

(1994) 03 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 12452 of 1987

Aftab Abdul Rehman Chatriwala

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) — Section 3 (1)
Smugglers and Foreign Exchange Manipulators Forfeiture of Property) Act, 1976 — Section 6 (1)

Citation : (1995) 2 ALT(Cri) 28 : (1994) CriLJ 2771 : (1994) 46 ECC 283 : (1994) ILR (Kar) 1409 : (1994) 2 KarLJ 422

Hon'ble Judges : G.P. Shivaprakash, J

Bench : Single Bench

Advocate : J. Jeshtmal, for the Appellant; M.B. Prabhakar, Govt. Pleader and Miss. Madhumatha Bagachi, for D. Shylendra Kumar, Central Govt. Standing Counsel, for the Respondent

Judgement

1. The petitioner was detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA for short). The copy of the detention order dated 20-10-1976 is marked as Annexure A. The said order was passed by the second respondent purporting to be u/s 3(1) of the COFEPOSA Act.

2. The legality and validity of the said detention order is challenged by the petitioner in this petition. The petitioner was detained during the emergency period; but he could not have challenged the said detention order then, since access to courts was barred. After lifting of the emergency, his detention order was revoked. Subsequently, the sister of the petitioner, namely, Ms. Mumtaz Chatriwala has received a notice purporting to be u/s 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA for short). Under the said notice, Ms. Mumtaz Chatriwala has been called upon to show cause why the properties indicated in the schedule should not be declared

to have been illegally acquired property/properties and forfeited to the Central Government in terms of the provisions of the said Act.

3. Obviously the said notice has been issued in view of the clause (c) of sub-section (2) of Section 2 of SAFEMA. It is in this context, this writ petition has been presented by the petitioner challenging the legality and validity of his detention despite the fact that the detention order has been revoked.

4. It is not in dispute that the said detention order was passed without affording any opportunity to the petitioner of making representation against his detention on the ground that disclosure of any information and material which led to his detention would be against public interest.

5. Sri. Jeshtmal, learned Counsel appearing for the petitioner submitted that the detention order was legally valid since grounds of detention were not disclosed and therefore violative of Art. 22 of the Constitution. In this regard, the learned Counsel invited my attention to the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Haji Mastan Mirza*, In the said decision the Supreme Court has ruled that failure to supply copies of documents referred to and relied upon in the grounds of detention for the purpose of detention under COFEPOSA vitiates the detention itself. The learned Counsel, therefore, contended that if non-furnishing of documents in support of the grounds indicated in the detention order vitiates the detention it is still worse in the instant case since the grounds itself were not indicated in the detention order. This contention of the learned counsel, in the light of the decision of the Supreme Court, has to be accepted.

6. In the said decision, the Supreme Court has further held that in view of the Section 6(1), action u/s 6 and 7 of the SAFEMA could be taken against only persons to whom the Act applies. Section 2(2) of the Act specifies the persons to whom the Act applies. Smt. Mumtaz Chatriwala being the sister of the petitioner the provisions of SAFEMA are applicable to her in view of Section 2(2)(c) of the Act.

7. As held by the Supreme Court, a valid order of detention under COFEPOSA is pivotal to the proceedings being taken u/s s 6 and 7 of SAFEMA. The law enunciated by the Supreme Court in the said decision squarely applies to the facts of this case. The only distinction being, in the instant case the impugned notice is issued to the sister of the petitioner and not to the very person detained. Since the proceedings initiated under the provisions of SAFEMA could be supported only if there was a valid detention order and as the detention order in the instant case was invalid, it follows that the proceedings initiated under SAFEMA also is invalid.

8. Miss Madhumitha Bagachi for Sri. Shylendra Kumar, learned Central Government Standing Counsel, submitted that in the instant case the impugned notice dated 27-4-1987 is only a show cause notice and it is open for Ms. Mumtaz Chatriwala to show cause against the proposed action and if there were to be any adverse order she can certainly present an appeal to the Appellate

Authority. In view of the fact that the detention order itself was invalid there is no need for her to show cause against a notice which is based on an undoubtedly invalid detention order.

9. In the result it is cleared that the detention order dated 20-10-1976 contained in the Annexure A was invalid and the show cause notice dated 27-4-1987 contained in Annexure-F based on such an invalid order is quashed.

10. Writ petition allowed.

11. Petition allowed.