

Tekchand Vs. Competent Authority.

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Court : Supreme Court of India

Decided On : Mar-31-1993

Reported in : [1993]201ITR658(SC)

Appeal No. : Civil Appeals Nos. 1391 to 1393 of 1979

Appellant : Tekchand

Respondent : Competent Authority.

Advocate for Pet/Ap. : Mr. B. V. Desai

Judgement :

B. P. JEEVAN REDDY J. - With a view to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators, Parliament enacted, in the year 1976, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, being Act No. 13 of 1976. The preamble to the act sets out the objective which the Act seeks to achieve. It says (see [1976] 46 Comp Cas (St.) 118) :

'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 engaged in such activities and manipulations of their ill-gotten gains;

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.'

It would be relevant to notice the Statement of objects and Reasons appended to the Bill. The Statement sets out the mischief the Act was intended to meet and counteract. It reads (see [1976] 46 Comp Cas (St.) 191) :

'Smuggling activities and foreign exchange manipulations are having a deleterious effect on the national economy. Persons engaged in such malpractices have been augmenting their ill-gotten gains by violation of laws relating to income-tax, wealth-tax or of other laws. In many cases, such persons have been holding properties acquired through ill-gotten gains in the names of their relatives associates and confidants. This accumulation of ill-gotten wealth gives increasing power, influence and resources to those who carry on such clandestine activities and even tend to confer social status and prestige which is quite contrary to the healthy socio-cultural norms. These activities pose a serious threat to the economy and the security of the nation. In conjunction with various other steps taken by the Government in recent months for cleansing the social fabric and resuscitating the national economy, it became necessary to assume powers to deprive such persons of their illegally acquired properties so as to effectively prevent the smuggling and other clandestine operations. The President promulgated on November 5, 1975, the Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Ordinance, 1975.'

The Act was preceded by an Ordinance issued on November 5, 1975. For that reason, the Act, when made, was given effect to from the said date. The object with which the Act was made is, without doubt, highly laudable.

The provisions of the Act apply to persons specified in sub-section (2) of section 2. Persons who have been convicted under the Sea Customs Act, 1878/Customs

Act, 1962, persons convicted under the Foreign Exchange Regulation Act, 1947/Foreign Exchange Regulation Act, 1973, constitute the first category. The second category is of the persons who have been detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1947 (COFEPOSA), provided the said order has not been revoked or withdrawn by the Competent Authority before the completion of the period prescribed or set aside by a competent court. The third category is of the relatives and associates of persons falling under categories 1 and 2. The fourth category is of the transferees from the persons falling in categories 1 and 2. Clause (c) in section 3 defines the expression 'illegally acquired property'. It means, in short, any property acquired, by a person, whether before or after the commencement of the Act, from out of any income or assets derived or attributable to the prohibited activity. Section 4 declares that as from the commencement of the Act it shall not be lawful for any person, to whom the Act applies, to hold any illegally acquired property either by himself or through any other person on his behalf. It declares further that any such property so held shall be liable to be forfeited. Section 6 provides for issuance of a notice calling upon the person to show cause why the properties illegally acquired by him should not be forfeited to the Government. Section 7 provides for the final orders to be passed on such show-cause notice after considering the explanation, if any, furnished by such person and after making such inquiry as may be appropriate in the circumstances. Section 8 enacts a special rule of burden of proof. It says, 'in any proceedings under this Act, the burden of proving the any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected'. Section 9 provides for imposing fine in lieu of forfeiture where the authority finds that property acquired by such person has only been partly acquired with illegally acquired income/assets. It is not necessary to refer to the other provisions except section 24, which gives an overriding effect to the provisions of the Act over any other law for the time being in force. Section 26 confers the rule-making power upon the Central Government.

The appellant in Civil Appeal No. 1391 of 1979, Tekchand, was a dealer in watches. The appellants in Civil Appeals Nos. 1392 and 1393 are his sons.

In the year 1976, Parliament had enacted the Voluntary Disclosure of Income and Wealth Act, 1976 (hereinafter referred to as 'the Voluntary Disclosure Act'). This Act was also preceded by an Ordinance issued on October 8, 1975. The Act was given effect to on and from the said date. The Ordinance and the Act provided for declaration by a person of his undeclared income in the prescribed manner and within the prescribed period. If he made the declaration in accordance with the relevant provisions of the Act, the income so disclosed was not liable to be included in his total income and tax was levied thereon at the rate prescribed in the Schedule to the Act which was, comparatively speaking, much lower than the rates then prevailing. Sections 11 and 16 conferred certain limited immunities upon the person making a declaration under the Act. Those are the only sections relevant for our purpose and must be noticed. Section 11 states, 'notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under sub-section (1) of section 3 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or for the purposes of prosecution under any of the Acts mentioned in sub-section (1) of section 8 of the Wealth-tax Act. 'The Acts mentioned in sub-section (1) of section 8 are the Indian Income-tax Act, 1922, the Excess Profits Tax Act, 1940, the Business Profits Tax Act, 1947, the Super Profits Tax Act, 1963, and the Companies (Profits) Surtax Act, 1964. Section 11 thus confers a limited immunity from imposition of any penalty of prosecution under any of the said Acts and the Wealth-tax Act. It does not confer an absolute or universal immunity. Coming to section 16, it too confers a limited immunity of a different kind. It says that if the voluntarily disclosed income, wealth or assets is represented by gold, then the said gold shall not be liable to confiscation either under the Customs Act or the Gold (Control) Act nor shall such person be liable to imposition of penalty or any other punishment thereunder provided he fulfills the conditions specified in the said section.

On October 31, 1975, Tekchand and his two sons made voluntary disclosure of certain income under the provisions of the Voluntary Disclosure Act. On that basis, proceedings were taken under this Act and concluded.

On August 21, 1976, an order of detention was passed against Tekchand under the provisions of the COFEPOSA Act. He served out the detention period. It was neither quashed nor set aside by a competent court nor was it withdrawn or revoked by a competent authority. The validity of the said detention order is not questioned in these proceedings.

On February 22, 1978, notices under section 6 of the Act (SAFEMA) were served upon Tekchand and his two sons calling upon them to show cause why the properties mentioned in the notices be not forfeited to the Central Government. The appellants were called upon to explain the income, earning or assets out of which they have acquired those properties. Explanations were furnished by all the three. In his explanation, Tekchand stated, inter alia, that he had made a disclosure of a sum of Rs. 25,000 in Form A under the Voluntary Disclosure Act which was accepted by the Competent Authority and a certificate issued to him in that behalf. He filed a copy of the said certificate. He also set out the manner in which the said sum was utilised after the disclosure. He submitted that he cannot be asked to explain the source from which he obtained the said sum of Rs. 25,000. Calling upon him to do so, he submitted, would violate the immunity granted to him under the Voluntary Disclosure Act. Similar pleas were taken by his two sons, the appellants in Civil Appeals Nos. 1392 and 1393 of 1979. Their objections were overruled by the Competent Authority who by his order dated October 21, 1976, forfeited the properties specified in his orders. The appellants preferred appeals before the Appellate Tribunal which were partly allowed. In so far as the Appellate Tribunal affirmed the orders of forfeiture, they have preferred these appeals with the leave of this court under article 136 of the Constitution.

Mr. B. V. Desai learned counsel for the appellant, urged the following contentions :

1. The Act applies only in the case of persons who have been detained under the COFEPOSA Act prior to the commencement of the Act (SAFEMA). It does not apply to persons who have been detained under the COFEPOSA Act after the commencement of the SAFEMA. This is evident from the use of the words 'every person in respect of whom an order detention has been made...' in clause (b) of sub-section (2) of section 2.

2. In these cases it is not proved that the properties forfeited are 'illegally acquired properties' within the meaning of clause (c) of sub-section (1) of section 3 - in particular of sub-clause (iii) thereof. The Competent Authority and the appellate authority erred in not giving effect to the immunity conferred by the Voluntary Disclosure Act and in calling upon the appellants to explain the source of the income declared under the Voluntary Disclosure Act.

3. The explanations offered by the appellants have been rejected by the authorities under the Act without a proper discussion. The findings recorded by them are perverse and are not supported by any evidence. The procedure prescribed by the Act has not also been followed scrupulously which too vitiates the orders of forfeiture.

We are unable to agree with any of the above submissions. There is nothing in the Act to indicate either directly or by necessary intendment that the Act is confined only to those persons who have been detained under the COFEPOSA Act or who have been convicted under the Customs Act or the FERA prior to the commencement of the SAFEMA. The use of the words 'has been made' in section 2 (2) (b) does not and cannot lead to such a conclusion. The use of the said words must be understood in the context of section 2 (2). Section 2 (2) (b) provides that every person in respect of whom an order of detention has been made and which detention order has not been revoked or withdrawn by the Competent Authority nor has been set aside by a competent court, can be proceeded against under the SAFEMA. A mere detention under the COFEPOSA Act is not enough. Not only there must have been an order of detention under the said Act, the other conditions prescribed in the proviso to clause (b) should not also have taken place. It is for this reason that the words 'has been made' were used in clause (b) of section 2 (2). In this context Explanation 4 appended to section 2 (2) becomes relevant. Parliament anticipated that a contention may be raised by persons proceeded against under the SAFEMA that proceedings under the Act can be taken only in those cases where they have been detained under the COFEPOSA Act or convicted under the Customs Act or the FERA after the coming into force of the SAFEMA. With a view to repel any such contention Explanation 4 states :

'Explanation 4. - For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.'

If the contention of learned counsel is correct and if that was the intention of Parliament, they would have said that such question shall be determined only with reference to the facts, circumstances and events including any conviction or detention which occurred or took place before the commencement of the SAFEMA. The first contention of learned counsel is accordingly rejected.

So far as the contention based upon section 11 and 16 of the Voluntary Disclosure Act is concerned we have already pointed out, while setting out the said provisions that the immunity conferred thereunder is of a limited character and that it is not an absolute or universal immunity. The immunity cannot be extended beyond the confines specified by the said provisions. There is also no reason to presume that Parliament intended to extend any immunity to smugglers and manipulators of foreign exchange who are proceeded against under enactments other than those mentioned in sections 11 and 16 of the Voluntary Disclosure Act. So far as the argument that the authorities under the Act have not properly considered the explanation offered by the appellants and the material produced by them is concerned, we must say that we are unable to agree with the same. Both the Competent Authority and the appellate authority have considered the same and held against the appellants. We see no reason to interfere with the concurrent finding in this appeal under article 136 of the Constitution. We are equally unable to agree with learned counsel for the appellants that the findings recorded by the authorities are either perverse or that they are based on no evidence. That the authorities acted with due care and caution is evident from the fact that with respect to one of the immovable properties the authorities were of the opinion that the failure to explain pertains only to a part of the income/assets and accordingly invoked section 9 and imposed a fine instead of forfeiting the same.

Mr. Desai argued finally that the appellants herein are small shopkeepers and that the authorities acted arbitrarily in proceeding against them under the SAFEMA leaving out far bigger and powerful violators. His argument is evocative of what the poet, James Jeffrey Roche, exclaimed in his poem The net of law :

'The net of law is spread so wide,

No sinner from its sweep may hide.

Its meshes are so fine and strong.

They take in every child of wrong

O wondrous web of mystery !'

Big fish alone escape from the !'

May be there is some truth in what learned counsel says but that cannot furnish or constitute a ground in law for allowing these appeals. It is for the authorities in charge of implementation of the Act to take note of the said wail. It is for them to ensure that the Act is utilised in all proper cases, more so where 'big fish' are involved.

The appeals fail and are, accordingly, dismissed. No order as to costs.

Appeals dismissed.

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