



2026:DHC:9108-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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CNR No. DLHC010103222026
+ MISC. APPEAL (FEMA) 9/2026
UNION OF INDIA Appellant
Through: Mr.Annirudh Sharma, Adv.

versus

SHRI LAXMAN T. ADVANI Respondent
Through: Mr.Pavan Narang, Sr. Adv.
with Mr.Himanshu Sethi,
Ms.Aishwarya Chhabra &
Mr.Kamal Nayan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed under Section 35 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as, the 'FEMA') read with Section 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as, the 'FERA'), challenging the Order dated 03.12.2010 passed by the learned Appellate Tribunal for Foreign Exchange, New Delhi in Appeal No. 841/1990, titled **Laxman T. Advani v. The Director, Enforcement Directorate**, setting aside the Adjudication Order No. SDE(R)III-228/90 dated 24.09.1990 passed



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by the Special Director, Enforcement Directorate.

2. The brief facts giving rise to the present appeal are that on 23.04.1985, the residential premises of the respondent were searched under Section 37 of the FERA by the officers of the Enforcement Directorate. It is the case of the appellant that Indian currency notes worth Rs.1,75,000/- and some loose sheets of paper were recovered from the residence of the respondent. On the same day, the business premises of the respondent were also searched, and some loose sheets of paper were recovered from the business premises as well. The statements of the respondent were recorded on 23.04.1985 and 24.04.1985, wherein the respondent allegedly admitted that he purchased and sold foreign exchange at rates other than those prescribed by the RBI and that the currency seized from his residence was the sale proceeds of the foreign exchange sold by him. It is alleged that he also admitted that the recovered loose sheets reflected transactions in foreign currency and even explained the said transactions along with the abbreviations used in the loose sheets. It is important to note that the respondent had later retracted from the said statements at the first opportunity itself, that is, on 26.04.1985.

3. Based on the above material, a Show Cause Notice dated 25.06.1986 was issued to the respondent, alleging violation of Section 8(1) and Section 8(2) of the FERA. The respondent submitted a reply dated 19.07.1986 to the said Show Cause Notice, denying the charges and any illegal transactions in foreign exchange. He also stated that the Indian currency amounting to Rs.1,75,000/-, recovered during the search at the respondent's residence, was not the sale proceeds of



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foreign exchange, as alleged by the appellant, but was the cash-in-hand. To prove this, the respondent produced his books of accounts and bank statements.

4. The Adjudicating Authority, however, by the order dated 24.09.1990, rejected the reply of the respondent and found the respondent guilty of contravening Section 8(1) and Section 8(2) of the FERA. Accordingly, the Adjudicating Authority imposed a penalty of Rs.10,00,000/- for contravention of Section 8(1) of the FERA and another penalty of Rs.10,00,000/- for contravention of Section 8(2) of the FERA on the respondent. The currency amount of Rs.1,75,000/- recovered during the search was also directed to be confiscated.

5. Aggrieved by the said order of the Adjudicating Authority, the respondent filed an appeal, that is, Appeal No. 841/1990 before the learned Appellate Tribunal.

6. As noted hereinabove, the learned Appellate Tribunal allowed the said appeal in favour of the respondent herein and set aside the order passed by the Adjudicating Authority, observing as under:

“6. In the present case the original record of the office of the Director, Enforcement Directorate is produced. From the record it appears that there is no evidence to show that the statement of Laxman T. Advani was recorded voluntarily. So far as other evidence is concerned, as per the prosecution case one Mukesh Kumar who was the attesting witness accompanying the search party has thrown the brief case containing the currency notes from 2nd floor of the house and a person waiting on the road picked up the said brief case and run away on a three-wheeler scooter. Some of the currency was collected. Thus the recovery of the currency notes itself become doubtful



particularly when no attesting witness including Mukesh Kumar is examined.

7. Apart from that the appellant has produced his Bank Account which shows that the appellant has withdrawn a sum of Rs.2,00,000/- from the Bank during last six months prior to the incidence. The Cash Book produced by the appellant shows that on 31.12.1984 the cash balance in the hands of appellant was Rs.1,99,000/-. In such situation evening assuming that currency notes were found in the house of the appellant amounting to Rs.1,75,000/- it cannot be said that the said currency was obtained by sale of foreign exchange.

8. The only other evidence on record is the loose sheets. The Apex Court in case of Central Bureau of Investigation Vs. V.C. Shukla & Ors. (1998) 3 Supreme Court Cases 410 had laid down that under Section 34 of the Evidence Act the Apex Court Entries in books of account regularly kept in course of business are admissible in evidence and the loose sheets does not fall within the said category and therefore they are not admissible in evidence.

9. Apart from these facts the Director, Enforcement Directorate have not examined any attesting witness or any other independent witness though the summons were issued to Mahesh Kumar and other attesting witnesses they could not be examined because they were not found on the address given in the panchnama. Thus only evidence on record is the Panchnama prepared on the spot. The Department in the present case have not recorded statement of any witness to prove the said Panchnama.

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11. Thus the overall scenario in the present case is that the only evidence relied by the Director, Enforcement Directorate is the retracted statement of the appellant and the loose sheets recovered room from his house. Panchnama prepared is not proved by the



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examining the attesting witness. In such circumstances this Tribunal have no option but to allow the appeal by setting aside the impugned judgment. Hence appeal stands allowed. The impugned order stand set aside.”

7. Aggrieved by the impugned order, the appellant has filed the present appeal.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

8. The learned counsel for the appellant submits that the learned Appellate Tribunal has erred in disregarding the statements made by the respondent, *inter alia*, explaining the loose sheets that were recovered during the search procedure. He submits that the said statements stood fully corroborated by the recovery of the Indian currency and the loose sheets from the residence and office of the respondent. Placing reliance on the judgments of the Supreme Court in ***Surjeet Singh Chhabra v. Union of India & Ors.***, (1997) 1 SCC 508; ***Telstar Travels Private Limited & Ors. v. Enforcement Directorate***, (2013) 9 SCC 549; ***K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin***, (1997) 3 SCC 721; and, ***Naresh J. Sukhawani v. Union of India***, 1995 Supp (4) SCC 663, he submits that even a retracted statement recorded by the Enforcement Directorate Officers is admissible, and is a substantive piece of evidence when corroborated by other evidence on record.

9. He submits that in terms of Section 71 of the FERA, the onus of proving that there was no violation of Section 8(1) or Section 8(2) of



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the FERA and that the respondent was innocent and had dealt with foreign currency with the permission of the RBI, lies on the respondent. He submits that, in the present case, the respondent had failed to discharge such onus and, therefore, the penalty imposed by the Adjudicating Authority on the respondent was fully justified. In support of his submissions, he relies upon the judgment of the Supreme Court in ***Collector of Customs, Madras v. D. Bhoormall***, (1974) 2 SCC 544, and of the High Court of Madras in ***Assistant Director, Enforcement Directorate v. N.P.V. Ramasamy Udayar***, 1996 SCC OnLine Mad 310.

10. He also places reliance on Section 72 of the FERA to contend that as the loose sheets had been seized from the residence and office of the respondent, they were admissible as evidence and had been rightly relied upon by the Adjudicating Authority.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT:

11. On the other hand, the learned Senior Counsel appearing for the respondent submits that in the present case, the recovery of loose sheets and currency notes itself was not proved by the appellant. In fact, it is the own case of the appellant, as reflected from the *panchanama*, that it was one of the *panch* witnesses brought by the appellant who threw the briefcase containing the currency notes from the second floor of the respondent's residence. The said *panch* witness, in fact, tried to run away with the money, but was apprehended. Another *panch* witness brought by the appellant also ran



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away from the site, and none of the said *panch* witnesses were ever examined by the appellant or offered for cross-examination by the respondent. He submits that the only evidence on record is the *panchnama* prepared on the spot. The entire seizure proceedings, therefore, remained unproved, and no reliance could have been placed on them.

12. He further submits that the alleged statement of the respondent recorded by the officers of the Enforcement Directorate while the respondent was in custody, was subsequently retracted by the respondent. The appellant made no endeavour to corroborate the said statement with any other independent witness or evidence and, therefore, no reliance could be placed on such retracted statement. In support of his submission, he places reliance on the judgments of the Supreme Court in *Noor Aga v. State of Punjab and Another*, (2008) 16 SCC 417; *Union of India v. Bal Mukund and Others*, (2009) 12 SCC 161; and, *Vinod Solanki v. Union of India and Another*, (2008) 16 SCC 537.

13. He further submits that the entire case of the appellant was based on some loose sheets of paper allegedly recovered from the residence and the office of the respondent. These loose sheets had no significance in law and could not be admitted in evidence, as held by the Supreme Court in *Central Bureau of Investigation v. V.C. Shukla and Others*, (1998) 3 SCC 410.

14. He further submits that the respondent had also produced his bank account details showing a withdrawal of Rs. 2,00,000/- from his bank in the six months preceding the search, as also his Cash Book



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reflecting cash-in-hand of Rs.1,99,000/- . He submits that in view of these accounts, the learned Appellate Tribunal had rightly held that the currency recovered from the residence of the respondent cannot be said to be obtained by sale of foreign exchange.

15. He submits that the present was, therefore, a case of no evidence against the respondent, and the learned Appellate Tribunal rightly passed the impugned order, setting aside the penalty imposed on the respondent by the Adjudicating Authority.

ANALYSIS AND FINDINGS:

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

17. In the present case, the allegations against the respondent arise from the search conducted at his residential premises as well as at his business premises on 23.04.1985, and the alleged recovery of Indian currency notes amounting to Rs.1,75,000/-, along with some loose sheets of paper.

18. At the outset, as far as this recovery is concerned, the appellant had failed to produce the *panch* witnesses to the search proceedings before the Adjudicating Authority, despite summons being issued. In fact, the circumstances surrounding the alleged recovery, as recorded in the *panchnama* itself, also raise serious doubts regarding the manner in which the recovery was effected. The conduct of the *panch* witnesses during the search proceedings itself shows that they were not reliable, inasmuch as it is the own case of the appellant that one of the *panch* witnesses threw the bag containing the recovered Indian



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currency notes from the window of the respondent's residential premises and, thereafter tried to run away with a portion thereof, while the another *panch* witness simply ran away from the scene. None of these witnesses was subsequently examined to establish the recovery proceedings or the contents of the *panchnama*. The very inception of the case of the appellant, therefore, has not been proved.

19. Even assuming that there was a recovery of Indian currency notes amounting to Rs. 1,75,000/- from the house of the respondent, as noted by the learned Appellate Tribunal, the mere possession of the said money would not, by itself, establish that it represented proceeds of sale of foreign exchange. The respondent had, in fact, explained the same by producing his bank account statement showing a withdrawal of about Rs. 2,00,000/- during the six month preceding the search and Cash Book reflecting cash-in-hand of Rs. 1,99,000/-. Therefore, again, the very foundation of the case of the appellant falls as the respondent was able to furnish a reasonable explanation for the possession of the currency recovered from his house.

20. The case of the appellant also rests upon the loose sheets of paper allegedly recovered from the residential and business premises of the respondent. The learned counsel for the appellant has relied on Section 72 of the FERA to contend that the said sheets support the case of the appellant.

21. Section 72 of the FERA reads as under:

“72. Presumption as to documents in certain cases .-Where any document,-

(i) *is produced or furnished by any person or has been seized from the custody or*



control of any person, in either case, under this Act or under any other law, or
(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any offence under this Act alleged to have been committed by any person,

and such document is tendered in any proceedings under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the Court or the adjudicating officer, as the case may be, shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document."

22. A plain reading of Section 72 of the FERA would show that where a document has been seized from the custody or control of any person, and such document is tendered in evidence against him in proceedings under the FERA, the Court or the Adjudicating Authority,



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as the case may be, shall presume, unless the contrary is proved, that the signatures and other parts of such document which purport to be in the handwriting of any particular person, or which the Court may reasonably assume to have been signed by or to be in the handwriting of a particular person, is in that person's handwriting; admit the document in evidence notwithstanding that it is not duly stamped, '*if such document is otherwise admissible in evidence*'; and presume the truth of the contents of such document. However, as held by the Supreme Court in **V.C. Shukla** (supra), loose sheets of paper are not books and, hence, entries thereon are not admissible under Section 34 of the Indian Evidence Act, 1872 (in short, 'Evidence Act'). Therefore, in the present case, even if it is presumed that the loose sheets of paper are in the handwriting of the respondent, the same being inadmissible under Section 34 of the Evidence Act, no reliance can be placed thereon. The reliance of the appellant on Section 72 of the FERA is, therefore, ill-founded, as the said provision would have no application in the facts of the present case.

23. To substantiate its case, the appellant has also heavily relied upon the retracted statement of the respondent. The submission of the learned counsel for the appellant that, the statement of the respondent explaining the entries contained in the loose sheets of paper, though subsequently retracted, can be relied upon, cannot be accepted.

24. The learned Tribunal, in the impugned order, has opined that the burden of showing that the statement made by the person in custody was recorded voluntarily and not under some threat or coercion, is on the prosecution. The learned Tribunal held that there is



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no evidence to show that the statement of the respondent was recorded voluntarily.

25. In ***Telstar Travels Private Limited*** (supra), the Supreme Court, while holding that even a retracted statement can be relied upon, emphasized that the Adjudicating Authority or the Court intending to act upon such statement must apply its mind to the subsequent retraction and satisfy itself that the statement sought to be relied upon was made voluntarily. Though the burden of showing that the statement was made as a result of inducement, threat, promise, etc., is on the maker of the statement, this would not preclude the Adjudicating Authority or the Court from applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. The retracted statement must also be corroborated. In the present case, the appellant has failed on both these fronts.

26. The learned Tribunal, with no material on record to prove the contrary, held that the statement made by the respondent was not voluntary. Further, apart from the statement itself, there was no evidence corroborating such statement.

27. The submission of the learned counsel for the appellant that the burden of proving that there was no contravention of any provisions of FERA lies on the respondent, is also too broadly stated. Section 71 of FERA is reproduced herein:

“71. Burden of proof in certain cases.-(1)
Where any person is prosecuted or proceeded against for contravening any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission, the burden of



proving that he had the requisite permission shall be on him.

(2) Where any person is prosecuted or proceeded against for contravening the provisions of sub-section (3) of section 8, the burden of proving that the foreign exchange acquired by such person has been used for the purpose for which permission to acquire it was granted shall be on him.

(3) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value [fifteen thousand rupees], the burden of proving that the foreign exchange came into his possession lawfully shall be on him."

28. A reading of the above provision shows that where the Department alleges contravention of any provision of FERA or any rule, direction, or order made thereunder which prohibits any person from doing an act without permission, the burden of proving that he had the requisite permission shall be on such person. However, to attract the said provision, the initial burden of proving that such person has committed an act which requires the permission of the Department lies on the Department itself. It is only when the Department proves that such an act has been committed that the burden shifts on such person to prove that he had the requisite permissions for doing such act. In the present case, the appellant has failed to prove that the respondent had dealt in foreign currency, therefore, Section 71 of the FERA could not come to the appellant's aid.

29. In view of the above, we find no infirmity in the impugned order dated 03.12.2010 passed by the learned Tribunal.



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30. The appeal is, accordingly, dismissed.

31. There shall be no order as to costs.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

OCTOBER 14, 2026/rv/Yg

Signature Not Verified

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By:REYMON VASHIST
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