

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 398 OF 2003

1. Shri. Ibrahim Adamali Patel,]
residing at Haji Manzil Building, Member]
street, Nabipur, Taluka & District Bharuch,]
Gujarat. (At present confined in Nasik]
Road, Central Prison, Nasik Road, State of]
Maharashtra]
]
2. Mrs. Sultana Ibrahim Patel,]
residing at Haji Manzil Building, Member]
Street, Nabipur, Taluka & District Bharuch,]
Gujarat.]
]
3. Ms. Samina Abid, Member,]
residing at Member Street, Village]
Nabipur, Taluka and District Bharuch,]
Gujarat State.]..Petitioners.

VERSUS.

1. The Union of India,]
Law & Judiciary Department,]
Room No. 242, 2nd floor, Income Tax, New]
Marine Lines, Mumbai.]
]
2. The appellate Tribunal for forfeited]
Property, 4th floor, Lok Nayak Bhavan,]
Khan Market, New Delhi.]
]
3. The Competent Authority and]
Administrator, SAFEMA/N.D.P.S. Nariman]
Point, Mittal Court, 'C' Wing, 3rd floor,]
Nariman Point,]
Mumbai 400021]
]
4. The State of Maharashtra.]..Respondents.

Mr. K. M. Sangani for the Petitioners.
Ms. Rebecca Gonsalvez for Respondent No. 1 to 3.
Mr. K. V. Saste, APP for the State / Respondent No. 4.

Coram : Ranjit More &
A. S. Gadkari, JJ.
Date : **July 27, 2017.**

Judgment [Ranjit More, J.] :

1. At the outset, Mr. Sangani, the learned Counsel appearing for the Petitioner, having taken instructions from his client, makes a statement that he is restricting this writ petition to the relief claimed in prayer clause (d) only. Statement accepted.

2. Heard Mr. Sangani, the learned Counsel for the Petitioner and Ms. Gonsalvez, the learned Counsel for Respondent Nos.1 to 3. By the judgment and order dated 5th August 1997, the Petitioner is convicted by the Special Court in Special Case No. 286 of 1996 for the offence punishable under sections 8(c) read with 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short, "NDPS Act"] and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1 lakh. The Petitioner challenged this judgment and order by filing an appeal before the High Court. The appeal, however, is dismissed.

3. On 15th May 1998, an order was passed by the Anti Narcotic Cell, CID Mumbai under section 68F of the NDPS Act for freezing Petitioner's property, namely, Flat No. 301, Wimbledon II Apartment, Four Bungalow, Andheri (West), Mumbai, claiming that the Petitioner has acquired the same illegally. The Competent Authority was informed about the freezing order within 48 hours as contemplated under section 68F of the NDPS Act. By the order dated 29th May 1998, the Competent Authority confirmed the freezing order and issued show cause notice as postulated under section 68H of the NDPS Act to the Petitioner asking him to show cause as to why the said property should not be forfeited. The notice was served on the Petitioner on 24th May 1998. The Petitioner thereafter on 23rd June 1998 gave reply to the notice. Subsequently, the matter before the Competent Authority was fixed on 21st May 1999 and 22nd June 1999. the Petitioner did not appear despite notice. The Competent Authority, therefore, on the basis of the Petitioner's reply, passed order dated 6th August 1999 thereby the said property was declared to be illegally acquired property and the same was forfeited to the Central Government. This order was challenged by the Petitioner by filing an appeal before the appellate tribunal. By the order dated 1st October 2001, the appeal is also dismissed after giving an opportunity

of hearing to the Petitioner. This order is impugned in the present writ petition.

4. Mr. Sangani, the learned Counsel appearing for the Petitioner made two-fold submissions. Firstly, that the property in question was not illegally acquired property and secondly that mandatory procedure under section 68F of the NDPS Act was not followed by the Competent Authority while freezing the property. In order to support his contentions, Mr. Sangani relied upon the decision of the Apex Court in Aslam Mohammad Merchant v. Competent Authority [(2008) 14 SCC 186] and unreported decision of Division Bench of this Court in Neeta Nitin Bhanushali v. State of Maharashtra and Others [Criminal Writ Petition No. 881 of 2000, decided on 30th September 2008].

5. Ms. Gonsalvez, the learned Counsel appearing for the Respondents, on the contrary, supported the impugned judgment and order. She submitted that the burden to prove that the property was acquired legally is on the Petitioner, he has not discharged the same, and therefore no fault can be found with the impugned order passed by the tribunal. She also submitted that required procedure as

contemplated under the provisions of the NDPS Act is followed and therefore no interference is called for.

6. Having considered the rival submissions and having gone through the petition along with annexures and ratio of the decisions cited supra, we find no merit in the writ petition. There is no dispute that the provisions of Chapter V-A are applicable to the Petitioner by virtue of the provisions of section 68A since admittedly the Petitioner has been convicted for the offence punishable under sections 8(c) read with 22 and 29 of the NDPS Act and sentenced to suffer 10 years rigorous imprisonment and his conviction is confirmed by the High Court.

7. By the order dated 15th May 1998, the Senior Inspector of Police, Anti Narcotic Cell, CID Mumbai froze the said property and the Competent Authority was informed about the same within the stipulated time. The freezing order was confirmed under section 68F(2) of the NDPS Act and notice was issued to the Petitioner under section 68H of the NDPS Act. Mr. Sangani, the learned Counsel appearing for the Petitioner submitted that before passing the order for freezing of the illegally acquired property, the authorised officer

under section 68F mandatorily required to disclose what is the relevant information available with him to confirm a belief that property in question was illegally acquired. He submitted that since such disclosure is not there in the freezing order under section 68F, the same is vitiated and therefore forfeiture of the property by the Competent Authority and confirmation of the same by the appellate tribunal is also vitiated. The learned Counsel for the Petitioner as stated above, in support of his submissions relied upon the unreported decision of Division Bench of this Court in Neeta Nitin Bhanushali (supra) and especially paragraph 14 thereof. We are unable to accept the submission of Mr. Sangani inasmuch as the officer authorised under section 68F in terms has stated in his freezing order that on the basis of information available to him and after carefully examining and considering the said information, he has reason to believe that the property in question is acquired by the Petitioner illegally through the income generated from drug trafficking within the meaning of section 68B(g) and section 68(c) of the NDPS Act.

8. This takes us to consider the second submission of Mr. Sangani that subject property is not acquired illegally. Under section

68J of the NDPS Act, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired property, shall be on the person affected. The Petitioner was given notice under section 68H on 4th June 1998, which was replied by the Petitioner by his letter dated 23rd June 1998. In this reply, the Petitioner stated that he acquired the subject property by receiving gift from London through State Bank of India for Rs.1,92,000/- vide draft No. DFTBR/94080900398 dated 9th August 1994, Rs.1,92,000/- vide draft No. DFTBR/94080900384 dated 9th August 1994 and Rs.1,68,350/- vide draft No. DFTBR/94081800452 dated 16th August 1994. The Petitioner also claimed that the said amount was gifted by Valli Adam Abhuji and Ismail Ahmed Patel and Ayub Ahedali Member. The Petitioner thereafter by the letter dated 20th July 1998 was asked to give particulars and addresses of the donors. To this, the Petitioner replied by the letter dated 4th September 1998. He stated that he does not know the whereabouts of these persons. The tribunal perused the agreement to purchase of the subject property, copy of which is annexed at Exhibit- A to this petition, and found that there are no details about the pay-order, viz., Pay Order Numbers, Dates and Amounts paid to the builder developer. There is nothing on record to show that where the Petitioner has deposited the said drafts and

whether the said drafts were utilised for purchase of the said flat. In terms of the provisions of section 68J of NDPS Act, it was for the Petitioner to prove that subject flat was acquired legally. Initial stand of the Petitioner was that he purchased this flat from the monies gifted by brother-in-law. However, he could not give particulars, addresses or whereabouts of those donors. Neither the Petitioner could show by adducing any evidence that flat was acquired by legal means. In the circumstances, the tribunal reached to the conclusion that property was acquired illegally and therefore confirmed the order of the Competent Authority. We find no reason to interfere with the same in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

9. Before parting with this judgment, we would like to deal with the decision of the Apex Court in Aslam's case relied upon by Mr. Sandani. The Apex Court in Aslam's case (supra) held that before actual forfeiture, issuance of the show cause notice is must. It is not disputed in the present case that show cause notice was given to the Petitioner and therefore this decision will not come to the rescue of the Petitioner.

10. In the light of above, we find no substance in the petition and the same is accordingly dismissed.

[A. S. GADKARI, J.]

[RANJIT MORE, J.]