



2026:DHC:8643-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28.09.2026

CNR No. DLHC011011272025
+ **MISC. APPEAL (FEMA) 39/2025**
UOI

.....Appellant

Through: Mr. Annirudh Sharma and Mr.
Ankit Swami, Advocates for
(ED)

versus

VIJAY CHAND BAID

.....Respondent

Through: Mr. Alok Sinha, Mr. Aakash
Saini and Ms. Deepansha Saini,
Advocates

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE ARUN BHARDWAJ

NAVIN CHAWLA, J. (ORAL)

1. This Appeal has been filed under Section 54 of the Foreign Exchange Regulation Act, 1973 (*hereinafter referred to as the “FERA”*) read with Section 35 of the Foreign Exchange Management Act, 1999 (*hereinafter referred to as the “FEMA”*), challenging the Order dated 10.03.2003 passed by the learned Appellate Tribunal for Foreign Exchange, New Delhi in Appeal No.252/1997, whereby the appeal filed by the respondent herein was partially allowed by the learned Tribunal and the penalty imposed on the respondent was reduced from Rs.5,00,000/- to Rs.15,000/-.

2. The brief facts giving rise to the present appeal are that on 12.06.1996, information was received by the Enforcement Directorate,

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Jalandhar from the Senior Superintendent of Police, Khanna, Jalandhar (Punjab) that they have apprehended one Sh. Girish Roy and seized Rs.15,00,000/- and Rs.1,50,000/- which was meant for compensatory payments. On receipt of the information, the officers of the Enforcement Directorate, Jalandhar searched the residential premises of the said Sh. Girish Rai and seized foreign exchange instruments expressed in Indian currency and foreign currency to the tune of Rs.3,00,000/-, US \$1000 and Indian currency of Rs.4,50,000/- and some documents. The statement of Sh. Girish Rai was recorded under Section 40 of the FERA on 13.06.1996, wherein he admitted that he was engaged in the business of receiving and making payments in India under the instructions of one Sh. Subhash of Philippines for the last four months and, in the said business, he had received different payments to the tune of Rs.28,00,000/- and made payments so far totaling to Rs.8,50,000/- under the instructions of said Sh. Subhash of Philippines. He also stated that the foreign exchange instruments seized from him were handed over to him by his uncle during April, 1996, while the Indian currency seized by the police from Shadi Lal belongs to him and he has received the same from a person, namely, Vicky at Delhi under the instructions of Sh. Subhash of Philippines at the residence of one Sh. Yogesh Sohal at Delhi. The residential premises of Sh. Yogesh Sohal was also searched from 31.07.1996, resulting in seizure of some documents. In his statements dated 31.07.1996 and 13.09.1996, recorded under Section 40 of the FERA, Sh. Yogesh Sohal, *inter alia*, stated that one person had come to his house and disclosed his identity as Vicky Pukhraj and delivered

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Rs.19,50,000/- to Sh. Girish Rai Dadwal of Jalandhar at his residence. He also identified the photograph of the respondent/Sh. Vijay Chand Baid.

3. Accordingly, summons were issued to the respondent and his statement under Section 40 of the FERA was recorded. In his statement, he admitted that he had received a payment of Rs.19,50,000/- from an unknown person on the instructions of his brother Sh. Mulchand Baid resident of Hongkong, and made the said payment to Sh. Girish Rai.

4. On the basis of the said disclosure, a Show Cause Notice dated 05.12.1996 bearing SCN No.T-4/222/DZ/96-SCN was issued to the respondent for having received and made payments amounting to Rs.19,50,000/- from a person resident in India under instructions of a person residing abroad, thereby violating Section 9(1)(b) and 9(1)(d) of FERA.

5. The Adjudicating Authority, by an order dated 02.06.1997, found the respondent guilty of having violated the above provisions of FERA and imposed a penalty of Rs.5,00,000/- on him. We quote from the said order is as under:-

“In the reply filed by Sh. S.C. Puri, Advocate, on behalf of Sh. Vijay Chand, Sh. Puri, Advocate had stated that the allegations against his client are simply based on unreliable and unbelievable evidence of Sh. Yogesh Sohal, who is co-accused in the case. Since the telephone Nos.7248960 and 7228218 are the numbers of Sh. Vijay Chand Baid, the person identified by Sh. Yogesh Sohal at his residence, who delivered the payment of Rs.19,50,000/- to Sh. Girish Rai as Vicky Pukhraj, was also Vijay Chand Baid and Sh. Vijay Chand Baid had also admitted in his

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statement dt.20.8.96 that he had received the said payment from unknown person for delivering the same to Sh. Girish Rai, I am convinced that Sh. Vijay Chand Baid is the person, who had changed his name as Vicky Pukhraj and delivered the payment at the residence of Yogesh Sohal to Sh. Girish Rai.

Though I agree with Sh. Puri, Advocate that the person apprehended in Punjab from whom Indian rupees were found, named Subhash of Philippines and Sh. Vijay Chand Baid has no brother named Subhash nor any person known residing in Philippines, yet I am convinced that Sh. Vijay Chand Baid has delivered the payment of Sh. Girish Rai, since the main offender in this case is Sh. Girish and Sh. Vijay Chand Baid has played a role of only mediator, I am fully convinced that he has contravened the provisions of the power conferred upon me I impose a penalty of Rs.5,00,000/- on Sh. Vijay Chand Baid.”

6. The said order was challenged by the respondent by way of an appeal before the learned Tribunal, which, as noted hereinabove, has been partially allowed by the learned Tribunal.

7. As far as the violation of Section 9(1)(b) and 9(1)(d) of FERA is concerned, the learned Tribunal upheld the order passed by the Adjudicating Authority, however, on the quantum of penalty, finding the same to be disproportionate, reduced it from Rs.5,00,000/- to Rs.15,000/-. We quote from the findings of the learned Tribunal is as under:-

“8.The penalty imposed on the appellant is Rs.5 lakhs. The Counsel for the appellant submits that it was with no criminal intent or with no guilty mind that the appellant was involved in the dealings, As rightly submitted on behalf of the appellant, despite his involvement in the dealings of the Indian currency on behalf of and at the

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instructions of certain non- resident Indians appellant having not worked on any compensation basis, coupled with the impecunious situation of the appellant, the penalty imposed is thoroughly disproportionate to the contravention involved, the ends of justice demands only a meagre penalty. Therefore, I am inclined to reduce the penalty and to modify the order of penalty into Rs. 15000/-

In the above premises, partly allowing the appeal, concurring with the findings against the appellant, I do modify the order of penalty against him, reducing the impugned order of penalty into Rs. 15,000/- ”

8. The learned counsel for the appellant submits that once the respondent had been found guilty of having violated Section 9(1)(b) and 9(1)(d) of the FERA, there was no occasion for the learned Tribunal to interfere with the penalty imposed by the Adjudicating Authority. In support of his plea, he also places reliance on Section 50 of the FERA, which in fact, authorizes the authority to impose penalty up to five times of the value of the contravention. He submits that given the amount of violation involved in this case, that is, Rs.19,50,000/-, the penalty imposed by the Adjudicating Authority was fully justified and not liable to be interfered with. He further submits that the learned Tribunal has reduced the penalty on uncalled for sympathy and on incorrect principles in law of absence of *mens rea*, which otherwise is irrelevant to the imposition of penalty. In support of his submission, he places reliance on **Director of Enforcement v. M.C.T.M Corporation Pvt. Ltd. & Others**, (1996) 2 SCC 471; **Chairman SEBI v. Shriram Mutual Fund and Another**, (2006) 5 SCC 361; and, **J.K Industries Ltd. & Ors. v. Chief Inspector**

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***of Factories & Boilers and Others*, (1996) 6 SCC 665.**

9. On the other hand, the learned counsel for the respondent submits that no fault can be found with the order passed by the learned Tribunal, inasmuch as the respondent had been involved in the case only on the basis of an alleged statement made by him and the co-accused. He submits that the respondent is not a man of means and the learned Tribunal had rightly found that there was no *mens rea* in the respondent to contravene the above provisions of the FERA. He submits that there was also no evidence of the appellant having gained any extraneous consideration in the transaction. He submits that the learned Tribunal, therefore, rightly reduced the penalty imposed on the respondent.

10. He further submits that the respondent has been pursuing this appeal right since 2003, and therefore, the impugned order does not warrant any interference of this Court.

11. We have considered the submissions made by the learned counsels for the parties.

12. The question of law that requires our consideration in the present appeal is whether the learned Tribunal can interfere with the penalty imposed by the Adjudicating Authority merely on the finding that there was no *mens rea* in the respondent violating the provisions of the FERA, and whether the learned Tribunal erred in reducing the penalty upon finding the same to be disproportionate to the contravention involved.

13. As far as the law on disproportionality of a penalty is concerned, it is well settled that while the doctrine of proportionality

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permits judicial review of the quantum of punishment, the Courts do not normally interfere with the penalty imposed by the competent authority unless the penalty imposed by the Authority is found to be so disproportionate that it shocks the conscience of the Court. We may refer to the celebrated judgment of the Supreme Court on this principle in **Ranjit Thakur v. Union of India**, (1987) 4 SCC 611, wherein the limit of its application was explained as under:

“25. Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review”

14. In **Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and Another**, (2007) 4 SCC 669, the Supreme Court reiterated that for interfering with the penalty imposed on basis of the doctrine of proportionality, the penalty has to be shown as “grossly excessive, disproportionately high or unduly harsh”.



15. Keeping in view Section 50 of the FERA and given the amount of violation involved, the penalty imposed by the Adjudicating Authority was not such as could have shocked the conscience of the learned Tribunal. The learned Tribunal, apart from using the phrase “disproportionate to the contravention involved”, has not explained how the same can be said to be so outrageous so as to defy logic. We do not find any reasons given by the learned Tribunal which may justify such finding in law.

16. In the present appeal, the respondent has been found guilty of having contravened the provisions of Section 9(1)(b) and 9(1)(d) of the FERA. There is no challenge by the respondent to these findings and the same has, therefore, attained finality. The contravention amount is of Rs.19,50,000/-. The learned Tribunal in the impugned order has reduced the penalty only on the ground that it did not find any criminal intent or guilty mind of the respondent and that he was working without any compensation. In our mind, both these factors are wrongly applied by the learned Tribunal.

17. In **Chairman, SEBI** (supra), the Supreme Court while considering whether *mens rea* is an essential condition for imposing penalty for breach of civil obligations, held as under:

“Mens rea: Whether an essential element for imposing penalty for breach of civil obligations?”

33. This Court in a catena of decisions has held that mens rea is not an essential element for imposing penalty for breach of civil obligations:

(a) aDirector of Enforcement v. MCTM



Corpn. (P) Ltd. : (SCC pp. 478 & 480-81, paras 8 & 12-13)

“8. It is thus the breach of a ‘civil obligation’ which attracts ‘penalty’ under Section 23(1)(a), FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10, FERA, 1947 that would immediately attract the levy of ‘penalty’ under Section 23, irrespective of the fact whether the contravention was made by the defaulter with any ‘guilty intention’ or not. Therefore, unlike in a criminal case, where it is essential for the ‘prosecution’ to establish that the ‘accused’ had the necessary guilty intention or in other words the requisite ‘mens rea’ to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the ‘blameworthy conduct’ of the delinquent had been established by wilful contravention by him of the provisions of Section 10, FERA, 1947. It is the delinquency of the defaulter itself which establishes his ‘blameworthy’ conduct, attracting the provisions of Section 23(1)(a) of FERA, 1947 without any further proof of the existence of ‘mens rea’. Even after an adjudication by the authorities and levy of penalty under Section 23(1)(a) of FERA, 1947, the defaulter can still be tried and punished for the commission of an offence under the penal law,....

* * *

12. In *Corpus Juris Secundum*, Vol. 85, at p. 580, para 1023, it is stated thus:

‘A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or



penal laws.'

13. We are in agreement with the aforesaid view and in our opinion, what applies to 'tax delinquency' equally holds good for the 'blameworthy' conduct for contravention of the provisions of FERA, 1947. We, therefore, hold that mens rea (as is understood in criminal law) is not an essential ingredient for holding a delinquent liable to pay penalty under Section 23(1)(a) of FERA, 1947 for contravention of the provisions of Section 10 of FERA, 1947 and that penalty is attracted under Section 23(1)(a) as soon as contravention of the statutory obligation contemplated by Section 10(1)(a) is established. The High Court apparently fell in error in treating the 'blameworthy conduct' under the Act as equivalent to the commission of a 'criminal offence', overlooking the position that the 'blameworthy conduct' in the adjudicatory proceedings is established by proof only of the breach of a civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23(1)(a) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention."

(b) *J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers*: (SCC p. 692, para 42)

"42. The offences under the Act are not a part of general penal law but arise from the breach of a duty provided in a special beneficial social defence legislation, which creates absolute or strict liability without proof of any mens rea. The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the offence. Similar type of offences based on the principle of strict liability, which means



liability without fault or mens rea, exist in many statutes relating to economic crimes as well as in laws concerning the industry, food adulteration, prevention of pollution, etc. in India and abroad. 'Absolute offences' are not criminal offences in any real sense but acts which are prohibited in the interest of welfare of the public and the prohibition is backed by sanction of penalty."

(c) R.S. Joshi v. Ajit Mills Ltd. : (SCC p. 110, para 19)

"Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that 'no mens rea, no crime' has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty."

(d) Gujarat Travancore Agency v. CIT: (SCC p. 55, para 4)

"It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276-C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276-C, which speaks of



wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision.”

(e) Swedish Match AB v. SEBI : (SCC p. 671, para 113)

“The provisions of Section 15-H of the Act mandate that a penalty of rupees twenty-five crores may be imposed. The Board does not have any discretion in the matter and, thus, the adjudication proceeding is a mere formality. Imposition of penalty upon the appellant would, thus, be a forgone conclusion. Only in the criminal proceedings initiated against the appellants, existence of mens rea on the part of the appellants will come up for consideration.”

(f) SEBI v. Cabot International Capital Corpn.: (Comp Cas pp. 862 & 864-65, paras



47, 52 & 54)

“47. Thus, the following extracted principles are summarised:

(A) Mens rea is an essential or sine qua non for criminal offence.

(B) A straitjacket formula of mens rea cannot be blindly followed in each and every case. The scheme of a particular statute may be diluted in a given case.

(C) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word ‘penalty’ by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

(D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.

(E) There can be two distinct liabilities, civil and criminal, under the same Act.

xxx

35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is



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wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow..”.

18. Thus, for imposition of penalty for violation of the provisions of the FERA, *mens rea* is not required and further, only because the respondent had violated the said Act without receiving any monetary benefit, cannot be the ground to reduce the penalty.

19. Given the above finding of ours, we are unable to approve of the impugned order passed by the learned Tribunal and the same is, accordingly, set aside.

20. The penalty imposed by the Adjudicating Authority on the respondent is restored.

21. Let the remaining amount of penalty, after adjusting any amount already deposited by it, be deposited by the respondent with the Competent Authority of the appellant within a period of eight weeks from the today.

22. The appeal is allowed in the above terms.

23. There shall be no orders as to costs.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

SEPTEMBER 28, 2026

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