

SUPREME COURT OF INDIA

Anz Grindlays Bank Limited

Vs.

Directorate of Enforcement

C.A.No.1748 of 1999

(N. Santosh Hegde and S.B.Sinha JJ.)

16.07.2004

JUDGMENT

1. The matters are referred to a Constitution Bench for an authoritative pronouncement on the subject. Records be placed Hon'ble the Chief Justice of India for appropriate orders.

2. Mr. K.K. Venugopal, learned Senior Counsel appearing on behalf of the appellants, raised several contentions in support of the appeal; one of them being that having regard to the fact that as the offence is said to have been committed by a Company; and as in terms of Section 56 of the *Foreign Exchange Regulation Act, 1973*, (for short "the Act") the punishment of mandatory imprisonment has to be imposed; no criminal proceedings can be initiated against the Company and in that view of the matter no person referred to in sub-sections (1) and (2) of Section 68 thereof can also be proceeded with.

3. In support of the said contention therein reliance has been placed on a recent three Judge Bench decision of this Court in *Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textile Ltd. and Another []*. We do not prima facie agree with the ratio laid down in *Velliappa Textile (supra)*.

4. In this case the company is the 'authorised dealer' within the meaning of Section 2(b) of the Act. The authorised dealer undisputedly is required to comply with the statutory requirements contained in Section 8, 9 and 49 of the Act read with Chapter X of the RBI Manual. The contraventions of the provisions of the Act having been allegedly taken place at the hands of the authorised dealer, that is, the petitioner no. 1, and, thus, although it is a company it is liable to be proceeded with. Section 56 of the Act provides for different punishment for commission of different offences. It is true that in an offence of this nature a mandatory punishment has been provided for but offences falling under other part of the said section do not call for mandatory imprisonment. Section 68 of the Act covers both cases where an offender can be punished with imprisonment or fine and a mandatory provision of imprisonment and fine. In the event it is held that a case involving graver offence allegedly committed by a company and consequently the persons who are in charge of the affairs of the company as also the other persons cannot be proceeded against, only because the company

cannot be sentenced to imprisonment, in our opinion, would not only lead to reverse discrimination but also go against the legislative intent. The intention of the parliament is to identify the offender and bring it to the book.

5. In order to make the statute workable, the Court should, thus take recourse to such principles of interpretation of statute as may be necessary, keeping in view the doctrine of UT RES MAGIS VALEAT PEREAT.

6. In that view of the matter upon taking recourse to the principle of purposive construction as has been held by a three Judge Bench of this Court in *Balram Kumawat Vs. Union of India & Ors*, , Section 56 of the Act can be made workable. It may, therefore, be possible to read down the provisions of Section 56 to the effect that when a company is tried for commission of an offence under the Act the judgment of conviction may be passed against it, but having regard to the fact that it is a juristic person and thus punishment of mandatory imprisonment cannot be imposed.

7. Further more, even if the company cannot be punished, the same may not mean that the other persons referred to under Sub-sections (1) and (2) of Section 68 can also be punished.

8. We may at this juncture notice that Mr. Malhotra, learned ASG appearing for the respondents submitted that a judgment of conviction and an order of sentence pertain to two different stages of the trial. Learned counsel in support of the said submission brought our attention to Section 69 of the Act which provides for certain consequences on passing of an order of conviction and only because the sentence of imprisonment cannot be imposed upon the company, the same may not mean that the company cannot be convicted. We are, therefore, of the opinion that the correctness of the decision of this Court in *Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textile Ltd. and Another*¹ requires consideration by the Constitution Bench. We are, therefore, of the opinion that the matter may be referred to a Constitution Bench for an authoritative pronouncement on the subject and the records be placed before Hon'ble the Chief Justice of India for appropriate orders.

¹(2003) 22 SCC 405