

SUPREME COURT OF INDIA

K.K. Kuda

Vs.

Chief Enforcement Officer, Enforcement Directorate

Crl.A.No.14 of 2015

(V.Gopala Gowda and C.Nagappan JJ.)

06.01.2015

JUDGMENT

C. NAGAPPAN, J.

1. Leave granted.

2. This appeal is preferred against the Judgment and Final Order dated 02.09.2013 passed by the High Court of Delhi in Criminal Miscellaneous Case No.5096/2006, whereby the High Court dismissed the petition seeking to quash the complaint filed under Section 56 of Foreign Exchange Regulation Act, 1973.

3. The first respondent herein issued Show Cause Notice dated 21.01.1994 under Section 51 of FERA, 1973 against ANZ Grindlays Bank, the Account Holder and three bank officials for having credited Non-convertible Rupee Funds of Rs.1,15,00,000/- (Rupees One Crore and Fifteen Lakhs only) during the period August to December, 1991 received from Moscow, into the Non- Resident (External) Account of Dr. P.K. Ramakrishnan in contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the said Officials. However, by letter dated 10.7.2001 addressed to the appellant, the respondent ordered that charges relating to 'consent' and 'connivance' shall stand deleted from the Show Cause Notice dated 21.01.1994.

4. In the meanwhile, Opportunity Notice, dated 12.5.2002, followed by Complaint dated 29.5.2002, was filed under Section 56 of FERA, 1973 against the persons abovenamed for having credited Non-convertible Rupee Funds into the Non-Resident (External) Account of the person concerned, alleging contravention of

Section 6(4), 6(5) read with S.49 of FERA having taken place with the consent, connivance of and attributable to the negligence of the Officials and the Additional Chief Metropolitan Magistrate, New Delhi, took cognizance of the complaint for the offence under Section 56 of FERA on 29.5.2002 itself and issued summons to the accused. Challenging the same, the appellant herein and other Officials sought for quashing the complaint proceedings in their petition in CrI.M.C.No.5096/2006, on the file of the High Court, Delhi. While the matter stood thus, the adjudicating authority passed the final Order dated 14.5.2010 holding that the Officials of the Bank have not consented or connived in the performance of the official duties and they were negligent. The High Court by the impugned order held that the prosecution of the accused persons shall be confined to the negligence on their part and not for they having consented or connived in the commission of the said offence. The said order is under challenge before us.

5. Mr. C.A.Sundaram, learned Senior Counsel appearing for the appellant, strenuously contended that the allegations of consent and connivance had been dropped by the respondent vide letter dated 10.7.2001, despite so, complaint was lodged on the allegations of consent, connivance and negligence on the part of the officials of the Bank suppressing the facts and the respondent is guilty of suppressio veri and suppressio facto and on this ground itself, the complaint is liable to be quashed. It is his further contention that the complaint pertains to the allegations of consent, connivance and negligence on the part of the officials for having credited Non-convertible Rupee Funds of the Account Holder concerned and the cause of action disclosed therein is composite and inseparable and it cannot be quashed in part and continuance of the complaint proceedings on the allegation of negligence would tantamount to abuse of the process of law. He also contended that taking advantage of Sunset clause under Section 49 of Foreign Exchange Management Act, 1999, without disclosing the issuance of reply by the appellant to the Opportunity Notice, the respondent in an arbitrary and mechanical manner filed the complaint without enclosing a single original document and in the absence of any material, the learned Magistrate could not have applied his mind and taken cognizance and summoning order is bad in law.

6. Per contra, Mr. V.Shekhar, learned Senior Counsel appearing for the respondents, contended that the complaint consists of three components and even eschewing the allegation of consent and connivance, the prosecution can be continued on the allegation of negligence and the impugned order is sustainable.

7. We carefully considered the rival submissions and perused the documents.

8. The crediting of Non-Convertible Rupee Funds in the Non-Resident (External) Account of Dr. P.K.Ramakrishnan happened during the period August to December, 1991. Three officials of ANZ Grindlays Bank were involved in it and Show Cause Notice was issued by Respondent No.1 on 21.1.1994 to the Bank as well as the Officials for contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the Officials. It is true that the respondent by letter dated 10.7.2001 ordered that the charges relating to 'consent' and 'connivance' shall stand deleted from the Show Cause Notice. Though FEMA came into force on 1.6.2000, Sunset clause under Section 49 of the said Act provided for filing of complaints under the FERA, 1973 till 31.5.2002. Taking advantage of it, the Respondent No.1 issued Opportunity Notice to all the three officials on 12.5.2002 and lodged the complaint on 29.5.2002. The Additional Chief Metropolitan Magistrate, New Delhi, on the same day took cognizance of the complaint for the offence under Section 56 of FERA and issued summons.

9. In spite of having dropped the allegations of 'consent' and 'connivance', the respondent in their complaint levelled allegations of all the three components, namely, consent, connivance and negligence. The contention of the appellant that the cognizance was taken on irrelevant consideration, is to be countenanced. There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint. Further, to substantiate the averments in the complaint, not even a single original document was enclosed. It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence. Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed.

10. The appeal is allowed and the impugned order is set aside and the proceedings in Criminal Complaint No.704/2002, on the file of the Additional Chief Metropolitan Magistrate, New Delhi, insofar as the appellant is concerned are quashed.