

## Fatima Mohd. Amin (Dead) through LR. Vs Union of India (UOI) and Another

**Court:** Supreme Court of India

**Date of Decision:** Jan. 16, 2003

**Acts Referred:** Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 " Section 2, 3, 4, 6

Constitution of India, 1950 " Article 226, 31B

**Citation:** (2003) 85 ECC 723 : (2003) 7 SCC 436

**Hon'ble Judges:** S. B. Sinha, J; C. A. Vaidyalingam, J

**Bench:** Division Bench

**Advocate:** H.N. Salve, Girish Pikale, S.Y. Chitale, Jayshree Navin Chandra, Sumita Mukherjee and A.P. Medh, for the Appellant; P.P. Malhotra C.V.S. Rao, Rajeev Sharma and B.V. Balaram Das, for the Respondent

**Final Decision:** Partly Allowed

### Judgement

@JUDGMENTTAG-ORDER

1. The son of the appellant herein, namely, Syed Murtuza Hussain Babamiya was convicted on 30th September, 1968 in a Customs case for

smuggling of gold and was sentenced to six months rigorous imprisonment and fine of Rs. 1,000 or in default thereof three months rigorous

imprisonment.

2. On 18th February, 1975 and 4th March, 1976, two sons of the appellant, namely, Syed Murtuza Hussain Babamiya and Syed Arif Babamiya

were detained under the detention orders issued by the authorities under the provisions of the Conservation of Foreign Exchange and Prevention of

Smuggling Act, 1974 (hereinafter referred to as "the COFEPOSA Act"). A show cause notice was issued on 29th October, 1976, inter alia, as to

why forfeiture of one-tenth property of the appellant shall not be effected. On 29th April, 1980, the respondent-Authorities recorded additional

reasons for forfeiture of the said property by including the ground as such the appellant being a related person, comes within the scope of the

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (in short "the SAFEMA") and the property held by her,

namely, one-tenth share in Syed Villa as well as the property in Rose Villa was liable to be confiscated.

3. On the basis of the additional reasons recorded, another show cause notice was issued on 5th May, 1980 pertaining to the property known as

Rose Villa, by which the property was sought to be confiscated.

4. On 12th August, 1980, by another order of SAFEMA Authorities directed forfeiture of the property of known as Rose Villa situated at

Panchgani in the State of Maharashtra, on the ground that the appellant has failed to establish the source of income in respect of the said property.

5. The appellant preferred two appeals against both the orders and the appellate authority allowed the appeals and set aside the order under

challenge on the ground that the detention order passed against her son had been set aside by the High Court, However, the appellate authority

remanded the matter to the competent authority for further investigation in the matter. On 18th December, 1981 the competent authority recorded

fresh reasons u/s 6 of the SAFEMA. On 24th October, 1986 an order was again passed directing forfeiture of the Rose Villa property.

Aggrieved thereby the appellant preferred an appeal before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal and confirmed the

order passed by the Competent Authority. The said order was challenged by means of a petition under Article 226 of the Constitution of India, but

the same was dismissed. It is against the said judgment, the appellant has approached this Court by way of special leave petitions.

6. Shri H.N. Salve, learned senior counsel appearing for the appellant urged that these cases stand concluded by the decision of this Court in the

case of 296441 , wherein it was held as thus:

It would thus be clear that the connecting link or the nexus, as it may be called, is the holding of property or assets of the convict/detune or

traceable to such detune/convict. Section 4 is equally relevant in this context. It declares that ""as from the commencement of this Act, 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"".

All such property is liable to be forfeited. The language of this section is indicative of the ambit of the Act. Clauses (c) and (d) in Section 2(2) and

the Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the

enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or

kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the

independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu

or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. By way of illustration, take a case

where a convict/detenu purchase a property in the name of his relative or associate--it does not matter whether he intends such a person to be a

mere name-lender or whether he really intends that such person shall be the real owner and/or possessor thereof--or gifts away or otherwise

transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates--in all such cases,

all the said transactions will be ignored and the properties forfeited unless the convict/detenu or his relative/associate, as the case may be,

establishes that such property or properties are not ""illegally acquired properties"" within the meaning of Section 3(c). In this view of the matter,

there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they

are in no way connected with the convict/detenu. So far as the holders (not being relatives and associates) mentioned in Section 2(2)(e) are

concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in good faith for consideration, his property -

even though purchased from a convict/detenu - is not liable to be forfeited. It is equally necessary to reiterate that the burden of establishing that the

properties mentioned in the show-cause notice issued u/s 6, and which are held on that date by a relative or an associate of the convict/detenu, are

not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish that the said property has not been

acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict. We do not

think that Parliament ever intended to say that the properties of all the relatives and associates, may be illegally acquired, will be forfeited just

because they happen to be the relatives or associates of the convict/detenu. There ought to be the connecting link between those properties and

the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate. In this view of the matter, the apprehension

and contention of the petitioners in this behalf must be held to be based upon a mistaken premise. The bringing in of the relatives and associates or

of the persons mentioned in Clause (e) of Section 2(2) is thus neither discriminatory nor incompetent apart from the protection of Article 31-B.

7. We have heard learned counsel for the parties and gone through the reasons recorded by the Competent Authority alongwith the show cause

notice. We do not find any averments to the effect that the property acquired by the appellant is a benami property of her son or the same was

illegally acquired from her son.

8. The contents of the said notices, even if taken at their face value do not disclose any reason warranting action against the appellant. No

allegation whatsoever has been made to this effect that there exists any link or nexus between the property sought to be forfeited and the illegally

acquired money of the detenu(s).

9. As the condition precedent for initiation of the proceeding under SAFEMA did not exist, the impugned orders of forfeiture cannot be sustained.

In that view of the matter, the appeals deserves to be allowed. The order under challenge is set aside.

10. The appeals are allowed. There shall be no order as to costs.

11. After the order was dictated, learned counsel appearing for the respondents stated that an observation should be made by us that it could be

open to the respondents to issue fresh show cause notice. We do not express any opinion on this. However, it will open to them to issue fresh

show cause notice, if it is permissible under law. Civil Appeals No. 7397, 7398, 7399 and 10969 of 1996. In view of the order passed in C.A.

Nos. 7400-7401 of 1996, these appeals are allowed. There shall be no order as to costs.