

CASE DETAILS

THANESAR SINGH SODHI (D) THR. LRS.

v.

UNION OF INDIA AND ORS.

(Civil Appeal No.5500 of 2011)

NOVEMBER 09, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: Detention order passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subsequently revoked/withdrawn, proceedings under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 if would become non est and untenable, as claimed.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 – s.2(2)(b) and its proviso – Application – Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 – ss.3, 9, 12 – Detention order passed u/s.3 revoked/withdrawn, impugned proceedings under the SAFEMA if can be maintained:

Held: s.2 provides for the application of the provisions of the Act only to the persons specified in sub-section (2) thereof – According to sub-section (2)(b) every person in respect of whom an order of detention has been made under COFEPOSA, the Act would be applicable subject to four clauses mentioned under the proviso thereto – For the purposes of this case, the relevant provisions are confined to s.2(2)(b) and its proviso – Apart from the four contingencies given in clauses (i) to (iv), every person against whom an order of detention has been passed under COFEPOSA, the provisions of SAFEMA would apply – Admittedly, an order of detention under COFEPOSA was made against the appellants – Order of detention was not revoked on the report of the Advisory Board or before the receipt of the report of Advisory Board or before making a

reference to the Advisory Board – Further, it was an order of detention passed u/s.3, COFEPOSA – s.9 and s.12A, COFEPOSA had no application to the detention order – As such, clause (i) would not be applicable – Clause (ii) would also not be applicable in as much as neither the detention order was made to which provisions of s.9, COFEPOSA would apply nor had it been revoked before the expiry of the time on the basis of review on the report of the Advisory Board – Furthermore, clause (iii) would also not be applicable as s.12A, COFEPOSA had no application to the detention order – Lastly, the detention order was not set aside by the Court of competent jurisdiction – Therefore, clause (iv) would also have no application – To the contrary, appellant had made a representation against the detention order which was rejected – Said order was challenged before the High Court by way of a writ petition which was also dismissed on merits – The revocation however was made on a statement given on behalf of the Union of India before Supreme Court in order to institute a complaint under the relevant statute – The said revocation is not contemplated u/s.2(2)(b) and its proviso, and, therefore, no benefit can be extended to the appellant(s) on the said count – Therefore, the impugned judgment confirming the order of forfeiture of properties u/s.7, SAFEMA does not suffer from any infirmity warranting interference – Customs Act, 1962 - Gold (Control) Act, 1968. [Paras 1, 22-22.4, 23]

LISTS OF CITATIONS AND OTHER REFERENCES
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Attorney General for India vs. Amratlal Prajivandas and others (1994) 5 SCC 54: [1994] 1 Suppl. SCR 1 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES
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CIVIL/CRIMINAL APPELLATE JURISDICTION : Civil Appeal No.5500 of 2011.

From the Judgment and Order dated 26.03.2010 of the High Court of Delhi at New Delhi in WP No.1212 of 1995.

With

Criminal Appeal No.730 of 2014.

Appearances:

Chinmoy Pradip Sharma, Sr. Adv., Kumar Ankur, Karan Bindra, Bipul Kedia, Chayan Sarkar, Anupam Prakash, Ms. Anzu. K. Varkey, Shailendra Kumar, Irfan Hasieb, Krishnajyoti Deka, Rishabh Munjal, Ms. Mahesh Sharma, Ms. Neelam Singh, Ms. Priyanshi Bhati, Advs. for the Appellants.

Vikramjit Banerji, A.S.G., Mukesh Kumar Maroria, Prashant Rawat, Siddharth Sinha, S.A. Haseeb, Pratyush Srivastava, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

VIKRAM NATH, J.

1. These two appeals challenge the impugned orders of the High Court more or less on the same and similar grounds as such have been taken up together and being decided by this common order. In Civil Appeal No.5500 of 2011, challenge is to an order passed by the Division Bench of the Delhi High Court dated 26.03.2010 whereby Writ Petition (Civil) No.1212 of 1995 was dismissed confirming the order of forfeiture of properties under section 7 of The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976¹. In Criminal Appeal No.730 of 2014, the challenge is to an order passed by the Division Bench of the Bombay High Court dated 03/17.12.2012 dismissing the Writ Petition No.3878 of 2011 wherein also the order of forfeiture of properties under SAFEMA was upheld.

2. Before the High Court, the main ground of challenge in both the cases was that as the detention order passed under section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974² has been subsequently revoked/withdrawn as such SAFEMA proceedings would become non est and untenable. An additional ground taken in Civil Appeal No.5500 of 2011 was to the effect that even the criminal

1 SAFEMA

2 COFEPOSA

complaint filed under the Customs Act, 1962³ wherein the appellant had been discharged on the ground that there was no evidence, would further render the proceedings under SAFEMA as untenable.

3. At the outset, the arguments advanced by the learned senior counsel for the appellant appears to be quite attractive and forceful but when the facts and law of the case are scrutinised, we are of the firm view that argument has to fail resulting into dismissal of the appeals.

4. For sake of brevity, we are reproducing the facts of Civil Appeal No.5500 of 2011 and will briefly refer to the facts in the other Criminal Appeal No.730 of 2014.

5. An order under section 3(1) of COFEPOSA for detaining the appellant was passed by competent authority on 02.01.1978. The representation dated 12.01.1978 made by the appellant against the detention order was rejected by the appropriate authority on 15.02.1978. The appellant thereafter preferred Cr. W.P. No.6 of 1978 before the Delhi High Court which was dismissed by a detailed speaking order by judgment dated 25.09.1978. This order of the Delhi High Court dismissing Cr. W.P.No.6 of 1978 was not carried any further and became final.

6. However, wife of the appellant preferred petition under Article 32 of the Constitution of India before this Court on 04.10.1978 which was registered as W.P.No.4446 of 1978. In the said petition, the detention order dated 02.01.1978 was challenged along with other ancillary reliefs. The said petition was clubbed with group of petitions and were finally dismissed as withdrawn by order dated 27.10.1978 passed by this Court, on the undertaking given on behalf of the Union of India that the detention order would be withdrawn and a complaint would be filed for prosecuting the detenues which included the appellant and others also. Consequent to the undertaking given before this Court, detention order against the appellant was revoked on 09.11.1978. This closes the chapter relating to the detention order, challenge to its validity and revocation.

3 The Act 1962

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7. On 10.02.1981, the authority under section 6 of SAFEMA issued show cause notice to the appellant to disclose the sources of income, earnings or assets from which he acquired:

- i) House No.2/32 A, Punjabi Bagh, New Delhi;
- ii) M/s Apsara Hotel, Arya Samaj Road, New Delhi; and
- iii) the deposits with the Bank of India, Karol Bagh, New Delhi.

8. Reply was given to the aforesaid show cause notice by the appellant on 21.03.1981. After considering the reply, notice dated 21.03.1983 was given under section 7(1) of SAFEMA affording him opportunity of being heard. Vide order dated 16.09.1983, the competent authority under SAFEMA forfeited the properties under section 7 thereof. Aggrieved by the same, the appellant preferred an appeal before the Appellate Tribunal on 07.10.1983.

9. Simultaneously, the appellant also preferred W.P.(Civil) No.12547 of 1983 before the Delhi High Court on 25.11.1983 wherein it challenged the vires of SAFEMA as also the proceedings initiated under the said Act. During the pendency of the writ petition, further proceedings before the Appellate Tribunal under SAFEMA were stayed by the Delhi High Court.

10. In the meantime, as there was challenge to the vires of SAFEMA before various High Courts, all such pending matters were transferred to this Court clubbed together with the title being **Attorney General for India vs. Amratlal Prajivandas and others**⁴. This group of petitions came to be decided vide judgment dated 12.05.1994. This Court upheld the vires of SAFEMA and accordingly, where appeals were pending before the Appellate Tribunals, were directed to be disposed of and be decided on their own merits.

11. The Appellate Tribunal vide order dated 02.03.1995 upheld the forfeiture order passed by the competent authority on 16.09.1983. The appellate orders were challenged before the Delhi High Court by way of W.P.(C) No.1212 of 1995. During the pendency of writ petition, an interim order was passed on 06.04.1995 staying the order passed by the appellate

4 (1994)5 SCC 54

tribunal on 02.03.1995. The said writ petition came to be dismissed vide judgment dated 26.03.2010 which is impugned in the present appeal.

12. Two additional facts relating to the complaint under the Act 1962 may also be noted here to complete the factual scenario.

13. After the statement was given before this Court as recorded in the order dated 27.10.1978 passed in Writ Petition Nos.4446-4447 of 1978 for filing the complaint for prosecution, the same was filed under section 135(1) (b) of the Act 1962 and under section 85 of Gold (Control) Act, 1968⁵. The Additional Chief Metropolitan Magistrate, New Delhi vide order dated 30.10.1981 discharged the appellant and closed the proceedings of the criminal complaint. Further, consequent to the said discharge, the custom authorities vide order dated 03.08.1987 set aside the penalties imposed against the appellant under the Act 1962 as also the Act 1968.

14. Insofar as the Criminal Appeal No.730 of 2014 is concerned, the facts in brief are that the order of forfeiture dated 26.06.2001 was challenged before the Appellate Tribunal which dismissed the appeal vide order dated 20.08.2002. Aggrieved by the same, the writ petition was preferred before the Bombay High Court being Crl. W.P. No.1260 of 2002 which was dismissed on 25.11.2002 and the SLP(Crl.) No.5558 of 2002 filed against the said order was also dismissed on 09.01.2003 by this Court. Thereafter, the appellant therein, filed a second petition being W.P.No.3878 of 2011 before the High Court of Bombay again challenging the same forfeiture order dated 25.06.2001 on the ground that the order of detention under COFEPOSA had been subsequently revoked by order dated 11.11.2009 passed by the Director (COFEPOSA) as such the order of forfeiture under SAFEMA which was challenged afresh has been untenable once the order of detention had been revoked. The Bombay High Court dismissed the second petition and held that no second petition would lie for the same relief once the earlier petition had been dismissed.

15. In the aforesaid facts of the case, learned senior counsel appearing for the appellant has strenuously urged with great vehemence that the impugned proceedings under the SAFEMA could not be maintained and the

5 The Act 1968

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impugned orders need to be quashed as the proceedings under COFEPOSA for detention stands revoked and also in Civil Appeal No.5500 of 2011 that even the criminal complaint had been closed as the appellant was discharged and further the penalty under the Act 1962 and the Act 1968 have also been revoked.

16. Learned counsel for the appellant had placed strong reliance on section 2(2) (b) of the SAFEMA to support his submissions that once the detention order under COFEPOSA had been revoked, the proceedings under SAFEMA could not be maintained. The submission is that provisions of SAFEMA could be made applicable only against the person in respect of whom the order of detention has been made under COFEPOSA. Once the order of detention itself had been revoked for whatever reasons there would be no order of detention against such person under COFEPOSA and therefore, no applicability of SAFEMA.

17. On the other hand, Shri Vikramjit Banerji, learned Additional Solicitor General submitted that the arguments advanced by the appellant are misplaced. According to him, provisions of SAFEMA can be invoked against the person in respect of whom the order of detention under COFEPOSA had been made subject to the exception given under the proviso to section 2(2)(b) of SAFEMA. Until and unless any of the four clauses under the proviso can be said to be attracted to the present appellant, the appellant cannot derive any benefit out of the same. It is only where the revocation is for the reasons and situations given under four clauses of the proviso that SAFEMA would not be applicable to such a person against whom the detention order had been passed under COFEPOSA.

18. Mr. Banerji also submitted that the proceedings under the Act 1962 and the Act 1968 and the complaint and the withdrawal of penalty under the said provisions also would not be of any help to the appellant in as much as the appellant would be liable to be proceeded with proceedings under SAFEMA as there was an order of detention under COFEPOSA against which representation was rejected and writ petition before the High Court had been dismissed on merits. The said order of the High Court had attained finality. Any subsequent withdrawal or revocation of the detention order which was not covered by any of the four clauses under proviso to section 2(2) (b) of SAFEMA, cannot be of any help to the appellant to canvas that

revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board;

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provision of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of that Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;”

22. A perusal of the above quoted provision makes it clear that apart from the four contingencies given in clauses (i) to (iv) above, every person against whom an order of detention has been passed under COFEPOSA, the provisions of SAFEMA would apply. In the present case, it is an admitted position that an order of detention under COFEPOSA was made against the appellants.

22.1. The order of detention had not been revoked on the report of the Advisory Board or before the receipt of the report of Advisory Board or before making a reference to the Advisory Board. Further, it was an order of detention passed under Section 3 of COFEPOSA. Section 9 and Section 12 A of COFEPOSA had no application to the detention order. As such, clause (i) would not be applicable.

22.2. Clause (ii) would also not be applicable in as much as neither the detention order was made to which provisions of Section 9 of COFEPOSA would apply nor had it been revoked before the expiry of the time on the basis of review on the report of the Advisory Board.

22.3. Further, clause (iii) would also not be applicable as Section 12A of COFEPOSA had no application to the detention order.

22.4. Lastly, the detention order had not been set aside by the Court of competent jurisdiction. Therefore, clause (iv) would have no application.

23. To the contrary, in the present case against the detention order, the appellant had made a representation which had been rejected. Thereafter the said order was challenged before the High Court by way of a writ petition which had also been dismissed on merits by a detailed order upholding the detention order. The revocation however had been made on a statement given on behalf of the Union of India before this Court in order to institute a complaint under the relevant statute. The said revocation is not contemplated under Section 2(2)(b) and its proviso, and, therefore, no benefit can be extended to the appellant(s) on the said count. Therefore, in our view, the impugned judgment does not suffer from any infirmity warranting interference. The appeals lack merit and are, accordingly dismissed.

24. Pending application(s), if any, stand disposed of.

Headnotes prepared by:
Divya Pandey

Appeals dismissed.