, the observation of the Appellate Board that the appellant could not have continued to keep the same in his pocket, is of no significance since no action at all was taken against the appellant in that regard.

8. As against these weighty and convincing arguments of learned counsel for the appellant, learned counsel for the respondent could not argue seriously contra particularly in the light of the above referred to features of the case and the above referred to settled decisions in this regard. It is clear from the abovesaid features pointed out and the decisions cited that both the authorities below have grossly

erred in law in solely relying on the abovesaid alleged confessional statement on the ground that it is voluntary. In the light of the immediate retraction of the said statement and in the light of the abovesaid accident register and injury report and other features of the case, it would be indeed erroneous in law to hold that the abovesaid confessional statement was voluntary and true. It is also significant to note that the Enforcement Officer and three other officers with him, against whom serious allegations have been made by the appellant about the ill-treatment meted out by them to him in extracting the said confessional statement, have not even come forward to at least file an affidavit stating that what has been alleged in the retracted statement of January 25, 1985, in all details, is not true. The Enforcement Officer has not even chosen to reply to the above referred to letter dated January 25, 1985, addressed to him by the appellant, nor has he been examined in relation to the abovesaid allegations found in the retraction letter dated January 25, 1985. As already stated, there is absolutely no corroborating material also.

9. In the above circumstances, the impugned orders are set aside and the appeal is allowed. However, in the circumstances of the case, there will be no order as to costs.