

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 1422-1423 of 2017
(Arising out of SLP (Crl.) Nos.6824-6825 of 2012)

THE ENFORCEMENT OFFICER

.... **Appellant(s)**

Versus

MOHAMMED AKRAM

....**Respondent(s)**

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

These Appeals are preferred against the judgment dated 29.07.2011 in Criminal Appeal No.940 of 2007 of the High Court of Karnataka at Bangalore and the judgment dated 10.01.2012 in Criminal Revision Petition No.1177 of 2011.

2. Notice was issued to the Respondent on 24.08.2012. As service could not be effected in the normal course, by an order dated 08.05.2014, this Court directed the Appellant to take appropriate steps for effecting the service on the

Respondent as per the procedure prescribed under Section 65 of Chapter VI of the Code of Criminal Procedure, 1973 (Cr. P.C.). As the Respondent could not be served, the Registry of this Court was directed to reissue summons to the Respondent which were to be served through the Special Court (Economic Offences), Bangalore, Karnataka. A report was received from the Special Court (Economic Offences), Bangalore that the Respondent was not available at the time when the Bailiff visited the last known address to serve the summons. Following the procedure prescribed in Section 65 Cr. P.C., the Bailiff affixed the summons on the door of the Respondent's house at his last known address. The Respondent is deemed to have been served. None appeared for the Respondent today.

3. The Assistant Director, Enforcement Directorate (FERA), Bangalore filed a complaint against the Respondent and two others for an offence punishable under Section 56 (1) (ii) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as the 'FERA 1973'). It was alleged in the complaint that M/s Pheroze Framrose, situated at Richmond Circle, Bangalore which was an authorised Money Changer, indulged in releasing substantial foreign exchange in contravention of the laws.

Mr. Bom R. Munshi and Mr. Clarence Fernandes who were employees of M/s Pheroze Famrose, were summoned during the course of enquiry and they admitted that foreign exchange worth Rs.50 crores was released on the basis of bogus documents by the Money Changer. Summons were issued under Section 40 of FERA on 23.10.1997 directing the Respondent and two others to appear before the Enforcement Officer, Bangalore on 24.10.1997. The Respondent and others failed to respond to the summons. As the Respondent and two others did not appear before the Enforcement Officer, CC No.86 of 1998 was filed before the Special Court (Economic Offences), Bangalore by the Assistant Director, Enforcement Directorate (FERA), Bangalore. The Respondent was represented in the said proceedings by an Advocate.

4. By a judgment dated 20.12.2006, the Special Court (Economic Offences), Bangalore dismissed the complaint and acquitted the Respondent for the offence punishable under Section 56 (1) of FERA, 1973. The case against the two other accused were split up and they were directed to face trial. It was held by the Special Court that the summons issued by the Enforcement Directorate were not duly served on the Respondent personally. The submission

on behalf of the complainant that service of summons on the Respondent was effected by affixing a copy of the summons on door of the house of the Respondent was not accepted by the Special Court. It was held that the complainant failed to prove the address of the Respondent by adducing any evidence. As the authorities did not prove the valid service of summons on the accused either personally or by substituted service, according to the Trial Court, the contravention of Section 40 (3) FERA did not arise. That apart, the Trial Court further held that refusal to appear before the Enforcement Officer in spite of summons under Section 40 (1) of FERA cannot be regarded as a contravention of the Act. The Special Court followed the judgment of the Kerala High Court in ***Itty v. Assistant Director***, reported in 1992 (58) E.L.T. 172 (Ker).

5. Criminal Appeal No.940 of 2007 was filed by the Appellant assailing the said judgment of the Special Court dated 20.12.2006 in CC No.86 of 1998. The High Court dismissed the appeal by following the judgment of the Kerala High Court in ***Itty's case (supra)***, holding that disobedience of summons for appearance does not amount to contravention of the provisions of FERA, 1973. The Appellant preferred a Criminal Revision Petition under

Section 397 Cr. P.C. requesting for setting aside the order passed by the High Court in Criminal Appeal No.940 of 2007 which came to be rejected as being not maintainable. The said judgments of the High Court in Criminal Appeal No.940 of 2007 dated 29.07.2011 and judgment in Criminal Revision Petition No.1177 of 2011 dated 10.01.2012 are subject matter of these appeals.

6. The sole point that arises for our consideration in this case is whether disobedience to respond to the summons issued under Section 40(3) FERA would amount to an offence under Section 56 of FERA, 1973. This point has come up for consideration before this Court in ***Enforcement Director and Anr. v. M.Samba Siva Rao and Ors. (2000) 5 SCC 431***. Due to the divergence of opinion of the High Courts of Kerala, Madras on one hand and High Court of Andhra Pradesh on the other, a three Judge Bench of this Court considered the matter and held as follows:

“4. A learned Single Judge of the Kerala High Court considered this question in the case of *Itty v. Asstt. Director* [(1992) 58 ELT 172 (Ker)]. On a conjoint reading of Sections 40 and 56 of the Act, the learned Judge came to the conclusion that the failure to obey the summons issued under Section 40(1) cannot be held to be a contravention of the provisions of the Act, rule, direction or order inasmuch as it is only

when directions pertaining to some money value involved are disobeyed, such disobedience is punishable under Section 56 of the Act. The learned Judge applied the ordinary rules of construction that penal statutes should receive a strict construction and the person to be penalised must come squarely within the plain words of the enactment. We are unable to accept the constructions put in the aforesaid judgment as in our view clauses (i) and (ii) of Section 56(1) are material for deciding the quantum of punishment and further, there is no reason why the expression "in any other case" in Section 56(1)(ii) should be given any restrictive meaning to the effect that it must be in relation to the money value involved, as has been done by the Kerala High Court. The summons issued under Section 40, if not obeyed, must be held to be a contravention of the provisions of the Act and at any rate, a contravention of a direction issued under the Act, and therefore, such contravention would squarely come within the ambit of Section 56 of the Act. The question came up for consideration before a learned Single Judge of the Madras High Court in the case of *C.Sampath Kumar v. A.N.Dyaneswaran* [Criminal OPs Nos. 5468 and 5629 of 1996 dated 1-8-1997] and was disposed of by the learned Judge of the Madras High Court by judgment dated 1-8-1997. The Madras High Court also came to the conclusion that the entire Section 56 of the Act is identified and substantiated only in terms of the extent and value of the money involved in the offence, and therefore, violation or contravention of summons, issued under Section 40 of the Act unrelated to the money involved in the investigation cannot be held to be punishable under Section 56. Against the aforesaid judgment of the Madras High Court, the department had preferred appeals to this Court, which were registered as Criminal Appeals Nos. 143-44 of 1998, but the question raised was not necessary to be answered as the persons concerned appeared before the

Enforcement Authorities and were arrested by the said Enforcement Authorities and, therefore, this Court kept the questions of law open by its order dated 20-7-1998. In yet another case, the question arose for consideration before the Madras High Court in Criminal OP No. 5718 of 1996 and a learned Single Judge did not agree with the earlier decision of the said High Court in Criminal OPs Nos. 5468 and 5629 of 1996 and referred the matter to a Division Bench by his order dated 13-8-1997 and it was submitted at the Bar that the Division Bench has not yet disposed of the matter. The question came up for consideration before the Andhra Pradesh High Court in the case of *P.V. Prabhakara Rao v. Enforcement Directorate, Hyderabad* [1998 Cri LJ 2507 (AP)] and the said High Court has taken the view that failure to attend and give statement in pursuance of summons issued under Section 40 of the Act, clearly amounts to disobedience of the directions given by the authority concerned and therefore, provisions of sub-section (1) of Section 56 apply. The learned Judge of the Andhra Pradesh High Court interpreted the expression "in any other case" in clause (ii) of Section 56(1) to mean that the said provision would get attracted even though no amount or value is involved in the contravention in question. The aforesaid view of the Andhra Pradesh High Court appears to us, is the correct interpretation of the provisions contained in Sections 40 and 56 of the Act."

7. The question of service under Section 40(3) of FERA, 1973 not being effected on the Respondent is irrelevant at this point of time as he was represented by an Advocate before the Trial Court. It appears that the Respondent is not interested in these proceedings. In any event, the judgment of the High Court cannot be sustained as it is

contrary to the law laid down by this Court in ***Enforcement Director and Anr. v. M. Samba Siva Rao and Ors. (supra)***.

8. For the aforementioned reasons, the judgment of the High Court is set aside and the appeals are allowed.

.....J
[S.A.BOBDE]

.....J
[L. NAGESWARA RAO]

New Delhi,
August 17, 2017