IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WA.No. 170 of 2009 ( ) IN OP.27169/2000

OP 27169/2000 of HIGH COURT OF KERALA DATED 24-09-2008

APPELLANT:

M.T.P.KUNHAMINA UMMA
W/O. MUTHALIB HAJEE, PALATHARA, VELLUR
PAYYANNUR, KERALA.

BY ADVS.SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS:
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1. THE COMPETENT AUTHORITY (SAFEM(FOP)
NDPS ACT, 64/1 , G.N. CHETTY ROAD,
T.NAGAR, CHENNAI-17.

2. THE APPELLATE AUTHORITY FOR FORFEITED
PROPERTY, REPRESENTED BY REGISTRAR, 4TH FLOOR
'A' WING LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI.

3. STATE OF KERLA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.

R1 & R2 BY ADVS. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR GENERAL
SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDIA
SHRI.K.HARILAL, CGC
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
SENIOR GOVERNMENT PLEADER SRI.P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12.06.2015 ALONG WITH OP. 6327/2002, THE COURT ON 29.06.2015 DELIVERED THE FOLLOWING:

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. No.170 of 2009
&
O.P. No.6327 of 2002

Dated this the 29th day of June, 2015

JUDGMENT

Shaji P. Chaly, J.

Writ appeal No.170 of 2009 is filed against the judgment in O.P. No.27169 of 2000 dated 24.09.2008. O.P. No.6327 of 2002 is tagged on to this appeal pursuant to the order of the Hon'ble Chief Justice dated 15.09.2009, the same being connected to the writ appeal and since the parties are closely related to the detenu in COFEPOSA case namely Sri.A.C.Abdulla. The subject matter of this appeal and the original petition arise under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976 (hereinafter referred to as “the Act”).

2. We think it appropriate to describe the facts in both the cases separately for easy reference and disposal. The brief facts leading to the filing of the aforesaid writ appeal are as follows:

3. The subject matter of the litigation started on receipt of Ext.P7 notice under Section 6(1) of the Act by the appellant and

issued by the first respondent, the Competent Authority under the Act, dated 12.09.1998 stating that the competent authority has reason to believe that the appellant's 1/3rd share in the partnership firm M/s.Avva Umma and Company, is illegally acquired property within the meaning of Section 3 (1)(C)of the Act. By this notice, the appellant was required to indicate the source of income, earnings and assets out of which the above share was acquired.

4. The reasons recorded by the competent authority for issuance of the said notice was also furnished to the appellant along with Ext.P6 which is marked in the writ petition as Ext.P8. Ext.P8 reveals that the notice was issued to the appellant on the belief that the appellant is the sister of the detenu in COFEPOSA proceedings, namely Sri.A.C.Abdulla and it is stated that Sri.A.C.Abdulla has indulged in unlawful activities and there are reasons to believe that the investment represented by the credit balance in her capital and current accounts as appearing in the books of M/s.Avva Umma and Company had been made out of illicit sources of income. It is further stated that the 1/3rd share of the appellant in the said firm partakes the character of illegally acquired property and qualify for forfeiture to the

Central Government under the Act. It is also mentioned therein, that the detenu Sri.A.C.Abdulla was detained under COFEPOSA pursuant to the detention order bearing No. 21496/SS A1/81/Home dated 7.5.1981 of the Government of Kerala.

5. From the records available in the original petition, we find that the appellant did not reply to Ext.P7 notice. Again Ext.P11 notice dated 25.9.1995 was issued for and on behalf of the competent authority informing the appellant that she has failed to reply to Ext.P7 notice, and further requiring her to attend a personal hearing on 17.10.1995 in the office of the competent authority at Chennai. On receipt of the said notice, it is seen that the appellant issued a reply dated 13.10.1995 stating that the appellant is not the sister of the detenu Sri.A.C.Abdulla and that she is the wife of his brother. She has also stated in the said reply that even though the issuance of Ext.P7 notice is mentioned in Ext.P10 notice, since 10 years have elapsed she has no knowledge about the same and she has also submitted that she has already explained her investments in the firm, M/S. Avva Umma and Company to the income tax authorities and that records will be available with them. She has also stated that she is not in a position to verify the details with the income tax

authorities since the records of the firm were lost in fire and she also disputed her connection with Sri.A.C.Abdulla mentioned in the notice.

6. In such circumstances, the competent authority again issued another letter to the appellant dated 24.11.1995 stating that even though she is not the sister of the detenu, she is a "person" within the meaning of Section 2(2)(c) r/w. explanation 2 of the Act and that therefore, the provisions of the Act are applicable to the appellant. It is seen from the said notice that the competent authority has again forwarded a copy of Ext.P7 notice issued under Section 6(1) of the Act to enable her to furnish the details called for. Apparently no reply furnishing the details sought for by the competent authority was forwarded by the appellant. In such circumstances, the competent authority issued notice dated 22.01.1999 recording that in spite of the notice dated 12.09.1988 and further opportunity provided, the appellant has not offered any explanation about the sources out of which she has made the investment in the aforesaid firm. The notice reveals that the competent authority had verified the income tax details of the firm and had claimed that the bulk of the investment made by her in the firm represented the funds

drawn from the account of the appellant maintained in Federal Bank, Payyannur which represented the remittances received from her husband Sri.Muthalib Hajee who was carrying on business in Malaysia and Singapore and further that from the income tax records it also appeared that the appellant had borrowed funds from one T.B.Aiyasha Umma (the petitioner in O.P. No.6327/2002). In the said notice, again the appellant was directed to specify the details regarding the avocation of her husband abroad with documentary evidence, the duration of his stay abroad, his earnings, savings and remittances therefrom, copies of bank passbook for proof of withdrawals, personal financial status and latest copy of balance sheet of the company with names and address of other partners and their relationship with the appellant. By the said notice an opportunity of personal hearing was also provided to the appellant on 16.02.1999 at the office of the competent authority at Chennai.

7. From the records available, we find that the appellant did not care to issue any reply or provide the details sought for by the competent authority and thereupon the competent authority passed Ext.P13 order dated 24.02.1999 taking into account materials they were received from the Income Tax

Department, and forfeiting the property proposed to be forfeited under Ext.P7 notice issued under Section 6 of the Act.

8. In the appeal filed against Pext.P13 order, the Appellate Tribunal re-appreciated the entire facts and circumstances involved in the case and came to the finding that in spite of the opportunities provided by the competent authority, appellant did not care to properly explain the source of her investment in the partnership firm M/s.Avva Umma and Company and accordingly the order passed by the competent authority was upheld. We find from the order of the Appellate Tribunal that the appellant had produced certain documents, which were not produced before the competent authority. Still the Tribunal considered those documents also and arrived at a finding that the order of the competent authority did not warrant any interference. It was in these circumstances, the writ petition was filed.

9. We have gone through the judgment of the learned Single Judge, the entire materials on record and heard arguments of the learned Senior Counsel Sri. T.M. Sreedharan for the appellant and the learned Assistant Solicitor General Sri.N.Nagaresh.

10. In the judgment under appeal, the learned Single Judge

came to the categoric conclusion that the appellant has failed to prove that the source for the investment made by her in the firm was not the funds that she received from her brother-in-law, the detenu in the COFEPOSA case, Sri.A.C.Abdulla. The records of the original petition show that the appellant had produced certain documents to substantiate her case that she was not in any manner associated with the detenu Sri.A.C.Abdulla. The learned Single Judge has considered these materials and came to the conclusion that even those documents did not establish that the investment in the forfeited property was not made by her from the funds belonging to the detenu Sri.A.C.Abdulla.

11. We also find that in spite of several opportunities provided by the competent authority enabling her to establish the source of funds invested by her in the company, the appellant has not availed of those opportunities to prove her innocence. It is also found that the only contention advanced by the appellant in the reply to Ext.P10 notice dated 25.09.1995, was to the effect that she is not the sister of detenu Sri.A.C.Abdulla as alleged by the competent authority and further that records are available with the Income Tax Department.

12. Learned Single Judge has also found that in spite of lapses on the part of the appellant, the competent authority has verified the records that were available with the Income Tax Department, which is discernible from Ext.P13 order passed by it and has given due consideration to the defence taken by her in Ext.P11 reply dated 13.10.1995. Therefore the judgment under appeal shows that the learned Single Judge has given due consideration to each and every aspect pointed out by the appellant and has rightly concluded that the order passed by the the competent authority and the Appellate Tribunal did not warrant any interference.

13. Now we come to the subject matter of O.P.6327 of 2002 and the brief facts relating to the said O.P. are as follows:

14. The petitioner in the O.P. is the wife of the detenu Sri.A.C.Abdulla. She was served with Ext.P6 notice under Section 6(1) of the Act on 12.9.1988 stating that on the basis of the relevant information available with the competent authority, they had reason to believe that the properties mentioned in the annexure to the notice were illegally acquired properties within the meaning Section 3(1)(c) of the Act and she was called upon to indicate the source of income, earnings and assets out of

which or by means of which, the above properties were acquired by her.

15. The annexure attached to Ext.P6 is extracted hereunder:

" ANNEXURE

S.No.	Description of the property	Name of the present holder of property.

1. IMMOVABLES:

Description of of the asset	Location in R.S. No.		Extent of land	
Self occupied residential house and land	81/2A	Muniyad	1.56cents	Smt.T.V.Ayisha Umma W/o.A.C.Abdulla Trikaripur,
Vacant Land	81/1A	"	0.02 cents	CANNANORE DIST.
Vacant Land	81/1B	"	12 cents	
Vacant Land	81/1B	"	0.04 cents	
Vacant Land	81/2B	"	0.05 cents	
Vacant Land	88/3		49 cents	

2. MOVABLES

1/3rd share in the right and title and interest in the partnership firm, M/s.Avva Umma & Co. -do-
Main Road, Payyannur represented by credit balance as on 30.06.1982 in the capital account of the firm. .. Rs.2,45,500/-

with accretions thereto.

Sd/-

(K.V.Rajan)

COMPETENT AUTHORITY

SAFEMFOPA: MADRAS-6

(seal) ”

To Ext.P6 notice, petitioner has issued Ext.P7 reply contending as follows:

“My investment in the firm M/s.Avva Umma & Co. upto 30th June, 1982 was Rs.2,45,500/- made up as follows:

year	Amount invested	Source of investments	
1973	Rs. 6,500/-	Out of Home savings, withdrawals from Federal Bank Ltd, Payyannur	
1976	Rs. 43,000/-	“	“
1977	Rs. 31,000/-	“	“
1978	Rs. 55,000/-	“	“
1979	Rs. 26,750/-	“	“
1980	Rs. 7,500/-	“	Vijaya Bank
“	Rs. 33,730/-	“	Federal Bank
1981	Rs. 29,020/-	“	Vijaya Bank
“	Rs. 10,000/-	“	Federal Bank
1982	Rs. 3,000/-	“	Vijaya Bank

	Rs. 2,45,500/-		
	========		

<u>Source of funds</u>:

Rs.6,500/- from home savings. Rs.3,000/- received from my close relative C.K. Abdurahiman by D.D. No.459674 on Indian Overseas Bank, Bombay. This amount was credited to my S.B. Account No.2785 Vijaya Bank, Thrikaripur.

I have received another two Demand Draft Nos.50791 and 50792 dated 5th August, 1961 drawn on Syndicate Bank, Payyannur for Rs.5,000/- each. These drafts were issued by Habib Bank, A.G.Zurich, P.B.No.181 Umm-81-Auwab, U.A.E. These drafts were send to me by my close relative C.K.Abdurahiman, U.A.E. The balance amount deposited in the bank represents remittances received from my husband Sri.A.C.Abdulla from abroad. He is a business man in Malaysia and Singapore.

Properties:

R.S.No.	Extent	
81/2A	1.56	This property was purchased in 1963 by DocNo.2956/63 dated 18th December 1963 for Rs.2,500/- Janmam right obtained for Rs.200/- Doc No.2958/63.
81/1B	0.12	Doc.No.2929/63 dated 17th December 1963 for Rs.200. These amounts were paid by father Sri.C.K.Hazzinar and property purchased by him in my name. He is no more.
81/1A	0.02	Purchased by Doc No.2531/73 dated 12th December, 1973 for Rs.50/-
81/2B	0.05	Purchased by Doc No.2532/73 dated 12thDecember, 1973 for RS.50/-

81/1B	0.04	Purchased by Doc No.2533/73 dated 12th December, 1973 for Rs.50/-
		These properties were purchased by my mother Kadeesumma in my name and she paid for the same.

The land in Survey No.88/3 to extent of 0.49 cents as mentioned in your letter do not belong to me.

If you need any further information please let me know."

16. From Ext.P7 reply it is seen that the petitioner has also offered to furnish further information to the competent authority. The competent authority thereafter issued Ext.P8 notice dated 25.9.1995 to the petitioner seeking further information with regard to the statements made by her in Ext.P7. It was further informed that the case was posted for personal hearing before the competent authority on 17.10.1995. It is seen from the records that to the said letter also petitioner issued reply dated 30.10.1995 furnishing the information sought for by the competent authority.

17. We also find from the records that yet another letter, Ext.P10 dated 30.09.1997, was sent by the petitioner to the competent authority purportedly as a reply to the notices of the

competent authority dated 24.11.1995 and 30.10.1996 again furnishing certain further details with regard to the properties held by her and the source of the funds generated by her etc etc.

18. From the materials on record, we understand that the competent authority thereafter passed Ext.P11 order under Section 7 of the Act stating that she is the wife of Sri.A.C.Abdulla who had suffered detention under the provisions of COFEPOSA Act, 1974 and she is a “person” in terms of Section 2(2)(c) of the Act. It further states that she acquired movable and immovable assets through illegal sources and further that it was under such circumstances notice under Section 6(1) of the Act was issued to the person affected proposing forfeiture of the properties mentioned.

19. The order further states that, the petitioner was directed to furnish all the details vide letter dated 17.02.1999 and further documentary evidence within 10 days as a final opportunity and also to make a specific request if she wishes to be heard in person. Therefore from the order we find that in spite of providing opportunity for hearing petitioner has not availed of the same and in such circumstances the competent

authority has gone through the records of the case, and the details of the properties and source of funds made available by the petitioner and after evaluating the facts and circumstances and the details provided by the petitioner, the competent authority has forfeited the following two items of properties:

" S.No.	Description of the property
i)	12 cents of vacant land in R.S. No.81/1B at Muniyat.
ii)	Right, title and interest in the partnership firm M/s. Avva Umma & co., Main Road, Payyannur, represented by credit balance of Rs.2,45,500/- as on 30.06.1982 in the capital account of the firm with accretions thereto."

20. Petitioner thereupon preferred Ext.P12 appeal along with Ext.P13 grounds of appeal before the Appellate Tribunal challenging the order passed by the competent authority. In the impugned order, the Appellate Tribunal found that the item of immovable property forfeited by the competent authority is not liable to be forfeited and upheld the forfeiture of the movable property forfeited by the competent authority, which is 1/3rd share in the partnership firm valued at an amount of Rs.2,45,500/-. The findings of the Appellate Tribunal in paragraph 9 and 10 being relevant, are extracted hereunder:

"9. With regard to the one-third share of the appellant in the right, title and interest in the partnership firm M/s.Avva Umma and Co. which had a credit balance of capital account at Rs.2,45,500/- as on 30.06.1982, the appellant explained that she had savings of Rs.6,500/- and received Rs.3,000/- from one C.K.Abdurahiman a relative and another sum of Rs.10,000/- by way of demand drafts and that the balance of the amount represents the money received from her husband from Malaysia and Singapore, through banking channels.

10. The appellant had no avocation of her own. Entire amount is said to have been received from the relative mentioned above and her detenu husband. No documentary evidence was produced on the ground that the records were burnt in a fire accident. There is nothing to show that there was fire accident and the records were burnt, except the mere assertion by the appellant. In her reply to the competent authority, the appellant stated that she has no bank account and is not in a position to furnish extracts and that she has not received any amount from C.K.Abdurrahiman, which is contrary to her claim made in her reply dated 20.10.1998. The appellant has not even produced any material to show that her husband was engaged in business in Malaysia and Singapore. The mere fact that he was sending remittances through banking channels from foreign countries is not sufficient to lead to a conclusion that the money was earned by legal means and not my smuggling activities. Even

> though an opportunity was given to the appellant and additional evidence was considered by the Competent Authority, there was no evidence to substantiate the contention of the appellant that her detenu husband was engaged in grocery and stationery business in Singapore and Malaysia as contended by her. In the absence of material to show the legitimate source of the money remitted by the detenu to the appellant, the Competent Authority was justified in holding that the share of the appellant in the partnership firm was acquired through tainted money and that the said share is illegally acquired property."

21. On a reading of the order of the learned Appellate Tribunal as extracted above, it can be seen that it has proceeded to uphold the order of the competent authority, with regard to the movable item of property forfeited, on the ground that the petitioner herein has not produced any document to show that the records were destroyed in a fire accident as contended by her and that therefore, she was unable to furnish the details sought for and that the arguments put forth by her cannot be sustained in view of the fact that she has not cared to substantiate the same with any material. Further the learned Tribunal has stated that the petitioner has not produced any material to show that her husband was engaged in business in

Malaysia and Singapore and that the remittances in the bank were through banking channels from foreign countries and the assertions made by her are not sufficient to conclude that the money was earned by her husband A.C. Abdulla by legal means and not by smuggling activities. On that basis, the Tribunal has concluded that the 1/3rd share held by the petitioner in M/s.Avva Umma and Company is liable to be forfeited and thereby upheld the order of the competent authority partly. It is aggrieved by this order that the petitioner has filed this original petition.

22. The thrust of the contention advanced by the learned counsel for the petitioner is that there is no connecting link between the property forfeited and the wealth acquired by the detenu Sri.A.C.Abdulla and therefore, in the absence of any such link or nexus the property is not liable to be forfeited. Yet another contention advanced by the learned counsel is with reference to Ext.P6 notice issued as per Section 6(1) of the Act and the annexure attached thereto. The contention was that, there is no mention at all in the notices about the detenu Sri.A.C.Abdulla or regarding any nexus or link between him and the properties acquired by her and that in the absence of such vital details, the competent authority has disabled the petitioner

from filing a proper reply to the notice issued under Section 6(1) of the Act and thereby violated the principles of natural justice.

23. It is true that in Ext.P6 notice or in the annexure attached to it, the reasons for the proposal for forfeiture are not mentioned. The notice is in a printed format and it only called upon the petitioner to "show cause why the aforesaid property or properties should not be declared to be illegally acquired property or properties and forfeited to the Central Government" and in the annexure the details of the properties alone are mentioned.

24. It is true that in Ext.P9 reply dated 13.10.1995 issued by the petitioner in reply to the notice dated 26.9.1995, issued by the competent authority, even though she has spoken about the detenu Sri.A.C.Abdulla in the context of the bank transactions, we not find that the competent authority had disclosed to the petitioner any document that was relied on to show that the properties were liable to be forfeited since it was acquired utilising the wealth acquired by the detenu Sri.A.C.Abdulla through nefarious activities as provided under the Act. Yet another point raised by the learned counsel for the petitioner is that the Tribunal without any material before it has

found that the detenu Sri.A.C.Abdulla has acquired wealth by illegal means.

25. The competent authority has filed counter affidavit dated 25.02.2003 and an additional counter affidavit dated 26.05.2010 in the original petition reiterating its findings in Ext.P11 order. It is stated that the petitioner has failed to prove that the property forfeited was not acquired by utilising funds diverted from illegal sources and that the forfeiture of the property is liable to be upheld. The learned Assistant Solicitor General has also contended that under Section 8 of the Act, the entire burden of proof to prove that the properties are not liable to be forfeited was upon the petitioner and that since she did not care to produce or adduce sufficient proof to establish the same, the property was liable to be forfeited.

26. From the records we find that the petitioner had replied to the notice sent by the competent authority and explained the details of the source of money for the purchase of the immovable property as well as for acquiring the $1/3^{rd}$ share in the partnership firm, M/s.Avva Umma and Company. Even though the competent authority has given opportunity to the petitioner to produce sufficient proof with regard to the withdrawal of

money from the accounts maintained by her in two banks viz., Vijaya Bank and Federal Bank, it is not seen produced by her. So also the learned Senior Counsel for the petitioner has brought to our notice a Division Bench judgment of this Hon'ble Court in **Kannanchery Abdu v. Competent Authority** in Writ Appeal No.1645 of 2007 dated 30.03.2007 to canvass for the proposition that the money earned by a non-resident Indian or a foreign citizen and routed through bank do not require further evidence for the proof of the said money transaction. In paragraph 8 of the judgment, it was held thus;

> “It is true that the burden is one the detenu to prove the source of income and the consideration paid for purchasing the property is not from the illegally gained money. The NRE passbook is sufficient to prove the source of income. The finding of the competent authority as well as the appellate authority was that, there was no evidence to show that how they earned money in Dubai, as books of accounts in Dubai was not produced. How he earned money in Dubai is not a matter that can be looked into by the authorities as no law can be enacted regarding the source of income or accounting procedure in Dubai. No action has been taken against the detenu under the FERA or FEMA for illegal remittances of money to India.”

According to us almost the factual situation in this case is more favourable to the petitioner since the money earned by detenu A.C.Abdulla, who was a citizen of Singapore, was routed through the bank account. Same is also a subject matter for consideration while we proceed to consider the issue raised by the learned counsel for the petitioner in the matter of issuance of notice under Section 6 of the Act.

27. Counsel for the petitioner, took us through the records produced in the original petition right from the issuance of Ext.P6 notice under Section 6(1) of the Act and contended that the competent authority has not mentioned about the detenu Sri.A.C.Abdulla or the nature of the alleged nefarious activities indulged by such person. Further it was pointed out that the petitioner was replying to the queries made by the competent authority and has answered to the same by providing the details to the best of her ability.

28. Neither in the pleading nor the materials produced by the competent authority in the original petition, is there anything connecting the petitioner with the detenu Sri.A.C.Abdulla or any of his alleged nefarious activities. But on the other hand in the counter affidavit filed by the competent authority, Ext.R1(a) is

produced which is similar to Ext.P6 notice produced along with the original petition, issued under Section 6(1) of the Act dated 12.9.1988 and along with the same we find that an annexure explaining the properties held by the petitioner alone is mentioned. But along with the additional counter affidavit dated 26.05.2010, the very same notice is produced as annexure R2(a) along with an annexure containing the details of the property and also the reasons recorded for issuance of notice under Section 6(1) of the Act containing the details of the detenu Sri.A.C.Abdulla, petitioner's relationship with the detenu and the detention of Sri.A.C.Abdulla under COFEPOSA.

29. Yet another reason stated in Ext.P14 order of the Tribunal to forfeit the sole item of movable property is that the petitioner's reply to the competent authority, she has stated that she has no bank account and was not in a position to furnish extracts and that she has not received any amount from Sri.C.K.Abdurahiman which is contrary to her claim in her reply dated 20.101988 to the notice under Section 6(1) of the Act. But the counsel contended that, in Ext.P7 reply the petitioner has given the bank details and that from the order of the Tribunal, it is clear that the details of funds generated through

the bank account was considered by it.

30. It is also the finding of the learned Tribunal that except the assertion made by the petitioner that her husband was engaged in business in Malaysia and Singapore and that he was a citizen of that country, the petitioner has not produced any documents to prove such a factual assertion made by her. Apart from the same, the Tribunal has entered into a further finding that the mere fact that the detenu Sri.A.C.Abdulla was making remittance through banking channels from foreign countries, was not sufficient to conclude that the money was earned by legal means and not by smuggling activities. There we find that the money routed through the banking channels is taken note of by the Appellate Tribunal and that is why it is mentioned that "merely because money is sent through banking channels that does not mean that he has earned that money by legal means and not by smuggling activities".

31. As stated earlier, in the counter affidavit and the additional counter affidavit filed by the second respondent the categoric assertion made is that no materials are produced by the petitioner to establish her case before the competent authority and that merely because certain assertions were made

and facts and figures were produced, the same would not suffice since burden of proof is on the "person" under Section 8 of the Act. We do find force in the said contention but at the same time production of a copy of Section 6(1) notice along with additional counter affidavit, after 22 years of initiation of the proceedings, is a matter which is disturbing. If the annexure with description of the property proposed for forfeiture, was not provided to the petitioner, that would mean that sufficient opportunity was not provided to the petitioner to properly defend her by producing sufficient documents and to prove that she had acquired the wealth not by illegal source of money, that was acquired by detenu Sri.A.C.Abdulla. It is a fair principle of natural justice that when a notice is issued and a person is called upon to file his reply thereto, he should be served the entire materials that are relied on against him in order to enable the party to file a reply by meeting all the contentions and then defend the allegations in accordance with the contentions put forth. Bearing the said principle in mind, we feel that this is a fit case where we should consider as to whether there is violation of principles of natural justice. In this context, learned Senior Counsel has brought our attention to the judgment of the

Constitution Bench of the Hon'ble Apex Court in **Attorney General of India v. Amratlal Prajivandas** [1994 KHC 484] and he has drawn our attention to paragraph 44 of the said judgment, the relevant portion of which is extracted hereunder:

> “It is contended by the counsel for the petitioners that extending the provisions of SAFEMA to the relatives, associates and other 'holders' is again a case of overreaching or of over-breadth, as it may be called -- a case of excessive regulation. It is submitted that the relatives or associates of a person falling under Clause (a) or Clause (b) of S.2(2) of SAFEMA may have acquired properties of their own, may be by illegal means but there is no reason why those properties be forfeited under SAFEMA just because they are related to or are associates of the detenu or convict as the case may be. It is pointed out that the definition of the 'relative' in Explanation (2) and of 'Associates' in Explanation (3) is so wide as to bring in a person even distantly related or associated with the convict/detenu within the net of SAFEMA, and once he comes within the net, all his illegally acquired properties can be forfeited under the Act. In our opinion, the said contention is based upon a misconception. SAFEMA is directed towards forfeiture of “illegally acquired properties” of a person falling under Clause (a) or Clause (b) of S.2(2). The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the

> convict or detenu, acquired or kept in their names, do not escape the net of the Act. It is a well known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties convict/detenu -- whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that that property was acquired by the detenu -- whether in his own name or in the name of his relatives and associates. It is to counter act the several devices that are or may be adopted by persons mentioned in Cls.(a) and (b) of S.2(2) that their relatives and associates mentioned in Cls.(c) and (d) of the said sub-section are also brought within the purview of the Act. The fact of their holding or possessing the properties of convict/detenu furnishes the link between the convict/detenu and his relatives and associates. Only the properties of the convict/detenu are sought to be forfeited, wherever they are."

32. The Hon'ble Apex Court has held further down in the said paragraph itself that "it would thus be clear that the

connecting link or the nexus, as it may be called,is the holding of property or assets of the convict/detenu or traceable to such detenu/convict". Again towards the end of the paragraph it is held "we do not think that the Parliament ever intended to say that the properties of all the relatives and associates may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. There ought to be the connecting link between those properties and the convict/detenu, the burden of disproving which as mentioned above, is upon the relative/associate".

33. The counsel has also drawn our attention to the judgments reported in **P.P.Abdulla and another v. Competent Authority and others** [(2007)2 SCC 510] and **Fatima Mohd.Amin v. Union of India** [(2003) 7 SCC 436] and particularly to paragraphs 9 and 10 in the decision reported in **P.P. Abdulla's** case (supra) and paragraph 8 and 9 in the decision reported in **Fatima Mohd. Amin's** case (supra). They are quoted hereunder:

> "9. In our opinion, the facts of the case are covered by the decision of this Court in Fatima Mohd. Amin v. Union of India. In the present case the contents of the notice, even if taken on face value, do

not disclose any sufficient reason warranting the impugned action against the appellant as, in our opinion, the condition precedent for exercising the power under the Act did not exist. Hence, the impugned orders cannot be sustained.

10. In the present case, in the notice dated 15.3.1988 issued to the appellant under Section 6(1) of the Act (copy of which is annexed as Annexure P-1 to this appeal), it has not been alleged therein that there is any such link or nexus between the property sought to be forfeited and the alleged illegally acquired money of the appellant.(P.P. Abdulla's case)

8. The contents of the said notices, even if taken at their face value do not disclose any reason warranting action against the appellant. No allegation whatsoever has been made to this effect that there exists any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu(s).

9. As the condition precedent for initiation of the proceedings under SAFEMA did not exist, the impugned orders of forfeiture cannot be sustained. In that view of the matter, the appeals deserve to be allowed. The order under challenge is set aside”

(**Fatima Mohd. Amin's** case)

34. So also in **Kannanchery Abdu's** case (supra), the Division Bench of this Court took into account the judgments referred supra and also the judgment in **Asiam Mohd. Merchant v. Competent Authority** [(2008) 14 SCC 186] and considered the question of the relevance and importance of the show cause notice issued under Section 6 of the Act and came to the categoric finding in paragraph 7 of the judgment that "in the absence of any allegation in the show cause notice, which is quoted in the earlier part of the judgment regarding the link or nexus between the property sought to be forfeited and the illegally acquired money of detenu under the Act, we are of the view that the proceedings taken against PA2 and PA3 is not maintainable".

35. Relying on those decisions, the learned Senior Counsel for the petitioner contended that the competent authority has not communicated the details with regard to the connecting link or nexus between the petitioner and the detenu which disabled her from filing a proper reply to the statutory notice under Section 6(1) of the Act.

36. When this query was put to the learned Assistant

Solicitor General he has taken us through Sections 2, 3 and 8 of the Act and contended that the burden is on the petitioner to prove that the property and wealth acquired by her are not purchased or acquired from the wealth of the detenu. The learned ASG has also invited our attention to the preamble to the Act and contended that the legislation is intended to maintain national economy and in order to protect the national interest, the provisions of the Act should be construed against the petitioner strictly who has the bounden duty to prove her case. In answer to the same, counsel for the petitioner contended that the competent authority was duty bound to communicate properly to the "person" the facts and circumstances leading to the proceedings against the "person" as defined under Section 3 of the Act and further that irrespective of the laudable objects of the Act, every citizen of this country, irrespective of their status in society, is entitled to enjoy the fundamental rights guaranteed under the Constitution subject to any reasonable restrictions imposed on them in accordance with law.

37. We find force in the contention raised by the counsel for the petitioner. It is true that the Act has a laudable object of preventing smuggling activities to secure a well balanced

economic situation and for the safety and integrity of the country, but at the same time, we cannot be unmindful of the constitutional guarantees provided to the citizens of this country under Part III of the Constitution of India and any law made can only be subject to the fundamental right guaranteed to the citizen under the Constitution. We also feel that in order to rope in a "person" under Section 3 of the Act, the criteria fixed under Section 2 of the Act should be satisfied first. A fair procedure and fair hearing includes supply of all relevant documents and materials so as to provide a fair opportunity to the person concerned to explain the circumstances in its entirety. This is all the more so in proceedings initiated under statutes like SAFEM (FOP) Act.

38. The above view expressed by us is also supported by Craig Administrative Law, 6th Edition in the following manner:

> "....Notice of a decision is essential in order to enable the person affected to be able to challenge it. It was an application of the right of access to justice which was a fundamental and constitutional principle of our legal system. The role of law required that a constitutional State should accord to individuals the right to know of a decision before their rights could be affected."

M.P. Jain and S.N.Jain, Principles of Administrative Laws, 6th Edition which is also extracted hereunder to support the above view:

> "Notice does not mean any kind of notice; it means an adequate notice as regards the details of the case against the concerned party. Any proceeding further against a person without adequate notice to him infringes the concept of natural justice and is invalid."

39. On going through the scheme of the Act, we find that the provisions of the Act are very stringent and harsh. When the legislature has made law so stringent and harsh that is all the more a reason that the opportunity provided to the party at the receiving end should be a very fair opportunity to explain the circumstances under which she is bound under law to explain the allegation made thereunder. So also the competent authority is bound to provide the entire materials enabling the petitioner to answer the same, which if not done, violates the basic tenets of the principles of natural justice. With particular reference to the facts of this case, as we have already stated, there is a bonafide suspicion of reasonable doubt in our mind as to whether the annexure containing the details of the detenu and the circumstances linking the properties sought to be forfeited against the illegal source of wealth acquired by the detenu was

served on her. The doubt that is arising in our mind consequent on the belated production of Annexure stated supra along with Ext.R2(a) as a part of the counter affidavit filed in the year 2010 cannot be said to be a timid, fickle or speculative doubt. Therefore in that circumstances, we are bound under law to extend the benefit of doubt in favour of the petitioner especially in view of the fact that the forfeiting of the property is affecting the Constitutional right of the petitioner provided under Article 300A of the Constitution of India. This view taken by us, is fortified by the principles laid down in the judgment of the Hon'ble Supreme Court in **Assistant Collector of Central Excise v. V.P. Sayed Mohammed** [AIR 1983 SC 168] in which the principle laid down is that "the reasonable doubt should be real and substantial one and a well founded actual doubt arising out of the evidence existing after consideration of all the evidence". Therefore, according to us, it is only just and proper that the harsh power conferred thereunder on the competent authority should be exercised with utmost caution and circumspection.

40. Yet another argument advanced by the learned counsel

for the petitioner is that the authorities under the Income Tax Act have accepted the return filed by the petitioner where the very same bank transactions are reflected and therefore the conclusive finding of yet another competent statutory authority was a substantial evidence or proof to show that the money invested by the petitioner in the partnership firm is from legal sources.

41. On the other hand countering the same and relying on Sections 24 and 25 of the Act, the learned Assistant Solicitor General contended that the Act has overriding effect over all other enactments and therefore the finding of the Income Tax Authorities in the return filed by the petitioner has no consequence while considering the case of a “person” provided under Section 3 of the Act.

42. We fully agree with the said argument advanced by the learned Assistant Solicitor General but we find that there were lapses on the part of the competent authority while issuing Section 6(1) notice, by not linking the properties sought to be forfeited with the illegal source of wealth acquired by the petitioner by appending the annexure produced along with Ext.R2(a) to the notice issued to the petitioner.

43. When a proper notice is not issued explaining the entire circumstances and inviting objection to the same, it is a clear violation of principles of natural justice warranting our interference under Article 226 of the Constitution of India. From the records produced along with the writ petition, we find that the mention of the detenu Sri.A.C.Abdulla is only in the order passed under Section 7 of the Act by the competent authority and apart from the same, the mention of Sri.A.C.Abdulla appears in the Annexure-R2(a) produced along with the additional counter affidavit dated 26.05.2010. Therefore, we are persuaded to think proceedings initiated were in violation of the principles of natural justice and the property, namely, 1/3rd share in the partnership firm M/s.Avva Umma and Co., held by the petitioner is not liable to be forfeited.

In view of the findings rendered above, we are not inclined to interfere with the judgment of the learned Single Judge impugned in Writ Appeal No.170 of 2009 and accordingly the said appeal will stand dismissed. O.P. No.6327 of 2002 will stand allowed. The order of the Appellate Tribunal dated 13.12.2001 confirming the order of the competent authority is set aside and the forfeiture of the movable property i.e. 1/3rd share in the partnership firm M/s.Avva Umma and Co. held by the petitioner will stand released to the petitioner.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv