

Karnataka Restaurant and ors. Vs. Competent Authority (Safemfopa) and ors.

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Court : Karnataka

Decided On : Feb-07-1990

Reported in : 1991(34)ECC150

Judge : M.P. Chandrakantaraj Urs, J.

Appeal No. : Writs Petition Nos. 15568 to 15572/1989

Appellant : Karnataka Restaurant and ors.

Respondent : Competent Authority (Safemfopa) and ors.

Advocate for Def. : Sri. D.V. Shylendra Kumar

Judgement :

ORDER

M.P. Chandrakantaraj Urs, J.

1. In W.P. No. 18551 of 1988 disposed of on 6-2-1990 Reported in [1990] 27 ECC 89 (Kar), I quashed the impugned detention order as well as the consequential notice issued under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ('the Act') following the decision of the Supreme Court in Union of India v. Hazi Masthan : 1984 CriLJ610 . The only difference on

the facts of that case and facts in these petitions are as follows:

2. One B.M. Abdul Rahiman a partner of the 1st petitioner Messrs Karnataka Restaurant was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) in the year 1976 as evidenced by Annexure-A to the petition. That order was not challenged by him. The said order as at Annexure-A is the one which has been quashed in the aforementioned writ petition, by my order dated 6-2-1990. In this petition, therefore what remains for consideration on the facts of the case is whether the proceedings initiated under the Act against his property as well as that of the firm would survive. If the detention order disappears then there is no further cause of action for the respondent-competent authority to issue notice for confiscation in the light of the decision in Hazi Mastan's case. Principally the detention order is the basis for assumption of jurisdiction under the Act by the Competent Authority. If there is no detention, the proceedings would be without jurisdiction.

3. In that view of the matter the order of the competent authority directing confiscation requires to be quashed. It appears that the order under appeal was stayed by this Court. In that view, quashing of the order under appeal is only formal.

4. Sri D.V. Shylendra Kumar, learned Counsel for the respondent stated that he is not aware, as a matter of fact, whether petitioners 2 to 5 also were detained under COFEPOSA and as such he is not in a position to submit whether proceedings initiated by the Competent Authority under the Act was in respect of the detention order as at Annexure-A.

5. On the facts given impugned order in question is quashed. The respondents may seek review of that order if facts turn out to be different.

6. Subject to the above observation, these petitions are allowed and writ as prayed for shall be issued and made absolute.

7. Order accordingly.

