

**Mohammed Hanifa Vs. Appellate Tribunal for Forfeited Property and Another**

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**Court :** Chennai

**Decided On :** Mar-26-1994

**Reported in :** [1995]211ITR589(Mad)

**Judge :** K.A. Swami, C.J. and ;T. Somasundaram, J.

**Acts :** Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Sections 18

**Appeal No. :** Writ Petition No. 4689 of 1979

**Appellant :** Mohammed Hanifa

**Respondent :** Appellate Tribunal for Forfeited Property and Another

**Advocate for Def. :** S. Veeraraghavan, Adv.

**Advocate for Pet/Ap. :** A. Thiagarajan, Adv.

**Judgement :**

1. In this petition under article 226 of the Constitution, the petitioner sought quashing of the order dated April 25, 1979, in No. FPA 49 of 1978-79 passed by the Appellate Tribunal for forfeited property and also the order dated June 30, 1976, in No. OCA/(MDS)/287 of 1976 passed by the competent authority for the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act.

2. According to the competent authority, the petitioner was a detenu and has suffered an order of detention, therefore, he is covered by the provisions of section 2(2)(b) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'SAFEMA'), that he had acquired agricultural land in June, 1974, for a total consideration of Rs. 12,861, that he is not able to establish that the entire consideration was paid from lawful sources and that he has failed to satisfy that consideration to the extent of Rs. 7,861 was from lawful sources. The competent authority has accepted the case of the petitioner to the extent that out of Rs. 12,861, a sum of Rs. 5,040 came from the sale proceeds of the jewellery of his wife. Accordingly, the competent authority has passed an order under section 7 of the SAFEMA forfeiting the property on the ground that the petitioner has failed to prove the lawful source for more than one-half of the value of the immovable property. The Appellate Tribunal has also agreed with the findings of the competent authority.

3. It is contended on behalf of the petitioner that even though the petitioner has examined a number of witnesses in support of his case that he had obtained a loan of Rs. 7,000 for the purpose of acquiring the land in question, that as the evidence was recorded by the Income-tax Officer appointed as Commission by the competent authority under section 18 of the SAFEMA, there was no question of again producing the same witnesses for examination before the competent authority, hence the competent authority committed an illegality in rejecting the evidence on the ground that the witnesses examined by the Income-tax Officer were not produced before the competent authority. It is also further submitted that the Tribunal has also committed the same error, even though it has been found that the evidence recorded by the Income-tax Officer as Commission under section 18 of the SAFEMA supports the case of the petitioner as to the loan raised by him to the tune of Rs. 7,000.

4. On the contrary, it is contended by the learned Additional Central Government Standing Counsel that as the competent authority and the Tribunal both on appreciation of the evidence, have recorded a finding of fact that the case of loan put forth by the petitioner was an afterthought and it was not the case that was put forth initially, both the authorities are justified in rejecting the oral evidence

recorded by the Income-tax Officer on Commission. It is also submitted that the competent authority and the Tribunal have given several reasons for rejecting the evidence and that non-production of the witnesses for cross-examination is not the only reason to reject the evidence by the competent authority.

5. We have been taken through the orders of the competent authority and the Tribunal. Both have accepted the case of the petitioner that a sum of Rs. 5,040 was obtained by sale of jewellery belonging to the wife of the petitioner. Both the authorities have rejected the case of the petitioner in so far as it related to the two loans, viz., Rs. 5,000 and Rs. 2,000, from two persons. On going through the orders, we find that the appreciation of evidence given by the witnesses relating to loans is mainly influenced by the fact that they were not again produced before the competent authority. Section 18 of the SAFEMA specifically provides thus :

'18. Power of competent authority it require certain officers to exercise certain powers. - (1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.

(2) For the purposes referred to in sub-section (1), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961 (43 of 1961), and the provisions of the said Act shall, so far as may be, apply accordingly.'

6. Therefore, it is open to the competent authority for the purpose of the proceedings under the SAFEMA to appoint any officer of the Income-tax

Department to conduct any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters. The Income-tax Officer appointed as Commission performs the duties and functions of the competent authority, which are otherwise required to be done by the competent authority. If that be so, the proceedings of the officer of the Income-tax Department appointed as Commission become part of the proceedings of the competent authority. Hence, the question of production of witnesses once again before the competent authority is not warranted. Both the authorities have also failed to notice the contents of the report made by the officer of the Income-tax Department appointed as commission. After examining Mohamed Sakkadi, Sheik Noordin, Pichai Thambi, Hameed Sultan and E. Jainullabudeen, he has submitted the records along with his report dated February 10, 1978, which reads thus :

'Enclosed please find sworn statements recorded from three of the parties mentioned in competent authority's letters cited above and also from one Jainullabudeen, an assessee of Muthupet, through whom Hanifa sold the chain and attikai, statement could not be recorded from Sekkadi the person to whom Hanifa claims to have sold the bangles as he did not present himself before me in response to the summons. it is understood that he could not be present because he lost his child only yesterday night. It shall summon him again some time later, say after about a week and send you the recorded statement.

7. It may be observed from the statements recorded so far that there is general corroboration of the claims made by Hanifa before the competent authority. From the demeanour of the deponents, I got the impression that what they were saying was the truth.'

8. Among the witnesses whose evidences was recorded by the Income-tax Officer, the evidence of Pichai Thambi and Hameed Sultan related to loan transactions. As extracted above, the Income-tax Officer stated that the evidence corroborated the case of the petitioner and from the demeanour of the witnesses, he got the impression that they were telling the truth. This part of the proceedings of the Income-tax Officer has been completely overlooked. Under these circumstances,

we are of the view that the finding recorded by the competent authority and the Appellate Tribunal on the question of loan availed of by the petitioner for purchasing the agricultural land in question cannot be held to be valid, as the same is arrived at on the wrong premise that the witnesses whose evidence was recorded by the Commission, should have been produced before the competent authority, secondly, on overlooking a part of the report made by the Income-tax Officer regarding the veracity of the witnesses examined by him.

9. We are of the view that when the Income-tax Officer appointed as Commission and on recording the evidence, has opined that what the witness had deposed was true, the non-consideration of the same by the competent authority and the Appellate tribunal has vitiated the finding recorded by them. Further, the property involved is not of great value, inasmuch as, it is stated that it is of the value of Rs. 12,861 and out of this a sum of Rs. 5,040 has been found by both the authorities that it has been met from lawful sources. Therefore, we are of the view that there is no justification to remit the case after a lapse of 15 years. We, accordingly, hold that the petitioner has proved that he has purchased the property in question by the amount obtained from lawful source. Hence, the forfeiture is not warranted. Accordingly, the writ petition is allowed. The orders of the competent authority and the Appellate Tribunal are quashed. No order as to costs.