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

Date of decision: 30.04.2026

\+ MISC. APPEAL(PMLA) 19/2024

PRAKASH CHANDRA YADAV .....Appellant

Through: Mr. Pavan Narang, Senior Advocate with Mr. Manish Shukla, Mr. Nilash Tiwari, Ms. Aishwarya Chhabra and Mr. Himanshu Sethi, Advocates.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Vivek Gurnani, Panel Counsel for ED with Mr. Kanishk Maurya, Advocate.

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

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed under Section 35 of the Foreign Exchange Management Act, 1999 [hereinafter, "FEMA"] read with Section 54 of the Foreign Exchange Regulation Act, 1973 [hereinafter, "FERA"], challenging the order dated 29.05.2024 passed by the learned Appellate Tribunal for Foreign Exchange under SAFEMA ["the Tribunal"] in Appeal No. FPA-FE-311/DLI/2005, titled as, "Shri Prakash Chandra Yadav vs. The Special Director, Directorate of Enforcement, Delhi", *inter alia* dismissing the appeal filed by the appellant herein.

2. The appellant had filed the above appeal before the learned Tribunal, challenging the order dated 30.11.2004, whereby the learned Adjudicating Authority had imposed a penalty of Rs. 5 Lakhs on the appellant for the alleged contravention of Section 8(1) of FERA.

3. The respondent had imposed the above penalty alleging that one Akbar Veerji, an NRI, had opened a Non-Resident External ["NRE"] account with the Canara Bank by depositing foreign exchange in the following manner:-

i. 01.07.92 (cash) US $500/- equivalent to Rs.14,850/-

ii. 04.07.92 (cash) US $10,000/- equivalent to Rs.2,95,000/-

iii. 17.07.92 (F.I.T.T) US $1,39,000/- equivalent to Rs. 42,29,756/-.

4. Out of the amount so deposited, a Cheque amounting to Rs. 30 Lakhs was issued in favour of the appellant on 17.07.1992. Claiming that the same was a violation of Section 8(1) of FERA, proceedings were initiated not only for imposition of penalty under Section 50 of the FERA but a criminal prosecution was also launched *inter alia* against the appellant.

5. As far as the criminal prosecution is concerned, by an order dated 30.11.2017 passed in CC No. 42/1/14, titled as, "Enforcement vs. Nemi Chand Jain & Ors.", the learned ACMM, Patiala House Courts has been pleased to acquit the appellant. However, as far as the penalty proceedings are concerned, as noted hereinabove, the Adjudicating Authority imposed a penalty of Rs. 5 Lakhs on the appellant *vide* order dated 30.11.2004, which has been confirmed by the learned Tribunal by dismissing the appeal filed by the appellant. The present appeal has been filed challenging the said order.

6. The learned Senior Counsel appearing on behalf of the appellant submits that in the present case, as the amount had been transferred to the appellant in Indian currency, there was no violation of Section 8(1) of FERA. He submits that the impugned order has wrongly interpreted Section 8(1) of FERA and is, therefore, liable to be set aside.

7. On the other hand, the learned counsel appearing on behalf of the respondent submits that the present appeal is liable to be dismissed not only on the ground of suppression, inasmuch as the appellant has failed to disclose in the appeal the judgment dated 06.04.2009 passed by this Court in CRL.REV.P. 146/2007, titled as, "***Prakash Chand Yadav vs. Enforcement Directorate***" [NC No. 2009:DHC:1166], by which the revision petition filed by the appellant against the framing of charge in the criminal case had been rejected by a learned Single Judge of this Court, but even on merits. He submits that in the present case, the alleged Loan Agreement dated 03.07.1992 relied upon by the appellant, would show that the appellant was aware that the amount been given to him as loan was from a NRE account, thereby showing his connivance in violation of Section 8(1) of FERA.

8. He submits that the learned Tribunal has also upheld the impugned penalty by placing reliance on Section 8(2) of FERA, which prohibits conversion of foreign exchange into Indian Currency.

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

10. There is no dispute on facts inasmuch as it is not denied by the appellant that he has received a cheque of Rs. 30 Lakhs from Akbar

Veerji, drawn on his NRE account, wherein the amount was deposited by him in foreign currency, that is, US Dollars. It is also not disputed that the cheque given to the appellant was, however, in the Indian Currency.

11. The only issue that arises for consideration of this Court is whether by receiving the said amount, the appellant can be said to have violated Section 8(1) or Section 8(2) of the FERA.

12. In this regard, the relevant provisions of the FERA are reproduced hereinbelow:-

> *"2(h) "foreign exchange" means foreign currency and includes—*
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> *(i) all deposits, credits and balances payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency;*
>
> *(ii) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other.*
>
> *xxx*
>
> *8. **Restrictions on dealing in foreign exchange.-***
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> *(1) Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer, any foreign exchange:*
>
> *Provided that nothing in this sub-section shall apply to any purchase or sale of foreign currency effected in India between any person and a money-changer.*

Explanation.- For the purposes of this sub-section, a person, who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person.

(2) Except with the previous general or special permission of the Reserve Bank, no person, whether an authorised dealer or a money-changer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank."

13. A reading of Section 2(h) of FERA would show that foreign exchange means foreign currency and includes any other instrument/deposit etc. payable in any foreign currency or in Indian currency or in foreign currency at the option of the drawee or the holder thereof; the essential element being that it is payable in foreign currency at the option of the drawee or the holder of such instrument.

14. In the present case, it is not disputed that the cheque was paid and was payable to the appellant only in the Indian currency.

15. A reading of Section 8(1) of FERA would further show that it prohibits, except with the previous general or special permission of the RBI, person other than an authorized dealer, to purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to, or exchange with any person, not being an authorized dealer, any foreign exchange. It also prohibits any resident in India other than an authorized dealer to outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with

any person, not being an authorized dealer, any foreign exchange. The proviso to the Sub-Section carves out an exception for purchase or sale of foreign currency effected in India between any person and a money changer. The explanation further clarifies that for the purposes of Sub-Section (1) of Section 8, a person who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person. What is, therefore, prohibited is the dealing in foreign exchange in any manner, that is, by purchase or otherwise acquiring or borrowing, or selling or otherwise transferring, or lending or exchanging the same, except by the authorized dealer.

16. In the present case, the allegation against the appellant is not of dealing in foreign exchange or of exchanging the same, but of receiving an amount in Indian Rupees from an NRE account of Mr. Akbar Veerji. The same cannot amount to a violation of Section 8(1) of FERA.

17. The learned Tribunal in holding to the contrary has placed reliance on an Explanation appended to Section 8(1) of FERA, and held that even receipt of money in Indian currency from an NRE account would be a contravention to Section 8(1) of FERA. We cannot agree to such interpretation. The Explanation has to be read strictly and in accordance with its grammatical meaning and a plain reading of the same does not support the finding of the learned Tribunal. The Explanation states that where the foreign exchange is deposited with another person or an account in foreign exchange is opened with another person, it shall be deemed to lending of foreign

exchange to such other person. In the present case, there is no allegation that Akbar Veerji has opened any account with the appellant in foreign exchange or has lent the money to the appellant in foreign exchange.

18. The learned Tribunal has further held that though it has not been contended against the appellant and is not the basis of the penalty proceedings initiated against him, the action of the appellant would also amount to violation of Section 8(2) of FERA. We are unable to agree with the said finding as well. Section 8(2) of FERA prohibits any person, whether an authorized dealer or a money changer or otherwise, from entering into any transaction which provides for conversion of Indian currency into foreign currency or that of foreign currency into Indian currency "at rates of exchange other than the rates for the time being authorized by the Reserve Bank".

19. In the present case, leave alone there being no allegation of exchange of foreign currency into Indian currency or *vice versa* against the appellant, there is also no allegation of the same being at a rate of exchange other than the rate authorized by the Reserve Bank. Section 8(2) of FERA, therefore, had no application in the facts of the present case.

20. As far as the submission of the learned counsel for the respondent that the present appeal is liable to be dismissed on account of concealment of the order dated 06.04.2009 passed by the learned Single Judge of this Court in CRL.REV.P. 146/2007, is concerned, we may only note that the said order was passed rejecting the challenge of the appellant against the order framing charge in the criminal case

against him. This Court, while rejecting the said challenge, had observed as under:-

> "*12. In so far as the case of the petitioner is concerned, it rests on the presumption that there was proper remittance in the NRE account of the account holder. It also depends on the evidence which may be led by the petitioner to show that this amount was actually given to him by Vikram Virji. In the absence of any evidence to the contrary and the statement having been made by Vikram Virji in his communication to Indian High Commissioner, prima facie, the case of the respondents that this money belongs to those who were benefiting out of it such as the petitioner in this case and the other accused person is prima facie sufficient for framing the charge against the petitioner. Therefore, to say that charges have been wrongly framed at this stage would not be justified in view of the detailed reasons given by the ACMM while framing the charges (supra). In so far as the defence of the petitioner is concerned, it can always be brought to the notice of Learned ACMM during the course of trial.*
> *13. Thus, I do not find any reason to interfere with the order framing of the charge which has to be passed by taking a prima facie view of the matter and not on the basis of any concrete evidence which may establish that petitioner would certainly be convicted of the charges leveled against him. I need not repeat the judgments which have been already cited in the order framing the charges in this regard. Hence I do not find any merits in this case. Petition filed by the petitioner is dismissed. Let the parties appear before the Trial Court on 17.04.2009.*"

21. The above order was, therefore, passed only by considering whether there is evidence on the basis of which the criminal

prosecution of the appellant can proceed. The said criminal proceedings have culminated in the acquittal of the appellant *vide* order dated 30.11.2017 passed by the learned ACMM, wherein the Court has held as under:-

> "*37. It has also come on record that during the testimony of complainant witnesses i.e . of Mr. R. K. Rawal that the money has not been sent into India through Hawala, but has come through banking channel into the account of Akbar Veerji and admitted that the account opened by him in India is NRE account and a person residing abroad having Indian nationality or any nationality could open an NRE account in India and that the funds from the NRE account could be taken back to the country or it could be encashed in India by cash or through Cheque. It is further admitted by Sh. K. C. Abraham during his cross-examination dated 07.03.2007, that the transactions out of NRE account were in Indian rupees and were made in India and payments were made by Cheque. It is further seen that the NRE account was maintained in an Indian bank. It is now pertinent to mention Section 8 (I) of FERA, 1973, which is as under:*
>
> *XXXX*
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> *41. Therefore, on perusal of the definition of 'foreign exchange', it is seen that the same includes of deposits and credits and balance payable in any currency and any drafts, cheques, letters of credits and bills of exchange expressed or drawn in Indian currency, but payable in foreign currency. Admittedly, it has come on record that the NRE account was maintained in India was payable in Indian currency and the payments were made by cheques to the accused persons. Nothing has come on record to show that any kind of foreign exchange was acquired in this case by the accused persons, as has been alleged or is the proceeds of foreign exchange*

which has not been dealt by an authorized dealer in India.

42. In the present case, all money had been received by the accused persons through cheques of Indian currency and it is not the case of the prosecution that foreign currency was received by accused no. 2 and 3 in India through cheques in NRE account. The money has been deposited in an Indian bank and payable by cheques. It has come on record, who has deposited the money in the NRE account maintained by Akbar Veerji and the prosecution has failed to establish that what kind of foreign exchange was credited or the proceeds of which were received by accused no. 2 and 3 in the present case. It has not even come on record that in which country allegedly was the amount of foreign exchange that has been made was deposited or never deposited the same and the Enforcement Directorate has not even able to establish whether the foreign exchange was deposited by person, who was not the authorized dealer as is the basis of the Section 8(1) of FERA, 1973, for which restrictions are provided for dealing in foreign exchange. It is seen that in order to attract the provisions of Section 8(1) FERA, 1973, would be 'buy or otherwise acquire or borrowing or sell or otherwise lend to exchange with any person not being an authorized dealer, any foreign exchange.' However, in the present case it is seen that there is no evidence on record to indicate even the possession of foreign exchange by the accused persons as in the present case, three cheques were issued by a NRE account maintained with a bank in India, expressed in Indian rupees and deposited in India which has been admitted by the complainant witnesses. Further, nothing has come on record to show that the remittances made in the NRE account maintained by Akbar Veerji were not done by permissible modes."

22. In view of the above, the order framing charge was no longer relevant and non-filing of the same by the appellant with the present appeal, cannot result in the dismissal of the appeal.

23. In view of the above, we find that from the facts alleged against the appellant, violation of Section 8(1) or 8(2) of FERA was not made out.

24. The impugned order dated 29.05.2024 passed by the learned Tribunal is accordingly set aside.

25. The appellant has deposited the penalty amount. The same be refunded to the appellant within a period of four weeks from today.

26. The appeal is allowed in the above terms.

27. There shall be no order as to costs.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

APRIL 30, 2026/*vd/ma/ik*