

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

+ CRL.REV.P. 176/2008

ANIL DHAR & ORS. .... Petitioners  
Through: Mr. Sudhir Batra, Adv.

versus

ENFORCEMENT DIRECTORATE ..... Respondent  
Through: Mr. Jatan Singh with Mr. Ashok Singh,  
Adv. for UOI.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**  
% **29.04.2010**

The respondent Enforcement Directorate had filed two criminal complaints before Additional Chief Metropolitan Magistrate alleging non compliance and non-payment of fine/penalty of Rs. 3 lakhs inspite of service of adjudication order dated 31<sup>st</sup> May, 1999 bearing No.83/ADJ/99/AD (KS) 287/1172 for violation/contravention of Section 18(2) and 18(3) of the Foreign Exchange Regulation Act, 1973 (Act for short). It was stated that penalty/fine was not paid and therefore, the accused was guilty of offence under Section 57 read with Section 49 (2) & (3) of the Act.

2. The first complaint was against Mr. Anil Dhar, Proprietor M/s. Babs International, A-5, Kashmir Apartment, Parwana Raod, Pitampura, Delhi and the second complaint was filed against M/s. Babs International through its Proprietor Mr.Anil Dhar, A-5, Kashmir Apartment, Parwana Road, Pitampura, Delhi. These two complaints were registered as complaint Nos.224/1/2002 and 225/1/2002.

3. By judgment dated 2<sup>nd</sup> July, 2007, the Proprietor Mr. Anil Dhar was held guilty of having committed an offence under Section 57 of the Act in complaint

No.224/1/2002. However the learned Chief Metropolitan Magistrate noticed that another separate complaint for non-compliance the same adjudication order was pending and hence the complaint was directed to be listed on 10<sup>th</sup> July, 2007 with the connected case and observed that arguments shall be heard on that date.

4. On 10<sup>th</sup> July, 2007 two separate orders have been passed in complaint No.224/1/2002 and complaint No.225/1/2002. The operative portion of order in complaint No.224/1/2002 reads as under :-

“Since the accused is not a previous offender hence in the considered opinion of this court the ends of justice would be served if the accused firm M/s. Babs International through its Proprietor Anil Dhar is sentenced to fine for a sum of Rs.3,00,000/- for the offence u/s. 57 of FERA. In default of payment of fine he shall undergo simple imprisonment for a period of six months. Surety stands discharged. Documents of surety be returned after cancellation of endorsement. File be consigned to record room.”

5. Operative portion of order in complaint No.225/1/2002 reads as under :-

“Since the accused is not a previous offender hence in the considered opinion of this court the ends of justice would be served if the accused Anil Dhar is sentenced to fine for a sum of Rs.3,00,000/-. In default of payment of fine he shall undergo simple imprisonment for a period of six months. Surety stands discharged. Documents of surety be returned after cancellation of endorsement. File be consigned to record room.”

6. Against the two decisions the petitioner filed two criminal appeals No.44/2007 and 45/2007, which have been dismissed by the learned Additional Sessions Judge in his order dated 21<sup>st</sup> January, 2008.

7. The only contention raised by the learned counsel for the petitioner in the present criminal revision is that the petitioner has been punished twice for the same offence, once in his individual capacity and then again in his individual capacity as a Sole Proprietor of M/s. Babs International. There is merit in the said contention. M/s.Babs International is not a separate legal entity but a sole proprietorship concern of Mr. Anil Dhar. M/s. Babs International is also not a

partnership concern. Mr. Anil Dhar and M/s Babs International are one and same person and not two different individuals. One person cannot be punished for the same offence twice.

8. In view of the aforesaid the present Revision Petition is allowed and it is directed that the petitioner herein has been sentenced in CC No.224/1/2002 and will be liable to be pay the fine as stipulated therein. The conviction and sentence in Criminal Complaint No.225/1/2002 is set aside and quashed on the ground that the petitioner has already been convicted for the same offence in the other complaint. The petitioner has already paid the fine of Rs.3 lacs before the Trial Court which has been bifurcated and divided in two equal parts of Rs.1,50,000/- each and treated as partly paid in the two complaints. The fine paid by the petitioner/accused will be treated as fine paid in the Criminal complaint No.224/1/2002. The Revision Petition is accordingly disposed of.

**APRIL 29, 2010**  
**J/NA/P**

**SANJIV KHANNA, J.**