

Sk. Rustam vs T. K. Datta on 22 May, 2024

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IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2901 of 2013

Sk. Rustam
-Vs-
T. K. Datta

For the Petitioner : Mr. Dipanjan Dutt
Mr. Karan Dudhwewala
Mr. SurajitSaha

For the Opposite Party : Ms. Debjani Roy
Ms. Sohini Dey

Heard on : 24.07.2023, 30.08.2023, 15.12.2023, 09.02.2024,
25.04.2024.

Judgment on : 22.05.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment and order dated 09.07.2013 passed by the Learned Additional Sessions Judge, Fast Track 1st Court, Calcutta in Criminal Revision No. 175 of 2012, dismissing thereby the aforesaid revisional application and affirming the judgment and order dated 30.08.2012 passed by the Learned Metropolitan Magistrate, 15th Court, Calcutta in Case No. C-6032 of 2001 (T.R. No. 621 of 2001) convicting the petitioner for commission of an offence

punishable under Section 57 of the Foreign Exchange Regulation Act, 1973

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and sentencing him to suffer imprisonment for 6 months and to pay fine of Rs.5000/- in default to suffer simple imprisonment for 2 months more.

2. The allegations portrayed in the said complaint are precisely to the effect that:-

- a) The Assistant Director of Enforcement Directorate, Kolkata in exercise of powers conferred upon him under Section 51 read with Section 50 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "FERA") found the petitioner guilty of violation of the provisions of Section 18(2) and 18(3) of the FERA and accordingly imposed a penalty of Rs.1,50,000/- upon the petitioner vide adjudication order no. 33/97/AD dated 16.05.1997.
- b) In the said order the Assistant Director of Enforcement Directorate, Kolkata directed the petitioner to deposit the penalty amount in the Kolkata office of Enforcement Directorate at 8A, Lindsay Street, Calcutta - 700037 within 45 days from the date of receipt of the said order.
- c) The petitioner, inspite of receipt of such adjudication order, failed to deposit the aforesaid penalty amount within the stipulated period. In reply to the letter bearing no. T-566/Cal/97/PRC/(AP-8)/5605 dated 14.07.1997 the petitioner vide his letter dated 04.08.1997 informed that he had preferred an appeal before the FERA, Appellate Board, New Delhi which was registered as Appeal No. 268/97. However, no stay order was granted by the FERA, Appellate Board, New Delhi to that effect.
- d) The petitioner had filed a writ petition before this Hon'ble Court which

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did not grant any order of stay.

e) Failing to pay the penalty imposed upon him by the Deputy Director, Enforcement Directorate, Kolkata who was an Adjudicating Officer, the petitioner committed an offence punishable under Section 57 of the Foreign Exchange Regulation Act, 1973.

3. The Learned Chief Metropolitan Magistrate, Calcutta, upon receipt of the aforesaid petition of complaint, took cognizance of the offence disclosed therein and accordingly transferred the case to the file of the Learned Metropolitan Magistrate, 15th Court, Calcutta for disposal.
4. The Learned Metropolitan Magistrate, 15th Court, Calcutta upon receiving the case records issued summons in the name of the petitioner.
5. The petitioner duly appeared before the Learned Court below and was examined under Section 251 of the Code of Criminal Procedure. The substance of the accusations were read over and explained to the petitioner to which he pleaded not guilty and claimed to be tried.
6. In order to prove its case the prosecution examined 1 witness while the defence adduced none.

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7. The Learned Advocate representing the appellant stated as follows:-

- a) The petitioner was conducting the business of manufacture and export of leather jackets under the name and style M/s A.R. Leathers.
- b) In the usual course of business, the petitioner exported leather jackets to one Bocate International of Berlin, Germany and one Amber International of New York, USA. The petitioner despatched the said goods by airway to Germany in September, 1993 as well as in December, 1993. The petitioner despatched the said goods

by airway to USA on 01.12.1993.

- c) The aforesaid foreign buyers refused to make payments after receipt of goods from the airport godown to the petitioner. Under such compelling circumstances the petitioner applied before the RBI for extension of time for the realisation of the export proceeds.
- d) On 18.07.1996, a Memorandum No. 11/96/SCN/DD was issued by the Deputy Director, Enforcement Directorate, Foreign Exchange Regulation Act requiring the petitioner to show cause why adjudication proceedings under Section 51 of the FERA Act should not be initiated against him for contravention of Section 18(2) and Section 18(3) of the Foreign Exchange Regulation Act, 1973 for non-realization of export proceeds by the petitioner from the said foreign purchasers.

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- e) On 16.05.1997, the adjudicating authority found the petitioner guilty of violation of Section 18(2) and Section 18(3) of the Foreign Exchange Regulation Act, 1973 and imposed a penalty Rs.1.50 Lakhs upon the petitioner.
- f) On 09.07.1997, the petitioner preferred an appeal being Appeal No. 268/97 before Foreign Exchange Regulation Appellate Board against order dated 16.05.1997. However, by order dated 28.10.1997, the appellate board directed the petitioner to deposit a sum of Rs.30,000/- as a pre-requisite for admission of appeal, which the petitioner could not comply due to paucity of funds.
- g) On 29.12.1999, Foreign Exchange Regulation Act, 1973 was repealed and replaced with Foreign Exchange Management Act,

1999. Pertinently Foreign Exchange Management Act, 1999 was enacted with the purpose to consolidate and amend the law relating to foreign exchange in India with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. In Foreign Exchange Management Act, 1999, offences related to foreign exchange were made civil offences and the provision of Section 18 of Foreign Exchange Regulation Act, 1973 did not find any place in the Foreign Exchange Management Act, 1999.

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- h) On 24.12.2001, C-6032 of 2001 under Section 57 of the Foreign Exchange Regulation Act, 1973 was filed against the petitioner before the Learned Metropolitan Magistrate, 15th Court at Calcutta as the petitioner was unable to pay the penalty imposed upon him within the stipulated period. The petitioner was subsequently put on trial.
- i) On 30.08.2012, by a Judgement passed by the Learned Metropolitan Magistrate, 15th Court at Calcutta, the petitioner was convicted under Section 57 of the Foreign Exchange Regulation Act, 1973 to suffer imprisonment for 6 months and to pay fine of Rs.5000 in default to suffer simple imprisonment for 2 months.
- j) The petitioner preferred a revision against Judgement dated 30.08.2012 being Criminal Revision No. 175 of 2012. By order dated 09.07.2013, the Learned Additional Sessions Judge, Fast Track 1st Court at Calcutta dismissed the appeal and affirmed

Judgement dated 30.08.2012.

k) C-6032 of 2001 under Section 57 of the Foreign Exchange

Regulation Act (FERA) was filed against the petitioner before the Learned Metropolitan Magistrate, 15th Court at Calcutta on 24.12.2001. However, FERA Act was repealed in 1998 by the Government and replaced by the Foreign Exchange Management Act, 1999 (FEMA), wherein all contravention related to foreign

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exchange were made civil offences and no imprisonment would be imposed in case of any violation of the provisions of the FEMA. Moreover, the provision of Section 18 of FERA became redundant with the repealing of the FERA and the same did not find any mention under FEMA.

l) Central Amendment Act reduced the punishment for an offence punishable, whereby the accused should be entitled to the benefit of such reduced punishment. In the instant case as FERA was repealed on the date of initiation of the instant case and was replaced by a very liberal statute being FEMA, the petitioner should also have been given the benefit of reduced punishment as prescribed under FEMA Act. Therefore, his conviction to suffer imprisonment for 6 months should be set aside and only a fine of appropriate amount should be imposed upon him.

m) Section 57 of FERA lays down that "if any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or fails to comply with any of his or its directions or orders, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with

fine or with both."

Thus, sentence that can be imposed on an accused for
contravention of Section 57 has to be read disjunctively wherein a

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Court of competent Jurisdiction has the power to either impose
only fine or only imprisonment or both upon the accused.

8. The rival contentions of the Learned Advocate for the Opposite Party are
stated as follows:-

i. The petitioner alleged that in view of the repeal of the FERA, by the
Foreign Exchange Management Act, 1999 (FEMA) the petitioner can
only be imposed with fine and cannot be sentenced to imprisonment, as
per the present provisions under FEMA. The petitioner relied on T.
Barai Vs. Henry Ah Hoe and Anr.¹ followed in Nemi Chand Vs. State
Of Rajasthan² and Trilok Chand Vs. State of Himachal Pradesh³.
It is submitted that the said judgments are inapplicable for the following
reasons:-

a) The Hon'ble Supreme Court considered the issue of implied repeal
in the T. Barai's case(supra), by the Food Adulteration Act, 1954 as
inserted by the Prevention of Food Adulteration (Amendment) Act, 1976
(hereinafter referred to as the 'Central Act 1954) with respect to
prosecutions launched under section 16(1)(a) read with Section 7 of the
Act in the state of West Bengal between the period April 29th, 1974 to
April 1, 1976. The same was evident from paragraph No. 1 and 2 of the
said T. Barai's case.

However, in the present case, there was no question of implied repeal of
the FERA by the Foreign Exchange Management Act, 1999 (FEMA) as

1 (1983) 1 SCC 177

2 (2018)1 SCC 448
3 2020) 10 SCC 763.

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because Section 49(4) of the FEMA envisaged that subject to Sub-section (3), all offences committed under the FERA should continue to be governed by the provisions of the repealed Act as if the Act has not been repealed. Section 49(3) was not applicable in case of the petitioner as the Adjudicating Officer passed the order on 16.05.1997.

b) The offence as committed by the petitioner under FERA was not pleaded or submitted to be identical to the FEMA offences. The offences under FEMA are not identical to the offences under the FERA. In view of the judgement in Regina vs Youle⁴; as relied upon at Paragraph no. 24 of the T. Barai's judgement (supra) the ex post facto law providing lesser punishment has no application as the offence described in the later Act is not the same as the earlier Act.

c) Nemi Chand Vs. State of Rajasthan⁵ followed T. Barai's (Supra) case as the aforesaid Central Act 1954 was also applicable in Nemi Chand's (Supra) case and is inapplicable as aforesaid.

d) Trilok Chand Vs. State of Himachal Pradesh⁶ followed T Barai's case and Nemi Chand's case (Supra) as therein also the Central Act 1954 under consideration and thus was inapplicable.

e) The case reference of Trilok Chand (Supra) was given on 08.02.2024. In Hindustan Unilever Limited Vs. State of Madhya

4 (1861) 158 ER 311, 315-316
5 (2018)1 SCC 448
6 2020) 10 SCC 763

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Pradesh 7 held Trilok Chands's judgment as per incurium in view of

Section 97 of the Food Safety and Standards Act, 2006.

ii. The petitioner also relied upon the judgment Anil Dhar & Ors. Vs.

Enforcement Directorate⁸ on the proposal that under Section 57 may modify the punishment.

It is submitted that as evident from paragraph 7 of the Anil Dhar (Supra) that there the person was imposed with fine once in individual capacity and second time as sole proprietor of M/s Babs International which was not a separate legal entity. Thus, the Hon'ble Court held that one person cannot be punished for the same offence twice.

Thus, it is submitted that there was no modification/alteration of the punishment and in Anil Dhar's case (Supra) only fine was imposed and no sentence of imprisonment. The said case is also inapplicable for adjudication of the present dispute.

iii. The petitioner submitted that the punishment as envisaged under

Section 57 of the FERA stipulated imprisonment for a term which may extend to two years or with fine or with both, thus the Hon'ble Court may alter the punishment of imprisonment only with fine.

The petitioner has failed to make out any case for interference by this Hon'ble Court under Section 482, Cr.P.C. The inherent powers of this Hon'ble Court under the Revisional Jurisdiction are exercised to prevent abuse of the process of any Court or to secure the ends of justice. The

⁷ (2020) 10 SCC 751,

⁸ 2010 SCC Online Del 1761

petitioner since 1997 has neglected to pay the penalty amount under the special statute FERA and also in the garb of pending litigation, was evading the punishment for imprisonment and fine since 2012 without

any reasonable cause.

The petitioner preferred a writ petition inter alia challenging the order of the Adjudicating Officer and also preferred a statutory appeal and has concealed the final outcome of the same before the Learned Addl. Session Judge 1st Track Court No. 1, Calcutta as also in the present petition filed before this Hon'ble Court. Thus, the conduct of the petitioner is unfair. In view of the aforesaid submissions the Hon'ble Court may be pleased to dismiss the application.

9. The Hon'ble Supreme Court in the case of First Global Stockbroking

(P) Ltd. v. Anil Rishiraj⁹, held the following:-

"7. A criminal court was empowered to take cognizance of the offences punishable under sections 56 and 57 of the Foreign Exchange Regulation Act only on a complaint in writing made by an officer of the categories covered by sub-clauses (a) to (c) of clause (i) of sub-section (2) of section 61. The Enforcement Officers were appointed under clause (e) of section 3 of the Foreign Exchange Regulation Act. By a notification dated September 24, 1993, issued under sub-clause (b) of clause (ii) of sub-section (2) of section 61 of the Foreign Exchange Regulation Act, various officers, including all the Enforcement Officers, were authorised to file a complaint in respect of the offences punishable under sections 56 and 57 of the Foreign Exchange Regulation Act.

9 (2024) 249 Comp Cas 239

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8. Now, we turn to section 49 of the Foreign Exchange Management Act under the heading "Repeal and saving". As noted earlier, sub-section (1) of section 49 repealed the provisions of the Foreign Exchange Regulation Act. Sub-sections (3) to (5) deal with "savings", which read thus:

"49. Repeal and saving.--... (3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act...

(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

(5) Notwithstanding such repeal,--

- (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
- (b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
- (c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed

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before the High Court within a period of sixty days of such commencement:

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal with the said period."

(emphasis added)

9. From the impugned judgment, it appears that the submissions were made on behalf of the appellants that the word "and" in sub-section (3) must be read as "or", and therefore, there is a bar on taking cognizance of the offence under the Foreign Exchange Regulation Act after the repeal of the Foreign Exchange Regulation Act. The High Court has elaborately and eruditely dealt with this argument. However, that need not detain us as the submissions made before this court proceed on the footing that there is a sunset period available of two years as provided in sub-section (3) of section 49 of the Foreign Exchange Management Act for filing complaints alleging the commission of offences punishable under sections 56 and 57 of the Foreign Exchange Regulation Act and for taking cognizance thereof.

10. In the facts of the case, the cognizance was taken by the learned magistrate within the sunset period of two years provided under sub-section (3) of section 49 of the Foreign Exchange Management Act.

11. We have perused the complaint filed by the first respondent.

The complaint has been filed by the first respondent, who was, at the relevant time, an Enforcement Officer appointed under clause (e) of section 3 of the Foreign Exchange Regulation Act. As noted earlier, the power under sub-clause (b) of clause (ii) of sub-section (2) of section 61 was exercised by the Central Government and all the Enforcement Officers were authorised to file complaints regarding the offences punishable under sections 56 and 57 of the Foreign Exchange Regulation Act. Thus, there is no difficulty in holding that the first respondent-Enforcement Officer, was authorised to file a complaint as provided in clause (ii) of sub-section (2) of section 61 of the Foreign Exchange Regulation Act. What is material here is sub-section (4) of section 49 of the Foreign Exchange

Management Act, which provides that subject to the provisions of sub-section (3), all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed. Sub-section (3) of section 49 saves the prosecution for the offences punishable under sections 56 and 57, which have been committed prior to the repeal of the Foreign Exchange Regulation Act, provided the competent court takes its cognizance within two years from the date of coming into force of the Foreign Exchange Management Act. In view of sub-section (4) of section 49, for the purposes of the prosecution of offences punishable under sections 56 and 57 of the Foreign Exchange Regulation Act, by a legal fiction, the provisions of the repealed Act will continue to apply. However, the same will continue to apply only for the purposes of prosecution of the offences which are saved by sub-section (3) of section 49 of the Foreign Exchange Management Act. That is how the complaint filed by the Enforcement Officer, duly authorised under clause (ii) of sub-section (2) of section 61 of the Foreign Exchange Management Act, will continue to be valid, inasmuch as by virtue of the legal fiction incorporated in sub-section (4) of section 49, the prosecution will continue to be governed by the provisions of the Foreign Exchange Regulation Act as if the same had not been repealed. Therefore, during the sunset period, the authorisation of the Enforcement Officers to file the complaints continues to be valid for the limited purposes of sub-section (3) of section 49 of the Foreign Exchange Management Act."

10. The Hon'ble High Court of Rajasthan at Jaipur held the following in *Ghanshyam Das Moolrajani v. Enforcement Directorate*:-

15. Adverting now to the argument advanced by the learned counsel for the petitioner that the competent authority had no jurisdiction to issue the impugned notice under the provisions of FERA, in view of what has been provided for in section 8 of FEMA.

This argument proceeds on the ignorance of the provisions relating to repeal and saving in section 49 of the FEMA. No doubt, sub-section (3) of section 49 provides that notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under Section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act. But it should be noted that even though the FEMA was enacted in the year 1999 but in view of provisions contained in its section 1(4) it came into force on 1.6.2000 when the Central Government by notification in the Official Gazette notified it. Notice in the present case was issued to the petitioner within two years from 1.6.2000. Moreover sub-section (5) of section 49 of the FEMA, even otherwise, saved anything done or taken including any rule, notification, inspection, order or notice etc. The adjudicatory proceedings initiated under the FERA would be saved particularly when an express intention for saving all those proceedings is available in aforesaid section 49. According to section 49(3) of the FEMA therefore such proceedings would be valid notice of which has been taken by the adjudicatory officer within two years from the date of commencement of the FERA. Argument advanced by the learned counsel to the effect that the proceedings under Sections 50/51 of the FERA would be barred by virtue of section 49(3) of the FEMA is therefore wholly misconceived and is therefore rejected.

11. The Foreign Exchange Management Act 1999 (hereinafter referred to as FEMA) was promulgated with the object to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

12. Section 1 of the said Act enumerates as follows:-

"1. Short title, extent, application and commencement.--

(1) This Act may be called the Foreign Exchange Management Act, 1999.

(2) It extends to the whole of India.

(3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

(4) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision."

13. The said Act came into effect from 1st June, 2000, vide notification no. G.S.R. 371(E), dated 1st May, 2000.

14. Section 49 of the said aforesaid Act states the following "49. Repeal and saving.--(1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved. (2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act. (4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed. (5) Notwithstanding such repeal,--

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

(6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

15. Section 49(3) of the aforesaid Act enumerated that the Courts were mandatorily restricted to take cognizance under the offence of the repealed act and no adjudicating officer shall take cognizance of any contravention under Section 51 of the repealed Act after an expiry of a period of two years from the date of the commencement of the said Act.

16. Section 49(4) of the aforesaid Act has been stipulated below:-

"(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed."

17. A conjoint reading of the provisions enumerated under Section 49(3) and 49(4) of the said Act signified that the actions taken by the competent authorities against the offence committed under the repealed Act will continue to be effective and valid for a period of two years from the date of commencement of the FEMA Act 1999.

18. In the instant case a Memorandum No. 11/96/SCN/DD was issued by the Deputy Director, Enforcement Directorate, Foreign Exchange Regulation Act (hereinafter referred to as FERA) where the petitioner was required to show cause why adjudication proceedings under Section 51 of the FERA Act should not be initiated against him on the date of July 18, 1996. The petitioner's

representative attended the adjudication proceedings and submitted a written note of argument on May 12, 1997. In the Adjudication proceedings, a penalty of Rs.1.50 Lakhs was imposed upon the petitioner with a direction to deposit such amount within 45 days on May 16, 1997. The petitioner preferred an appeal before the Foreign Exchange Regulation Appellate Board against the order dated May 16, 1997 on July 9, 1997. In the appeal, the petitioner also filed an application for dispensation of the penalty amount. By a letter, the petitioner informed the FERA authorities that he was completely ruined and had no money to pay on July 23, 1997.

On the October 28, 1997, by an order passed in Appeal No. 268/97, the petitioner was told to deposit a sum of Rs.30,000/- as a pre-requisite to admission of appeal. The petitioner did not deposit that amount. C-

6032 of 2001 under Section 57 of the FERA Act was filed against the petitioner before the Learned Metropolitan Magistrate, 15th Court at Calcutta on December 24, 2001. Appeal No. 268/97 before Foreign Exchange Regulation Appellate Board was dismissed as the petitioner could not deposit a sum of Rs.30,000/- on November 27, 2008. By a Judgement passed by the Learned Metropolitan Magistrate, 15th Court at Calcutta, the petitioner was convicted under Section 57 of the FERA Act to suffer imprisonment for 6 months and to pay fine of Rs.5000 in default to suffer simple imprisonment for 2 months on August 30, 2012. The petitioner preferred a revision against Judgement dated August 30, 2012 being Criminal Revision No. 175 of 2012. By order dated July 9, 2013, the Learned Additional Sessions Judge, Fast Track 1 Court at Calcutta dismissed the appeal and affirmed Judgement dated August 30, 2012

19. The Foreign Exchange Management Act of 1999 effectively operated from 1st of June, 2000 as aforesaid. The memorandum as aforesaid was issued against the petitioner to show cause as to why adjudication proceedings under Section 51 of the F.E.R.A Act should not be initiated against him for contravention of Sections 18(2) and Section 18(3) of the Foreign Exchange Regulation Act, 1973 on 18.07.1996. The adjudicating authority as aforesaid found the petitioner guilty of violation of the aforesaid provisions on 16.05.1996 and imposed a penalty of Rs.1.50 lakhs upon the petitioner. The petitioner preferred an appeal against such order on 09.07.1997 and was subsequently directed to deposit a sum of Rs.33,000/- with prerequisite for admission of the appeal which was not complied with by the petitioner stating his financial constraint. The issuance of notice and subsequent adjudication determining the petitioner to be guilty of violation of Section 18(2) and Section 18(3) of the Foreign Exchange Regulation Act 1973 related to 18.07.1996 and 16.05.1997 prior to the promulgation of the Foreign Exchange Management Act, 1999 and according to Section 49(3) and Section 49(4) of the F.E.M.A. Act of 1999. The provisions of the F.E.R.A. Act of 1973 will be applicable in the instant case.

20. In view of the decisions cited above, a further sunset period of two years was granted to adjudicate the proceedings of the offences instituted under the F.E.R.A. Act deferring the applicability of the F.E.M.A. Act of 1999 as enumerated in Section 49(3) of the F.E.M.A. Act.

21. The contention of the Learned Advocate for the petitioners to deal with the instant offence of the petitioner leniently with a liberal approach considering the same to be of civil nature in consonance

with the provisions of the F.E.M.A. Act of 1999 is redundant and inoperative.

22. The inherent power of the High Court under Section 482 of the Code of Criminal Procedure is wide subject to certain criteria whereby the High Court cannot conduct a mini trial to determine the culpability of the offender. Moreover, the inherent power as aforesaid is to be exercised to secure ends of justice or for the prevention of abuse of process of any court.

23. In the instant case the guilt of the petitioner has been conclusively determined by the Trial Court after adducing evidence. Moreover, the petitioner at the inception as well as on the second occasion of depositing a sum of Rs.33,000/- for admission of the appeal asserted his inability to pay the required sum of money for deficient funds. The process instituted against the petitioner was justified and not harassing in nature. The petitioner was legally incumbent and liable for contravention of Section 18(2) and Section 18(3) of Foreign Exchange Regulation Act 1973 which have been aptly proved.

24. Section 57 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA) "57. Penalty for contravention of order made by adjudicating officer, Appellate Board and High Court.--If any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or fails to comply with any of his or its directions or orders, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with fine or with both."

25. However, the aforesaid Section 57 of the said Act provides for a disjunctive clause. Considering the age of the petitioner to be 75 years and the incident relating to the year 1996 with a lapse of considerable period of time, the incarceration of the petitioner will not serve any further purpose. The conviction of the petitioner is upheld. However the sentence is modified to the extent of payment of fine of Rs.3 lakhs within three months from the date.

26. In view of the above discussions, the instant criminal revisional application is dismissed. Sentence is modified to pay a fine of Rs.3,00,000/- within three months from the date.

27. There is no order as to costs.

28. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

29. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)