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W.A.Nos.320, 321 & 322 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2024

PRONOUNCED ON : 19.08.2024
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.320, 321 & 322 of 2014
and
M.P.Nos. 1, 1 & 1 of 2014

Rukhiya	... Appellant in W.A.No.320/2014
Abdul Majeed	... Appellant in W.A.No.321/2014
P.K.Umaiba	... Appellant in W.A.No.322/2014

Vs.

1.The Registrar,
The appellate Tribunal for
Forfeited Property, 4th Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi-100 002.

2.The Competent Authority,
Smugglers & Foreign Exchange Manipulators
(Forfeiture of properties) Act 1976,
Utsav, No.1, 64/1, G.N.Chetty Street,
Chennai – 17.

... Respondents in all the Writ Appeals



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Prayer in W.A.No.320/2014 :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No.16341/2000 dated 03.01.2014.

Prayer in W.A.No.321/2014 :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No.16342/2000 dated 03.01.2014.

Prayer in W.A.No.322/2014 :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No.16343/2000 dated 03.01.2014.

For Appellants in
all the Writ Appeals : Mr.B.Kumar, Senior Counsel for
Mr.S.Ramachandran

For Respondents in
all the Writ Appeals : R1-Tribunal
: Mr.N.Ramesh (for R2)

COMMON JUDGEMENT



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(Judgement was delivered by S.M.Subramaniam J.)

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FACTUAL MATRIX:

The preliminary facts are that an order of detention by the Government of Kerala was issued on 14.08.1984 detaining Mr.K.P.Abdul Majeed from June 1984 to June 1985. The authorities under the Smugglers & Foreign Exchange Manipulators (Forfeiture of Properties) Act 1976 (herein after referred as SAFEMA) received information from the office of the Collector Customs Cochin on 16.01.1985 that Mr.K.P.Abdul Majeed holds 1/5th share in joint property. Notice under Section 6(1) of SAFEMA was issued on 18.02.1986 in respect of 1/6th share in joint property. Mr.K.P.Abdul Majeed submitted his defence statement that it was his ancestral property. Subsequently, the said notice had been withdrawn.

2. In the year 1987, Mr.K.P.Abdul Majeed married Mrs.Rukhiya as his second wife. On 10.10.1988, an order of detention was issued by the Government of Tamil Nadu against Mr.K.P.Abdul Majeed in G.O.No.SR-1/1070-10/88. Yet another order of detention dated 19.07.1990 was issued by the Government of India in F.No.673/228/90-Cus.VIII, by Joint Secretary.



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Subsequently, on 05.11.1990 Inspector of SAFEMA submitted a report along with the copies of statement of Income / Net Wealth filed by K.P.Abdul Majeed. Notice under Section 6(1) dated 21.11.1990 was issued to Mr.Abdul Majeed in respect of the properties mentioned in the net wealth report filed by the Inspector of SAFEMA. Consequently, Notice under Section 6(1) was issued on 29.11.1990 to the two wives of K.P.Abdul Majeed in respect of the properties mentioned in the report. On 19.04.1995, enquiry was held after affording sufficient opportunity and personal hearing and the noticees were permitted to be represented by lawyers of their choice. The competent authority under Section 7(1) of SAFEMA passed a composite order on 20.06.1996. The appeal filed was dismissed by the Appellate Tribunal on 19.05.2000. Thereafter, an order of forfeiture, under Section 19(1) of SAFEMA was passed on 28.08.2000. Further an order of detention by the Government of India was issued on 06.10.2003 in F.NO.673/8/2003-Cus.VIII, by Joint Secretary.

3. The admitted facts between the parties to the lis on hand are that on 14.08.1984, one of the appellant Mr.K.P.Abdul Majeed suffered detention. The other appellants namely Mrs.Rukhiya and Mrs.P.K.Umaiba are the



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wives of Mr.K.P.Abdul Majeed. All of them fall within the definition of “Person” within the meaning of Section 2(2) of SAFEMA.

4. Notices dated 18.02.1986 under Section 6(1) were issued to Mr.K.P.Abdul Majeed in respect of 1/6th share in joint property and Mrs.P.K.Umaiba in respect of 0.24 cents of lands. After enquiry, both the above properties were released by accepting the explanations submitted by the above two persons that the said property was ancestral property of Mr.K.P.Abdul Majeed. Thereafter on 21.11.1990, Notices under Section 6(1) were issued to Mr.K.P.Abdul Majeed (2nd Notice), Smt.Umaiba (2nd Notice) and Smt.Rukhiya (1st Notice). The said Notices were issued in respect of the properties purchased after 1986 (i.e., after issuance of 1st Notice).

5. On 19.04.1995, Mr.K.P.Abdul Majeed produced copies of his two passports and other documents. Written statement of defence were submitted by the persons and several personal hearings were afforded to them by the competent authorities. Enquiry was held. All the three persons were



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represented by lawyers of their choice. Sufficient opportunities were afforded to them.

6. Pertinently, the validity of Section 6(1) Notice was not challenged by the Noticees at that point of time. It is admitted that all the properties mentioned in the three Notices were purchased by Mr.K.P.Abdul Majeed, either in his name or with the joint names of his wives. It is further admitted that the purchase money for all these properties were drawn from the account of detenu Mr.K.P.Abdul Majeed. On 20.06.1996, orders were passed by competent authorities, forfeiting the properties, except some properties for which explanations were accepted.

7. Three separate appeals were filed by Mr.K.P.Abdul Majeed and by his two wives on 12.08.1996. Curiously, in the appeals, it was admitted that the properties were purchased in the name of all the three persons out of the funds drawn from the account of detenu Mr.K.P.Abdul Majeed. Even at that point of time, the validity of Notice under Section 6(1) was not challenged. The main contention in the grounds of appeal by three appellants was that the sources of purchase of money have been shown from NRE account and the



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same should have been accepted.

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8. The statement made in the affidavit by the petitioners that the detenu Mr.K.P.Abdul Majeed did not undergo any further detention after 1st Notice was factually incorrect. Though, it is contended on behalf of the appellants that the detention orders were revoked, it is immaterial as far as the provisions of the SAFEMA are concerned. The application of the Act is well defined under Section 2. Therefore, revocation of detention has no implication or impediment for invoking the provisions of SAFEMA.

9. During the pendency of the appeal before the Appellate Tribunal, the detenu Mr.K.P.Abdul Majeed transferred some of the properties, under order of stay, to his wife. On complaint to the Tribunal, detenu undertook to re-transfer.

SUBMISSIONS OF THE APPELLANTS:

10. The learned Senior Counsel Mr.B.Kumar, appearing on behalf of the appellants would submit that Section 6(1) Notice is invalid. Irrelevant wordings are not deleted from Section 6(1) Notice. The requirements under



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Section 6 of the SAFEMA have not been complied with. Notice of forfeiture can be issued if the known sources of income and the link or nexus between the purchase of property and ill-gotten money are established. In the absence of any such material available on record, the requirement under Section 6(1) is not satisfied. Therefore, in the present case, Section 6(1) Notice is null and void.

11. Mr.B.Kumar, learned Senior Counsel articulated by stating that Section 6(1) Notice can be issued if the details and the value of the properties along with the nexus or link with the detenu and the ill-gotten money, if any, are to be established at the first instance for the purpose of forming an opinion and to issue notice under Section 6(1).

12. In this context, the learned Senior counsel mainly relied on the principles considered by the learned Single Judge of this Court in the case of ***R.Ramakrishnan Vs. Appellate Tribunal¹***, for forfeiture property. It is contended that the entire position of law has been considered by the learned Single Judge of this Court and the legal principles are summarised. Applying the said legal principles, Section 6(1) Notice issued against the appellants

¹ 2011(2) MWN (CrI) 582



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herein are invalid and not in compliance with the requirements as contemplated under Section 6(1) of SAFEMA.

13. The learned Senior Counsel referred paragraph no.44 of the Judgement in the case of *Attorney General of India Vs. Amratlal Prajivandas and others*². Nine Judges Bench of the Hon'ble Supreme Court of India has considered the principles, which would prevail over all other judgements. The Judgement of the Three Judges Bench of the Supreme Court India in the case of *Fatima Mohm Amin Vs. Union of India*³ wherein paragraph no.6, the Three Judges Bench relied on the principles laid down in *Amratlal Prajivandas case* (supra) . In the said case, it is reiterated that the properties acquired by the detenu or his relatives, must be a benami property or acquired illegally, is to be proved. In the event of no allegation in specific, link or nexus, notices are to be declared as non-est and violative of Section 6 of SAFEMA.

14. In the case of *Kesar Devi Vs. Union of India*⁴, the Supreme Court

2 1994 (5) SCC 54

3 2003 (7)SCC 436

4 2003 (7)SCC 427



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again referred paragraph no.44 of *Amratlal Prajivandas case* cited supra.

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The case of *Aslam Mohammed Merchant vs. Competent Authority and others*⁵, is relied upon by the appellants. However, the said case was relating to the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The provisions of the NDPS Act and SAFEMA are in-comparable. Thus, the ingredients, required for initiation of action are distinct and different. Thus, the principles in *Aslam Mohammed Merchant's case* cited supra, in respect of the provisions under NDPS Act, may not have application in respect of the cases under SAFEMA. Thus, the analogy made on behalf of the appellant deserves no merit consideration.

15. The appellants have further relied on the judgement of the Division Bench of this Court in the case of *Competent Authority SAFEMA and NDPS Acts UTSAV Vs. M.Khader Moideed*⁶. The Division Bench has referred *Aslam Mohammed Merchant's case* cited supra and the nine Judges Bench judgement in the case of *Amratlal Prajivandas case*.

16. Mr.B.Kumar, learned Senior Counsel, mainly relied on the legal

⁵ 2008 (14) SCC 186

⁶ 2017 (1) LW (Crl) 139



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principles culled out by the learned Single Judge of this Court in the *case of R.Ramakrishnan* (supra). It is reiterated that the said principles are carved out from and out of the judgements of the Supreme Court. Therefore, it is to be followed in the present case. The Division Bench judgement of this Court, in the *case of M.Khader Moideed* (supra) has been further followed by another Division Bench of this Court in the case of *Competent Authority Vs. Smt.Ayisath Munawara*⁷.

17. It is contended that the detention orders were revoked subsequently. Therefore, all further actions are necessarily to be dropped. The nexus between money in possession of the detenu and purchase of property in joint name are not established. Therefore, the issuance of 6(1) Notice, in the absence of materials, are untenable.

SCOPE OF SECTION 6 OF SAFEMA:

18. Section 6(1) reads as under:

“6. Notice of forfeiture.—(1) If, having regard to the value of the properties held by any person to whom this act applies, either by himself or

⁷ W.P.No.1333 of 2018 dated 13.10.2022



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through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.”

Careful reading of Section 6(1) is of paramount importance, since Section 6(1) Notice is the basis for all further actions to be continued under the provisions of SAFEMA. The first phrase of Section 6(1) indicates that



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having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf. It speaks about the application of the Act under Section 2 of SAFEMA. Therefore, the authority competent must first ensure that the provisions of SAFEMA is applicable to a person for issuance of Notice under Section 6(1) of the Act. The second phrase indicates that known sources of income, earnings or assets, any other information or material available to it as a result of action taken under Section 18 or otherwise. Therefore, a report submitted by the Inspector under Section 18 of the Act can be taken into consideration or the materials available on record or the information thereon may also be considered by the authority competent. Known sources of income, earnings, assets and any other information or materials are the prima facie materials/informations required for the purpose of forming an opinion that the competent authority has “**reason to believe**”, that all or any such properties are illegally acquired properties.

19. The very purpose of description regarding the known sources of income or earnings or assets or information or a report under Section 18 is to ensure that the competent authority apply his mind for forming an opinion



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that he has reason to believe that such properties are acquired illegally.

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20. The phrase “reason to believe” has live link between the materials / informations or reports available and application of mind on the part of the competent authority. Therefore the requirements contemplated under Section 6(1) are to be taken into consideration by the competent authority for forming an opinion that he has “reason to believe” that all or any of such properties are illegally acquired properties.

21. It is amply clear that the competent authority has to form an opinion and that he has reason to believe to form such an opinion to issue Notice under Section 6(1) of the Act. It is absolutely unnecessary for the competent authority to arrive at a final decision in respect of the legality of the details of the properties, materials which all are necessary for the purpose of issuing Notice under Section 6(1) of SAFEMA.

22. To reiterate, Section 6(1) of SAFEMA require some materials on record and such materials shall prima facie establish that all or any of such properties are illegally acquired properties. If the competent authority has



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reason to believe that such properties are illegally acquired properties, such reasons would be sufficient for issuing a Notice under Section 6(1) of SAFEMA.

23. The argument on behalf of the appellant that “*there must be a conclusive material for the purpose of forming an opinion*” is incorrect since it is only a Notice issued calling upon the persons to show cause, why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under the provisions of SAFEMA. Since Section 6(1) Notice is a Show Cause Notice, to provide opportunity to the persons to whom the Act applies, it becomes unnecessary for the authorities to arrive at a final decision or collect all the materials necessary for the purpose of exercising the powers under 6(1) of SAFEMA.

24. A fine distinction can be drawn between Notice under Section 6(1) and an order of forfeiture to be passed under Section 7(1) of SAFEMA. However, considering the Right to Property under Article 300A of the Constitution of India, the Parliament thought fit and imposed certain pre-



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requisite conditions, for forming prima facie opinion and to arrive at a conclusion that the authority has reason to believe that all or any of such properties are illegally acquired properties.

25. Strict availability of documents and evidences required to invoke Section 7(1) may not be required for issuing Notice under Section 6(1) of SAFEMA. Even after issuance of Section 6(1) Notice, the competent authority is empowered to conduct inquiry and drop all further proceedings. Therefore, the requirements of Section 6(1) need not be conclusive. It would be sufficient if prima facie materials are available on record to form an opinion that the authority has reason to believe that the properties are illegally acquired property.

26. The phrase “reason to believe” is the subjective satisfaction of the competent authority. Therefore, it is not necessary that all the informations and materials, for the purpose of invoking Section 7(1), is to be made available at the time of issuance of Section 6(1) Notice. Further enquiry after Notice under Section 6(1) may throw more light on the issues for the purpose of invoking the provisions of SAFEMA. Since such probabilities are inbuilt



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under the scheme of the Act, the scope of ingredients for issuing Notice under Section 6(1) of SAFEMA need not be expanded so as to defeat the very purpose and object of SAFEMA.

27. The very object of SAFEMA is for the effective prevention of smuggling activities, and foreign exchange manipulations, which are having a deleterious effect on the national economy. It is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains. Therefore, mere issuance of Notice, based on certain prima facie material, would not cause prejudice to the persons since enquiry will be conducted for the purpose of arriving at a decision to invoke Section 7 of the Act. Thus, the arguments advanced on behalf of the appellants that Section 6(1) Notice is invalid, is unacceptable and stands rejected.

28. The requirements of material contemplated under Section 6(1) of SAFEMA is only to establish a prima facie case for forming an opinion that the authority has reason to believe that all or any of such properties are illegally acquired properties. Once Section 6(1) Notice is issued, burden of proof lies on affected person. The noticee, on receipt of Notice is at liberty to



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disprove the prima facie opinion formed by the competent authority.

Therefore, Section 6(1) Notice can be issued if the competent authority has reason to believe, based on the materials available on record. Such materials may be insufficient for forfeiture of property under Section 7.

SUBMISSIONS OF THE RESPONDENTS:

29. Mr.N.Ramesh, learned Senior Panel Counsel for the Government of India, appearing on behalf of the second respondent would strenuously oppose the contentions of the appellants.

(I) Validity of Notice issued under 6(1) of SAFEMA;

30. (a) Validity of Section 6(1) Notice was never challenged either before the competent authority or before the appellate authority. It is not the case of the appellants that no reasons were recorded but the reasons recorded were not sufficient.

(b) Value of the properties, 'known sources of income' of the relative/holder of properties and other information were considered and stated in the notice. The said notice was issued based on the statement of wealth return filed by the petitioners for the first time before the income tax



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authorities, which were obtained as a result of enquiries under Section 18.

Reasons were recorded. Thus the competent authority has complied with all the requirements, while issuing Notice under Section 6(1) of the Act.

(c) It is to be noted that all the mentioned properties have been purchased either in the name of detenu or jointly with detenu. It is admitted case of the wives before the authorities and also in the affidavit before this Court that the money has flown from the detenu/husband. It is not the case of the wives- petitioners that they purchased the properties separately out of their independent earnings. On the other hand it was the specific case of the petitioners before the competent authority that the properties were purchased by the detenu in the name of his wives benami.

(d) In the wealth statement, the appellants have mentioned that the purchase money was drawn from NRI account of husband. Therefore, in the reasons recorded, it was stated that the wives have no known sources of income and that husband is a detenu. Therefore logical inference is that the properties should have been purchased from the money of the detenu. The reasons recorded are sufficient in view of facts and circumstances of the case from the view point of Competent Authority. For the sake of argument, even if the reasons recorded were insufficient, the admission would ratify such



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deficit. It is settled law that the reasons recorded are to be to the subjective satisfaction of the Competent Authority. The sufficiency of reasons recorded need not be gone into at the time of review under Article 226 of Constitution of India.

(e) It has been clarified by the Hon'ble Supreme Court in ***Attorney General for India & Ors, vs. Amratial Prajivanda & Ors.***⁸, as follows in paragraph- 44:

"It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under Section 6, and which are held on that date by a relative or an associate of the convict/detenu, are not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish that the said property has not been acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict. We do not think that 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

⁸ (1994) 5 SCC 54



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above, is upon the relative/associate. In this view of the matter, the apprehension and contention of the petitioners in this behalf must be held to be based upon a mistaken premise.

As clarified above in the judgement, the "connecting link" is required only in case if the properties stood in the name of wife and acquired from their individual income. In the present case all the properties are in the joint name of detenu and wives. It is further seen from the wealth return and as admitted, money has been drawn from detenu's account. Therefore the requirement of connecting link loses its-significance.

(f) ***Kesar Devi vs Union of India***⁹ is in conformation with the Attorney general case. In ***Kesar Devi case*** (supra), the petitioner was wife of the detenu. She was never assessed to tax and had no known sources of income. In the notice under Section 6(1) it was simply stated that Kesar Devi was the wife of detenu and therefore a person under the Act. The Court accepted the reasons recorded as sufficient.

(g) In view of law laid down in the above two cases, the notice issued to the detenu and his two wives are perfectly valid.

(h) Therefore reasons recorded in the show cause notice issued under

⁹ 2003 (7)SCC 427



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Section 6(1) is valid. Contentions of the appellants are baseless, contrary to the facts of the case and liable to be rejected.

(II) Whether "Supplementary" Notice are unsustainable in view of dropping of proceeding under 1st Notice;

31. (a) The 1st notices were issued on 18.2.1986 each to detenu K.P.Abdul Majeed and his wife Smt. Umaiba. No notice was issued to Smt. Rukhiya as she was not married and she was married only in the year 1987. The reply submitted by the petitioners to the 1st notice was accepted and the properties there under were released.

(b) 2nd notices were issued on 21.11.1990 each to detenu K.P.Abdul Majeed and his two wives. The properties mentioned in the 2nd notice were different from 1st notice. Those properties were admittedly purchased after the issuance of 1st notice, i.e., from 1986 to 1989.

(c) In the 2nd notice issued to Mr.K.P.Abdul Majeed and to Smt. Umaiba, it was mentioned on the head as "supplementary notice". No such mention is there in the notice issued to Smt. Rukhiya. This was done in order to maintain the continuity of the file in the competent authority's office and to remind that there is prior notice in respect of two persons.



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(d) The caption "supplementary" cannot make the 2nd notice supplement to the 1st notice in the absence of any such purpose of supplementing the 1st notice. It is well settled that nature of document cannot be decided by its name (nomenclature) and the contents/recitals of document are relevant.

(e) Label or name to be ignored. Another facet of principle is that the form of a transactions may be ignored in certain circumstances is that a document should not be construed purely from their legal or technical aspects and by attaching undue significance to the names, labels, or words used rather than to the true intention of the parties (Ref: *Neelkant Narayanasingh (Sri Sri) vs CIT, 1951, 20 ITR 8 (Pat)*).

(f) Thus mere mentioning of "supplementary" will not make the 2nd notice as supplementary to the 1st notice. The 2nd notice is independent notice, in respect of other properties with separate reasons recorded.

(III) Whether the remittances made through NRE account should be treated as legal source;

32. (a) The detenu had filed wealth tax and income tax returns, collectively for the first time in 1990 for the assessment year 1989-90, i.e.,



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just prior to the issuance of 2nd notice. The I.T. Returns were accepted by the ITO in the year 1992. Thus at the time of issuance of notice, his IT returns were not even accepted by the IT Department. Though the wealth and income has been shown, there is no evidence for licit or legal source of such income or wealth. On such basis, the "reasons to believe" as recorded in the present case by the competent authority undoubtedly raise a doubt about the legal source of funds wherefrom the aforesaid properties were acquired at the relevant time.

(b) The remittances in NRE Account only show the mode of transaction. But the petitioners have not proved the licit or legal source of such money. This is Important wherein

- the detenu's passport shows that during the period of remittances he was very much within India.

- In the wealth tax assessment order it is stated that the detenu has been in lodging business and that he is resident during the relevant period.

(c) In *Commissioner Of Income Tax Vs P.Mohanakala*¹⁰, the Supreme Court said that mere remittance from a foreign country through banking channels was not sufficient to explain its genuineness and further said in concluding para that;

¹⁰ 2007(6) SCC 21



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"The doubtful nature of the transaction and the manner in which the sums were found credited in the books of accounts maintained by the assessee have been duly taken into consideration by the authorities below. The transactions though apparent were held to be not real one. May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence. No question of law much less any substantial question of law had arisen for consideration of the High Court. The High Court misdirected itself and committed error in disturbing the concurrent findings of facts."

(d) The detenu was a smuggler. Many detention orders were clamped against Person Affected No.1 for his repeated indulging in smuggling during 1984 to 2005. It is well known that the money earned by violation of law in India are transmitted out through hawala transaction and then sent back via NRE account. Where such specific allegations are raised, the detenu must prove his legal source.

(e) Section 21 of SAFEMA provides that findings under the other Laws not conclusive for proceedings under SAFEMA. Therefore the acceptance of returns by Assessing officer has no relevance for the proceedings under the Act. This has been held and confirmed by Division Benches of this Court.



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(IV) Whether non supply of his own confession statement which has been referred to by the CA amounts to violation of natural justice;

33. (a) Any proceeding under SAFEMA commences and the Competent Authority gets jurisdiction on the basis of order of detention/conviction. The proceedings under SAFEMA were in consequence of detention of K.P.Abdul Majeed. The grounds of detention clearly refer to giving copy of the statement to the Person Affected. SAFEMA is only a logical extension and continuation of the detention proceedings under COFEPOSA. Person Affected made the voluntarily statement before the Customs authorities and same remained un- retracted. Since a copy is already given to him as evidenced in the grounds of detention there is no need for giving one more copy to him.

(b) The appellant had not made any request to the Competent Authority seeking supply of materials to be relied on by him. Therefore, it is not a case of refusal.

(c) It can be seen from the proceedings that principles of natural justice have been complied with in every step of the proceeding and due opportunity was given at every stage. The appellants were permitted to engage a lawyer of their choice. Personal hearings were given.



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(d) The Competent Authority has relied upon two passports produced by the appellants to come to the decision/conclusion. The confession statement has been referred to by the Competent Authority after his conclusion paragraph. It can be seen from the order that even without referring to the confession statement, the conclusion has been arrived at. The paragraph, in which the confession statement has been referred to, if removed, the reasons and decision will stand. Therefore, it cannot be said the authority has relied upon the statement to come to his conclusion.

(e) To allege violation of natural justice, the appellant has to show the nature of prejudice caused to him. It is argued that had confession statement been supplied, the appellant would have produced his second passport. On the contrary, it is seen from the order that the appellant had already produced his 2nd passport and the decision was based only on such passports. Therefore, the appellants failed to show the nature of prejudice.

(f) As held in *State Bank of Patiala vs S.K. Sharma*¹¹ mere non supply of document relied upon will not amount to violation of natural justice where there is substantial compliance of natural justice and that where no prejudice caused on account of it.

¹¹ CDJ 1996 SC 067 = 1996 AIR (SC) 1669



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(V) Appellants relying on Precedents which are distinguishable and inapplicable:

34. (a) By the decision in *Attorney General of India & Ors. vs. Amratlal Prajivanda & Ors.*(supra), the SAFEMA provisions and Act were held to be constitutionally valid by the 9 Judges bench of Supreme Court. The next judgment in *Kesar Devi vs Union of India* (supra) confirms and in consonance with the attorney general case.

(b) The other three subsequent decisions which are cited, namely,

(i)*Fatima Mohd. Amin (Dead) through Lrs v. Union of India*¹²,

(ii)*P.P.Abdulla & Anr. v. Competent Authority & Ors.*¹³, and

(iii) *Aslam Md. Merchant Vs. Competent Authority*¹⁴

have to be read in the light of the Constitution Bench decision since they are decisions by Benches comprised of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in *Attorney General vs. Amratlal Prajivandas* case. The law laid down in para-44 by the Constitution Bench that there ought to be the connecting link between those properties in the

¹² (2003) 7 SCC 436

¹³ (2007) 2 SCC 510

¹⁴ (2008) 14SCC 186



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name relative/associate and the convict/detenu, the burden of disproving which as mentioned above is upon the relative/associate.

(i) In ***Fatima Mohd. Amin (Dead) Through Lrs v. Union of India & Anr.***¹⁵, the Supreme Court held that the contents of 6(1) notice therein even if taken on their face value did not disclose any reason warranting action against the appellant. It was observed that no allegation whatsoever has been made to the effect that there exists any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu. It may be noted that, the property that was sought to be forfeited belong to the mother, whereas the detenus were her two sons and it was the case of the respondent that the illegal activity was carried out by two sons, and the property was acquired in the name of the mother from the ill gotten monies.

- In the present case, admittedly the said properties are purchased by the detenu in his name and jointly in the name of his wives. The link or nexus is not required in view admitted flow of fund from the detenu. Therefore on facts the above citation in Fatima

¹⁵ 2003 (7) SCC 436



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Md. Amin is not applicable to the present case.

- In Kesar Devi case (supra), the Court had distinguished the Fatima Md Amin case.

(ii) In ***P.P.Abdulla & Anr. v. Competent Authority & Ors.***¹⁶, the Supreme Court applied the decision in ***Fatima Mohd. Amin*** (supra). The Supreme Court observed as follows:

"9. In our opinion, the facts of the case are covered by the decision of this Court in Fatima Mohd. Amina v. Union of India (supra). 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".

- In the case on hand, sufficient reasons have been duly recorded. On facts, the above judgement is not applicable to the facts of this case.

- According to the clarification given by constitutional bench in Attorney General's case (supra), the link or nexus is required to be

¹⁶ 2007 (2) SCC 510



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mentioned only in case of relative/associate. The subsequent judgement in *Kesar Devi vs. union of India*¹⁷ was also of the same view.

- Unfortunately Attorney General case (Supra) and Kesar Devi case (Supra) were not brought to notice of the court while deciding P.P.Abdulla case.

- P.P.Abdulla case has held that link or nexus has to be mentioned in the notice even for detenu which is contrary to the constitutional bench case. In the above cited case, P.P.Abdulla was detenu. Thus the above judgement in P.P.Abdulla has been rendered per incuriam.

(iii). In *Aslam Mohd. Merchant Vs Competent Authority & Ors*¹⁸, the Court has observed in para-36 that the Competent Authority himself was not satisfied as to the reasons. The Hon'ble Court was of NDPS Act. Under the NDPS Act, the authorities had power of "freezing" "tracing" "identifying" the properties and were therefore bound to establish the proof that the property was derived from illicit

17 2003 (7)SCC 427

18 2008 (14)SCC 186



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traffic. Further the definition of "Property" and "illegally acquired property" under NDPS Act is different from the definition of SAFEMA. Therefore on facts, the Court in Aslam Merchant held that, under the scheme of the NDPS Act, the necessity of establishing link or nexus is writ large on the face of the statutory provision as would appear from the definition of 'illegally acquired property' (under NDPS) as also that of 'property' (NDPS). On the other hand, under the provisions of SAFEMA there is no requirement of establishing the link. Thus on facts, Aslam Merchant case (supra) is not applicable to the case on hand.

(c) That is, nexus between the income derived from illegal activity and the acquisition of the property need not be established where the property concerned is that of the detenu himself. The said nexus is required to be established only when the detenu's property is held benami in the name of any other person or relative, It is only in such cases that the nexus between the income derived from illegal activity, and the property is required to be established.

(d) A perusal of the said subsequent judgments indicates that none of these Judgments have considered para-44 of Attorney General's case (supra)



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in proper perspective. The observations made in the above judgments that even in the cases where the property is held by the detenu himself, there should be connecting link or nexus, should be held as made in ignorance of and without considering the law laid down in para 44 which was binding.

35. Therefore, not only the decision in Attorney General's case (supra) must be followed on account of the larger strength of the Bench that delivered it but all the subsequent decisions, which taken contrary view to the Attorney General case (supra) and Kesar Devi case (supra) must be held to be per-incuriam and hence not binding since they have not taken into account the ratio of the judgment of the Constitution Bench. As per the doctrine of 'per incuriam', any judgment which has been passed in ignorance of or without considering a statutory provision or a binding precedent is not good law and the same ought to be ignored.

36. Therefore, the notice issued by Competent Authority is valid and in accordance with the provisions and the properties mentioned therein are liable to be forfeited to the Government.



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37. In the case of ***Biswanath Bhattacharya vs. Union of India and others***¹⁹, the Apex Court held as follows:

“39. If a subject acquires property by means which are not legally approved, the sovereign would be perfectly justified to deprive such persons of the enjoyment of such ill-gotten wealth. There is a public interest in ensuring that persons who cannot establish that they have legitimate sources to acquire the assets held by them do not enjoy such wealth. Such a deprivation, in our opinion, would certainly be consistent with the requirement of Articles 300-A and 14 of the Constitution which prevent the State from arbitrarily depriving a subject of his property.

38. The question of principles of natural justice has been dealt with in the case of ***Smt. Rukhiya vs. The Registrar the Appellate Tribunal for Forfeited Property***²⁰ as under:

“42. I have carefully gone through the order passed by the competent authority dated 20.6.1996. I am unable to accept the contention of the petitioners that there is a

¹⁹ 2014 (4) SCC 392

²⁰ 2014 SCC OnLine Mad 20



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violation of principles of natural justice. A perusal of the order would show that the petitioners were given sufficient opportunity by the competent authority before passing the composite order. A common reply was filed by the petitioners on 30.3.1996 followed by personal hearings on several dates. During the course of the proceedings, the petitioners filed written replies on 24.12.88, 18.1.89, 18.3.91, 21.3.91, 19.4.95 and 25.5.95. Through those replies, the petitioners had explained the sources of acquisition of the properties under notice. Thus, after hearing the petitioners and perusing their written objections, the competent authority passed the composite order. He has also recorded that during the course of the proceedings, copies of several documents such as purchase deeds, passport of the detenu, SSLC Certificate, NRE Account, details of cheques issued, pass book of share and loan account of the petitioners have been filed. Thus, it is clear that the petitioners have been given full opportunity to furnish the documents which they would like to rely upon. The only grievance set out in these writ petitions on the question of principles of natural justice is that the competent authority relied upon a statement of the petitioner dated 6.2.1984 said to have been given under the COFEPOSA proceedings. According to the petitioners, the copy of the said statement was not



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furnished to the petitioners and therefore it violates the principles of natural justice. In fact a perusal of the order of the competent authority would show that he has not come to the conclusion based on the said statement alone and on the other hand he has reasoned out for his conclusion at paragraph No. 4 itself based on the passports produced by the detenu/petitioner.”

39. The learned Single Judge in the writ order elaborately considered the grounds raised by the appellants herein. The learned Single Judge also relied on the judgement of 9 Judges Bench of the Hon'ble Supreme Court of India in the **case of Prajivandas (supra)** and factually distinguished the other cases relied on by the appellants/ petitioners. The documents produced by the detenu and the report submitted by the authorities were also taken into consideration. Since some of the cases relied on by the appellants are distinguishable on facts, the same cannot be followed as precedent in the present case. The legal principles in the **case of Prajivandas (supra)** enumerates that the burden of establishing that the properties, mentioned in the Showcause Notice issued under Section 6 and which are held on that date by the relative or an associate of the convict / detenu, are not illegally



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acquired properties of the convict / detenu, lies upon such relative / associates. He must establish that the said property has not been acquired with the moneys or assets provided by the detenu / convict or that they in fact did not or do not belong to such detenu / convict.

40. The Hon'ble Supreme Court reiterated that there ought to be a connective link between those properties and the convict/ detenu, the burden of disproving which, as mentioned above, is upon the relative / association. In view of the said legal principles settled by the 9 Judges Bench of the Supreme Court of India, the arguments advanced on behalf of the appellants that even before issuance of 6(1) Notice, there must be complete materials available on record and link between the properties and the detenu must be established is incorrect proposition and if such an argument is accepted, the very purpose and object of SAFEMA would be defeated. Rule of constructive interpretation of statute became imminent in order to ensure that the objectives of the enactment is fulfilled.

41. Therefore, the appellant has not established any ground for the purpose of entertaining the present writ appeal. The writ order and the



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findings of the learned Single Judge are candid and convincing and it does not require any interference.

42. Accordingly, the writ appeals are dismissed. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(C.K.J.,)

19.08.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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To

1.The Registrar,
The appellate Tribunal for
Forfeited Property, 4th Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi-100 002.

2.The Competent Authority,
Smugglers & Foreign Exchange Manipulators
(Forfeiture of properties) Act 1976,
Utsav, No.1, 64/1, G.N.Chetty Street,
Chennai – 17.



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S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

(sha)

Pre-Delivery Order in
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19.08.2024