

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2022
(Arising out of SLP(Criminal) No.9086 of 2022)

CHEN HSUI YUN

APPELLANT(S)

VERSUS

DIRECTORATE OF REVENUE INTELLIGENCE

RESPONDENT(S)

O R D E R

Leave granted to the limited extent, as indicated *infra*.

In this appeal, limited notice, to explore the possibility of compounding the entire offence said to have been committed by the appellant, was issued on 23.09.2022.

In view of the developments that have taken place, we have granted leave to the limited extent of compounding of the entire offence committed by the appellant and have heard learned counsel for the parties at this stage itself.

Shorn of unnecessary details, the relevant background aspects of the matter are that while boarding Air India flight No.AI-310 from New Delhi to Hong Kong on 27.08.2019, five passengers, including the appellant, were intercepted and were found carrying huge quantity of foreign currency in their baggage. So far as the

appellant is concerned, the allegations had been that foreign currency equivalent to Rs.65,16,000/- was recovered from her baggage. In the proceedings that ensued, the appellant was enlarged on bail by the CMM, Patiala House Courts, New Delhi, imposing the conditions that she would not travel abroad without permission of the Court. The later application moved by the appellant pointing out her hardships and having no accommodation in India was considered and ultimately, the CMM, Patiala House Courts, by the order dated 18.12.2020, allowed the appellant to visit abroad for a period of six weeks on certain conditions. This order was, however, set aside by the District and Sessions Judge, Delhi on 10.02.2021 in Criminal Revision Petition No.09 of 2021. The said order was challenged by the appellant by way of a revision petition in the High Court of Delhi at New Delhi, being CrI. Rev. P.137 of 2021, which was disposed of by the High Court on 11.06.2021 while granting her permission to visit abroad on various terms and conditions, including that of depositing an amount of Rs.15,00,000/- in the form of FDR in the name of Registrar General of the Court. The appellant, however, could not deposit the said amount, as required in the order passed by the High Court.

In the meantime, a show cause notice dated 29.12.2020 was issued by the Adjudicating Authority and therein, by the order dated 08.02.2022, the Adjudicating Authority

ordered absolute confiscation of the foreign currency equivalent to Rs.65,16,000/- recovered from the appellant and further imposed penalty of Rs.6,50,000/-. Further, the complaint for offence punishable under Section 135 of the Customs Act, 1962, was filed leading to Criminal Case No.4413 of 2021 in the Court of CMM, Patiala House Courts, New Delhi.

On the matter being taken up in this Court against the aforesaid order dated 11.06.2021 passed by the High Court and this Court having issued notice limited to the extent of exploring the possibility of compounding the entire offence, ultimately, the Chief Commissioner of Customs (Delhi Zone) proceeded to pass the order dated 10.11.2022 that reads as under: -

"To
The Additional Director,
Directorate of Revenue Intelligence,
New Delhi - 110002

Sir,

Subject: SLP no.9086/2022 filed by Ms. Chen Hsiu Yun -Reg.

Ref: Letter F. No.DRI/HQ-GI/338/IV/ENQ-5/INT-NIL/2019 dated 09.11.2022.

Please refer to above-mentioned subject.

Please refer to the captioned subject. In the said matter Hon'ble SC vide order dated 10.10.2022 directed to decide the terms & conditions for compounding of the offence.

As per Rule 3 of Customs (Compounding of offences) Rules, 2005 an application has to be filed in a prescribed format as stipulated under Rule 3 of the above mentioned Rules along with a declaration [F.No.334/I/2012-ST].

In view of the directions, it is proposed that

(i) Though formal application has not been filed as stipulated under Rule 3 of the Customs (Compounding of Offences) Rules, 2005 by the accused yet the compounding may be allowed treating the directions of the Hon'ble court as an application for compounding.

(ii) The penalty of Rs.6.5 lacs imposed vide OIO No.45 dated 08.02.2022 be deposited forthwith.

(iii) An amount of Rs.6,50,000/- (Six Lacs Fifty Thousand only) as '*compounding amount*' under Rule 5 of the Customs (Compounding of Offences) Rules, 2005 is deposited within the prescribed time limit of 30 days under sub Rule 5 of Rule 4 of Customs (Compounding of Offences) Rules, 2005 from the receipt of this letter/date or within the period as directed by the Hon'ble Court.

(iv) Forfeiture of the entire foreign currency recovered from the accused as the same has already been confiscated absolutely vide the OIO No.45 dated 08.02.2022.

(v) Further, any compounding is allowed subject to the fulfilment of terms & conditions laid down under Section 137(3) of the Customs Act, 1962 for which a negative verification report is a requisite.

The communication to seek the report has already been sent to the field formations on 01.11.2022. In addition, Personal Hearing (if the applicant wishes to avail) as stipulated under the proviso of Rule 3 (supra) may also be given.

Further, for the compliance of the above terms & conditions a period of 04 weeks may be prayed from the Hon'ble court if deem fit.

This issues with the approval of the competent authority."

Today, the learned counsel for the appellant, after taking instructions, has filed the submissions and undertaking on behalf of the appellant in the following

terms:

"1. That the total foreign currency seized from my possession is Rs.65,00,000/- (Rupees Sixty-Five Lakh only).

2. That I am a lady of age 56 years old and having family in Taiwan including my husband suffering from cancer, younger sister who died in an accident in January, 2020 and my mother having age 84 years.

3. That I am not owner of the seized foreign currency and I was only a carrier and I agreed to do this work for some cash only without knowing the consequences.

4. That since enlarge from bail, I am living in a slum area/Jhuggi in a room of a lady who meet me in Tihar Jail as I have no money to afford the rent of a hotel.

5. That this is my first offence and I undertook not to commit such kind of offence never in future.

6. That I will deposit Rs. 6,50,000/- (Rupees Six Lakh Fifty Thousand only) towards the penalty as per Order-in-Original No. 45/Adj./Jyotiraditya/JC/2022 dated 08.02.2022 and Rs. 1,00,000/- (Rupees One Lakh only) towards compounding of offence under Section 137 of the Customs Act, 1962 (Read with Section 132 & 135 of the Customs Act, 1962) as I have requested to my family and my relatives.

7. That now where I am staying now is just like a jail as I cannot share my feelings, my emotions. I cannot eat my favorite food. I cannot talk to any one as I have no knowledge of English and Hindi.

8. I am in very poor condition. I apologize for my act of omission and commission. You are requested to give mercy to me as knowing me a poor and helpless."

Taking note of the totality of facts and circumstances of the case, more particularly the fact that the foreign currency amounting to Rs.65,00,000/- has

already been confiscated absolutely and the fair submissions made on behalf of the appellant, we are inclined to accept the offer made by her i.e., of depositing Rs.6,50,000/- being the entire amount of penalty as per the Order-in-original dated 08.02.2022 and then, a sum of Rs.1,00,000/- towards compounding of offence under Section 137 of the Customs Act, 1962.

The learned Additional Solicitor General, Mr. S.V. Raju though, has supported the order as passed by the Commissioner of Customs but could not deny the position that the foreign currency amounting to Rs.65,00,000/- already stands confiscated absolutely that shall be forfeited and that the appellant is making payment of the entire amount towards penalty.

In the given set of facts and circumstances, we do not find it necessary or expedient to relegate the appellant to the process of hearing before the Commissioner of Customs; rather we are of the view that interest of justice shall be served by modification of the order in terms of the proposition advanced on behalf of the appellant.

In the totality and peculiar circumstances of the present case, we are of the view that the concession as prayed for on behalf of the appellant, for reduction of amount towards compounding, deserves to be granted.

This appeal, therefore, stands partly allowed to the extent and in the manner indicated above, while accepting the terms suggested on behalf of the appellant and subject,

of course, to her compliance of other requirements in accordance with law. The appellant shall have four weeks from today to carry out compliance.

Needless to observe that the present order has been passed only in the peculiar circumstances of the present case.

.....J.
(DINESH MAHESHWARI)

.....J.
(SUDHANSHU DHULIA)

New Delhi;
November 15, 2022.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s).9086/2022

(Arising out of impugned final judgment and order dated 11-06-2021 in CRLREVP No.137/2021 passed by the High Court Of Delhi At New Delhi)

CHEN HSUI YUN

Petitioner(s)

VERSUS

DIRECTORATE OF REVENUE INTELLIGENCE

Respondent(s)

Date : 15-11-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Mr. Amit Kumar Attri, Adv.
Mr. Priyanshu Upadhyay, Adv.
Mr. Viraat Tripathi, Adv.
Mr. Shivam Shankar, Adv.
Mr. Akash Bansal, Adv.
Mr. Anilendra Pandey, AOR

For Respondent(s) Mr. S V.Raju, ASG
Mr. M.K. Maroria, AOR
Mr. Kanu Agarwal, Adv.
Mr. Zoheb Hussain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted to the limited extent.

The appeal is partly allowed in terms of the signed order.

All pending application, if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

(signed order is placed on the file)