

SHOBHA SURESH JUMANI

A

v

APPELLATE TRIBUNAL, FORFEITED PROPERTY AND ANR.

MAY 4, 20001

[B.N. KIRPAL, M.B. SHAH AND RUMA PAL, JJ.]

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Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

S.12(4)—“Person aggrieved”—Who is—Detention—Forfeiture of property—Wife of detenu—Filing of appeal as “person aggrieved”—Entitlement of—Held, “person aggrieved” means person whose property is illegally acquired and forfeited under the Act or whose legal rights qua the said property are adversely affected—There is no infringement of legal right of a wife of detenu—Thus, she is not entitled to file an appeal as “person aggrieved”.

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S.2(2)(c)—Applicability of—Prevention of Corruption Act, 1988—Persons convicted under—Non-inclusion of—Need for amendment—Suggested.

Hindu Adoption and Maintenance Act, 1956—Ss. 18, 27 and 28—Hindu wife—Maintenance from husband—Entitlement of—Whether creates a charge for maintenance on the property forfeited—Held, No—Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

E

Words & Phrases.

“Person aggrieved”—Meaning of in the context of S.12(4) of the *Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.*

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“Dependant”—Meaning of in the context of S.21 of the *Hindu Adoption and Maintenance Act, 1956.*

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The issue involved in the present appeal was whether appellant, wife of a detenu, whose property was forfeited under the *Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976* was entitled to file and appeal as “person aggrieved” under S.12(4) of the Act.

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- A** On behalf of appellant it was contended that the order passed by the Tribunal was illegal and erroneous because “any person aggrieved by an order of the competent authority” was entitled to file an appeal under Section 12(4) of the Act and appellant being wife of the detenu was an aggrieved person; that the appellant apart from being wife was also entitled to have charge for maintenance from the properties which are forfeited and, therefore,
- B** she was “person aggrieved” by the order of the competent authority.

Dismissing the appeal, the Court

- C** HELD : 1.1. Appellant-wife of detenu whose property is forfeited under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 is not entitled to file an appeal as “person aggrieved” under S.12(4) of the Act. [528-B]

- D** 1.2. Under the scheme of the Act ‘any person aggrieved’ by an order of the competent authority would mean person whose property is held to be illegally acquired under the Act and which is to be forfeited or whose legal rights qua the said property are adversely affected. Therefore, a relative or associate, who has no interest or right in such property cannot be held to be a person aggrieved. It is true that wife may be aggrieved because her husband’s properties are forfeited. But that would not confer a right to file an appeal against such order. There is no infringement of her legal right.
- E** For the purpose of the Act husband and wife are different entities. If the properties standing in the name of relative or associate are forfeited on the ground that smugglers or foreign exchange manipulators were holding the said properties in their names or that such properties are legally acquired, then to that extent, for challenging the said finding, the relative or associate can be held to be person aggrieved by the order of the competent authority.
- F** But, a relative or associate can not be considered to be aggrieved if the properties belonging to the Smuggler or Foreign Exchange manipulator are forfeited under the Act. [532-C-F]

- G** *Thammanna v. K. Veera Reddy*, [1980] 4 SCC 62 and *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and Others.*, [1997] 4 SCC 452, referred to.

Sidebotham, Re, ex P Sidebotham, (1880) 14 Ch D 458, referred to.

Black’s Law Dictionary, referred to.

- H** 2. Section 18 of the Hindu Adoption and Maintenance Act, 1956 only provides that a Hindu wife shall be entitled to be maintained by her husband

during her life time if she is staying separately as provided under sub-section (2). Section 27 provides that dependant's claim for maintenance under the Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise. Section 28 further provides that where a dependant has a right to receive maintenance out of the estate and if such estate is transferred, the right to receive maintenance may be enforced against the transferee, if the transferee has notice of such right or if the transferee is gratuitous. The word 'dependant' is defined under Section 21 to mean relatives of the deceased, namely, (1) his or her father; (2) his or her mother; (3) his widow, so long as she does not remarry but does not include the wife whose husband is surviving. Thus, in the instant case, no charge for maintenance was created in favour of the appellant on the properties which are forfeited.

[532-H; 533-A-B]

3. It is difficult to comprehend the reason for not including a person who is convicted under the Prevention of Corruption Act, 1988 in the definition of Section 2(2) (c) of the Act. It appears that for controlling the cancerous growth of corruption apart from further deterrent provisions, illegally acquired properties by means of corrupt practices could be forfeited under the provisions by suitable amendment in the Act. Under the Indian Penal Code, various punishments are provided in Section 53 which include forfeiture of property and Sections 61 and 62 provided sentence of forfeiture of property. However, Sections 61 and 62 were deleted by Indian Penal Code (Amendment) Act, 1921. But considering the situation prevailing in the society, the said provisions are required to be re-introduced so as to have deterrent effect on those who are bent upon to accumulate wealth at the cost of the society by misusing their post or power. [533-D-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 501 or 2001.

From the Judgment and Order dated 6.4.2000 of the Bombay High Court in Crl. W.P. No. 653 of 2000.

H.L. Tiku, Raj Kumar Singh Tomma and Ashok K. Mahajan for the Appellant.

Mukul Rohtagi, Additional Solicitor General, Ms. Binu Tamta and Ms. Sushma Suri for the Respondents.

A The Judgment of the Court was delivered by

B **SHAH, J.** Short question requiring consideration in this appeal is— whether wife whose husband's property is ordered to be forfeited under the Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "the SAFEMA") is entitled to file an appeal as "person aggrieved" under Section 12(4) of the Act?

C Before dealing with the contentions, facts in nutshell are that the Government of India issued detention order dated 16.11.1995 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA") against one Suresh Manoharlal Jumani, resident of Khar (West), Mumbai. It appears that the order of detention was not implemented as he was absconding. However, his detention order is neither revoked nor quashed by any court of competent jurisdiction. Thereafter, in exercise of powers conferred under sub-section (1) of Section 6 of the SAFEMA, competent authority issued notice dated D 31.12.1996 to Suresh Manoharlal Jumani and his wife Smt. Shobha Suresh Jumani to show cause why the properties mentioned therein should not be declared to be illegally acquired properties and forfeited to the Central Government under the Act. The competent authority divided the properties in two parts-(1) standing in the name of detenu i.e. properties mentioned as E Items No.1 to 6; and (2) properties mentioned as Items No.7 and 8, which were standing in the name of appellant. Notice to the appellant was issued as two properties were standing in her name and as she was considered to be covered by the provisions of Section 2(2)(c) of the SAFEMA. After giving opportunity of hearing and of producing relevant material evidence, competent authority by order dated 23.8.1999 held that the properties mentioned therein F stood forfeited to the Central Government under Section 7 of the SAFEMA free from all encumbrances.

G That order was challenged before the Appellate Tribunal for the forfeited property at New Delhi by filing appeal under Section 12. By order dated 5.1.2000, with regard to the forfeited property, i.e. Item Nos. 1 to 6 which were in the name of detenu, the Tribunal directed that as the detenu has not filed the appeal, the appeal was not maintainable and the counsel should confine his arguments only in respect of Items No.7 and 8. The learned counsel sought time for making his submission and the matter was adjourned to 4.2.2000. On 4.2.2000 the matter was heard qua Items No.7 and 8 which were H standing in the name of the appellant and the appeal was dismissed on

8.2.2000. Thereafter, appellant preferred Miscellaneous Petition No. 17/Bom of 2000 in FPA No. 40/BOM/99 for reviewing the order on the ground that the appellant was having interest in Items No.1 to 6 as she had vested right of maintenance from her husband and his properties, and, therefore, she was 'person aggrieved'. That contention was negated by the Tribunal by order dated 22.2.2000. The High Court of Bombay by order dated 6.2.2000 dismissed CrI. Writ Petition No. 653 of 2000 challenging the order passed by the Tribunal. Hence, this appeal.

At the time of hearing of this matter, learned counsel Mr. H.L. Tiku appearing on behalf of the appellant submitted that the order passed by the Tribunal is illegal and erroneous because "any person aggrieved by an order of the competent authority" is entitled to file an appeal under Section 12(4) of the SAFEMA and appellant being wife of the detenu is an aggrieved person. He also submitted that the appellant apart from being wife is also entitled to have charge for maintenance from the properties which are forfeited and, therefore, she is 'person aggrieved' by the order of the competent authority.

First we would reiterate that the words 'any aggrieved person' are found in several statutes. However, the meaning of the expression "aggrieved" may vary according to the context of the enactment in which it appears and all the circumstances. In *Sidebotham, Re, ex p Sidebotham*, [(1880) 14 Ch D 458, at page 465)], it was observed by James, L.J.:

"But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something".

The said passage was referred to and relied upon by this Court in *Thammanna v. K. Veera Reddy*, [1980] 4 SCC 62 and *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and Others*, [1997] 4 SCC 452.

For deciding whether the appellant-wife could be said to be person aggrieved in context of the scheme and statutory provisions, we would refer to the objects and reasons of the Act and also relevant provisions. The Preamble of the SAFEMA reads thus: -

A *"An Act to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto.*

B Whereas for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

C And whereas such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

And whereas *such persons* have in many cases been holding the properties acquired by them through such gains in *the names of their relatives, associates and confidants.*"

(Emphasis added)

D Whole emphasis in the Preamble is on the forfeiture of illegally acquired property by the smugglers and foreign exchange manipulators as such ill-gotten gains have a deleterious effect on the national economy. Further, even though such persons may be holding illegally acquired properties in the name of their relative, associates and confidence, such properties are also to be forfeited. Thereafter, Sub-section (1) of Section 2 provides that the Act would apply only to persons specified in sub-section (2). Sub-section (2) categorises 'such persons' as

F (a) person convicted under the Customs Act, Foreign Exchange Regulations Act, as stated therein, or

(b) person against whom an order of detention has been made under COFEPOSA, or

(c) person who is a relative of person referred to in clause (a) or (b), or

G (d) every associate of person referred to in clause (a) or (b), or

(e) any holder of the property which was at any time previously held by a person referred to in clause (a) or clause (b) unless by purchase or in good faith for consideration.

H Explanations II and III provides for the meaning of the words 'relative' and

'associate' respectively. Relative includes spouse of the person. At this stage, we would mention that there appears to be some mistake in omitting the persons who are convicted for the offence under the Prevention of Corruption Act, 1988 even though, illegally acquired property is given exhaustive meaning under clause (c) of Section 3(1) of the Act to mean any property acquired by 'such person' wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter of which Parliament has power to make laws. The definition gives further inclusive meaning with which we are not concerned at present. Section 4 prohibits holding of illegally acquired property by providing "it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf". Sub- Section (2) provides that such property shall be liable to be forfeited to the Central Government in accordance with the provisions of the Act. The procedure is prescribed under Sections 6 and 7 of the Act. Section 6 provides for issuance of show cause notice to 'such person' who is holding illegally acquired properties. As stated above such person would be the person who is covered by the inclusive definition under Section 2(2)(c) of the Act. It also provides for issuance of notice to the other person who holds the property on behalf of 'such person'. Thereafter, Section 7 makes it clear that the person affected is person who holds such properties. As per sub-section (1) of Section 7, the competent authority is required to determine whether the properties in question are illegally acquired properties by the 'person affected'. Secondly, in a case where a person affected holds any property specified in the notice through any other person after giving opportunity of hearing to such other person, the competent authority is required to determine whether all or any of the properties in question are illegally acquired properties. Sub-section (1) of Section 7 reads as under: -

"7. Forfeiture of property in certain cases.- (1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under Section 6, and the materials available before it and after giving to *the person affected* (and in a case where the person affected holds any property specified in the notice *through any other person, to such other person* also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties."

From this sub-section it is clear that for the purpose of the Act, Section

- A 7 categorises properties in two parts (1) properties held by the person affected and (2) the person affected holding the property through any other person. Further Section 12 deals with procedure for filing appeal before the Appellate Tribunal. Sub-section (4) provides that ‘any person aggrieved’ by an order of the competent authority made under Section mentioned therein may, within forty-five days from the date on which the order is served on him, prefer an appeal to the appellate Tribunal.
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- From the aforesaid scheme of the Act, ‘any person aggrieved’ by an order of the competent authority would mean person whose property is held to be illegally acquired under the Act and which is to be forfeited or whose legal rights qua the said property are adversely affected. According to *Black’s Law Dictionary*, “aggrieved party” refers to a party whose personal, pecuniary or property rights have been adversely affected by another person’s actions or by a court’s decree or judgment—Also termed party aggrieved; person aggrieved.” Therefore, a relative or associate, who has no interest or right in such property can not be held to be a person aggrieved. It is true that wife may be aggrieved because her husband’s properties are forfeited. But that would not confer a right to file an appeal against such order. There is no infringement of her legal right. For the purposes of the Act husband and wife are different entities. If the properties standing in the name of relative or associate are forfeited on the ground that smugglers or foreign exchange manipulators were holding the said properties in their names or that such properties are legally acquired, then to that extent, for challenging the said finding, the relative or associate can be held to be person aggrieved by the order of the competent authority. But, a relative or associate can not be considered to be aggrieved if the properties belonging to the smuggler or Foreign Exchange manipulator are forfeited under the Act.
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- Learned counsel for the appellant, however, submitted that Hindu wife would be having interest in her husband’s property as she is having right of maintenance from her husband’s property. For this purpose, learned counsel referred to Sections 18, 23 and 27 of the Hindu Adoption and Maintenance Act, 1956. Section 18 only provides that Hindu wife shall be entitled to be maintained by her husband during her life time and if she is staying separately as provided under sub-section (2), she is entitled to claim maintenance from her husband. Section 23 deals with the determination of the amount of maintenance. Section 27 provides that dependant’s claim for maintenance under the Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by
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a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise. Section 28 further provides that where a dependant has a right to receive maintenance out of the estate and if such estate is transferred, the right to receive maintenance may be enforced against the transferee, if the transferee has notice of such right or if the transferee is gratuitous. At this stage, we would make it clear that the word 'dependant' is defined under Section 21 to mean relatives of the deceased, namely, (1) his or her father; (2) his or her mother; (3) his widow, so long as she does not remarry but does not include the wife whose husband is surviving. In any case admittedly no charge for maintenance was created in favour of the appellant on the properties which are forfeited. She has not suffered any legal grievance and has no legal peg for a justiciable claim to hang on. Hence, there is no substance in the contention raised by the learned counsel for the appellant.

Before parting with the judgment, we would observe that it is difficult to comprehend the reason for not including a person who is convicted under the Prevention of Corruption Act, 1988 in the definition of Section 2(2)(c) of the Act. It appears that for controlling the cancerous growth of corruption apart from further deterrent provisions, illegally acquired properties by means of corrupt practices could be forfeited under the provisions by suitable amendment in the Act. The question whether the time is ripe for such amendment or not is to be decided by the Legislature. However, we cannot turn our eyes to the fact that because of mad race of becoming rich and acquiring properties overnight or because of ostentatious or vulgar show of wealth by few or because of change of environment in the society by adoption of materialistic approach, cancerous growth of corruption and illegal gains or profits has affected the moral standards of the people and all forms of governmental administration. It is to be mentioned that under the Indian Penal Code, various punishments are provided in Section 53 which include forfeiture of property and Sections 61 and 62 provided sentence of forfeiture of property. However, sections 61 and 62 were deleted by Indian Penal Code (Amendment) Act, 1921. But considering the situation prevailing in the society, it appears that the said provisions are required to be re-introduced so as to have deterrent effect on those who are bent upon to accumulate wealth at the cost of the society by misusing their post or power. We hope that the Legislature would consider this aspect appropriately.

In the result, the appeal is dismissed.