

15.10.2026
Ct. No. 33
Item No.2 to 5
PA

C.R.A. 665 of 2010

Mr. Barun Kumar Chattopadhyay
-Vs-
The Special Director, Enforcement Directorate
And

C.R.A. 666 of 2010

Sri Chandranath Chatterjee
-Vs-
The Special Director, Enforcement Directorate
And

C.R.A. 667 of 2010

Mr. Pradyot Kumar Dutta
-Vs-
The Special Director, Enforcement Directorate

C.R.A. 707 of 2010

Mr. Gurupada Chowdhary
-Vs-
The Special Director, Enforcement Directorate

For the Appellants	: Mr. Amitabh Shukla Mr. Dipankar Aditya Mr. Prakash Pandey Ms. Aishwarya Priya Raha
For the Respondent	: Mr. Vipul Kundalia Mr. Uneaza Ali Mr. Dhironatto Chaudhuri Ms. Debjani Roy
Order	: 15.10.2026

1. The instant criminal appeals, preferred under the statutory framework of the Foreign Exchange Management Act, 1999 (FEMA) read with the antecedent Foreign Exchange Regulation Act, 1973 (FERA), assails the judgment and order dated 05.03.2008 passed by the Learned Appellate

Tribunal for Foreign Exchange, New Delhi, in Appeals No. 123 of 2007, 124 of 2007, 125 of 2007 and 127 of 2007, whereby the Learned Tribunal dismissed the appeals preferred by the appellants, thereby affirming the Adjudication Order No.SDE/(SKP)/II/01/2007 dated 28.05.2007 passed by the Special Director, Enforcement Directorate, which imposed a pecuniary penalty of Rs. 2,00,000/- upon the appellants.

2. At the threshold of the hearing, an objection was presented by the Learned Counsel for the respondent concerning the maintainability of the present appeal before the Criminal Appellate Jurisdiction of this Court. It is submitted on behalf of the Enforcement Directorate that an appeal challenging an order of the Appellate Tribunal under Section 35 of FEMA, 1999 must be instituted before the Original Side Registry under Chapter XXXVIII, Part 20 of the Original Side Rules of this Court, which regulates references and appeals analogous to civil revenue matters under Section 260A of the Income Tax Act, 1961, Section 35G and 35H of the Central Excise Act, 1944, and Section 130 and 130A of the Customs Act, 1962, and Sections 27A and 27 of the Wealth Tax Act, 1957. The respondent asserts that the adjudication order and the appellate judgment postdate the commencement of FEMA, and therefore the appeal partakes of a civil revenue character governed by the Special Bench pronouncement of this Court in *Union of*

3. Conversely, the Learned Advocate for the appellant contends the proceedings, the Show-Cause Notice and the resulting penalty emanate from alleged penal contraventions under FERA. It is submitted that the statutory rights, accrued liabilities, and penal procedures originating under FERA are preserved by Section 49(4) of FEMA read with Section 6 of the General Clauses Act, 1897. Consequently, proceedings initiated under FERA retain their intrinsic criminal character and remain governed by the Code of Criminal Procedure, 1973.

4. To evaluate the legal sustainability of the preliminary objection, it becomes imperative to quote and analyze the distinct statutory provisions governing this transitional legislative framework:

5. Section 35 of the Foreign Exchange Management Act, 1999:

"35. Appeal to High Court.—Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order..."

6. While Section 35 of FEMA designates the High Court as the appellate forum on questions of law, the procedural routing of such appeals—whether on the Civil Original Side or

within the Criminal Appellate Jurisdiction—is inexorably linked to the nature of the underlying statutory liability. FEMA inherently contemplates civil penalties for contraventions of foreign exchange regulations. However, where an appeal emanates from an adjudication under the repealed FERA regime, the nature of the liability remains anchored to penal sanctions and statutory savings.

7. Section 49(3) and Section 49(4) of the Foreign Exchange Management Act, 1999:

"(3) Notwithstanding anything contained in sub-section (2), but without prejudice to the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897), 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. (4) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2) and (4) 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."

8. Sub-section (3) and sub-section (4) of Section 49 preserve the clear legislative intent that offences and penal contraventions committed under the repealed FERA continue to be governed by FERA provisions, thereby avoiding the obliteration of the criminal or penal nature of accrued liabilities. Therefore, invoking Section 35 of FEMA as the procedural conduit does not alter or extinguish the substantive criminal character of FERA adjudication.

9. Section 6 of the General Clauses Act, 1897:

"6. Effect of repeal.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not— ... (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid..."

10. Section 6 of the said Act ensures the repeal of an enactment does not extinguish accrued liabilities or alter the nature of pending legal remedies unless a contrary legislative intention appears. Under the FERA framework, contraventions carried penal consequences and were subjected to criminal procedural oversight under the Code of Criminal Procedure. By command of Section 6(e) of the said Act, both the liability and the corresponding procedural remedy survive repeal.

11. In evaluating the judicial precedents cited, the reliance placed by the respondent upon the Special Bench decision of this Court in *Union of India v. Jagadish Prasad Nandalal* (2012 SCC OnLine Cal 5726) is inapplicable. The Special Bench considered the applicability of Chapter XXXVIII, Part

20 of the Original Side Rules governing references and statutory appeals under Section 35 of FEMA, holding that appeals arising strictly from civil contraventions and monetary adjudications initiated directly under the modern civil framework of FEMA are governed by revenue appeal rules on the Original Side. However, that decision addressed pure revenue appeals and did not deal with saved penal adjudications originating under Section 18(2) read with Section 68 of FERA, where accrued liabilities carry statutory continuity under Section 49(4) of FEMA, 1999. The underlying cause of action in the present matter is an accrued penal liability arising under the repealed FERA regime, saved by Section 49(4) of FEMA read with Section 6(e) of the General Clauses Act, 1897, the civil revenue routing mandated in *Jagadish Prasad Nandalal* (supra) has no application to the present proceedings.

12. Conversely, the principle enunciated by the Hon'ble Supreme Court in *M/s. P.V. Mohammad Barmay Sons v. Director of Enforcement* (1993 Supp (2) SCC 724) establishes the effect of repeal accompanied by a saving clause preserves the legal consequences of acts done and liabilities incurred during the operation of the repealed FERA. The Hon'ble Apex Court affirmed that pending legal proceedings and investigations concerning pre-repeal contraventions remain fully actionable under the repealed statutory scheme as if it continues to operate, thereby confirming that substantive penal liabilities accrued under FERA do

not lose their criminal character merely because the final appellate challenge is brought after the enactment of FEMA.

13. Such position is reinforced by the Delhi High Court in *Rakesh Jain v. Union of India* (2014 SCC OnLine Del 4920 / MANU/DE/2380/2014), which analyzed the transitional dynamics between FERA and FEMA under Section 49(6) of FEMA and Section 6 of the General Clauses Act, 1897. The Delhi High Court affirmed that the legislative intent behind the transitional savings clause was to preserve the continuity of legal remedies and revisionary or appellate proceedings under FERA before the appropriate judicial forums, thereby supporting the proposition that legal remedies for pre-repeal FERA adjudications retain their saved procedural framework and are properly entertainable on the criminal appellate side.
14. Crucially, the principle of judicial parity applies with full force to the matter at hand. Identical criminal appeals were preferred by the co-accused corporate entity (MMTC Ltd.) and co-employee (Sri B.C. Mallick) against the exact same Adjudication Order dated 28.05.2007 and Appellate Tribunal Order dated 05.03.2008 in CRLA No. 330 of 2008 and CRLA No. 584 of 2008 before the High Court of Delhi. The High Court of Delhi entertained those challenges under its Criminal Appellate Jurisdiction as Criminal Appeals and, by a judgment dated 23.05.2014 delivered by Justice S. Muralidharan, allowed the appeals on merits and set aside both impugned orders. As the co-accused entities successfully challenged the identical penal order under

criminal appellate jurisdiction, parity of judicial administration requires that an identical penal adjudication receives consistent treatment, as treating the present appellant's challenge as a civil revenue matter would violate the principle of judicial parity. Furthermore, the record discloses that the appellant initially preferred Criminal Appeal No. 582 of 2008 before the High Court of Delhi, which, by an order dated 31.07.2008, granted liberty to withdraw and file before the appropriate High Court having territorial jurisdiction over the appellant's residence in West Bengal, thereby maintaining the character of the appeal as a criminal challenge throughout.

15. In view of the statutory scheme of Section 49(4) of FEMA, 1999 read with Section 6 of the General Clauses Act, 1897, and supported by the judicial parity established in CRLA No. 330 of 2008, this Court holds that the present appeals, assailing a penal sanction rooted in FERA contraventions, are maintainable as a Criminal Appeal before this Court. The preliminary objection raised by the respondent regarding maintainability stands overruled.
16. Let the appeals be listed on 11th of December, 2026 for hearing on merits.

(Ananya Bandyopadhyay, J.)