

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FERA APPEAL NO. 39 OF 2009

Mr. Meghraj S. Jain)
Aged about 40 years, residing at)
2, Hem Prabha Chitranjan Road,)
Vile Parle (E), Bombay-57).. Appellant

Vs.

1. The Union of India)
Through Joint Secretary,)
Ministry of Law & Justice,)
Branch Secretariat, Aayakar)
Bhavan, M.K.Road, Mumbai 400 020)
2. The Special Director,)
Directorate of Enforcement,)
Mumbai Zone, 1st floor,)
Janmabhoomi Chambers,)

Walchand Hirachand Marg,)

3. The Honourable Members,)

Appellate Tribunal for Foreign)

Exchange Janpath Bhawan, 4th floor,)

B Wing, New Delhi 0110 001.)..Respondents

Mr. Bhagwan Raichandani, Advocate, for the appellant.

Mr. S.S.Pakale with Mr. H.V.Mehta & Mr. Kiran J. Kondpile, Advocates for the respondents.

CORAM: F.I.REBELLO AND

J.H.BHATIA, JJ.

DATE : 9th July, 2009.

JUDGMENT: (PER J.H.BHATIA, J.)

1. By Order-in-original dated 9.7.1996, the Special Director, Enforcement held the present appellant guilty of contravention of the provisions of Section 8(1), 8(2) and 9(1)(b) of Foreign Exchange Regulation Act, 1973 (FERA) for purchase and sale of foreign exchange unauthorisedly and imposed a

penalty of Rs.10 lakh and Rs.75,000/- respectively. The appellant challenged that order in Appeal No.95 of 1999 before the appellate Tribunal for Foreign Exchange. The appeal also came to be dismissed. Therefore, he has preferred this appeal before the High Court.

2. To State in brief, it is the contention of the Enforcement Directorate that on the basis of certain information, residential premises of one Narendra Mirani came to be searched on 11.4.1989 under Section 37 of FERA and during the search, besides the Indian currency, different foreign currencies valued at about Rs.6 lakh were recovered. Some loose sheets were also seized from his house. Premises of certain other persons were also searched during the same investigation. Narendra Mirani stated that whenever he used to come to Bombay, he used to purchase foreign currency from M/s. Mangal Jewellers. As a result of this, the shop premises of M/s. Mangal Jewellers as well as the residence of the present appellant were searched on 11.4.1989. However, during the search no incriminating article was found. Statement of the present appellant also came to be recorded wherein he confessed that he was helping his uncle Udaylal Jain owner of M/s.Mangal Jewellers in running business in gold and silver. He was acquainted with Narendra Mirani and he also admitted that Narendra Mirani used to come to M/s. Mangal Jewellers whenever he visited Bombay and he used to

purchase foreign currency worth Rs. 4 to 5 lakh on each occasion. The present appellant confessed that he himself used to purchase foreign currency from different persons and used to sell the same to Narendra Mirani. Thus, he had sold foreign currency to Narendra Mirani on 8 to 9 occasions and that the foreign currency thus sold by him to Narendra Mirani was worth Rs.30 to 40 lakh. He also admitted that during last 10 to 12 days prior to the date of search, he had sold foreign exchange worth Rs.5 lakh to Narendra Mirani and he also received about of Rs.3 lakh by hawala from one Manoj. The premises of Kapoor Jewellers owned by Manoj Jain were searched but nothing was found. Manoj Jain himself was not available at the premises searched nor he made himself available afterwards. As per the confessional statement of Narendra Mirani, the foreign exchange seized from him during the search was purchased by him from the present appellant. He also stated at what rates he had purchased different currencies from the present appellant. It appears that Narendra Mirani was regularly purchasing foreign currency during his visits to India and he used to take the same abroad without any authority or permission from the Reserve Bank of India.

3. The learned Counsel for the appellant vehemently contended that except the retracted confessional statement of the present appellant and Narendra

Mirani, there was no material to establish the charges against the present appellant. He also pointed out that the present appellant was arrested on 12.4.1989 and on 14.4.1989 he had submitted an application before the Metropolitan Magistrate retracting the alleged confessional statement. According to him, the appellant had stated in that application that the confessional statement was false and was recorded under force and coercion. Learned Counsel contended that when the confessional statement was retracted by the present appellant as well as by Narendra Mirani and when there was no recovery from the business or residential premises of the present appellant, those statement could not be acted upon.

4. In Vinod Solanki versus Union of India 2009 (233) ELT 157 (S.C.). Their Lordships of the Supreme Court held that the initial burden to prove that the confessional statement recorded under FERA was voluntary and it was free from threat, inducement or force was on the prosecution and that the law does not say that accused has to prove that the retracted confession was made by him under threat, coercion, etc. Their Lordships observed in paras 34 and 35 as under :-

“34. A person accused of commission of an offence is not expected to

prove to the hilt that confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction. With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.

35. *In the instant case, the Investigating Officers did not examine themselves. The authorities under the Act as also the Tribunal did not arrive at a finding upon application of their mind to the retraction and rejected the same upon assigning cogent and valid reasons therefor. Whereas mere retraction of a confession may not be sufficient to make the confessional statement irrelevant for the purpose of a proceeding in a*

criminal case or a quasi criminal case but there cannot be any doubt whatsoever that the court is obliged to take into consideration the pros and cons of both the confession and retraction made by the accused. It is one thing to say that a retracted confession is used as a corroborative piece of evidence to record a finding of guilt but it is another thing to say that such a finding is arrived at only on the basis of such confession although retracted at a later stage.”

In view of these observations, it would appear that in a criminal or quasi criminal proceedings, a person accused of commission of offence under FERA has not to prove to the hilt that confession has been obtained from him by inducement or threat by the person in authority. However, when confession had been retracted, the Court must bear in mind the attending circumstances and other relevant factors to come to conclusion whether the confession was voluntary and was not obtained by any inducement, threat or force. At the same time, mere retraction of the confession may not be sufficient to make confessional statement irrelevant for the purpose of quasi criminal proceedings and the Court is obligated to take into consideration the pros and cons of confession and retraction made by the accused.

5. In **K.I.Pavunny vs. Asstt. Collector (HQ), C. Ex. Collectorate,**

Cochin 1997 (90) ELT 241 (S.C.), Three Judge Bench of the Supreme Court observed as follows in para 20 :-

*“20..... It is the duty of the prosecution to prove the case beyond reasonable doubt. The evidence may consist of direct evidence, confession or circumstantial evidence. In a criminal trial punishable under the provisions of the IPC, it is now well settled legal position that confession can form the sole basis for conviction. If it is retracted, it must first be tested whether confession is voluntary and truthful inculcating the accused in the commission of the crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Evidence Act and Section 164 of the Code. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions. If a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in *Bhagwan Singh v. State of Punjab – AIR 1952 SC 214, Para 30*. If it is established from the record or circumstances that the confession is*

shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was voluntary and believes it to be true, then there is no legal bar on the Court for ordering conviction. However, rule of prudence and practice does require that the Court seeks corroboration of the retracted confession from other evidence. The confession must be one inculcating the accused in the crime. It is not necessary that each fact or circumstance contained in the confession is separately or independently corroborated. It is enough if it receives general corroboration. The burden is not as high as in the case of an approver or an accomplice in which case corroboration is required on material particulars of the prosecution case. Each case would, therefore, require to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true. These require to be tested in the light of given set of facts. The high degree of proof and probative value is insisted in capital offences.”

In view of this, it is clear that if the confessional statement is retracted, the Court is required to examine whether it was obtained by threat, duress or promise and also whether the confession is truthful. If it is found to be voluntary and truthful inculpatory portion of the retracted confession can be acted and even conviction can be based upon the same. However, prudence and practice require that in case of retracted confession Court should seek assurance by way of corroboration from other evidence adduced. A general corroboration is sufficient. In the light of this legal position, the facts of the present case are required to be examined.

6. In the present case, different places, including the business and residential premises of Narendra Mirani as well as that of the present appellant came to be searched on 11.4.1989 and on the same day their statements were also recorded. The present appellant was arrested and produced before the Magistrate on 12.4.1989. On that day, he had not retracted the statement. He retracted the statement by making an application dated 14.4.1989. It means he had taken more than two days to retract the statement even after production before the Magistrate. The recovery of foreign exchange of 13 countries worth Rs.6 lakh was recovered during the search of the premises of Narendra Mirani. Naturally, he was called upon to explain wherefrom he had received that foreign currency. Immediately after that Narendra Mirani made the confessional statement

inculcating himself as well as the present appellant. The present appellant made the confessional statement on the same day. In view of these circumstances, we are satisfied that the confessional statements were not made under any force, duress, coercion or because of any inducement from any person in authority. There is no plausible explanation as to why the present appellant did not retract the statement at first available opportunity. He had an opportunity to retract the statement on 12.4.1989 when he was produced before the Magistrate. The case against the present appellant is not based merely on the confessional statements of himself and Narendra Mirani. These confessional statements find corroboration from the recovery of foreign currency of 13 countries from Narendra Mirani. Narendra Mirani had also specifically stated about the rates at which he had purchased some of those currencies from the present appellant. The recovery of the currencies and the details given by Narendra Mirani provide sufficient corroboration. In view of all these circumstances, we find that the confessional statement made by the present appellant was voluntary and it was retracted on a second thought and, therefore, the confessional statement can be acted upon in spite of the retraction. Therefore, in our opinion, the Authorities below rightly acted upon the confessional statement and held the present appellant guilty of the charges. In view of the facts and circumstances of the case, we do not find that the Authorities below committed any error in drawing

the conclusions. There is nothing to show that the findings are perverse in any manner. Therefore, no question of law is involved in the present Appeal.

7. In the result, the Appeal stands dismissed.

(J.H.BHATIA,J.)

(F.I.REBELLO,J.)