

P.P. ABDULLA AND ANR.
v.
THE COMPETENT AUTHORITY AND ORS.

DECEMBER 14, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act, 1976—ss. 6 (1) and 7 (1)—Notice and consequent forfeiture of property—Propriety of—Held: Forfeiture was illegal—As there is nothing recorded in writing by the Authority establishing such link or nexus between the property sought to be forfeited and the alleged illegally acquired money.

Interpretation of Statutes—Interpretation of provisions of confiscation—Held: Order of confiscation being stringent, the provisions thereof has to be construed strictly and the statute must be strictly complied with.

Notice was issued against appellant under Section 6 (1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 for forfeiture of his property alleging that the properties purchased by him and the building constructed thereon attracted the provisions of the Act. Consequently, the concerned authority ordered forfeiture of the property to the Government of India. Appellate Authority upheld the order of the concerned Authority. Appellant challenged the orders of the appellate Authorities, which was allowed by Single Judge of High Court holding that the orders of forfeiture could not be maintained. The appeal thereagainst by competent authority was allowed by Division Bench of High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. It has been expressly stated in Section 6 (1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property Act, 1976) that the reason to believe of the competent authority must be recorded in writing. In the counter-affidavit it has also been stated that the reasons in the notice under Section 6(1) were recorded in writing. This is not sufficient. Whenever the statute required reasons to be recorded in writing

A then it is incumbent on the respondents to produce the said reasons before the Court so that the same can be scrutinized in order to verify whether they are relevant and germane or not. This can be done either by annexing the copy of the reasons along with the counter-affidavit or by quoting the reasons somewhere in the counter-affidavit. Alternatively, if the notice itself contains the reason of belief, that notice can be annexed to the counter-affidavit or quoted in it. In the notice under Section 6(1) it has not been alleged that there is any such link or nexus between the property sought to be forfeited and the alleged illegally acquired money of the appellant. The said notice has to be held to be illegal. Consequently the order passed in pursuance of the said notice is declared as null and void. [986-C-E; 986G-H; 987-A-B]

C *Fatima Mohd. Amina (dead) through LRs. v. Union of India and Anr.*, [2003] 7 SCC 436, relied on.

2. An order of confiscation is a very stringent order and hence a provision for confiscation has to be construed strictly, and the statute must be strictly complied with, otherwise the order becomes illegal. 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, the condition precedent for exercising the power under the Act did not exist. [986-E-G]

E CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1318 of 2006.

From the final Judgment and Order dated 31.1.2006 of the High Court of Kerala at Ernakulam in W.A. No. 1541/2005.

F C.K. Sasi for the Appellant.

Mohan Parasaran, A.S.G., B.B. Ahuja, Sahdev Singh, T.A. Khan and B.V. Balaram Das, for the Respondents.

The Judgment of the Court was delivered by

G **MARKANDEY KATJU**, J. Leave granted.

This appeal has been filed against the impugned judgment of the Kerala High Court dated 31.1.2006 in W.A. No.1541 of 2005.

H Heard learned counsel for the parties and perused the record.

The facts of the case are that the appellant was convicted under the Customs Act, 1962 in a case relating the seizure of 700 bars of foreign gold from him. Alleging that certain properties purchased by the appellant and the building constructed thereon attracted the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "the Act"). Ext. P1 notice was issued to the appellant under Section 6(1) of the said Act in a proceeding for forfeiture of the property. The proceedings culminated in Ext. P5 order of the concerned authority whereby he found that the appellant could not sufficiently prove that the property specified in the notice was not his illegally acquired property. It was held that the appellant could explain only to the extent of Rs. 26,500/- as the source for acquiring the said property and the building thereon which was valued at Rs. 1,36,134/-. Accordingly, the authority by virtue of the powers under Section 7(1) of the Act ordered forfeiture of the property to the Government of India free of all encumbrances vide Ext. P5. The appeal preferred by the appellant before the appellate authority was dismissed, upholding the order of the authority vide Ext. P6. The appellant challenged Exts. P5 and P6 orders in O.P. No.27488/2000 which was allowed by the learned Single Judge of the High Court relying on the decision of the Supreme Court in *Fatima Mohd. Amina (dead) through LRs. v. Union of India & Anr.*, reported in [2003] 7 SCC 436, holding that since there is no allegation regarding the existence of any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu under the Act, the orders of forfeiture could not be maintained.

Against the aforesaid judgment of the learned Single Judge the competent authority and Union of India filed an appeal before a Division Bench of the High Court which was allowed by the impugned judgment, hence this appeal.

Learned counsel for the appellant has invited our attention to Section 6(1) of the Act which states :

"If, 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, 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

- A 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
- B 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.”

- Learned counsel submitted that it has been expressly stated in Section 6(1) that the reason to believe of the competent authority *must be recorded in writing*. In the counter-affidavit it has also been stated in paragraph 8 that the reasons in the notice under Section 6(1) were recorded in writing. In our opinion this is not sufficient. Whenever the statute required reasons to be recorded in writing, then in our opinion it is incumbent on the respondents to produce the said reasons before the Court so that the same can be
- D scrutinized in order to verify whether they are relevant and germane or not. This can be done either by annexing the copy of the reasons along with the counter-affidavit or by quoting the reasons somewhere in the counter-affidavit. Alternatively, if the notice itself contains the reason of belief, that notice can be annexed to the counter-affidavit or quoted in it. However, all that has not been done in this case.
- E

It must be stated that an order of confiscation is a very stringent order and hence a provision for confiscation has to be construed strictly, and the statute must be strictly complied with, otherwise the order becomes illegal.

- F In our opinion, the facts of the case are covered by the decision of this Court in *Fatima Mohd. Amina (dead) through LRs. v. Union of India & Anr.*, (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
- G be sustained.

- In the present case, in the notice dated 15.3.1988 issued to the appellant under Section 6(1) of the Act (copy of which is annexed as Annexure P1 to this appeal), it has not been alleged therein that there is any such link or nexus between the property sought to be forfeited and the alleged illegally
- H

acquired money of the appellant.

A

Hence, in view of the decision of this Court in *Fatima Mohd. Amina's case* (supra), the said notice dated 15.3.1988 has to be held to be illegal. Consequently the order passed in pursuance of the said notice is declared as null and void. The appeal is, therefore, allowed and the impugned orders of the High Court and the concerned Authorities are set aside. No costs.

B

K.K.T.

Appeal allowed.