IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28766-2018
Reserved on: 05.03.2025
Pronounced on : 28.05.2025

NIRMAL SINGH -PETITIONER

V/S

UNION OF INDIA AND OTHERS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. P.K. Mutneja, Sr. Advocate with
Ms. Suverna Mutneja, Advocate
Mr. Akshay Goel, Advocate and
Mr. Gurnam Singh, Advocate
for the petitioner.

Ms. Garima Kuthiala Prashar, Advocate with
Mr. Chander Mohan Sharma, Advocate
for the respondents No.1, 3 and 4.

Ms. Arundhati Kulshreshtha, A.A.G, Punjab
for the respondent No.2.

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KULDEEP TIWARI, J. (ORAL)

1. The challenge enclosed in the instant writ petition is to the petitioner's father's detention order No.5201-2/SD and B-2 dated 15.04.1975, issued under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'COFEPOSA Act'). Moreover, challenge is also thrown to the orders dated 27.07.1994 and 12.03.1996.

2. The case at hand has a chequered history and it is pending adjudication before this Court since 1996. Therefore, before proceeding to

gauge the merits of the instant writ petition and penning down judgment, it is deemed imperative to dive deep and make a studied survey of the factual matrix.

FACTUAL MATRIX

3. The petitioner's father, who was/is owner of M/s Friend Watch Company, Railway Road, Jalandhar, was originally detained on 01.10.1974 under the Maintenance of Internal Security (Amendment) Ordinance, 1974 (hereinafter referred to as the 'MISA Ordinance'). This detention order was successfully assailed by the petitioner's brother by filing CRWP-127-1974 before this Court. This Court, vide order dated 12.11.1974, held the impugned detention order to be illegal and ordered the detenu to be set at liberty.

4. Thereafter, second detention order dated 15.04.1975 was clamped upon the petitioner's father, but, this time under Section 3(1) of the COFEPOSA Act. The second detention order was also challenged by the petitioner's brother by filing CRWP-136-1975 before this Court. However, during pendency of the CRWP (supra), national emergency was declared and after it was lifted, the petitioner's father was released on 23.03.1977. On account of his release, the CRWP (supra) was dismissed as becoming infructuous, vide order dated 24.02.1978.

5. Subsequently, a show cause notice under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the 'Act of 1976'), was served to the petitioner on 22.08.1980, and thereafter, vide order dated 13.02.1989, his

following properties were ordered to be forfeited to the Central Government free from all encumbrances under Section 7(3) of the Act of 1976.

> *"(i) Right, title and interest in House No.267, Mota Singh Nagar, Jalandhar.*
>
> *(ii) Right, title and interest in the business carried on under the name and style of Friends Watch Company Jalandhar."*

6. This forfeiture order caused pain to the petitioner and triggered him to institute thereagainst an appeal before the Appellate Tribunal for Forfeited Property, New Delhi (hereinafter referred to as the 'Appellate Tribunal'). The Appellate Tribunal, through its drawing the order dated 25.07.1989, remanded the case to the competent authority with a direction to pass an order afresh under Section 7(1) in accordance with law.

7. In the meantime, the petitioner's father also instituted CRWP-4062-1989 before this Court, thereby assailing the proceedings initiated against his son (present petitioner) by the competent authority under the Act of 1976, on the ground that, the same are outcome of his own detention under the COFEPOSA Act, hence his detention be declared illegal and the proceedings (supra) be quashed. This writ petition was dismissed vide order dated 10.12.1990, however, liberty was granted to the petitioner's father to agitate before the competent authority all the grounds incorporated in the writ petition for vacation of the notice dated 22.08.1980 issued to his son.

8. Thereafter, the competent authority, which was seized of the matter after remand from the Appellate Tribunal, affirmed the decision of forfeiture of the petitioner's properties (supra) vide order dated 27.07.1994.

9. Fetching grievance from the order dated 27.07.1994, the petitioner again preferred an appeal before the Appellate Tribunal, mainly on the ground that, his objections/grounds were not adjudicated by the competent authority. The Appellate Tribunal, vide order dated 12.03.1996, partly allowed the appeal, by setting aside the impugned forfeiture order insofar as it ordered forfeiture of the business carried on in the name of M/s Friends Watch Company.

10. Fetching grievance from the competent authority's forfeiture order dated 27.07.1994, and, the Appellate Tribunal's order dated 12.03.1996, the petitioner has instituted the instant writ petition.

<u>SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER</u>

11. The first argument constructed by the learned senior counsel for the petitioner is that, the petitioner does not have any concern with the business of M/s New Tyme and Company, Jalandhar City. To lend vigour to this argument, he submits that, initially the partnership firm (supra) was run by the petitioner's father and grandfather, however, the petitioner's father departed from the partnership firm on 05.06.1964, as is evident from the dissolution deed (Annexure P-1). After parting ways from the partnership firm (supra), the petitioner's father started his own business

under the name and style of M/s Friend Watch Company, owner whereof the petitioner is now. Therefore, there is nothing on record even remotely suggestive of the fact that, the petitioner ever had any relation with M/s New Tyme and Company, Jalandhar City, which is presently being run by petitioner's grandfather and uncle (petitioner's father's brother).

12. The second argument built up by the learned senior counsel is that, despite the original detention order dated 01.10.1974, as issued against the petitioner's father under the MISA Ordinance, becoming set aside by this Court vide order dated 12.11.1974, drawn upon CRWP-127-1974, yet another detention order dated 15.04.1975 was issued against him under the COFEPOSA Act (which replaced the MISA Ordinance), and that too, on identical charges/grounds. Once the charges/grounds of detention, as embodied in the original detention order issued under the MISA Ordinance, were already set aside by this Court, hence the incorporation of identical charges/grounds in the subsequent detention order issued under the COFEPOSA Act, is totally unreasonable and illegal. Moreover, the charges/grounds of detention, which were levelled under the MISA Ordinance and were set aside by this Court, were stale charges and pertained to M/s New Tyme and Company, with which the petitioner's father had no concern or connection. Therefore, the impugned detention order dated 15.04.1975 is liable to be set aside.

13. Furthermore, the learned senior counsel, in his endeavour to assail the charges/grounds of detention embodied in the impugned detention order dated 15.04.1975, made the following submissions:-

(a) The ground No.1 pertains to recovery of 69 watches from a parcel addressed to Sh. Santokh Singh, which was allegedly found containing 69 watches, valued at Rs. 7000/-. The petitioner's father stood trial and was exonerated by the court of Sh. Dalbara Singh, C.J.M., Jalandhar, vide decision dated 29.02.80 (Annexure P- 12). This exoneration was before the issuance of notice under section 6 of the Act of 1976.

(b) The ground No.2 pertains to the recovery of 7 smuggled watches from the premises of M/s New Tyme and Co. on 15.07.72. This ground was found to be false and the alleged watches were also released by the appellate authority on 29.12.84. This order was on file before the competent as well as the appropriate authority at the time of hearing. The same was pointed out to the authority at the time of hearing. All in all they could not even charge-sheet the petitioner's father on this ground.

(c) The ground No.3 relates to the recovery of 7 watches from M/s Friend Watch Co. These watches were found to be old ones meant only for repairs and were released by the appellate collector (Customs) vide its order dated 24.9.75. All in all they could not even charge-sheet the petitioner's father on this ground.

(d) The ground No.4 relates to the recovery of 47 new watches from M/s New Tyme & Co. valued at Rs.7405/-. In this matter, the Department chargesheeted the petitioner's father, but, the petitioner's father was exonerated vide judgment dated 14.10.80 (Annexure P-13) passed by the Additional Session Judge, Jalandhar. The Additional Session Judge, Jalandhar, brought out that the petitioner's father was prosecuted because of his enmity with the custom officials.

14. Continuing his arguments, the learned senior counsel submits that, all the impugned proceedings have emanated from personal animosity of the custom officials, which is noted even in the judgment dated 14.10.1980 (Annexure P-13).

15. Concluding his arguments, the learned senior counsel draws attention of this Court towards the statute enclosed in the Act of 1976 and submits that, the competent authority has not recorded any reason to believe that the properties concerned were illegally acquired by the petitioner, hence the impugned show cause notice dated 22.08.1980 is itself void *ab initio* and the proceedings emerging therefrom do not survive at all.

SUBMISSIONS OF THE LEARNED STATE COUNSEL / COUNSEL FOR THE RESPONDENT NO.2

16. The arguments advanced by the learned senior counsel for the petitioner are vociferously opposed by the learned State counsel by making the following submissions.

17. First of all, the learned State counsel submits that, there has been inordinate delay and laches of 21 years, on the part of the petitioner, in challenging the detention order dated 15.04.1975, issued under Section 3(1) of the COFEPOSA Act.

18. She next submits that, the detention order (supra) has already been assailed by the petitioner's brother by instituting CRWP-136-1975 before this Court, which was dismissed as becoming infructuous, vide order dated 24.02.1978. The order dated 24.02.1978 was never

challenged, hence the same has attained finality. Consequently, now the petitioner cannot, in the instant writ petition, again assail the detention order (supra).

19. It is further submitted that, the father of the petitioner along with his brother were running and managing two firms under the name and style of M/s New Tyme and Company and M/s Friends Watch Company, and, both these firms were indulging in the smuggling of watches. It is completely false that, the petitioner was no longer associated with these two firms. When the premises of M/s New Tyme and Company were raided, the father of the petitioner made a statement on 08.03.1969, without any pressure or coercion. Furthermore, the brother of the petitioner signed the said statement as proprietor of M/s New Tyme and Company. At no stage was it disclosed that, he has nothing to do with the said firm.

20. Finally, the learned State counsel submits that, even at the time, when the father of the petitioner was stated to have been retired from the said partnership concern, he was lodged in the Central Jail and was serving sentence in another case. As per information provided by the father of the petitioner, he remained in the Central Jail from 1958 – 1968, and therefore, it was impossible for him to run any business or to execute any document, thus indicating his retirement from either of the two partnership concerns. Moreover, the father of the petitioner signed a declaration recorded under Section 11(c) of the Customs Act on behalf of M/s New Tyme and Company and made a declaration of the stocks of

watches lying with the said firm. As such, it can safely be concluded that, the father of the petitioner was actively engaged in the business of M/s New Tyme and Company, and that, this firm was engaged in the smuggling of watches.

REASONS FOR DISMISSING THE INSTANT WRIT PETITION

21. This Court has heard at length the submissions made by the learned counsels representing the contenting litigants and also made a studied survey of the entire record. For the reasons to be assigned hereinafter, this Court does not find any merit in the instant writ petition.

22. The arguments pitched by the learned senior counsel for the petitioner mainly revolves around the legality of petitioner's father's detention order dated 15.04.1975, issued under Section 3(1) of the COFEPOSA Act. By making detailed submissions, an endeavour has been made to impress upon this Court that, since the charges penned down in the original detention order dated 01.10.1974, issued against the petitioner's father under the MISA Ordinance, were quashed by this Court way back on 12.11.1974, therefore, on the same set of charges, the second detention order dated 15.04.1975 is not at all maintainable.

23. This Court is of the opinion that, the above submission is not available to be raised by the petitioner inasmuch as the same has already been adjudicated and answered against the petitioner's father by this Court through drawing the order dated 10.12.1990, upon CRWP-4062-1989. It was observed by this Court that, since CRWP-136-1975, wherein initially became assailed the legality of the detention order dated

15.04.1975, has already been dismissed as becoming infructuous, vide order dated 24.02.1978, and, this order has acquired finality, therefore, CRWP-4062-1989 is not maintainable on the ground of *res judicata*. The relevant extract of the order dated 10.12.1990 is reproduced hereunder:-

> *"None of the three arguments advanced by the learned counsel for the petitioner has any relevance or is of any consequence on the disposal of Cr.W.P. No. 4062 of 1989 filed by the petitioner. State nature of the grounds of detention incorporated in Annexure P.4 being the subject matter of Criminal Writ Petition No. 136 dated 24th February, 1978 cannot be gone into over again and decided afresh in this writ. Cr.W.P. No. 136 of 1975 was dismissed on 24th February, 1978 with the following order, "Mr. Tiwana states that the petitioner has been released from the custody which came about in pursuance of the impugned order. The petition has, therefore, become infructuous and is accordingly dismissed". The petitioner was ordered to be detained vide order Annexure P.3 on 15th April, 1975 for a period of two years only and came to be released on 23rd March, 1977; almost after the expiry of two years period aforesaid. Dismissal of the writ was thus ordered on merits of the case and acquired a finality. In Bhagat Ram Vs. State Of Rajasthan, AIR 1972 S.C. 1502 their lordships of the Supreme Court held that the order of Special Bench of this Court dated 24th February, 1978 unless set aside in appeal was binding and conclusive in all subsequent proceedings between the parties and that the principle of res judicata is also applicable to criminal proceedings. In the light of the observations aforesaid the petitioner is debarred from challenging the legality of the order dated 24th February, 1978 in Cr.W.P. No. 4062 of 1989 after the expiry of over 11 years from the date of its making. Inaction and laches on his part also debar the petitioner from assailing it over again after the lapse of so many years."*

24. While rendering the order dated 10.12.1990, upon CRWP

(supra), although this Court had granted liberty to the petitioner's father to agitate before the competent authority all the grounds incorporated in the said writ petition, however, this liberty was granted by considering the fact that, the basis for institution of the said writ petition was the forfeiture order dated 13.02.1989.

25. The above facts make it abundantly clear that, now the petitioner cannot, by filing the instant writ petition, dispute the legality of his father's second detention order dated 15.04.1975, which has attained finality on dismissal of CRWP-136-1975 vide order dated 24.02.1978. This same observation has already been made by this Court in the order dated 10.12.1990, drawn upon CRWP-4062-1989.

26. Furthermore, this Court is of the view that, the competent authority/Appellate Tribunal has duly examined all the explanations and defence put forth by the petitioner to justify that, acquisition of the house in question is not the result of crime proceeds, rather is result of money earned from legal business and money borrowed from near and dears. The explanations and defence were not found substantiated by any cogent evidence, hence the house in question was ordered to be forfeited. The relevant extract of the findings recorded by the Appellate Tribunal in its order dated 12.03.1996 is reproduced hereunder:-

> *"5. The entire cost of construction has been claimed to have been met out of loans from various relatives. The only exception is the loan of Rs.8,000/- which was taken from Improvement Trust and which was repaid in instalments. Hence apart from the money allegedly withdrawn from the sole proprietory business and the loan from Improvement Trust the entire balance investment is*

claimed to have come out of cash loans from relatives which were all interest free and for which no evidence has ever been filed at any stage that they have been returned to those relatives and if so the source thereof.

1. Shri Jodh Singh Grand father of Shri Nirmal Singh.	*Rs.9500.00*
2. Santokh Singh uncle of Shri Nirmal Singh and brother of the detenu.	*Rs.3500.00*
3. Kuldip Kaur W/o Shri Pritam Singh, mother of the appellant.	*Rs.4893.00*
4. Gurbachan Kaur W/o Praduman Singh, brother of the detenu and uncle of the Affected Person.	*Rs.4496.00*
5. Smt. Pritam Kaur W/o Santokh Singh who had also given a loan himself and who is the brother of detenu.	*Rs.2430.00*
6. Kuldip Kaur W/o Surjit Singh, Uncle of the appellant.	*Rs.2430.00*
7. Pritam Kaur W/o Shri Sohinder Singh	*Rs.13,740.00*
8. Sohinder Singh uncle of Shri Nirmal Singh	*Rs. 5015.00*

6. The facts of the last two creditors have already been discussed as the Competent Authority has rejected their affidavits as these two persons were never produced even before the Income Tax Officer for the purpose of corroboration of their affidavits.

7. After going through the statements recorded by the Income Tax Officer and the entire evidence filed in support of these so called loans it becomes quite clear that the story of these alleged loans from close relatives has been concocted only for the purpose of explaining the investments made in the house property. Relatives do help out other relatives but when it is a case of an emergency or something equally crucial. It is not normal for relatives to be so generous with their money which is claimed to have been given for indefinite periods without any interest for the sole purpose of making investments in immovable property. All the uncles were also married and had their own families to look after. The income returned by them was very small. It was certainly was not high

> *enough to justify such generosity on their part in favour of their nephew Shri Nirmal Singh. Even the grandfather is unlikely to give such a big amount of Rs. 9500/- to one grandson when he had four sons and several other grandchildren. It is not surprising that these relatives agreed to file affidavits to help out Shri Nirmal Singh as in reality no money was being given by them to Shri Nirmal Singh. Most of them even appeared before the Income Tax Officer who recorded extremely cursory statements without asking them any relevant question about whether they had any bank account or where the money had been kept before it was lent to Shri Nirmal Singh and whether they had ever given any such loan to anyone else in their time. It is difficult to believe that apart from the loan of Rs. 8000/- taken from Improvement Trust Jullundhur, any part of the investment made in the house property had come from a genuine and legitimate source or was the income earned by Shri Nirmal Singh. In fact keeping in view his age and the short period which elapsed between the time when he was a student and the time when he was making heavy investments in plot and construction of house it is clear that the money had come from his father. Therefore, on this point the auction of the Competent Authority is held to be justified and is confirmed."*

27. Moreover, the learned senior counsel for the petitioner is unable to point out any illegality or perversity in the finding of fact recorded by the Appellate Tribunal. Therefore, in the absence of any patent illegality or perversity, this Court does not find any reason to interfere in the forfeiture order (supra).

28. The final submission made by the learned senior counsel for the petitioner appertains to non-adherence of the mandate enclosed in the Act of 1976, at the time of issuing the show cause notice dated

22.08.1980 (Annexure P-7).

29. The above made submission is of no significance, inasmuch as, during the course of arguments, this Court posed a specific query to the learned senior counsel for the petitioner, as to whether the show cause notice (supra) has been challenged in the instant writ petition, to which he fairly responded in negative. Consequently, when the legality of the show cause notice (supra) has not been assailed in the instant writ petition, this Court does not find any necessity to adjudicate the legality thereof.

FINAL ORDER

30. In summa, this Court does not find merit in the instant writ petition and the same is accordingly **dismissed**.

(KULDEEP TIWARI)
JUDGE

May 28, 2025
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No