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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 14940/2024 & CM APPL. 62655/2024**

NARENDRA KUMAR RAI

.....Petitioner

Through: Mr. Divyesh Pratap Singh and Mr.
Amit Sangwan, Advocates.

versus

**THE COMPETENT AUTHORITY SAFEMA NDPS ACT NEW
DELHI**

.....Respondent

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan Siddhant, GP.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

23.10.2024

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1. The Petitioner has filed the present petition, assailing order dated 27th August, 2024¹ passed by the Appellate Tribunal under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976,² whereby the Petitioner's appeal against order dated 11th March 2020 passed by the competent authority under SAFEMA, was held to be non-maintainable.

2. The factual background leading to the initiation of the present proceedings is summarised as follows:

2.1 A detention order dated 4th December, 1990 was passed against Mr. Birendra @ Virendra Kumar Rai, the Petitioner's brother, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic

¹ "impugned order"

² "SAFEMA"



Substances Act, 1998. Mr. Birendra was covered under Section 68A(2)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.³ Accordingly, the provisions of Chapter VA of the NDPS Act applied to his relatives, who fell under Section 68A(2)(d) of the Act. Accordingly, Case no. 48/83 was registered against the Petitioner as well as his father and brothers.

2.2 The proceedings in the said case resulted in order dated 14th January, 1993, whereby the competent authority forfeited the property bearing No. B-37/47A, Birdopur Police Station, Bhelupur, District Varanasi,⁴ as per Section 68(I)(1), (2) and (3) of the NDPS Act.

2.3 Against the said order, the Petitioner preferred an appeal before the Appellate Tribunal for Forfeited Property.⁵ The said appeal was disposed of through order dated 23rd March, 1993, and the matter was remanded to the competent authority for a fresh decision, providing the Petitioner an opportunity to lead evidence under Section 68I of the Act.

2.4 Pursuant to this remand, the competent authority passed another order on 12th August, 1993 forfeiting the property on the ground of non-submission of documentary evidence.

2.5 Aggrieved by the said order, the Petitioner preferred an appeal along with miscellaneous petition for condonation of delay before the ATFP on the ground that the copy of order dated 12th August, 1993 was not served upon him and he had no knowledge of the order till 06th October, 1997. The said contention was however rejected, and the ATFP *vide* order dated 24th August, 1999, dismissed the appeal.

2.6 Subsequently, the Petitioner preferred a misc. writ petition

³ “NDPS Act”

⁴ “impugned property”



23211/2023 before the High Court of Judicature at Allahabad which was dismissed on 27th November, 2013. The Petitioner preferred another civil writ petition no. 66885/2013 before the High Court of Judicature at Allahabad, which was also dismissed through order dated 09th December, 2013. Accordingly, proceedings under Section 68U of the NDPS Act were initiated for taking possession of the impugned property.

2.7 Parallely, it must be noted that other affected parties, *i.e.*, the brothers of the Petitioner namely Mr. Sharwan Kumar Rai, Mr. Vinay Kumar Rai, Mr. Vimal Kumar Rai and Mr. Pawan Kumar Rai, who had a combined 5/6th share in the property, continued their legal proceedings, which resulted in the order dated 11th March, 2020. Through this order, the competent authority under SAFEMA quashed the forfeiture order *qua* the aforesaid affected parties, while categorically recording that the Petitioner's share shall remain forfeited. The observations to that effect are as follows:

“However, 1/6th share of Shri Narinder Kumar Rai in the above property (House No.B-37/47A, Birdopur Police Station: Bhelupur, Distt: Varanasi and the plot No.61 on which the house is constructed) will remain forfeited in view of the detailed discussion as mentioned supra.”

2.8 In such circumstances, the Petitioner preferred an appeal under Section 68(4) of the NDPS Act impugning order dated 11th March, 2020. The Appellate Tribunal under SAFEMA *vide* the impugned order held that the appeal was not maintainable in the following terms:

“7. The Forfeiture Order under challenge is the impugned order dated 11.03.2020. As per the impugned order dated 11.03.2020, Shri Birendra @ Virendra Kumar Rai, S/o Shri Kamta Prasad Rai, is a person against whom order of detention vide F.No.80/43/91 the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as “PIT NDPS Act, 1988”) dated 04.12.1990

⁵ “ATFP”



under the provision of section 3(1) of the PIT NDPS Act, 1988 was passed by Joint Secretary to the Government of India. The said detention order was challenged before the Hon'ble Allahabad High Court in Writ Petition No. 1648 of 1991 but the said Writ Petition was dismissed on 21.03.1992. Subsequently, Shri Virendra Kumar Rai filed an appeal against the afore mentioned High Court order before the Hon'ble Supreme Court of India in Special Leave to Appeal (Criminal) No. 1050 of 1992. The said appeal was also dismissed by the Hon'ble Supreme Court of India vide its order dated 03.09.1992. Thus, the detention order has neither been revoked by the Advisory Board nor it has been set aside by the Competent Authority.

8. *And that Shri Birendra Kumar Rai alias Virendra Rai is a person covered under section 68A(2)(c) of the Narcotics Drugs and Psychotropic Substance Act, 1985. Accordingly, the provisions of Chapter VA of the Narcotic Drug and Psychotropic Substances Act, 1985 are applicable to him. His relatives are also covered u/s 68A(2)(d) of NDPS Act, 1985.*

9. *And that Shri Virendra Kumar Rai along with his father Shir Kamta Prasad Rai and his brothers namely; Shri Narender Kumar Rai, Shri Sharwan Kumar Rai, Shri Vinay Kumar Rai, Shri Vimal Kumar Rai and Shri Pawan Kumar Rai were engaged in illicit trade of drugs under NDPS Act, 1985 for a very long time. A case number 48/83 was also registered against them under sub-section 14 of section 9 of the Opium Act, 1857.*

10. *It is an admitted fact that so far as the present appellant is concerned, the properties which were forfeited vide order dated 12.08.1993 has attained finality. So, the same cannot be reopened in the garb of challenging the order dated 11.03.2020 which was the proceedings against the persons other than the present appellant. The judgment of the Hon'ble Supreme Court (Supra) relied on by the learned counsel of the appellant is not applicable as the facts, nature of case and the law are different from the facts, nature of the case and the law involved in the present case.*

11. *In the light of the same, the contention raised by the learned counsel for the respondent regarding the non-maintainability of the Appeal is considered and accepted.*

12. *Since the case of the appellant has attained finality therefore the Appeal is dismissed being not maintainable. Accordingly, the stay order if any passed in this Appeal is vacated and the pending miscellaneous petitions, if any, are disposed of."*

3. In the aforesaid factual background, Mr. Divyesh Pratap Singh, counsel for the Petitioner, makes the following submissions:

3.1 The impugned property was collectively purchased by all the six



owners including the Petitioner, out of valid agricultural income or of their parents. The property was in fact, acquired by way of a registered common sale deed dated 19th October, 1983.

3.2 The Petitioner's 1/6th share in the impugned property cannot be segregated. The other five owners of the property, *i.e.*, the Petitioner's brothers are similarly placed as the Petitioner. The forfeiture order *qua* them has been quashed, and their collective share constituting 5/6th of the property has been released. Thus, the forfeiture of the Petitioner's share is grossly inequitable.

3.3 The competent authority as well as the Appellate Authority have segregated the Petitioner's share from the impugned property without assigning any reasonable basis. Reliance is placed on the common sale deed dated 19th October, 1983 to establish that the ownership of the Petitioner is conjoint with the other owners of the property, who have succeeded in the matter.

3.4 The Petitioner had challenged the order of the High Court of Judicature at Allahabad in W.P. (C) 66885/ 2013 before the Supreme Court in SLP No. 8644/2014. While the Supreme Court, *vide* order dated 17th April, 2014 dismissed the said SLP, they categorically observed that the dismissal will not come in the way of any pending proceedings.

3.5 Fresh proceedings were initiated by the competent authority in 2012, as is evident from notices issued to the Petitioner under Section 68I(1) of the NDPS Act, to which the Petitioner had submitted his reply. The issuance of fresh notices effectively indicates that the issue of forfeiture had been left open in terms of the NDPS Act.

4. The Court has considered the aforementioned submissions, but remains



unpersuaded. The Appellate Tribunal under SAFEMA, in the impugned order dated 27th August, 2024 has accurately noted the sequence of facts leading to the conclusion that the forfeiture *qua* the Petitioner had attained finality. The notice issued to the Petitioner in 2012 under Section 68I(1) of the NDPS Act, in the opinion of the Court, does not amount to re-opening of the forfeiture of the Petitioner's 1/6th share in the property that had attained finality. It is abundantly clear from the facts of the case that the ATFP had remanded the forfeiture order dated 14th January, 1993 to the competent authority, providing the Petitioner a fair opportunity to lead evidence against the forfeiture order. It was on account of the Petitioner's inability to furnish substantive documentary evidence that the second forfeiture order dated 12th August, 1993 was passed by the competent authority. The same was further reaffirmed by order dated 11th March, 2020, whereby the competent authority under SAFEMA categorically noted that 1/6th share of the Petitioner in the impugned property shall remain forfeited.

5. The Petitioner has placed reliance on the judgment of the Supreme Court in *Javed Shaukat Ali Qureshi v. State of Gujarat*,⁶ to emphasise that when there is similar or identical evidence against multiple accused persons, the Court cannot convict one and acquit the other. However, in the opinion of the Court, the said judgement is not applicable to the facts of the present case. Paragraph No. 15 of the judgement makes it abundantly clear that the aforesaid observation of the Supreme Court related to conviction and acquittal of two accused based on identical eyewitness evidence, whereby the Court opined that 'criminal' courts cannot make a distinction between two accused when faced with identical testimonies against them. Contrarily,



the instant case deals with the ramifications of detention on the detenu's family members under Section 68A(2)(d) of the NDPS Act. As observed above, the Petitioner and his brothers were similarly placed with respect to the forfeiture of the impugned property, however, it was on account of the Petitioner's failure to furnish evidence before the competent authority that his share from the property was segregated and forfeited. Therefore, the Petitioner cannot challenge the aforesaid forfeiture on the ground of parity with his brothers.

6. It must also be emphasised that the present petition has been filed against the order of the appellate authority under SAFEMA. This Court, exercising writ jurisdiction under Article 226 of the Constitution of India, does not function as a court of appeal. Therefore, the impugned order can only be set aside on account of manifest arbitrariness or illegality in the findings of the Appellate Tribunal. However, as noted above, the competent authority as well as the appellate authority have consistently upheld the forfeiture of the Petitioner's share in the impugned property. In such circumstances, the Court does not find any infirmity in the impugned order.

7. Accordingly, the instant petition is disposed of, along with pending application.

SANJEEV NARULA, J

OCTOBER 23, 2024

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⁶ (2023) 9 SCC 164.