

Smt. Kesar Devi vs Union Of India & Ors on 31 July, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4195, 2003 (7) SCC 427, 2003 AIR SCW 3751, (2003) 9 ALLINDCAS 106 (SC), 2003 (9) ALLINDCAS 106, 2003 (4) SLT 934, (2003) 6 JT 330 (SC), 2003 (9) SRJ 88, 2003 (6) ACE 580, 2003 (6) SCALE 45, 2003 SCC(CRI) 1652, 2003 (2) UJ (SC) 1339, (2003) 5 SUPREME 425, (2003) 6 SCALE 45, (2004) SC CR R 500, (2003) 2 EFR 658, (2003) 3 RECCRIR 880, (2003) 9 INDLD 323, (2003) 47 ALLCRIC 616, (2003) 4 ALL WC 2856, (2003) 3 BLJ 462, (2003) 4 ALLCRILR 642

Author: G.P. Mathur

Bench: S. Rajendra Babu, G. P. Mathur

CASE NO.:

Appeal (civil) 2455 of 1997

PETITIONER:

Smt. Kesar Devi

RESPONDENT:

Vs.

Union of India & Ors

DATE OF JUDGMENT: 31/07/2003

BENCH:

S. Rajendra Babu & G. P. Mathur.

JUDGMENT:

JUDGMENT G.P. Mathur, J.

1. This appeal has been preferred by special leave against the judgment and order dated 12.1.1996 of a Division Bench of Rajasthan High Court by which the special appeal preferred by the appellant against the judgment and order dated 19.7.1995 of a learned Single Judge was dismissed and the order passed by the Appellate Tribunal for Forfeited Property, New Delhi, was affirmed.

2. The appellant is widow of late Jagannath Sharma. The Customs and Central Excise Authorities of Jaipur recovered 5 gold bars from Jagannath Sharma on 24.7.1969. On 8.4.1972 Police Authorities recovered 15 gold bars from Radha Ballabh and on 15.11.1972 two gold bars of foreign origin were

recovered from Ram Parekh and both of them gave statements that they had bought the same from Jagannath Sharma. On 11.10.1973 police recovered 38 gold bars from one Ram Prasad Sharma and the documents showed that the same belonged to Jagannath Sharma. Jagannath Sharma was then detained under MISA on 8.10.1974, but the detention order was revoked and he was released in November, 1974. Thereafter, he was again detained on 4.8.1975 under COFEPOSA Act by an order passed by the Deputy Secretary to the Home Department, Government of Rajasthan, Jaipur. The detention order was passed on the ground that the State Government was satisfied that with a view to prevent Jagannath Sharma from dealing in smuggled goods and engaging in transporting or concealing or keeping smuggled goods, it was necessary to make an order under Section 3(1) of the COFEPOSA Act to detain him.

3. Proceedings for forfeiture of three properties, namely, (1) House property No. D-48, Bapu Nagar, Jaipur; (2) House property known as Haldia House, Johari Bazar, Jaipur (Municipal No.JD-JMC-1/106/1948); and (3) House Property in Mehandi Ka Chowk, Ramganj Bazar, Jaipur (Municipal No.GD-JMC-1/276/1948) were initiated under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short "SAFEMA"). A notice under Section 6(1) of SAFEMA (hereinafter referred to as "the Act") was issued to the appellant Smt. Kesar Devi with regard to Bapu Nagar property and a similar notice was issued to the appellant's husband Jagannath Sharma with regard to the other two properties, namely, Haldia House and Mehandi Ka Chowk. Jagannath Sharma gave a reply that the aforesaid two properties did not belong to him but belonged to his wife. Thereafter, the competent authority issued a letter dated 27.4.1977 purporting to be a notice under Section 6(2) of the Act to the appellant. In this letter apart from enclosing a copy of the notice under Section 6(1) issued to Jagannath Sharma as required by clause (2) of Section 6, the competent authority called upon the appellant "to produce evidence if she was the real owner of the aforesaid property, and if so, to indicate the source of her income, earnings or assets out of which or by means of which she had acquired the properties." In her reply dated 5.5.1977, the appellant asserted that she was the absolute and exclusive owner of all the three properties and the same had been purchased out of her own individual income and they had nothing to do with her husband Jagannath Sharma. The competent authority, after considering the material on record passed an order under Section 7(1) of the Act on 28.7.1977 against the appellant forfeiting Bapu Nagar property. A separate order was passed against Jagannath Sharma on the same date forfeiting the other two properties. The orders were passed on the finding that though the ostensible owner of the properties was Smt. Kesar Devi but the real owner was her husband Jagannath Sharma. In appeal, the appellate Tribunal vide its order dated 26.10.1977 set aside the order and remanded the matter to the competent authority to enable the appellant and her husband to cross-examine the witnesses and also to produce such witnesses in support of their case, as they may desire. Thereafter, the competent authority, after affording an opportunity of hearing and leading evidence, passed a fresh order, forfeiting all the three properties, namely, properties at Bapu Nagar, Haldia House and Mehandi Ka Chowk.

4. Feeling aggrieved by the said order, the appellant preferred an appeal before the appellate Tribunal. The appellate Tribunal held that in the notice issued to the appellant under Section 6(1) of the Act, two properties, namely, Haldia House and Mehandi Ka Chowk were not included. The Tribunal did not accept the contention of the representative of the Department that the letter dated

27.4.1977 forwarding to the appellant a copy of the notice under Section 6(1) issued to her husband Jagannath Sharma, was not only a notice under Section 6(2) to her but also a notice under Section 6(1) in respect of these two properties. After consideration of the evidence adduced by the parties, the Tribunal agreed with the finding of the competent authority that there was no evidence to support the assertion that the appellant was carrying on any business and that any savings were thus available to her for making investment in the properties acquired. Accordingly, the appeal was allowed qua (1) Haldia House property and (2) Mehandi Ka Chowk properties and the order of forfeiture passed regarding the aforesaid properties was set aside. The appeal was, however, dismissed with regard to house property No.D-48, Bapu Nagar, Jaipur and its forfeiture as directed by the competent authority was upheld.

5. The appellant then preferred a writ petition before the Jaipur Bench of Rajasthan High Court challenging the orders of the competent authority and of the appellate authority. During the course of hearing of the writ petition, three main contentions assailing the detention of Jagannath Sharma were raised, namely, (1) when challenge is made regarding forfeiture of the property under SAFEMA, the Court is competent to examine the orders passed under COFEPOSA Act; (2) the order passed by the State Government for detaining the appellant's husband under COFEPOSA Act was bad in law; and (3) the grounds of detention under COFEPOSA Act were not communicated. It was also urged that reasons for belief had not been recorded as provided under Section 6(1) of the Act. The finding of the authorities that the appellant had failed to establish that she had purchased the property from her own income, was also assailed. The learned Single Judge did not accept the contentions raised on behalf of the appellant and after a detailed consideration of the same dismissed the writ petition. The special appeal preferred by the appellant was dismissed summarily by the Division Bench of the High Court.

6. In support of the contention that it is open to a person to assail the validity of a detention order passed under COFEPOSA Act while challenging the proceedings initiated under SAFEMA regarding forfeiture of property, the appellant before the High Court had placed reliance on Union of India Vs. Haji Mastan Mirza (1984) 2 SCC 427. However, this decision has been expressly overruled by a Bench of nine Judges in Attorney General for India v. Amratlal Prajivandas (1994) 5 SCC 54, wherein it has been held as under:

"Thus the conclusion is that an order of detention to which Section 12-A is applicable as well as an order of detention to which Section 12-A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detenu and to his relatives and associates provided such order of detention does not attract any of the sub-clauses in the proviso to Section 2(2)(b). If such detenu did not choose to question the said detention (either by himself or through his next friend) before the Court during the period when such order of detention was in force, - or is unsuccessful in his attack thereon - he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates."

In view of this authoritative pronouncement by this Court, the main grounds of challenge raised before the High Court have no legs to stand.

7. The competent authority as also the appellate authority considered the evidence adduced by the appellant and came to the conclusion that there was no evidence to support the appellant's claim that she was carrying on any business and that any savings were thus available to her for making investment in the acquired property. The finding is based upon a thorough and proper appraisal and consideration of the evidence on record and we find no reason to differ from the same. In the special leave petition, the grounds taken relate to the validity of the detention order passed under COFEPOSA Act against Jagannath Sharma and also to the correctness of the finding recorded by the authorities that the appellant did not have any individual income of her own to purchase the properties. These grounds, in our opinion, have no substance for the reasons indicated above and they were rightly not very seriously pressed by the learned counsel before us.

8. An application was moved by the appellant on 24.3.2003 for producing additional documents and for urging additional grounds. Learned counsel has submitted that the notice issued under Section 6(1) of SAFEMA does not show as to how any link or nexus is established between the properties sought to be forfeited and the alleged illegally acquired money of the detenu Jagannath Sharma. It has been urged that unless the notice itself showed the link or nexus between the illegally acquired money of the detenu and the property sought to be forfeited, no order for forfeiture under Section 7 could be passed. In support of his submission, learned counsel has placed reliance on a decision of this Court in Civil Appeal No.7400- 7401 of 1996 (Smt. Fatima Mohd. Amin (dead) through LR v. Union of India & Anr.) decided on 16.1.2003.

9. Section 2(1) of SAFEMA lays down that the provisions of the said Act shall apply only to the persons specified in Sub-section (2) of that Section. Sub-section (2) of Section 2 gives a long list of different categories of persons to whom the Act shall apply and they include those who have been convicted under the Customs Act, 1962; Sea Customs Act, 1878; Foreign Exchange Regulation Act, 1947 or 1973, where the value of goods or the amount involved exceeds Rs.1 lakh or have been convicted subsequently under the aforesaid Acts. Clause (b) of this Sub-section includes a person against whom an order of detention has been made under COFEPOSA Act and is not covered by the proviso to this clause. Clause

(c) to Sub-section (2) includes every person who is a relative of the person referred to in clause (a) or clause (b). Explanation (2) gives a long list of relatives for the purpose of clause (c) and in view of clause (i) thereof, Kesar Devi being the spouse of Jagannath Sharma is clearly covered by the provisions of the Act. Section 6 of the Act lays down that if, having regard to the value of the properties held by any person to whom the Act applies, either by himself or through any other person on his behalf, his known source 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 calling upon him to indicate the sources of his income, earnings or assets, out of which or by means of which, he has acquired such property 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. The condition precedent for issuing a notice by the competent authority under Section 6(1) is that he should have reason to believe that all or any of such properties are illegally acquired properties and the reasons for such belief have to be recorded in writing. The language of the Section does not show that there is any requirement of mentioning any link or nexus between the convict or detenu and the property ostensibly standing in the name of the person to whom the notice has been issued. Section 8 of the Act which deals with burden of proof is very important. It lays down that in any proceedings under the Act, the burden of proving that any property specified in the notice served under Section 6 is not illegally acquired property, shall be on the person affected. The combined effect of Section 6(1) and Section 8 is that the competent authority should have reason to believe (which reasons have to be recorded in writing) that properties ostensibly standing in the name of a person to whom the Act applies are illegally acquired properties, he can issue a notice to such a person. Thereafter, the burden of proving that such property is not illegally acquired property will be upon the person to whom notice has been issued. The statutory provisions do not show that the competent authority, in addition to recording reasons for his belief, has to further mention any nexus or link between the convict or detenu (as described in Sub-section (2) of Section 2) and the property which is sought to be forfeited in the sense that money or consideration for the same was provided by such convict or detenu. If a further requirement regarding establishing any link or nexus is imposed upon the competent authority, the provisions of Section 8 regarding burden of proof will become otiose and the very purpose of enacting such a Section would be defeated.

10. The requirement of establishing a "link or nexus" between the illegally acquired money of the convict or detenu as described in Sub-section (2) of Section 2 of the Act and the properties sought to be forfeited is sought to be derived from certain observations made by this Court in Attorney General for India v. Amratlal Prajivandas (supra) in paragraph 44 of the Reports. If paragraph 44 is read as a whole, it will be clear that no such requirement of establishing any link or nexus on the part of the competent authority has been laid down therein. In the said paragraph, the Bench dealt with contention of 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. The relevant part of para 44 (page 92 of the Reports) is being reproduced below :

"..... The language of this section is indicative of the ambit of the Act. Clauses (c) and (d) in Section 2(2) and the Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. By way of illustration, take a case where a convict/detenu purchases a property in the name of his relative or associate – it does not matter whether he intends that such a person to be a mere name lender or

whether he really intends that such person shall be the real owner and/or possessor thereof – or gifts away or otherwise transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates – in all such cases, all the said transactions will be ignored and the properties forfeited, unless the convict/detenu or his relative/associate, as the case may be, establishes that such property or properties are not "illegally acquired properties" within the meaning of Section 3(c). 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 above, is upon the relative/associate."

11. The judgment of a Court has not to be interpreted like a Statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored. The observations made have to be understood in the context of the facts and contentions raised. As mentioned earlier, Explanation (2) appended to Clause (c) of Sub-section (2) of Section 2 gives a very long list of relations. The combined effect of clauses (iii) and (vii) of the Explanation is that a convict or detenu's wife's sister's lineal descendant whether male or female and howsoever low is also included even though the relationship is quite remote. In those cases where the relationship is very remote one, the competent authority may have to indicate some link or nexus while recording reasons for belief that the property is illegally acquired property. But cases where relationship is close and direct like spouse, son or daughter or parents stand on altogether different footing. Here no link or nexus has to be indicated in the reasons for belief between the convict or detenu and the property as such an inference can easily be drawn.

12. We are, therefore, clearly of the opinion that under the Scheme of the Act, there is no requirement on the part of the competent authority to mention or establish any nexus or link between the money of the convict or detenu and the property sought to be forfeited. In fact, if such a condition is imposed, the very purpose of enacting SAFEMA would be frustrated, as in many cases it would be almost impossible to show that the property was purchased or acquired from the money provided by the convict or detenu. In the present case, the appellant is the wife of the detenu and she has failed to establish that she had any income of her own to acquire the three properties. In such circumstances, no other inference was possible except that it was done so with the money provided by her husband.

13. In order to examine whether the notice issued by the competent authority satisfies the requirement of Section 6, it is necessary to reproduce the same and the same reads as under :

"1. Kesar Devi alias Kani Devi, of DG-JMC-1/169/1948, Bakshiji-Ki-Gali, Mehandi Ka Chowk, Ramganj Bazar, Jaipur is the wife of Jagan Nath Sharma in respect of whom an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 was made on 4.8.1975. She is, therefore, a person covered by Sec. 2(2)(c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the SAFEMA).

2. The Commissioner of Income-tax, Jaipur has, vide his D.O. No.ADI/JPR/COFEPOSA/350 dated 1.9.1976, furnished information under Sec. 16(2) of the SAFEMA regarding the illegally acquired properties of Kesar Devi.

3. Kesar Devi has never been assessed to tax nor has she ever filed her return of income. Kesar Devi is the holder of house property D-48, Bapu Nagar, Jaipur. Kesar Devi, in her statement on 22.7.1976 before Sh. S.P. Gupta, Inspector, Jaipur has stated that she purchased the plot of land D-48, Bapu Nagar, about 13 years back and immediately thereafter constructed a house on this plot. She admitted that she did not remember the price paid for the purchase of the above plot but stated that the house, including the plot, cost her about Rs.30,000. She further stated that she received money from her mother-in-law and father-in-law for the construction of the house, besides the sale proceeds of her ornaments. She also asserted that she used to earn income from stitching of gota on sarees and that this income was available to her. When specifically questioned about evidence in respect of the assertions made by her regarding the source of investment in the plot or the construction of the house, she in no unequivocal terms, admitted that she had no evidence. Kesar Devi is reported to have had no known sources of income. The source of investment in the house, therefore, remains unproved. The house property thus constitutes property which has, wholly or partly, come out of or by means of any income, earnings or assets, the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws and accordingly is a property within the meaning of Sec. 3(1)(c)(iii) of the SAFEMA.

4. I have, therefore, reason to believe that the property mentioned below held by Kesar Devi is illegally acquired property within the meaning of Sec. 3(1)(c) of the SAFEMA in respect of which a notice under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 should be served on her to indicate the sources of her income, earnings or assets, out of which or by means of which she acquired this property, the evidence on which she relies and other relevant information and particulars and to show cause why this property should not be declared to be illegally acquired property and forfeited to the Central Government."

The notice clearly records the reasons for belief and, therefore, it fully complies with the requirement of law and there is no infirmity in the same.

14. The judgment in Civil Appeal No.7400-7401 of 1996 relied upon by the learned counsel for the appellant can be of no assistance to him. On facts, the Court found that the notice issued by the competent authority did not disclose any reasons and thus the same did not meet the requirement of Sub-section (1) of Section 6 of the Act. As shown above, this is not the case here as the reasons for belief have been clearly recorded by the competent authority.

We, therefore, find no merit in the appeal and the same is hereby dismissed.