A. TAJUDEEN

v.

UNION OF INDIA

(Civil Appeal No. 5773 of 2009)

OCTOBER 10, 2014

[JAGDISH SINGH KHEHAR AND C. NAGAPPAN, JJ.]

Foreign Exchange Regulation Act, 1973:

ss.9(1)(b) and 50 – Proceedings initiated against appellant for violation of provisions of s.9(1)(b) – Authorities relying upon a statement alleged to have been made by appellant before officers of Enforcement Directorate – Held: No reliance was placed on the said statement in the impugned memorandum – Per se, therefore, it was not open to the authorities to place reliance on the said statement, while proceeding to take penal action against appellant, in furtherance of the impugned memorandum – Besides, as appellant had refuted having executed any such statement, it was imperative for Enforcement Directorate to establish through cogent evidence that appellant had made such a statement, and having failed to do so, it was not open to them to place reliance on the alleged statement, for establishing charges against appellant in impugned memorandum.

ss.9(1)(b) and 50 – Proceedings initiated against appellant for violation of provisions of s.9(1)(b) – Statements of appellant and his wife recorded by officers of Enforcement Directorate – Held: The said statements are not to be referred to as corroborative pieces of evidence, but as primary evidence to establish the guilt of appellant — In the absence of any independent corroborative evidence, the said statements of appellant and his wife recorded during the raid and while appellant was under detention, which, immediately, on release, were retracted, could not constitute the exclusive

basis to determine the culpability of appellant – The entire action taken by Enforcement Directorate against appellant in furtherance of the impugned memorandum is set aside – Evidence.

Evidence:

Execution of 'mahazar' in respect of recovery of money – Held: Merely because the "mahazar" was attested by two independent witnesses would not lead credibility to the same — Such credibility would attach to the "mahazar" only if the said two independent witnesses were produced as witnesses, and the appellant was afforded an opportunity to cross-examine them – Such a procedure was not adopted in the instant case – Besides, the said 'Mahazar is insufficient to establish violation of s.9(1)(b) of the 1973 Act – Thus, the execution of 'mahazar' is inconsequential for the determination of guilt of appellant.

Allowing the appeal, the Court

HELD: 1.1. There is no doubt that no reliance has been placed on the alleged statement made by the appellant on 20.4.1989 before the officers of the Enforcement Directorate, in the memorandum dated 12.3.1990. Per se, therefore, it was not open to the authorities to place reliance on the said statement, while proceeding to take penal action against the appellant, in furtherance of the said memorandum dated 12.3.1990. Additionally, it is apparent from the reply (Annexure P-9) furnished by the appellant to the memorandum dated 12.3.1990, that he clearly and expressly refuted having executed any statement on 20.4.1989. It was, therefore, imperative for the Enforcement Directorate to establish through cogent evidence that the appellant had indeed made such a statement on 20.4.1989. It also cannot be overlooked that no action was initiated against the

A appellant on the basis of the statement dated 20.4.1989. [para 9] [878-H; 879-A-C]

1.2. Therefore, the statement dated 20.4.1989 could not be relied upon by the Enforcement Directorate to establish the allegations levelled against the appellant through the memorandum dated 12.3.1990. Further, in the absence of having established through cogent evidence, that the appellant had made the statement dated 20.4.1989, it was not open to the Enforcement Directorate to place reliance on the same, for establishing the charges levelled against the appellant in memorandum dated 12.3.1990. Even before this Court, the alleged statement made by the appellant on 20.4.1989 could not be produced, which seems to be a fictitious creation of the Enforcement Directorate. [para 9-10] [880-A-C; 881-E]

1.3. The innocence or guilt of the appellant will have to be determined on the basis of the statements made by the appellant and his wife (on 25.10.1989 and 26.10.1989) to the officers of the Enforcement Directorate. Therefore, for the case in hand, the said statements are not to be referred to as corroborative pieces of evidence, but as primary evidence to establish the guilt of the appellant. It is significant to note that the said statements were all made either at the time of the raid, which was carried out by the officers of the Enforcement Directorate at the residence of the appellant, or whilst the appellant was in custody of the Enforcement Directorate. Immediately after the appellant was released on bail on 27.10.1989, on the same day itself, both the appellant and his wife addressed communications to the Director, Enforcement Directorate, New Delhi resiling from the above statements, by clearly asserting that they were recorded under coercion and undue influence, and would not be binding on them. The statements of the appellant and his wife were not corroborated by independent evidence. This Court is of

the considered view, that the officers of the Enforcement Directorate were seriously negligent in gathering independent evidence of a corroborative nature. Therefore, the retracted statements dated 25.10.1989 and 26.10.1989 made by the appellant and his wife could not constitute the exclusive basis to determine the culpability of the appellant. [paras 15 and 18] [887-E-H; 890-A-B]

K.T.M.S. Mohd. v. Union of India, 1992 (2) SCR 879 = (1992) 3 SCC 178; *Vinod Solanki v. Union of India* 2008 (17) SCR 1070 = (2008) 16 SCC 537 – cited.

1.4. Merely because the "mahazar" was attested by two independent witnesses would not lead credibility to the same. Such credibility would attach to the "mahazar" only if the said two independent witnesses were produced as witnesses, and the appellant was afforded an opportunity to cross-examine them. Such a procedure was not adopted in the instant case. Besides, even if the "mahazar" is accepted as valid and genuine, the same is wholly insufficient to establish that the amount recovered from the residence of the appellant was dispatched by a resident of Singapore, through a person who is not an authorised dealer in foreign exchange. Even, in response to the memorandum dated 12.3.1990, the appellant had acknowledged the recovery of money from his residence, but that acknowledgment would not establish violation of s.9 (1)(b) of the 1973 Act. Thus, execution of the "mahazar" on 25.10.1989 is inconsequential for the determination of the guilt of the appellant. [para 19] [890-D-H; 891-A-B]

1.5. Therefore, the impugned judgment passed by the High Court is set aside. Resultantly, the entire action taken by the Enforcement Directorate against the appellant in furtherance of the memorandum dated 12.3.1990, is also set aside. [para 21] [891-E-F]

A **Case Law Reference:**

1992 (2) SCR 879	**cited**	**para 13**
2008 (17) SCR 1070	**cited**	**para 13**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5773 of 2009.

From the Judgment and Order dated 28.09.2006 in CMA No. 1282 of 1994 of the High Court of Judicature at Madras]

C R. Nedumaran for the Appellant.

K. Radhakrishnan Arijit Prasad, Kiran Bhardwaj (For B.V. Balaram Das), for the Respondent.

The Judgment of the Court was delivered by

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JAGDISH SINGH KHEHAR, J. 1. Through memorandum dated 12.3.1990 it was alleged, that the appellant herein – A. Tajudeen, without any general or special exemption from the Reserve Bank of India, had received an amount of Rs.8,24,900/- in two installments, at the behest of Abdul Hameed, a person resident in Singapore. The first installment was allegedly received on 23.10.1989 which comprised of Rs.4,00,000/-. The remaining amount was allegedly received in the second installment on 25.10.1989. As per the memorandum the aforesaid amounts had been received from a local person, who was not an authorised dealer in foreign exchange.

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2. Based on the factual position noticed hereinabove, the allegation against the appellant was, that he had violated Section 9(1)(b) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as, the 1973 Act). Section 9(1)(b) aforementioned, is being extracted hereunder:-

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"9. Restrictions on payments – (1) Save as may be provided in, and in accordance with any general or

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special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, India shall – A

(a) xxx xxx xxx B

(b) receive, otherwise than through an authorized dealer, any payment by order or on behalf of any person resident outside India;

Explanation – For the purposes of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized dealer) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized dealer;" C D

Based on the aforesaid statutory provision, and the factual position noticed hereinabove, the Enforcement Directorate initiated proceedings against the appellant under Section 50 of the 1973 Act. E

3. Before adjudicating upon the merits of the controversy, it is essential to narrate the factual position leading to the issuance of the aforesaid memorandum dated 12.3.1990. The facts as they emerge from the pleadings, and the various orders leading to the passing of the impugned judgment rendered by the High Court of Judicature at Madras (hereinafter referred to as, the High Court) on 28.9.2006, are being chronologically narrated hereunder:- F G

(i) The appellant – A. Tajudeen is alleged to have made a statement to the Enforcement Directorate on 20.4.1989, wherein he acknowledged, that he had received a sum of H

A Rs.1,40,000/- from Abdul Hameed. Out of the above amount, he paid a sum of Rs.60,000/- through his shop boy – Shahib, to Shahul Hameed (a relative of Abdul Hameed) of Village Pudhumadam. A further amount of Rs.20,000/- was paid to some friends of Abdul Hameed at Keelakarai, and remaining B amount was retained by appellant himself. In the statement made on 20.4.1989, it was allegedly acknowledged by the appellant that Abdul Hameed was a resident of Singapore, and was running a shop located at Market Street, Singapore.

C (ii) On 25.10.1989, the officers of the Enforcement Directorate raided the residential premises of the appellant, namely, no. 6, Dr. Muniappa Road, Kilpauk, Madras. At the time of the raid, which commenced at 1.00 pm, his wife T. Sahira Banu was at the residence. The appellant - A. Tajudeen, D also reached his residence at 1.30 pm, whilst the officers of the Enforcement Directorate were still conducting the raid. During the course of the raid, a sum of Rs.8,24,900/- in Indian currency was recovered from under a mattress from a bedroom of the appellant's residence.

E (iii) A mahazar was prepared on 25.10.1989, depicting the details of the currency recovered from the raid. The said mahazar was prepared in the presence of two independent witnesses, namely, R.M. Subramanian and Hayad Basha. The above independent witnesses also affixed their signatures on F the mahazar.

(iv) At the time of the raid itself, the statement of the appellant - A. Tajudeen was recorded (on 25.10.1989). The relevant extract of the aforesaid statement of the appellant is G being reproduced hereunder. It needs to be expressly noticed, that the appellant now allegedly disclosed the address of Abdul Hameed, as no. 24, Sarangoon Road, Singapore.

"Today your officers searched my aforesaid house and seized a sum of Rs.8,24,900/- as set out in the Mahazar. H

I wanted to establish a jewellery shop in Madras. I commenced a jewellery shop in the name and style of "M/s. Banu Jewellers" on 19.10.1989 at No. 12, Ranganathan Road, Nungambakkam, Madras-34. It is a partnership business wherein my wife T. Sahira Banu is a partner. For that I sold my wife's gold jewels and also taken hand loans from my friends. The said business was started with a capital of Rs.2,20,000/- in my wife's name. The other partner Mr. S. Muthuswamy of No. 20, Indira Nagar, Adyar (I do not remember his address) has contributed to the capital a sum of Rs.30,000/-.

For expanding the said shop and for improving the business, I required about Rs.9,00,000/-. My relatives are working in Singapore and Malaysia. One Abdul Hameed from my native place is carrying on business for the past 15 years at no. 24, Sarangoon Road, Singapore. He is dealing in clothes, VCRs etc. He came down to Madras about 2 months back. At that time, he met me at my residence. I told him that a jewellery business to be commenced and that I require about Rs.9,00,000/- for the said business and to discharge certain small loans. Further I requested him to help me by providing the said money assuring to repay the same in 2 or 3 years' time with small interest during his visit to India.

He assured to contact me over phone, House telephone no. 666611 on reaching Singapore. The said Abdul Hameed, about 2 months back, called me over phone from Singapore and told me that as I requested to him, he had made arrangements for sending the sum of Rs.9,00,000/- and that he will inform me about the mode of transmitting the same. Thereafter during the 2nd week of this month, the said Abdul Hameed contacted me over phone. At that time he told me that he would send Rs.8,25,000/- in two installments being Rs.4,00,000/- and Rs.4,25,000/- and that the said money would be delivered at my house in the

A 3rd week or 4th week of this month through unknown person. Pursuant thereto, on 23.10.1989 around 9.00 pm an unknown person came to my house inquiring about me and gave me Rs.4,00,000/- stating that he is delivering the same on the instruction of Abdul Hameed of Singapore.
B Similarly another unknown person came to my house at 8.00 am on 24.10.1989 and delivered to me Rs.4,25,000/- claiming to be on the instructions of the said Singapore Abdul Hameed. I was keeping the said Rs.4,00,000/- and Rs.4,25,000/-, totaling to Rs.8,25,000/-, in my house which
C was received on the instruction of Abdul Hameed.

The Enforcement Officer who searched the house seized the sum of Rs.8,24,900/- which I got in the aforesaid manner. The said Abdul Hameed who is residing at
D Singapore is my distant relative on the paternal side. He is living with his family at Singapore. He used to come down to my native lace, Pudhumadam Village, once in a year to visit his relatives. He is aged 45 years and of the height of about 5½ feet, fair complexion and medium built.

E The person who delivered the sum of Rs.4,00,000/- on the instructions of said Abdul Hameed did not disclose his name and address. He was about 35 years old and with medium height and medium built. He was wearing pants and shirt. He left within few minutes on delivering the sum
F of Rs.4,00,000/- to me and hence I could not notice other identifiable marks. Similarly the other person who came on 24.10.1989 and delivered the sum of Rs.4,25,000/- on the instructions of said Abdul Hameed also did not disclose his name and address. He must be around 40
G years old. He is also medium built and also medium height. Since both of them left my house within a few minutes on delivering the said sums, I could not notice their identifiable marks. I was making arrangements to export readymade garments. In respect thereof, I required the place apart
H from my house to meet my customers. For that I have taken

on rent room no. 402, in Ganpat Hotel, Nungambakkam High Road about 4-5 months back from its owner one M.R. Prabhakaran. I am using the telephone no. 477409 in the said shop, A/C machine and fridge available in the said room. Since Export business did not suit me, I left it. The said room is in my possession." A B

(emphasis is ours)

(v) During the course of the raid conducted on 25.10.1989, the appellant - A. Tajudeen, was detained by the officers of the Enforcement Directorate. His statement was again recorded on 26.10.1989 by the Chief Enforcement Officer, whilst he was in custody. Relevant portion of his above mentioned statement is being extracted hereunder:- C

"I have earlier given statement before you on 25.10.1989. In that I have disclosed that by searching my house on 25.10.1989 your officers have seized a sum of Rs.8,24,900/- which I received from unknown persons on 23.10.1989 and 25.10.1989 on the instructions of Abdul Hameed of Singapore. This is true. On 25.10.1989, the said officers searched the jewellery shop "Banu Jewellers" in which my wife is a partner. At that time I was also there. In the said search no documents were seized. The other partner Mr. Muthusamy who is looking after the seized sum of Rs.8,24,900/- is not related to the said business. As stated by him, there is no connection between the said business and the sums seized. D E F

Today your officers searched my room at No. 402, Ganpat Hotel, Nungapakkam High Road, Madras-34 which I have taken on rent. I was there during the search. Since I have lost the key it was opened by a lock repairer. Pursuant to the said search a quotation from A.L. Textiles Mills dated 15.4.1989 was seized. G

Hereinbefore, in April last, I appeared before the officers H

A and gave a statement. Today I was shown the statement which I have given before the officers on 20.4.1989. I have stated about the receipt of a sum of Rs.1,40,000/- through my shop boy, Shahib, on the instructions of said Abdul Hameed of Singapore and out of the same, I have
B disbursed Rs.60,000/- on the instructions of the said Abdul Hameed to Shahul Hameed at Pudhumadam and the payment of Rs.20,000/- to a friend in Keelakarai through my shop manager, Hasan. The said Shahul Hameed mentioned in the statement dated 20.4.1989 and Abdul
C Hameed disclosed in the statement dated 25.10.1989 is one and the same person. In the said statement dated 24.10.1989 I have stated that Abdul Hameed is running a fancy store in Market Street in Singapore. In the statement dated 25.10.1989, I have stated that Abdul Hameed is
D running a shop at Sarangoon Road, Singapore. Few months back, he has shifted his business from the Market Street to Sarangoon Road. In the statement dated 20.4.1989, I have stated that I am running a textile shop "Seemati Silks" at Periyakadai Veethi, Ramanathapuram.
E In the statement dated 25.10.1989 I have stated that I am the proprietor of "Seemati Silks" at Salai Street. Periyakadai Veethi is used to be called as Salai Street. All that I stated in this statement are true."

F (emphasis is ours)

(vi) Whilst the appellant - A. Tajudeen was under detention of the Enforcement Directorate, the statement of his wife T. Sahira Banu was also recorded on 26.10.1989. The same was allegedly scribed by M.J. Jaffer Sadiq, a nephew, and then
G signed by T. Sahira Banu. In the above statement, T. Sahira Banu, the wife of A. Tajudeen admitted the recovery of Rs.8,24,900/- by the officers of the Enforcement Directorate, from the residence of the appellant i.e., no. 6, Dr. Muniappa Road, Kilpauk, Madras.

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(vii) On 27.10.1989, A. Tajudeen and T. Sahira Banu retracted their earlier statement(s), alleging that the same had been recorded against their will and under the threat and compulsion of the officers of the Enforcement Directorate.

4. In response to the memorandum dated 12.3.1990, the appellant filed a reply (which is available on the record of the present case as Annexure P-9). In his reply, he denied having made any statement on 20.4.1989. He asserted, that a copy of the aforesaid statement dated 20.4.1989 had never been furnished to him, nor had been relied upon in the memorandum dated 12.3.1990. He also denied the factual contents of the statements dated 25.10.1989 and 26.10.1989. He denied having ever met Abdul Hameed. He also denied, that there was any occasion for him to ask for any loan from the said Abdul Hameed. He denied any acquaintanceship with the said Abdul Hameed. Insofar as the statements recorded on 25.10.1989 and 26.10.1989 are concerned, his specific assertion in his reply was, that he was compelled to make the above statements at the dictation of the officers of the Enforcement Directorate. He also asserted, that the said statements had been made under threat, coercion and undue influence. He highlighted the fact, that on the very day of his release from detention, i.e., on 27.10.1989, he had addressed a letter to the Enforcement Directorate, repudiating the factual position indicated in the statements made by him on 25.10.1989 and 26.10.1989. He also asserted, that a similar course of action had been adopted by his wife T. Sahira Banu, inasmuch as, she too had repudiated the statement recorded by her on 26.10.1989 at the office of the Enforcement Directorate through a separate communication dated 27.10.1989. Insofar as the currency recovered from his residence is concerned, his explanation was, that he had an established business under the trade name of Seemati Silks, which had an annual turnover of Rs.25 to 30 lacs. He also asserted, that his wife T. Sahira Banu had also business establishments including Seemati Matchings and Banu Jewellers, from which she was earning

A income. Besides the aforesaid business establishments, it was the contention of the appellant - A. Tajudeen, that he had several other business projects, from which he was also earning independent income. In addition to his financial status reflected hereinabove, it was also the case of the appellant, that he had
B taken hand loans. The amount which was recovered by the officers of the Enforcement Directorate from his residence on 25.10.1989, was comprised of all the above sources. He clearly and expressly denied, having received the aforesaid currency (Rs. 8,24,900/-) from a person resident in India, at the behest
C of a person not resident in India.

5. Having examined the response of the appellant, the Additional Director of Enforcement, Southern Zone, Madras, by an order dated 22.4.1991, arrived at the conclusion, that the
D appellant was guilty of violating Section 9(1)(b) of the 1973 Act. Having so concluded, the seized amount of Rs.8,24,900/- was ordered to be confiscated. In addition, the appellant was imposed a penalty of Rs.1,00,000/- for contravening the provisions of Section 9(1)(b) of the 1973 Act. Dissatisfied with
E the order dated 22.4.1991 passed by the Additional Director of Enforcement, Southern Zone, Madras, the appellant preferred an appeal before the Foreign Exchange Regulation Appellate Board (hereinafter referred to as, the Appellate Board). The aforesaid appeal bearing number 316 of 1991 was
F allowed by an order dated 31.12.1993. While allowing the appeal, the Appellate Board directed the refund of penalty of Rs.1,00,000/- imposed on the appellant. The Appellate board also quashed the direction pertaining to the confiscation of Rs.8,24,900/- seized from the residence of the appellant.

G 6. Aggrieved by the order passed by the Appellate Board, the Union of India through the Director of Enforcement preferred an appeal under Section 54 of the 1973 Act, before the High Court. The High Court allowed the above appeal being C.M.A. NPD no. 1282 of 1994 by an order dated 28.9.2006. While
H allowing the aforesaid appeal, the High Court placed reliance

on the statement made by the appellant, before the officers of the Enforcement Directorate on 20.4.1989. The aforesaid statement was referred to, as having been voluntarily made by the appellant. The High Court expressed the view, that the statements recorded by the appellant on 25.10.1989 and 26.10.1989 were voluntarily made by him, and as such, the retraction of the said statements, was not accepted. Likewise, the High Court accepted the statement of T. Sahira Banu made at the office of the Enforcement Directorate at Madras on 26.10.1989, as voluntary. Her retraction of the said statement was also not accepted by the High Court. The High Court placed reliance on the fact, that the appellant had been produced before the Additional Chief Metropolitan Magistrate, Madras, during the course of his detention, but he had not indicated to the Magistrate during his production, that he and his wife were compelled to make the above statements, by the officers of the Enforcement Directorate. This was the primary reason for the High Court, in rejecting the retractions made by the appellant and his wife.

7. Insofar as the veracity of name and identity of Abdul Hameed is concerned, the High Court expressed the view, that the name and identity of the person who had dispatched the money in question, was in the personal knowledge of the appellant alone, and therefore, his disclosure about the name and identity of Abdul Hameed could not be doubted. Insofar as the different addresses of Abdul Hameed indicated in the statements dated 20.4.1989 and 25.10.1989/26.10.1989 are concerned, the High Court was of the view, that the appellant had himself disclosed the address of the above mentioned Abdul Hameed, and as such, he cannot be permitted to use the said statements to his own benefit. The High Court was also of the view, that merely because the statements had been recorded at the time of the raid at the residence of the appellant, and whilst he was under detention, it could not be inferred, that the same were not voluntary.

A 8. During the course of hearing, the first contention advanced at the hands of the learned counsel for the appellant was, that it was not open to the Enforcement Directorate to rely on the alleged statement dated 20.4.1989, which the appellant is stated to have made before the officers of the Enforcement B Directorate. Insofar as the instant aspect of the matter is concerned, it was the vehement contention of the learned counsel for the appellant, that no reference was made to the above statement dated 20.4.1989 in the memorandum dated 12.3.1990. It was further submitted, that a copy of the aforesaid C statement dated 20.4.1989 was never furnished to the appellant. In fact it was the vehement contention of the learned counsel for the appellant, that no such statement was ever made by the appellant - A. Tajudeen, to the officers of the Enforcement Directorate. Learned counsel for the appellant, in fact D emphatically invited our attention to the fact, that the High Court in para 16 of the impugned judgment had inter alia, observed as under:-

> "16. ..... Referring to the explanation given by the officer that they had no record of the statement made on E 20.4.1989 at the time when the statement was made by Tajudeen on 26.10.1989....."

It was also submitted, that if the appellant had made any such statement on 20.4.1989, as was now being relied upon by the F Enforcement Directorate, he would have most definitely been proceeded against for violation of the provisions of Section 9(1)(b) of the 1973 Act. The very fact that he was not proceeded against, shows that no such earlier statement may have been recorded by the appellant on 20.4.1989.

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9. We have given our thoughtful consideration to the first contention advanced at the hands of the learned counsel for the appellant. There is no doubt whatsoever, that no reliance has been placed on the alleged statement made by the appellant H on 20.4.1989 before the officers of the Enforcement

Directorate, in the memorandum dated 12.3.1990. Per se, therefore, it was not open to the authorities to place reliance on the aforesaid statement, while proceeding to take penal action against the appellant, in furtherance of the aforesaid memorandum dated 12.3.1990. Additionally, it is apparent from the reply (Annexure P-9) furnished by the appellant to the memorandum dated 12.3.1990, that the appellant clearly and expressly refuted having executed any statement on 20.4.1989. It was, therefore, imperative for the Enforcement Directorate, to establish through cogent evidence, that the appellant had indeed made such a statement on 20.4.1989. It also cannot be overlooked, that no action was initiated against the appellant on the basis of the aforesaid statement dated 20.4.1989. A perusal of the aforesaid statement, in the terms as are apparent from the pleadings of the case, leaves no room for any doubt, that if the appellant had made any such statement, he would have been proceeded against under Section 9(1)(b) of the 1973 Act. The mere fact that he was not proceeded against, prima facie establishes, in the absence of any evidence to the contrary, that the assertion made by the appellant to the effect that he never made such statement, had remained unrefuted. The reason depicted in the paragraph 16 of the impugned judgment passed by the High Court extracted in the foregoing paragraph is clearly a lame excuse. Even though the aforesaid excuse may have been valid, if the allegation was, that the record of the statement made on 20.4.1989, was not available with the officers of Enforcement Department at the time of the raid on 25.10.1989, yet to state that the aforesaid record was not available when the second statement was made on 26.10.1989 at the office of the Enforcement Directorate, is quite ununderstandable. It is pertinent to mention, that the second statement was recorded by the Chief Enforcement Officer when the appellant – A. Tajudeen was in custody of the Enforcement Directorate. At that juncture if the record, as alleged, was not available with the authorities, it must lead to the inevitable inference, that the record was not available at all. For the

A reasons recorded hereinabove, we are satisfied in holding, firstly, that the statement dated 20.4.1989 could not be relied upon by the Enforcement Directorate to establish the allegations levelled against the appellant through the memorandum dated 12.3.1990. And secondly, in the absence of having established B through cogent evidence, that the appellant had made the above statement dated 20.4.1989, it was not open to the Enforcement Directorate to place reliance on the same, for establishing the charges levelled against the appellant in memorandum dated 12.3.1990.

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10. With reference to the statement of the appellant dated 20.4.1989, it is also necessary to record, that we had an impression during the course of hearing, that the above statement would lead us to a clearer understanding of the truth D of the matter. After the hearing concluded on 6.6.2014, we required the learned counsel for the respondent to hand over to us the record of the case. We had clearly indicated to learned counsel, that the purpose for this was, that we wished to examine the alleged statement of the appellant dated E 20.4.1989, along with the record connected therewith. In compliance, the summoned record was presented at the residential office of one of us (J.S. Khehar, J.) on 7.6.2014. A perusal of the record revealed, that the same did not comprise of the appellant's alleged statement dated 20.4.1989, or the F record connected therewith. The said record was therefore returned forthwith (on 7.6.2014 itself), by making the following remarks:

> "Mr. A.B. Ravvi, Assistant Legal Advisor, Directorate of Enforcement, Ministry of Finance, Government of India, G Chennai office, alongwith Mr. B. Naveen Kumar, Assistant Legal Advisor, Directorate of Enforcement, Ministry of Finance, Government of India, Headquarters at New Delhi, have visited the Residential office of Hon'ble Mr. Justice Jagdish Singh Khehar, Judge, Supreme Court of India, 6, H Moti Lal Nehru Marg, New Delhi – 110011, today on 7th

June, 2014 at about 1.30 pm to deliver a file containing original papers in the matter – Civil Appeal no. 5773 of 2009 (A. Tajudden vs. Union of India). Since the file does not contain document dated 20.4.1989 (statement of the appellant in the matter), for which the same was summoned, the file is being returned herewith, as per the directions of the Hon'ble Judge.

Sd/-
(Deepak Guglani)
Court Master
7.6.2014

File received by:-
Sd/-
[Mr. A.B. Ravvi]"

Needless to mention, that despite the above remarks no further record was ever brought to our notice. This is a seriously unfortunate attitudinal display, leaving us with no other option but to conclude, that the alleged statement made by the appellant on 20.4.1989, may well be a fictitious creation of the Enforcement Directorate. In such circumstances, reliance on the appellant's alleged statement dated 20.4.1989, just does not arise.

11. Having arrived at the aforesaid conclusion, we shall now examine the veracity of the remaining evidence available with the Enforcement Directorate, for substantiating the charges levelled against the appellant through memorandum dated 12.3.1990. Having discarded the statement dated 20.4.1989, what remains is, the statements of the appellant - A. Tajudeen recorded on 25.10.1989 and 26.10.1989, as also, the statement of his wife T. Sahira Banu recorded on 26.10.1989. Besides the aforesaid statements, the remaining evidence against the appellant is, in the nature of a "mahazar" prepared on 25.10.1989, which was signed by two independent witnesses, namely, R.M. Subramanian and Hayad Basha. In addition to the above, the Enforcement Directorate also relied

A upon the newspaper sheets of the Hindu and Jansatha, in which the bundles of notes recovered from the residence of the appellant, were wrapped. Insofar as the Hindu newspaper sheets are concerned, they were of the Delhi and Bombay editions dated 19.2.1989, 14.4.1989, 23.7.1989 and B 4.10.1989. The sheets of the Jansatha newspaper also pertain to its Delhi and Bombay editions of February, 1989 and 23.10.1989.

12. Insofar as the aforesaid remaining evidence is C concerned, it was the vehement contention of the learned counsel for the appellant, that the same was not sufficient to discharge the onerous responsibility of the Enforcement Directorate, to establish the charge levelled against the appellant. It was the submission of the learned counsel for the D appellant, that reliance could not be placed on the statements made by the appellant, as also, his wife (on 25.10.1989 and 26.10.1989). In this behalf, it was sought to be cautioned, that if this manner of establishing charges was affirmed, the officers of the Enforcement Directorate, could easily compel individuals E through coercion, threat and undue influence, as they had allegedly done in this case, and then proceed to punish them, on the strength of their own statements. It was submitted, that in the facts and circumstances of this case, there was ample opportunity available with the Enforcement Directorate, to F establish the veracity of the statements made by the appellant - A. Tajudeen and his wife T. Sahira Banu. In this behalf it was pointed out, that the appellant has allegedly indicated, that Abdul Hameed, the dispatcher of the funds, was originally from his Village Pudhumadam in District Ramanathapuram. He also G stated, that the said Abdul Hameed was related to him from his paternal side. In the statements relied upon by the Enforcement Directorate, the appellant had allegedly also disclosed, that Abdul Hameed had contacted him over the telephone from Singapore. It was submitted, that all the above H facts were verifiable. It was submitted, that it could not be believed, that officers of the Enforcement Directorate did not

verify the authenticity of the factual position in respect of Abdul Hameed. It was further submitted, that the appellant in the statement dated 20.4.1989 had mentioned, that the appellant, on the instructions of Abdul Hameed of Singapore, dispatched a sum of Rs. 60,000/- (out of total amount of Rs. 1,40,000/-) to Shahul Hameed at Pudhumadam through his shop boy - Shahib. According to the learned counsel, the Enforcement Directorate could have confirmed the aforesaid factual position through Shahib. It is apparent, according to learned counsel, that the aforesaid factual position was found to be incorrect, and therefore, no further statements were recorded by the Enforcement Directorate, in connection therewith. It was also submitted, that the appellant had produced before the Assistant Director of Enforcement, a communication from the Revenue Department of Singapore, dated 2.9.1990 stating that, there was no such address at no. 24, Sarangoon Road, Singapore, and as such, the very foundational basis of the statements made by the appellant on 25.10.1989 and 26.10.1989 were rendered meaningless. It was also submitted, that an Advocate had enclosed a copy of the certificate issued by the Controller of Property Tax, Singapore, depicting that no such address was there at Sarangoon Road, where the said Abdul Hameed was alleged to be running his business.

13. In order to contend that the statements made by the appellant – A. Tajudeen and his wife T. Sahira Banu could not be relied upon in law, learned counsel for the appellant, placed reliance on K.T.M.S. Mohd. v. Union of India, (1992) 3 SCC 178 and invited our attention to the observations made in paragraph 34. The same is extracted hereunder:

> 34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the

A respective Acts is a sine quo non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely B because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails C to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent D retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in E passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the F order will be vitiated. Reference may be made to a decision of the full Bench of the Madras High Court in Roshan Beevi v. Joint Secretary to the Govt. of T.N., Public Deptt., [1983] LW (Crl.) 289, to which one of us (S. Ratnavel Pandian, J.) was a party.

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(emphasis is ours)

In order to supplement the legal position expressed in the above extracted judgment, learned counsel for the appellant also placed reliance on *Vinod Solanki v. Union of India,* (2008)

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16 SCC 537, by inviting our attention to the following conclusion recorded therein:-

"36. 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.

37. 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.

38. 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 18herefore. 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 obligated 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

A arrived at only on the basis of such confession although retracted at a later stage.

39. The appellant is said to have been arrested on 27.10.1994; he was produced before the learned Chief
B Metropolitan Magistrate on 28.10.1994. He retracted his confession and categorically stated the manner in which such confession was purported to have been obtained. According to him, he had no connection with any alleged import transactions, opening of bank accounts, or
C floating of company by name of M/s Sun Enterprises, export control, bill of entry and other documents or alleged remittances. He stated that confessions were not only untrue but also involuntary.

40. The allegation that he was detained in the Office of
D Enforcement Department for two days and two nights had not been refuted. No attempt has been made to controvert the statements made by appellant in his application filed on 28.10.1994 before the learned Chief Metropolitan Magistrate. Furthermore, the Tribunal as also the
E authorities misdirected themselves in law insofar as they failed to pose unto themselves a correct question. The Tribunal proceeded on the basis that issuance and services of a show-cause notice subserves the requirements of law only because by reason thereof an
F opportunity was afforded to the proceedee to submit its explanation. The Tribunal ought to have based its decision on applying the correct principles of law.

41. The statement made by the appellant before the
G learned Chief Metropolitan Magistrate was not a bald statement. The inference that burden of proof that he had made those statements under threat and coercion was solely on the proceedee does not rest on any legal principle. The question of the appellant's failure to
H discharge the burden would arise only when the burden

was on him. If the burden was on the Revenue, it was for it to prove the said fact. The Tribunal on its independent examination of the factual matrix placed before it did not arrive at any finding that the confession being free from any threat, inducement or force could not attract the provisions of Section 24 of the Indian Evidence Act." A B

(emphasis is ours)

14. The aforesaid submissions were sought to be refuted by the learned counsel representing the Union of India, by placing reliance on the findings recorded by the High Court, in the impugned judgment. C

15. First and foremost, we shall endeavour to examine the veracity of the statements made by the appellant – A. Tajudeen and his wife T. Sahira Banu on 25.10.1989 and 26.10.1989 to the officers of the Enforcement Directorate. Before proceeding with the factual controversy, it is essential to record, that from the view we have taken in the ultimate analysis, the innocence or guilt of the appellant will have to be determined on the basis of the statements made by the appellant and his wife (on 25.10.1989 and 26.10.1989) to the officers of the Enforcement Directorate. Therefore, for the case in hand, the above statements are not to be referred to as corroborative pieces of evidence, but as primary evidence to establish the guilt of the appellant. It is in this background, that we shall endeavour to apply the legal position declared by this Court, to determine the veracity and reliability to the statements, which later came to be retracted by the appellant and also by his wife. Insofar as the above statements are concerned, there is no doubt whatsoever, that they were all made either at the time of the raid, which was carried out by the officers of the Enforcement Directorate at the residence of the appellant, or whilst the appellant was in custody of the Enforcement Directorate. Immediately after the appellant was released on bail by the Additional Chief Metropolitan Magistrate, Madras on D E F G H

27.10.1989, on the same day itself, both the appellant – A. Tajudeen and his wife T. Sahira Banu addressed communications to the Director, Enforcement Directorate, New Delhi resiling from the above statements, by clearly asserting that they were recorded under coercion and undue influence, and would not be binding on them.

16. Having given our thoughtful consideration to the aforesaid issue, we are of the view that the statements dated 25.10.1989 and 26.10.1989 can under no circumstances constitute the sole basis for recording the finding of guilt against the appellant. If findings could be returned by exclusively relying on such oral statements, such statements could easily be thrust upon the persons who were being proceeded against on account of their actions in conflict with the provisions of the 1973 Act. Such statements ought not to be readily believable, unless there is independent corroboration of certain material aspects of the said statements, through independent sources. The nature of the corroboration required, would depend on the facts of each case. In the present case, it is apparent that the appellant – A. Tajudeen and his wife T. Sahira Banu at the first opportunity resiled from the statements which are now sought to be relied upon by the Enforcement Directorate, to substantiate the charges levelled against the appellant. We shall now endeavour to examine whether there is any independent corroborative evidence to support the above statements.

17. According to the learned counsel representing the appellant, there was an effective opportunity to the officers of the Enforcement Directorate to produce evidence with reference to a number of important facts, disclosed by the appellant while making the aforesaid statements, yet the officers of the Enforcement Directorate chose not to substantiate the same through independent evidence. He cited a few instances where such evidence could have been easily gathered by the officers of the Enforcement Directorate. In the absence of any corroboration whatsoever, it was submitted, that

retracted statements made by the appellant – A. Tajudeen and his wife T. Sahira Banu, could not be used to record findings against the appellant. A

18. We have no doubt, that evidence could be gathered to substantiate that Abdul Hameed, the person who is alleged to have dispatched the money from Singapore, was a resident of Village Pudhumadam in District Ramanathapuram, to which the appellant also belongs. Material could also have been gathered to show, whether he was related to the appellant from his paternal side. Furthermore, the Enforcement Directorate could have easily substantiated whether or not, as asserted by the appellant, the aforesaid Abdul Hameed had contacted him over telephone from Singapore, to inform him about the delivery of the amount recovered from his residence on 25.10.1989. Additionally, the Enforcement Directorate could have led evidence to establish that the aforesaid Abdul Hameed with reference to whom the appellant made statements on 20.4.1989, 25.10.1989 and 26.10.1989, was actually resident of Singapore, and was running businesses there, at the location(s) indicated by the appellant. Still further, the officers of the Enforcement Directorate could have ascertained the truthfulness of the factual position from Shahib, the shop boy of the appellant – A. Tajudeen, whom he allegedly sent to hand over a sum of Rs. 60,000/- to Shahul Hameed (a relative of Abdul Hameed) of Village Pudhumadam. Had the statements of the appellant and his wife been corroborated by independent evidence of the nature indicated hereinabove, there could have been room for accepting the veracity of the statements made by the appellant – A. Tajudeen and his wife T. Sahira Banu to the officers of the Enforcement Directorate. Unfortunately, no effort was made by the Enforcement Directorate to gather any independent evidence to establish the veracity of the allegations levelled against the appellant, through the memorandum dated 12.3.1990. We are of the considered view, that the officers of the Enforcement Directorate were seriously negligent in B C D E F G H

A gathering independent evidence of a corroborative nature. We have therefore no hesitation in concluding that the retracted statements made by the appellant and his wife could not constitute the exclusive basis to determine the culpability of the appellant.

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19. We shall now deal with the other independent evidence which was sought to be relied upon by the Enforcement Directorate to establish the charges levelled against the appellant. And based thereon, we shall determine whether the same is sufficient on its own, or in conjunction to the retracted C statements referred to above, in deciding the present controversy, one way or the other. First and foremost, reliance was placed on "mahazar" executed (at the time of the recovery, from the residence of the appellant) on 25.10.1989. It would be pertinent to mention, that the appellant in his response to the D memorandum dated 12.3.1990 had expressly refuted the authenticity of the "mahazar" executed on 25.10.1989. Merely because the "mahazar" was attested by two independent witnesses, namely, R.M. Subramanian and Hayad Basha, would not led credibility to the same. Such credibility would attach to E the "mahazar" only if the said two independent witnesses were produced as witnesses, and the appellant was afforded an opportunity to cross-examine them. The aforesaid procedure was unfortunately not adopted in this case. But then, would the preparation of the "mahazar" and the factum of recovery of a F sum of Rs. 8,24,900/- establish the guilt of the appellant, insofar as the violation of Section 9(1)(b) of the 1973 Act is concerned? In our considered view, even if the "mahazar" is accepted as valid and genuine, the same is wholly insufficient to establish, that the amount recovered from the residence of G the appellant was dispatched by Abdul Hameed, a resident of Singapore, through a person who is not an authorised dealer in foreign exchange. Even, in response to the memorandum dated 12.3.1990, the appellant had acknowledged the recovery of Rs. 8,24,900/- from his residence, but that acknowledgment

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would not establish the violation of Section 9(1)(b) of the 1973 Act. In the above view of the matter, we are of the opinion that the execution of the "mahazar" on 25.10.1989, is inconsequential for the determination of the guilt of the appellant in this case.

20. The only other independent evidence relied upon by the Enforcement Directorate is of pages from the Hindu and the Jansatha newspapers, in which the bundles of money were wrapped, when the recovery was effected on 25.10.1989. In view of the position expressed in the foregoing paragraph, we are satisfied that the charge against the appellant under Section 9(1)(b) of the 1973 Act, cannot be established on the basis of newspaper sheets, in which the money was wrapped. The newspaper sheets relied upon, would not establish that the amount recovered from the residence of the appellant – A. Tajudeen was dispatched by Abdul Hameed from Singapore, through a person who was not an authorized dealer.

21. Based on the above determination, and the various conclusions recorded hereinabove, we are satisfied, that the impugned judgment passed by the High Court deserves to be set aside. The same is accordingly hereby set aside. Resultantly, the entire action taken by the Enforcement Directorate against the appellant in furtherance of the memorandum dated 12.3.1990, is also set aside. As a consequence of the above, the Enforcement Directorate is directed to forthwith refund the confiscated sum of Rs.8,24,900/-, to the appellant, as also, to return the amount of Rs.1,00,000/-, which was deposited by the appellant as penalty.

22. The instant appeal is, accordingly, allowed in the abovesaid terms.

Rajendra Prasad Appeal allowed.