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(2014) 08 DEL CK 0062

In the Delhi High Court

Case No : LPA 134/2013 and CM Nos. 3837-38/2013

Lalit Kumar Modi — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30, 32
Constitution of India, 1950 — Article 19(1)(a), 19(1)(g), 19(2), 19(6)
Criminal Procedure Code, 1973 (CrPC) — Section 188, 345, 346
Foreign Exchange Management Act, 1999 — Section 10, 13, 13(1), 14, 16
Foreign Exchange Regulation Act, 1973 — Section 13, 18, 19, 35, 39
Income Tax Act, 1961 — Section 13(1), 131, 131(1), 144C, 272A(1)
Passports Act, 1967 — Section 10, 10(3), 10(3)(c), 11, 2(a)
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2015) 213 DLT 504

Hon'ble Judges : Vibhu Bakhru, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Parag P. Tripathi, Senior Advocate, Anoop Bose, Rishi Agrawal, Swadeep Hora, Menaka, Abhishek Singh, Rohit Gupta, Umang Gupta, Bansuri Swaraj, Kunal Bahri and Vivek, Advocate for the Appellant; Rajeeve Mehra, ASG, Jatan Singh, Soayib Qureshi, Naginder Benipal and Ashish Virmani, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—The appellant is aggrieved by the judgement dated 16.01.2013 delivered by a learned single Judge of this court in W.P.(C) 376/2012 whereby the said writ petition was dismissed. In the said writ petition, the appellant/ petitioner had inter alia sought a writ of Certiorari for quashing and / or setting aside the order dated 31.10.2011 passed by the respondent No. 2 (Chief Passport Officer) and the order dated 03.03.2011 passed by the respondent No. 3 (Regional Passport Officer).

2. The order dated 03.03.2011 which had been passed by the Regional Passport Officer was one whereby the passport of the appellant was revoked. The order

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dated 31.10.2011 was passed by the respondent No. 2 (Chief Passport Officer) in an appeal u/s 11 of the Passports Act, 1967 (hereinafter referred to as ''The Passports Act'') which had been preferred by the appellant from the revocation order passed by the respondent No. 3 on 03.03.2011. By virtue of the order dated 31.10.2011, the appellant''s appeal was rejected by the respondent No. 2.

3. The facts giving rise to the present appeal need to be set out. An investigation was being conducted against inter alia the appellant under the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as ''FEMA''). In connection with the said investigation a summons had been issued to the appellant by the Assistant Director, Directorate of Enforcement, in purported exercise of his powers u/s 37(1) and 37(3) of FEMA read with Section 131(1) of the Income- tax Act, 1961 and Section 30 of the Code of Civil Procedure, 1908. The said summons was as under:-

"Government of India

Directorate of Enforcement

Tel: 22886182

Fax: 22828930

23-24, 2nd floor, Mittal Chambers,

Nariman Point, Mumbai-400021

T-3/81-B/2008/AD(DKS)/4137

SUMMONS

To appear in person

{REFER SECTION 37(1) AND (3) OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999, READ WITH SECTION 13(1) OF THE INCOME TAX ACT, 1961 AND SECTION 30 OF THE CODE OF CIVIL PROCEDURE, 1908}

To,

Shri Lalit Kumar Modi

3rd Floor, Nirlon House,

Dr. Annie Besant Road, Worli,

Mumbai

WHEREAS, an investigation is being conducted against you under the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999).

AND WHEREAS in connection with the said investigation, you are hereby summoned to appear before me in person on 10.08.2010 at 11.00 Hrs to tender

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evidence in respect of various agreements executed by the BCCI-IPL, alongwith the documents listed in the Schedule below.

SCHEDULE

1. Passport in original for verification.

2. Details of all bank accounts in India and abroad.

3. Copies of all Invitations to Tender (ITT) floated by the BCCI in connection with IPL.

4. Copies of all Agreements executed by the BCCI in connection with IPL.

5. Copies of all minutes and attendance sheets of the IPL Governing Council meetings.

6. Copies of all e-mails/communications exchanged in connection with auction of Franchises in 2008 & 2010 sale of commercial & Media Rights and IPL-2

Take notice that, in default of your appearance on the day mentioned here-in-before, you shall be liable to action u/s 13 of the Foreign Exchange Management Act, 1999 and/or Section 32 of the Code of Civil Procedure, 1908.

Given under my hand and the seal on this 2nd August 2010.

Sd/-

(D.K. Sinha)

Assistant Director"

4. In response to the said summons dated 02.08.2010 the appellant sent a reply on 07.08.2010 to the following effect:-

"Lalit Kumar Modi

Chairman & Commissioner

(Suspended)

Nirlon House

Dr. Annie Besant Road

Worli, MUMBAI - 400030

PHONE: 91-022-66637373

FAX : 91-022-24932260

To,

The Assistant Director,

Directorate of Enforcement,

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23-24, 2nd Floor, Mittal Chambers,

Nariman Point, Mumbai - 21.

For the attention of Mr. D. K. Sinha, Asst Director.

Subject : Reply to your Summons

Ref: - Your Summons dated 2nd August 2010: Ref No. T-3/81-B/2008/AD(DKS)

Dear Sir,

1. I am in receipt of your above-mentioned Summons. In compliance thereof, I wish to state as under.

2. I apologize for not being in a position to appear before you, in person, on 10.08.2010 at 11.00 hours. This is because, of serious security concerns. There is a threat perception to my life and I have been advised to stay outside the country until this threat perception alters. Please therefore excuse my absence. My General Counsel and Constituted Attorney, Mr. Mehmood Abdi will attend on my behalf and provide all necessary information and assistance in the meantime.

3. As required in your Summons, I am submitting the following documents which may be placed on record:-

a. Photocopy of. my Passport for your record (Annexure "1" to this letter);

b. Details of all my Bank Accounts in India (Annexure "2" to this letter). I do not have any foreign Bank Accounts;

c. Photocopies of all Invitations to Tender (I.T.T.) floated by the B.C.C.I. in connection with the I.P.L. (Tab "1" of the Compilation of Documents submitted along with this letter);

d. Photocopies of all agreements executed by B.C.C.I. in connection with the I.P.L. which are available with me (Tab "2" of the Compilation of Documents submitted along with this letter);

e. Photocopies of all Minutes and Attendance Sheets of the I.P.L. Governing Council Meetings (Tab "3" of the Compilation of Documents submitted along With this letter);

4. Your Summons requires that I produce all e- mails/communications exchanged in connection with auction of Franchisees in 2008 and 2010; sale of commercial and Media Rights of I.P.L.-2. In this connection, I wish to point out the following:-

a. At the relevant, time, e-malls/communications were, typically, sent from my email accounts with I.P.L./B.C.C.I (being lkm@iplt20.com and lkm@bcci.tv). The B.C.C.I. has however blocked my access to these accounts with the result I am not able to access them;

b. Fortunately for me, I had retained copies of a large number of e-mails /

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communications for submitting them with my Reply to the Show Cause Notice issued by the B.C.C.I. Many of these pertain to auction of franchisees in 2008 and 2010 and sale of commercial/media rights of I.P.L-2 and are available with me;

c. For your convenience I am therefore forwarding to you, my Reply and the voluminous documents submitted along with it to the B.C.C.I. I trust that these will be of assistance to you in your ongoing inquiry/investigation

d. Should I come across any more information or documents or records, I shall submit the same to you at the earliest.

5. I assure you of my full co-operation. Should you require any more information or assistance from my end, please send me directives / questionnaire and I will respond to the same.

Thanking you,

Yours Sincerely,

Lalit Kumar Modi

Chairman and Commissioner IPL (suspended)

Cc-Director, Enforcement Directorate (FEMA),

Lok Nayak Bhawan, 6th Floor, New Delhi.

Another summons was sent by the Assistant Director, Directorate of Enforcement, requiring the appellant to appear in person on 07.09.2010 for tendering evidence and producing documents mentioned below:-

1. Passport for identification;

2. Copies of all agreements signed by you on behalf of Cricket South Africa / IPL South Africa;

3. Copies of all agreements (not submitted so far) including those entered into with Pioneer Digadsys, Red Partners, Ticket Genie, Ireland Davenport, etc.

As in the previous summons dated 02.08.2010, in this summons also it was mentioned that the appellant should take notice that in default of his appearance on the date mentioned above, he would be liable to action u/s 13 of FEMA and / or Section 32 of the Code of Civil Procedure, 1908. At this juncture, it is sufficient to note that the summonses were issued in respect of an investigation being conducted under FEMA. Both the summonses required the appearance of the appellant in person to tender evidence in respect of various agreements executed by BCCI/IPL, along with documents mentioned therein. Both the summonses had been replied to in detail and the documents sought for had been supplied by the appellant to the extent available with him as would be evident from the replies dated 07.08.2010 and 07.09.2010. However, the appellant did not appear before

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the Assistant Director, Directorate of Enforcement on the dates specified in the summonses for the alleged reasons of personal security as indicated in the reply dated 07.08.2010.

5. Thereafter, a complaint was filed by the Assistant Director, Directorate of Enforcement before the Deputy Director of Enforcement, Mumbai which was the Adjudicating Authority in the matter of investigations against the appellant. The complaint was filed u/s 16(3) of FEMA on 16.09.2010. As per the complaint, it was indicated that the appellant was under investigation by the Directorate for contraventions of FEMA which were punishable u/s 13 thereof. It was further indicated that in connection with the said investigation, summonses dated 02.08.2010 and 24.08.2010 had been issued requiring the presence of the appellant before the said Assistant Director for tendering evidence and for producing documents as mentioned in the said summonses. It was further stated in the complaint that the appellant did not appear before the Assistant Director on the dates stipulated and, therefore, failed to comply with the summonses. It was also averred in the complaint that the security threat as claimed by the appellant had not come in the way of his hectic schedule in connection with the IPL Tournament. Therefore, according to the complainant, it appeared that the appellant was wilfully avoiding his examination on oath under the provisions of Section 37 of FEMA. According to the complainant the failure to appear before him was without any valid reason and it amounted to non-compliance of a legal process. Consequently, by virtue of the complaint, the Assistant Director was of the view that a penalty, as may be deemed fit, be imposed on the appellant u/s 13 of FEMA for having contravened the provisions of Section 37 of FEMA read with Section 131(1) and 272A(1) of the income tax Act, 1961. It was prayed in the complaint that the same be taken on record and the appellant be dealt with as per law. Thereafter, a show cause notice dated 20.09.2010 was issued to the appellant by the Deputy Director, Directorate of Enforcement, Mumbai to show cause in writing within 10 days from the date of receipt of the notice as to why adjudication proceedings as contemplated u/s 13 of FEMA should not be held against the appellant for the contravention of the provisions of FEMA referred to in the complaint dated 16.09.2010. The attention of the appellant was also invited to Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 which stipulated the manner of holding of an inquiry for the purposes of adjudicating Section 13 of FEMA. The said show cause notice also indicated as below:-

"5. In view of the above, you are required to appear either in person or through legal practitioner / Chartered Accountant duly authorised by you to explain and produce such documents or evidence as may be useful for or relevant to the subject matter of enquiry before me.

6. In case you fail, neglect or refuse to appear before me on the appointed day, the adjudication proceedings shall proceed against you ex-parte."

6. That complaint dated 16.09.2010 has not yet been adjudicated and

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proceedings are going on under FEMA. In the meanwhile, a letter dated 04.10.2010 was received by the Regional Passport Office, Mumbai from the Directorate of Enforcement indicating that the complaint dated 16.09.2010 u/s 13 of FEMA had been filed against the appellant and that a show cause notice had also been issued to the appellant on 20.09.2010 for non-compliance of the summonses issued by the Enforcement Directorate. On the basis of this letter the Regional Passport Officer, Mumbai issued a show cause notice dated 15.10.2010 requiring the appellant to explain as to why action should not be initiated u/s 10(3)(c) of the Passports Act, 1967. That show cause notice dated 13.10.2010 was issued to the appellant at the address given in the Passport Application - Anand 41, Gandhi Gram Road, Juhu, Mumbai. However, that notice was subsequently returned undelivered on 11.11.2010.

7. In the meanwhile, another letter dated 15.10.2010 had been received from the Directorate of Enforcement giving another address of the appellant at Nirlon House, Dr. Annie Besant Road, Worli, Mumbai. Accordingly, the Regional Passport Office issued another show cause notice dated 15.10.2010 at the Nirlon House address. The said show cause notice dated 15.10.2010 is as under:-

GOVERNMENT OF INDIA

MINISTRY OF EXTERNAL AFFAIRS

REGIONAL PASSPORT OFFICE

Manish Commercial Centre,

216-A, Dr. A.B. Road,

Worli, Mumbai - 400030

Ref No. F7(5)10-D-4399/10-572-Pool-1

October 15, 2010

Mr. Lalit Kumar Modi

3rd Floor, Nirlon House

Dr. Annie Besant Road, Worli,

Mumbai,

Sir,

Please refer to your passport application dated 22.07.2008, on the basis of which you were issued passport bearing No. Z-1784222 dated 30.07.2008 by this office.

It is informed by the Directorate of Enforcement, Mumbai that a complaint dated 16.9.2010 u/s 13 of FEMA, 1999 has been filed against you and a Show Cause Notice has been issued to you on 20.9.2010 for non-compliance of summons issued by them.

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In view of this, you are called upon to explain as to why action u/s 10(3)(c) of the Passports Act, 1967 should not be initiated against you.

If you wish, you may appear before Assistant Passport Officer (Policy) to represent your case in person, within fifteen days from the date issue of this letter along with passport bearing No. Z-1784222 dated 30.07.2008. If no reply is received within the stipulated period, necessary action under the Passport Act, 1967 will be initiated against you by this office.

Yours faithfully

Assistant Passport Officer (Policy)

Regional Passport Office, Mumbai"

8. Receipt of the show cause notice dated 15.10.2010 was acknowledged by the appellant''s Advocates through their letter dated 26.10.2010 through which they also requested for further information in order to enable them to file a comprehensive reply. They also, while submitting a preliminary response, sought for extension of time to submit the reply. In response thereto a letter was issued by the Regional Passport Office on 01.11.2010 to the appellant giving the details with regard to the contents of the communication received from the Directorate of Enforcement and also giving extension of time. Hearing was also granted to the Advocates on 18.11.2010 and finally on 26.11.2010. Written submissions were also submitted thereafter on behalf of the appellant. All this culminated in the order dated 03.03.2011 passed by the respondent No. 3 whereby the appellant''s passport No. Z-1784222 dated 30.07.2008 issued by the Regional Passport Office, Mumbai was revoked u/s 10(3)(c) of the Passports Act in the interests of general public. The relevant findings of the respondent No. 3 and the conclusion are as under:-

"The public interest which is inherent in the present case is (a)investigations into a multi-crore scam, (b) diversion of foreign exchange and violation of foreign exchange regulations, (c) loss of revenue (d) repeated SUMMONS issued by the Directorate of Enforcement, which have been consistently flouted. The statutory authorities investigating into the above Illegal affair have decided that for the purpose of discharging their statutory functions the presence of Shri Lalit Kumar Modi is necessary. However, Shri Lalit Kumar Modi is deliberately absenting himself. The fact that he is deliberately absenting himself is borne out from the specious defense put forward by him. The bogey of a security threat is virtually non-existent by virtue of the fact that the Mumbai Police have offered him police protection in addition to the security agencies who are already at his continuous service. Additionally, this threat existed even prior to the time the summonses by the Directorate of Enforcement were issued. However that did not stop Shri Lalit Kumar Modi from travelling around the country. Therefore it is abundantly, clear that Shri Lalit Kumar Modi is deliberately hampering the Investigations. It is in the interest of the general public that the law of the land operates effectively and no person is allowed to subvert the legal provisions by avoiding legal processes

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like summons on one pretext or another. The scam in respect of the IPL has brought, the sport of cricket in particular to disrepute apart from the foreign exchange losses to the nation, (it is in the interest of the game of cricket and of the public in general that the case is property investigated for which the interrogation of Shri Lalit Kumar Modi is required.

After examination of all the aspects of the matter and submission of the Advocates of Shri Lalit Kumar Modi and requests made by the Directorate of Enforcement, and for the reasons stated aforesaid, I, Vinoy Kumar Choubey, Regional Passport Officer, therefore, do hereby pass an order to REVOKE the passport No. Z-1784222 dated 30.07,2008 issued by Regional Passport Office, Mumbai in favour of Shri Lalit Kumar Modi u/s 10(3)(c) of the Passports Act, 1967 in the interests of general public."

9. Being aggrieved by the order of revocation dated 03.03.2011, the appellant preferred an appeal u/s 11 of the Passports Act. The same was rejected by the respondent No. 2 by virtue of the order dated 31.10.2011. The respondent No. 2 (Chief Passport Officer) held:-

1. That the Directorate of Enforcement was an arm of the Government and was competent to make recommendations for revocation of the appellant''s passport;

2. There was no violation of the principles of natural justice inasmuch as the revocation order dated 03.03.2011 passed by the respondent No. 3 was preceded by a show cause notice, with ample opportunities of filing a written response to the same which was followed by hearing given to the Advocates of the appellant as also the opportunity of furnishing written submissions;

3. The appellant appeared to have committed contravention of provisions of FEMA to the extent of hundreds of crores of rupees and to have taken personal benefits by acquiring huge sums of money which was suspected to have been parked outside India;

4. That Cricket was most popular sport in India and there was a huge public sentiment attached to it. Therefore, it was in public interest that the present case was properly investigated for which interrogation of the appellant in person was considered necessary. Consequently, the case fell u/s 10(3)(c) of the Passports Act;

5. The issue of threat to the personal security of the appellant was only an action intended to avoid the process of law for non-compliance of the legal process. Whenever the need arose, protection was given by the Mumbai Police;

6. The alternative suggested for questioning the appellant though video conferencing was not a meaningful one inasmuch as the appellant was required to be confronted with documents. The modality of interrogation is to be decided primarily by the investigating agency and, therefore, the Directorate of Enforcement insistence on the physical presence of the appellant in India was justified.

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10. For all the above reasons the appeal filed by the appellant was not allowed by the respondent No. 2 (Chief Passport Officer).

11. Being aggrieved by the revocation order dated 03.03.2011 as also the appellate order dated 31.10.2011, the appellant filed the said writ petition (W.P. (C) 376/2012) seeking, inter alia, a writ of certiorari quashing the said orders. A learned single Judge of this court by virtue of his judgment dated 16.01.2013 dismissed the said writ petition. According to the learned single Judge, the core issue before him was whether the revocation of the passport was valid in law. This, according to the learned single Judge, gave rise to two further issues -

(i) Whether the necessary jurisdictional facts available to the Regional Passport Officer enabled him to revoke the passport?

(ii) Whether the Regional Passport Officer exercised his powers in the interest of the general public?

12. Both these questions were answered in the affirmative. According to the learned single judge there was sufficient actionable material before the Regional Passport Officer to exercise his authority u/s 10(3)(c) of the Passports Act. The actionable material could be received from other wings of the Government as in the present case it was received from the Directorate of Enforcement. The learned single Judge also noted that summonses issued under FEMA ought to be honoured. The said summonses ought to have been responded to by the appellant by his personal appearance. According to the learned Single Judge, it would be in public interest that such summonses are responded to in accordance with law. Therefore, when the appellant did not appear before the Directorate of Enforcement, it would run counter to the public interest in such summonses being responded to. Consequently, the learned single Judge came to the conclusion that the Regional Passport Officer had exercised its powers in the interest of general public. He also observed that the power to issue summons and to require the presence of a person was not only exercisable in respect of a person, who would appear as a witness but also against a person being investigated such as the appellant herein. For all these reasons, the learned Single Judge found that revocation of the passport of the appellant to be valid in law and, consequently, he dismissed the writ petition.

13. Mr. Parag Tripathi, the learned Senior Counsel, appearing on behalf of the appellant submitted that Section 10(3)(c), under which provision the appellant''s passport has been revoked, requires application of mind of the authority concerned. This is inherent in the expression, in the interest of general public appearing in Section 10(3)(c) of the Passports Act. The passport Officer while considering the applicability of Section 10(3)(c) of the Passports Act has to apply his own mind and he carries out a quasi judicial function. As such, he cannot act under the dictation of some other persons. He submitted that in the present case, the respondent No. 3 revoked the passport of the appellant without any application of mind and purely on the dictates of the Directorate of Enforcement

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as would be evident from the sequence of events. Therefore, the revocation order was clearly contrary to law and was liable to be set aside.

14. Mr. Tripathi next submitted that the appellant did not appear in person in response to the summonses dated 02.08.2010 and 24.08.2010 but, he fully cooperated and gave all the details and documents that were sought for by the Directorate of Enforcement. In this connection he submitted that the appearance of the appellant was not a must inasmuch as he was a person under investigation as distinct and different from a person from whom evidence was being sought. He further submitted that there is no provision for interrogation or arrest under FEMA or under the applicable provisions of the income tax Act (namely Section 131). He further submitted that even pursuant to a complaint u/s 16(3) of FEMA, the person against whom the complaint has been lodged can appear through a legal practitioner, Chartered Accountant or other authorised person. Therefore, the question of non-appearance pursuant to the summonses was not such a serious issue as to entail the revocation of the passport in the interest of general public.

15. It was further submitted by Mr. Parag Tripathi that in any event the non-appearance of the appellant was not without reason. He submitted that as indicated by the various replies furnished by the appellant, there was a serious threat to his personal safety. Of course, this has not been believed by the authorities below but, according to Mr. Tripathi the perception of threat has to be taken from the stand point of the person involved. When the matter is considered in this light, it cannot be assumed that the non- appearance of the appellant pursuant to the said summonses was intentional and without any reason.

16. Mr. Parag Tripathi also submitted that the only provision under FEMA which entails civil imprisonment is Section 14 thereof. Section 14 comes into play only when the penalty which is imposed u/s 13, after following the due process of Section 16, is not paid by the person on whom the penalty is levied. He submitted that this is not the case here at all inasmuch as all the complaints u/s 16(3) of FEMA are pending and none of them have fructified into an order of penalty.

17. It was further contended on behalf of the appellant that the revocation of the passport of the appellant has seriously impacted the fundamental rights of the appellant under Article 19(1)(a) and 19(1)(g) of the Constitution inasmuch as the appellant has not been able to travel outside U.K to participate in conferences and discussions and express his views on matters, inter alia, concerning cricket and the organisation of cricket. Nor has he been able to travel to other countries outside U.K. in order to meet his business obligations. He submitted that since, the revocation of the passport is illegal, the same has seriously affected the above mentioned fundamental rights.

18. Mr. Tripathi also submitted that one of the complaints filed under FEMA

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includes allegations against the bank and its employees but the bank has been deleted inasmuch as no show cause notice has been issued to the bank or its Manager. Apparently, the bank has not been issued the show cause notice because the bank stated that it was the mistake. He submitted that u/s 10 of FEMA the bank was the authorised dealer and if the violation is condoned in respect of the bank, then the matter even in so far as the appellant is concerned would be over.

19. He further submitted that the order dated 03.03.2011 whereby the respondent No. 3 revoked the passport of the appellant was bad for another reason. The reason being that the said order dated 03.03.2011 refers to diversion of Foreign Exchange, violation of Foreign Exchange Regulation and loss of revenues which were neither referred to nor the subject matter of the show cause notice dated 15.10.2010 issued by the Regional Passport Office. It was submitted that it is settled law that material which does not form part of the show cause notice cannot be made the basis for an order passed pursuant to such a show cause notice. In this connection it was also pointed out that even the appellate order passed by the Chief Passport Officer on 31.10.2011 has returned a finding that the appellant appears to have committed contravention of provisions of FEMA to the extent of hundreds of crores of rupees and to have taken personal benefits by acquiring huge sums of money which were suspected to have been parked outside India. It is submitted that this finding could not have been returned inasmuch as there was no such allegation contained in the show cause notice dated 15.10.2010 issued by the Regional Passport Office pursuant to which the passport of the appellant was revoked. The only allegation made in the said show cause notice dated 15.10.2010 was that a complaint dated 16.09.2010 u/s 16(3) of FEMA had been filed against the appellant and a show cause notice had been issued by the Directorate of Enforcement on 20.09.2010 for non-compliance of summonses issued by them. In other words, the only issued raised in the show cause notice dated 15.10.2010 was the non-compliance of summonses issued by the Directorate of Enforcement. Therefore, all the other findings could not have been returned by the respondent No. 2 or the respondent No. 3.

20. For all these reasons, it was submitted by Mr. Parag Tripathi that the orders dated 30.03.2011 passed by the respondent No. 3 and 31.10.2011 passed by the respondent No. 2 are illegal and bad in law and require to be set aside by this court. He also submitted that the impugned order dated 16.01.2013 passed by the learned single Judge also needs to be set aside because it does not take into consideration the above submissions in the correct light. He further submitted that the conclusion of the learned single judge that there were necessary jurisdictional facts before the Regional Passport Officer to revoke the appellant''s passport was not correct. Neither was the conclusion of the learned single Judge that the Regional Passport Officer had exercised his powers of revocation of passport in the interest of general public. He also submitted that the learned single Judge had erred in concluding that the power to require the physical

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presence of an accused was not only applicable in respect of a witness but also in respect of a noticee / a person under investigation. For these reasons, he submitted that the impugned judgment dated 16.01.2013 passed by the learned single Judge also needed to be set aside and the passport of the appellant required to be restored.

21. On the other hand, Mr. Rajeeve Mehra, the learned ASG, appearing on behalf of the respondents submitted that no interference with the impugned judgment as also to the orders passed by the respondent No. 2 and 3 was called for. He submitted that the Directorate of Enforcement had issued summonses to the appellant to appear in person to tender evidence and that u/s 37 of FEMA personal appearance was required. He also referred to Sections 30 and 32 of the Code of Civil Procedure, 1908 and Section 131(1) of the income tax Act, 1961. Despite the said summonses being issued to the appellant, he did not appear before the Directorate of Enforcement. As a result, a complaint u/s 16(3) of FEMA was filed on 16.09.2010 for non-compliance of the summonses. Thereafter, the Enforcement Directorate sent a letter dated 04.10.2010 to the Regional Passport Office regarding the said complaint for non-compliance of summonses. On the basis of that letter, the Regional Passport Office inter alia issued the show cause notice dated 15.10.2010 for action u/s 10(3)(c) of FEMA. An opportunity of filing a written reply was afforded to the appellant and the same was availed of inasmuch as the appellant''s Advocates filed several replies. Furthermore, an opportunity of hearing was also granted at least on two dates - 18.11.2010 and 26.11.2010, by the respondent No. 3 to the Advocates of the appellant. After the conclusion of hearing, written submissions on behalf of the appellant were also permitted to be taken on record. Mr. Mehra submitted that after following this entire process, the respondent No. 3 passed the order dated 03.03.2011 revoking the passport of the appellant. He submitted that these steps clearly indicate that there was full compliance with the principles of natural justice.

22. It was also submitted by Mr. Mehra that public interest required that the appellant must make himself available for investigation in respect of FEMA violations. The fact that the appellant did not personally appear before the Directorate of Enforcement pursuant to the summonses made it clear that action taken in the form of revocation of the passport of the appellant was in public interest. Therefore, the revocation of the passport of the appellant by invoking the provisions of Section 10(3)(c) of FEMA cannot be regarded as being contrary to law. Mr. Mehra further submitted that the so called serious threat to the life of the appellant was only a bogey to delay and protract the investigations against him for serious FEMA violations. He submitted that while the appellant was in India, he had been, whenever necessary, provided with protection by the Mumbai Police. He further submitted that while in India and, particularly, during the IPL series, the appellant was moving from place to place within India without any problem. Therefore, according to Mr. Mehra, the non-appearance of the appellant was absolutely without a reasonable cause and that the submission as to the existence of a serious threat to the appellant''s life was nothing but a bogey.

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23. Finally, Mr. Mehra went through the findings of the respondent No. 3 in the revocation order dated 03.03.2011 as also the findings of the Chief Passport Officer (respondent No. 2) in the appellate order dated 31.10.2011 and the conclusions of the learned single Judge in the impugned order dated 16.01.2013. Mr. Mehra submitted that all these findings were well founded and point in the direction that the revocation of the passport of the appellant was called for in the interest of the general public. Consequently, the revocation of the appellants passport u/s 10(3)(c) of the Passports Act was valid in law. He submitted that the appeal be dismissed.

24. In rejoinder Mr. Parag Tripathi submitted that it must be noticed that no summons remained outstanding against the appellant inasmuch as the summonses dated 02.08.2010 and 24.08.2010 had been issued in the course of investigations with regard to FEMA violations by inter alia the appellant. The investigations have fructified into several complaints including the complaint dated 13.07.2011 pursuant to which a show cause notice dated 20.07.2011 has also been issued asking inter alia the appellant to show cause as to why adjudication proceedings as contemplated u/s 16 of FEMA should not be held. The summons dated 02.08.2010 and 24.08.2010 were issued in connection with an investigation in respect of which the said complaint was subsequently filed on 31.07.2011. Therefore, the summonses are no longer outstanding. Consequently, the revocation of the passport of the appellant was not at all in the interest of general public.

25. We must now examine the applicable and relevant statutory provisions. The relevant provisions under FEMA:-

Section-13. Penalties.-

(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

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"Section 14. Enforcement of the orders of Adjudicating Authority.-

(1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him u/s 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied -

(a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(3) Notwithstanding anything contained in sub-section (l), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may, for the time being, be found.

(6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

(8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his

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discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.

(9) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

(10) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.

(11) Every person detained in the civil prison in execution of the certificate may be so detained,--

(a) where the certificate is for a demand of an amount exceeding rupees one crore, up to three years, and

(b) in any other case, up to six months:

Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.

(12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.

(13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

"Section 16. Appointment of Adjudicating Authority.-

(1) For the purpose of adjudication u/s 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention u/s 13, against whom a complaint has been made under sub-section (3) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that the said person

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is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

(2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

(3) No Adjudicating Authority shall hold an enquiry under sub- section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

(4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

(5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and -

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint: Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

"Section 37. Power of search, seizure, etc.-

(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income tax authorities under the income tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act."

The Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules,

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"Rule 4 - Holding of inquiry.-

(1) For the purpose of adjudicating u/s 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.

(3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.

(4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

(5) The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).

(6) While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.

(8) If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of section 13 of the Act.

(9) Every order made under sub-rule (8) of the rule 4 shall specify the provisions

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of the Act or of the rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain reasons for such decisions.

(10) Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority.

(11) A copy of the order made under sub-rule (8) of the rule 4 shall be supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of copying fee @ Rs. 2 per page.

(12) The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority.

The Foreign Exchange Regulation Act, 1973:-

"Section 35. Power to arrest.-

(1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where any officer of Enforcement has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1973 (2 of 1974).

"Section 39. Power to examine persons.--The Director of Enforcement or any other officer of Enforcement authorised in this behalf by the Central Government, by general or special order, may, during the course of any investigation or proceeding under this Act,--

(a) require any person to produce or deliver any document relevant to the investigation or proceeding;

(b) examine any person acquainted with the facts and circumstances of the case.

"Section 50. Penalty.--If any person contravenes any of the provisions of this Act other than section 13, clause (a) of sub- section (1) of Section 18, Section 18A and clause (a) of sub - Section (1) of Section 19 or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more as may be adjudged by the Director of Enforcement or any

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other officer or Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government (in either case hereinafter referred to as the adjudicating officer).

"Section - 56. Offences and prosecutions.-

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act other than section 13, clause (a) of sub-section (1) of Section 18, Section 18A and clause (a) of sub - Section (1) of Section 19, sub-section (2) of section 44 and sections 57 and 58, or of any rule, direction or order made thereunder he shall, upon conviction by a court, be punishable, -

(i) In the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months; (ii) In any other case, with imprisonment for a term which may extend to three years or with fine or with both.

(2) If any person convicted of an offence under this Act not being an offence u/s 13 or clause (a) or sub-section (1) of section 18 or section 18A or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58 is again convicted of an offence under this Act not being an offence u/s 13 or clause (a) of sub-section (1) of section 18 or section 18-A or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(3) Where a person having been convicted of an offence under this Act, not being an offence u/s 13 or clause (a) of sub-section (1) of section 18 or section 18A or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58, is again convicted of offence under this Act not being an offence u/s 13 or clause (a) of sub-section (1) of section 18 or section 18A or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58, the court by which such person is convicted may, in addition to any sentence which may be imposed on him under this section, by order, direct that that person shall not carry on such business as the court may specify, being a business which is likely to facilitate the commission of such offence for such period not exceeding three years, as may be specified by the court in the order.

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(4) For the purposes of sub-sections (1) and (2), the following shall not be considered as adequate and special reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-

(i) the fact that the accused has been convicted for the first time of an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other penal action has been taken against him for the same offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) the age of the accused.

(5) For the purposes of sub-sections (1) and (2), the fact that an offence under this Act has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than six months.

(6) Nothing in 3 the proviso to section 188 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to any offence punishable under this section.

From the above provisions of FEMA and FERA it is clear that there is a departure under the FEMA provisions from the earlier, more stringent provisions of FERA. Under FEMA there is no provision for arrest nor is there any provision for criminal prosecution as provided in Sections 35 and 56 of FERA respectively. Both these provisions have been dropped in FEMA. We may also point out that the power to examine persons which the Officers of the Directorate of Enforcement had by virtue of Section 39 and FERA also does not find place in FEMA.

26. Insofar as FEMA is concerned it is clear that by virtue of Section 37(3) thereof, the concerned officers of the Directorate of Enforcement exercise like powers which are conferred on income tax Authorities under the income tax Act, 1961 and they shall exercise such powers, subject to such limitations laid down under the income tax Act, 1961. At this juncture it would be necessary to refer to Section 131(1) of the income tax Act, 1961 which deals with the power regarding discovery, production of evidence, etc. The said provision reads as under:-

"Power regarding discovery, production of evidence, etc. 131. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), and Chief Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :--

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(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

xxxx xxxx xxxx xxxx"

From the above it is evident that the officers under the income tax Act have the same powers as are vested in a court under the Code of Civil Procedure, 1908 to try a suit in respect of inter alia discovery and inspection, enforcing the attendance of any person, including any officer of a bank / company and examining him on oath and compelling the production of books of accounts and other documents. This takes us to Sections 30 of the Code of Civil Procedure, 1908 which reads as under:-

"Section 30. Power to order discovery and the like.- Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

It is evident from Section 30 CPC that the court has power to issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other material objects producible as evidence. The penalty for default is provided in Section 32 CPC and the same reads as under:-

"Section 32 - Penalty for default The court may compel the attendance of any person to whom a summons has been issued u/s 30 and for that purpose may-

(a) Issue a warrant for his arrest;

(b) Attach and sell his property;

(c) Impose a fine upon him not exceeding five thousand rupees;

(d) Order him to furnish security for his appearance and in default commit him to the civil prison."

From the above, it is clear that reading Section 37(3) of FEMA along with Section 131(1) of the income tax Act, 1961 and Section 30 CPC, the competent officers

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of the Directorate of Enforcement have the power to issue summonses to persons whose attendance is required either to give evidence or to produce documents or other material objects producible as evidence. In other words, attendance of such persons is with the objective of giving evidence or producing documents and other objects. It is in this backdrop that the summonses dated 02.08.2010 and 24.08.2010 were issued by the Directorate of Enforcement. Those summonses were specifically issued to the appellant to appear before the Assistant Director, Directorate of Enforcement, in person to tender evidence in respect of various agreements executed by the BCCI-IPL, along with the documents mentioned in the said summonses to which we have already adverted earlier in this judgment. It is, therefore, clear that the requirement of the presence of the appellant was for tendering evidence as well as documents and it was not for the purposes of interrogation or examination which were powers available under FERA but not under FEMA.

27. Coming now to the other provisions of FEMA, Section 13 provides for penalties. If there is any contravention of the provisions of FEMA or any Rule, Regulation, Notification, Direction or Order in exercise of the powers under FEMA, Section 13 clearly stipulates that when any person is guilty of such contravention, upon adjudication, he shall be liable to penalty upto three times the sum involved in such contravention where the amount is quantifiable or upto Rs 2 lakhs where the amount is not quantifiable. Furthermore, where the contravention is a continuing one, further penalty may extent to Rs 5,000/- for every day after the first date from which the contravention continues. Sub-Section (2) of Section 13 permits for confiscation of currency, security or any other money or property in respect of which the contravention has taken place in addition to the penalty that is imposed u/s 13(1) of FEMA. It is pertinent to note that the penalty u/s 13(1) is imposed only upon adjudication. Adjudication is done in the manner prescribed u/s 16 of FEMA. Section 16(1) requires the adjudication authority to hold an inquiry in the manner prescribed after giving the person alleged to have committed contravention u/s 13, against whom a complaint has been against sub-Section (3), a reasonable opportunity of being heard for the purpose of imposing any penalty. There is also a proviso to Section 16(1) which is not relevant for the purposes of this case. Section 16(3) of FEMA stipulates that no Adjudicating Authority shall hold an inquiry under sub-Section (1) except upon a complaint in writing made by an officer authorised by a general or special order by the Central Government.

28. Coming back to the factual context of the present case, we find that because the appellant had not appeared before the Assistant Director, Directorate of Enforcement pursuant to the said summonses, the said Assistant Director had filed a complaint u/s 16(3) of FEMA on 16.09.2010. That complaint has led to a show cause notice being issued by the Directorate of Enforcement on 20.09.2010 and adjudication in respect thereof is pending. So, this much is clear that the written complaint u/s 16(3) of FEMA with regard to the appellant''s non - compliance with the summonses is pending before the Adjudicating Authority

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under FEMA. A show cause notice was also issued by the Adjudicating Authority on 20.09.2010 wherein the appellant was required to appear in person or through legal practitioner / chartered accountant duly authorised by the appellant. This was in consonance with the stipulation contained in Section 16(4) of FEMA which clearly enables the person against whom the complaint has been made to appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

29. We have already noted that Section 16(1) of FEMA requires the Adjudicating Authority to hold an inquiry, in the manner prescribed. The manner prescribed for holding an inquiry is in terms of Rule 4 of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. Rule 4(3) is in consonance with Section 16(4) of FEMA inasmuch as where the Adjudicating Authority is of the opinion that an inquiry should be held, he is required to issue a notice fixing a date for the appearance of the person against whom the complaint has been filed to appear either personally or through his legal practitioner or a chartered accountant duly authorised by him. It is evident that even in the adjudication process stipulated u/s 16 of FEMA read with Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, the personal appearance of the persons against whom the complaint has been made is not necessary as he may be represented by a legal practitioner or a chartered accountant duly authorised by him.

30. Another point that needs to be noticed with regard to Rule 4 of the said Rules is that there are two stages for the holding of an inquiry. The first stage is of issuance of a show cause notice requiring the person concerned to show cause within the specified period as to why an inquiry should not be held against him. If the Adjudicating Authority is convinced with the cause shown by the person concerned and he is of the opinion that no inquiry should be held, the matter ends there. However, by virtue of Rule 4(3) of the said Rules, if the Adjudicating Authority, after considering the cause, if any, shown by the concerned person, is of the opinion that an inquiry should be held, he is required to fix a date for the appearance of that person either personally or through legal practitioner or through a chartered accountant duly authorised by him. It is true that while holding such an inquiry, which is the second stage of the adjudication process, the Adjudicating Authority has the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry. This power is to be found in sub-Rule (6) of Rule 4 of the said Rules. It is also clear that such power does not extend to the enforcement of attendance of the person against whom the complaint is made, who can, as we have noticed above, enter appearance either in person or through a legal practitioner or a chartered accountant duly authorised by him. In fact, if there is no appearance on the part of the person against whom the complaint has been filed, sub-rule (7) of Rule 4

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stipulates that the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so. It is only upon following the above procedure that the Adjudicating Authority may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of Section 13 of the said Act.

31. Coming back to the facts of the present case, we find that on the basis of the material available on record, the complaint u/s 16(3) of FEMA which was registered on 16.09.2010 has been followed by a show cause notice dated 20.09.2010 which essentially requires the appellant to show cause as to why an inquiry should not be held. The matter has not progressed beyond that stage. In fact, nothing has been brought to our notice to indicate that the Adjudicating Authority has formed any opinion that an inquiry should be held and that an inquiry has in fact been held. In any event, it is an admitted position that no adjudication order imposing a penalty pursuant to the complaint dated 16.09.2010 has been passed by the Adjudicating Authority under FEMA as yet.

32. The only other provision of FEMA which requires consideration is Section 14 thereof. It provides for the enforcement of the orders of Adjudicating Authority. That stage, as we have pointed out above, has not arisen as yet because no orders have been passed by the Adjudicating Authority under FEMA. However, it is important to note that it is only on non-compliance of the orders passed by the Adjudicating Authority with regard to payment of penalty, that the person who is in default is liable to civil imprisonment. That stage has not yet arisen and, therefore, the question of arrest and imprisonment of the appellant does not arise at this stage.

33. We now come to the relevant provisions of the Passports Act. They are as under:-

"Section 3. Passport or travel document for departure from India.--No person shall depart from, or attempt to depart from India, unless he holds in this behalf a valid passport or travel document.

"Section 10. Variation, impounding and revocation of passports and travel documents.-

(1) The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification u/s 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government

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also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf: Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of

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the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

From the above provisions and, particularly, Section 3 of the Passports Act, it is evident that no person can depart from or attempt to depart from India, unless he holds in this behalf a valid passport or travel document. Section 2(a) has defined departure, within its grammatical variations and cognate expressions, to mean departure from India by water, land or air. There is no dispute, in the facts of the present case, that the appellant, when he departed from India for U.K, where he is now temporarily residing, had a valid passport.

34. Even the preamble of the Passports Act indicates that it is an Act to provide for the issue of passport and travel documents, to regulate the departure from India of citizens of India and other persons and for matters incidental or ancillary thereto. The prime focus of the Passports Act, therefore, appears to be that no citizen of India should depart from or attempt to depart from India without any valid passport or other travel document issued under the Passports Act.

35. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, the Supreme Court, per P.N. Bhagwati, J (for himself, Untwalia and Fazal Ali, JJ), while upholding the validity of Section 10(3)(c) of the Passport Act held:-

"35. But that does not mean that an order made u/s 10(3)(c) may not violate

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Article 19(1)(a) or (g)."

"...even where a statutory provision empowering an authority to take action is constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory provision is valid, the action may be void. Therefore, even though Section 10(3)(c) is valid, the question would always remain whether an order made under it is invalid as contravening a fundamental right. The direct and inevitable effect of an order impounding a passport may, in a given case, be to abridge or take away freedom of speech and expression or the right to carry on a profession and where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6)."

(underlining added)

It was further observed by the Supreme Court that:-

"There may be many such cases where the restriction imposed is apparently only on the right to go abroad but the direct and inevitable consequence is to interfere with the freedom of speech and expression or the right to carry on a profession. A musician may want to go abroad to sing, a dancer to dance, a visiting professor to teach and a scholar to participate in a conference or seminar. If in such a case his passport is denied or impounded, it would directly interfere with his freedom of speech and expression..... Examples can be multiplied, but the point of the matter is that though the right to go abroad is not a fundamental right, the denial of the right to go abroad may, in truth and in effect, restrict freedom of speech and expression or freedom to carry on a profession so as to contravene Article 19(1)(a) or 19(1)(g). In such a case, refusal or impounding of passport would be invalid unless it is justified under Article 19(2) or Article 19(6), as the case may be."

(underlining added)

36. Section 10(3) of the Passports Act empowers the passport authority to inter alia revoke a passport or travel document for any of the reasons specified in Clauses (a) to (h) thereof. Clause (c) of Section 10(3) empowers the passport authority to inter alia revoke a passport if the said authority deems it necessary so to do - (i) in the interests of the sovereignty and integrity of India, (ii) the security of India, (iii) friendly relations of India with any foreign country, or (iv) in the interests of the general public. The appellant''s passport has been revoked u/s 10(3)(c) by invoking the fourth above mentioned category - in the interests of the general public. At first blush this may seem to be a phrase of a very wide amplitude but, that may not be so. In Maneka Gandhi (supra) itself, in paragraph 35, the Supreme Court held that the expressions - sovereignty and integrity of India, security of India and friendly relations of India with any foreign country were species of the broad genus of in the interests of the general public. Furthermore, if an order made u/s 10(3)(c) restricted a citizen''s right to carry on a profession, occupation or business then the order could be protected by Article 19(6) of the Constitution. And, if the order made u/s 10(3)(c) restricted a

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citizen''s freedom of speech and expression then, the order could be protected by Article 19(2) under the category of interests of the general public only if it was in the interests of public order, decency or morality. The Supreme Court had observed as follows (in para 35):-

...Now, passport can be impounded u/s 10(3)(c) if the Passport Authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public. The first three categories are the same as those in Article 19(2) and each of them, though separately mentioned, is a species within the broad genus of interests of the general public. The expression interests of the general public is a wide expression which covers within its broad sweep all kinds of interests of the general public including interests of the sovereignty and integrity of India, security of India and friendly relations of India with foreign States. Therefore, when an order is made u/s 10(3)(c), which is in conformity with the terms of that provision, it would be in the interests of the general public and even if it restricts freedom to carry on a profession, it would be protected by Article 19(6). But if an order made u/s 10(3)(c) restricts freedom of speech and expression, it would not be enough that it is made in the interests of the general public. It must fall within the terms of Article 19(2) in order to earn the protection of that article. If it is made in the interests of the sovereignty and integrity of India or in the interests of the security of India or in the interests of friendly relations of India with any foreign country, it would satisfy the requirement of Article 19(2). But if it is made for any other interests of the general public save the interests of public order, decency or morality, it would not enjoy the protection of Article 19(2). There can be no doubt that the interests of public order, decency or morality are interests of the general public and they would be covered by Section 10(3)(c), but the expression interests of the general public is, as already pointed out, a much wider expression and, therefore, in order that an order made u/s 10(3)(c) restricting freedom of speech and expression, may not fall foul of Article 19(1)(a), it is necessary that in relation to such order, the expression interests of general public in section 10(3)(c) must be read down so as to be limited to interests of public order, decency or morality. If an order made u/s 10(3)(c) restricts freedom of speech and expression, it must be made not in the interests of the general public in a wider sense, but in the interests of public order, decency or morality, apart from the other three categories, namely, interests of the sovereignty and integrity of India, the security of India and friendly relations of India with any foreign country. If the order cannot be shown to have been made in the interests of public order, decency or morality, it would not only contravene Article 19(1)(a), but would also be outside the authority conferred by Section 10(3)(c).

(underling added)

37. We have to, therefore, examine the revocation of the appellant''s passport by virtue of the order dated 03.03.2011 passed by the respondent No. 3, in this

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backdrop. It must be remembered that the revocation of the appellant''s passport was based on the letter dated 04.10.2010 received by the Regional Passport Officer from the Directorate of Enforcement to the effect that a complaint dated 16.09.2010 u/s 13 of FEMA had been filed against the appellant and that a show cause notice had been issued against the appellant by the Directorate of Enforcement on 20.09.2010 for non- compliance of summonses issued by them. We may recall that complaint dated 16.09.2010 which had been filed u/s 16(3) of FEMA specifically recorded as under:-

It is, therefore, in view of above facts, clear that the above mentioned person is deliberately, and intentionally avoiding the summons, in order to stall the investigation and therefore it is prayed that a penalty as may be deemed fit be imposed on Shri Lalit Kumar Modi.

That the above mentioned person, has contravened the provisions of Section 37 of the Foreign Exchange Management Act, 1999 read with Section 131(1) and 272-A(1) of the income tax Act, 1961 and thereby rendered himself liable to be proceeded against u/s 13(1) of FEMA, 1999.

xxxx xxxx xxxx xxxx

That it is prayed that this complaint may be taken on record and Shri Lalit Kumar Modi be dealt with as per law.

From this it is clear that the complaint u/s 16(3) was specifically for the non-compliance of summonses issued to the appellant. The procedure seeking the imposition of a penalty for non- compliance under FEMA had been put into action by the filing of the said complaint dated 16.09.2010. That has not yet fructified into an order passed by an Adjudicating Authority imposing a penalty u/s 13 of FEMA.

38. Taking, the filing of the complaint and the issuance of the show cause notice under FEMA to the appellant as a basis, the Regional Passport Office issued the show cause notice under the Passports Act to the appellant asking the appellant to show cause as to why action u/s 10(3)(c) of the Passports Act should not be initiated against him. It is thereupon that the revocation order dated 03.03.2011 was passed under the Passports Act by invoking the expression in the interests of the general public appearing in Section 10(3)(c) of the Passports Act.

39. We must examine the direct and inevitable consequence of the revocation order. At the time the revocation order was passed, the appellant was already abroad in the U.K. The direct consequence of the revocation order was that the appellant could not travel to any country outside of the U.K. He could not attend any conferences or meetings in any other country where he could have expressed his views on cricket or on the organization and administration of cricket. To that extent it can be said that the ''direct and inevitable'' consequence of the revocation order was to impinge upon his freedom of speech and expression. Now, this could be legitimate if the revocation order could be said to

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be in the interests of the general public, of course, limited to the interests of ''public order, decency or morality''. The alleged infraction on the part of the appellant could hardly be stated to fall foul of ''public order, decency or morality''. Therefore, in our view, the revocation order was invalid.

40. In any event, the public interest allegedly involved, as evident from the appellate order dated 31.10.2011, was that cricket was the most popular sport in India and a huge public sentiment was attached to it and, therefore, it was in ''public interest'' that the case against the appellant was properly investigated for which the interrogation of the appellant was considered necessary. This kind of ''public interest'' does not fall in the categories of public order, decency or morality and, therefore, cannot be used as a shield against invalidity which would naturally follow on account of a restriction on the freedom of speech and expression.

41. We also agree with the submission by Mr. Parag Tripathi that the show cause notice dated 15.10.2010 issued by the Regional Passport Office had reference only to the non-compliance with the summonses which had been issued by the Enforcement Directorate. There was no mention in the show cause notice and, in our view, there could have been no such mention as that was the subject matter of investigation under FEMA, with regard to the alleged diversion of Foreign Exchange and alleged violation of Foreign Exchange Regulations or the alleged loss of revenue. Furthermore, even the appellate authority (respondent No. 2), in our view, could not have returned findings with regard to the appellant appearing to have committed contraventions of the provisions of FEMA to the extent of hundreds of crores of rupees and to have taken personal benefits by acquiring huge sums of money and to be suspected to have parked the same outside India. This was not for the Passport Officer to examine. The passport officer''s jurisdiction, if at all, was limited to the show cause notice dated 15.10.2010 which was only in respect of non-compliance of the summonses issued by the Enforcement Directorate. The Passport Officer was not at all concerned with the merits of the alleged FEMA violations or the extent of alleged FEMA violations. That was the concern of the Adjudicating Authority under FEMA.

42. Therefore, the observations of the authorities below with regard to the allegations of FEMA violations against the appellant ought to be disregarded in the context of the revocation order. But, the matter does not end here because, in our view, these allegations had an impact on the decision making process of the Regional Passport Officer as well as the Chief Passport Officer inasmuch as they have both referred to the allegations to indicate that it was in ''public interest'' that the passport of the appellant be revoked. In other words, the authorities under the Passports Act, while revoking the passport of the appellant, examined and were influenced by materials which were not relevant or germane and were not specified in the show cause notice dated 15.10.2010. The only ''subject-matter'' of the show cause notice was the ''non-compliance of summons'' issued by the Directorate of Enforcement, Mumbai.

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43. There seems to be substance in the arguments raised by Mr. Tripathi that non-appearance in response to the summonses was not such a serious matter as to result in the revocation of the passport of the appellant. This is all the more so because the legal consequences for non-compliance had already been set in motion by the issuance of show cause notices by the Directorate of Enforcement in respect of the complaints filed u/s 16(3) including the complaint dated 16.09.2010.

44. At this juncture it would be pertinent to, once again, refer to the observations of the Supreme Court in Maneka Gandhi (supra) (at pages 315, 316) to the following effect:-

..... It would thus be clear that though the impugned order may be within the terms of Section 10(3)(c), it must nevertheless not contravene any fundamental rights and if it does, it would be void. Now, even if an order impounding a passport is made in the interests of public order, decency or morality, the restriction imposed by it may be so wide, excessive or disproportionate to the mischief or evil sought to be averted that it may be considered unreasonable and in that event, if the direct and inevitable consequence of the Order is to abridge or take away freedom of speech and expression, it would be violative of Article 19(1)(a) and would not be protected by Article 19(2) and the same would be position where the order is in the interests of the general public but it impinges directly and inevitably on the freedom to carry on a profession, in which case it would contravene Article 19(1)(g) without being saved by the provision enacted in Article 19(6).

In this context also, the revocation order is far too wide, excessive and/or disproportionate to the ''mischief'' or ''evil'' of non -compliance of summons issued by the Directorate of Enforcement. In such a circumstance, the order cannot be saved by either Article 19(2) or Article 19(6).

45. Furthermore, the object of the summons was to provide evidence and documents as stated above. All that had been provided by the appellant and the appellant was also ready and willing to be examined through video conferencing. We must say at this juncture that FEMA does not entail custodial interrogation and, therefore, a request for an alternative mode examination under video conferencing was certainly an option available with the Directorate of Enforcement and should not have been simply shrugged aside. We say so, even if it is assumed that the appellant did not have a genuine threat to his life as claimed by him.

46. We agree with the learned Additional Solicitor General that there has been no violation of the principles of natural justice to the extent that a show cause notice dated 15.10.2010 was issued to the appellant; his replies through his Advocates were taken on record; his Advocates were heard and further written submissions after arguments were also taken on record and considered by the Regional Passport Officer before the revocation order dated 03.03.2011 was

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passed. But, that by itself does not make the said order lawful. This is so because, as we have pointed out above, extraneous considerations and irrelevant materials were taken into account by the officers under the Passports Act while rendering their decisions dated 03.03.2011 and 31.10.2011. This is also apart from the more serious issue of invalidity on account of violation of Article 19(1)(a) and (g). The learned Single Judge, in the impugned order dated 16.01.2013, in our view, did not examine these aspects of the matter.

47. We have also pointed out that since there is a specific procedure and there are specific statutory provisions for any default in non-compliance with summonses under FEMA itself read with relevant provisions of the income tax Act and the CPC, the revocation of the appellant''s passport for that so-called default (which is yet to be adjudicated upon), on the ground that it was in the interests of the general public, was not lawful.

48. We may also examine the matter from another aspect. If we assume that the appellant was not in the U.K but in India, could the action of revocation of the passport of the appellant be regarded as lawful? In fact, would the Enforcement of Directorate have even requested the Regional Passport Officer for taking action under the Passports Act? We think not. And, we must remember that the passport is essentially required for departure from India. The appellant is already in U.K.

49. For all these reasons, we set aside the impugned judgment dated 16.01.2013 and, consequently, the orders dated 31.10.2011 and 03.03.2011 passed by the respondent Nos. 2 and 3. As a result, the revocation of the appellant''s passport is set aside and the passport stands restored. We make it clear that we have not expressed any opinion with regard to the alleged FEMA violations on the part of the appellant which are being examined separately by the authorities under FEMA.

50. The appeal is allowed to the aforesaid extent. There shall be no order as to costs.

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