

## Shanti Devi Vs Union of India (UOI) and Others

**Court:** Delhi High Court

**Date of Decision:** May 15, 1998

**Acts Referred:** Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 & Section 6, 8

**Citation:** (1998) 73 DLT 477

**Hon'ble Judges:** R.C. Lahoti, J; Dalveer Bhandari, J

**Bench:** Division Bench

**Advocate:** Arun Jaitley and Vibha Dutta, for the Appellant; Rajender Nath and R.N. Verma, for the Respondent

**Final Decision:** Allowed

### Judgement

R.C. Lahoti, J.

By this petition under Articles 226/227 of the Constitution of India, the petitioner seeks to lay challenge to an order dated

28.4.80 passed by the Competent Authority u/s 7 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

(hereinafter the Act, for short), maintained in appeal by the order dated 1.8.94 passed by the Appellate Tribunal For Forfeited Property, New

Delhi.

2. The facts in so far as relevant for the purpose of the present petition may briefly be noticed. The property forming subject matter of the

impugned proceedings was as under:

#### ANNEXURE

(i) Right title and interest pertaining to half share in House No. 1135, Chatta Madan Gopal, Maliwara, Delhi.

(ii) Amounts due to Smt. Shanti Devi from :

(a) Suresh Chand Rajender Kumar, 572 Katra Babu Pearey Lal, Chandni Chowk, Delhi-110006.

(b) Shri Ramesh Chand, 5 Hastings Lane, New Delhi.

(c) Skytone Electrical (India) Manufacturer of Cables and Wires, 43. Industrial Area, Faridabad-121001

(d) M/s. Pragati Construction Co. Engineers & Contractors, W-49, Greater Kailash 1, New Delhi-11048.

(e) M/s. Ganpat Rai Jagdish Narain, General Cloth Merchants & Commission Agents, Katra Marwari, Nai Sarak, Delhi-6.

(f) Shri Hira Chand Jain, Delhi

(iii) Credit balance in Saving Bank account with (S.B. Sarafa (Market,

Union Bank of India. (Chandni Chowk,

(iv) F.D.R. in Union Bank of India (Delhi.

3. The petitioner Shanti Devi was the wife of one Basant Lal. The marriage had taken place in the year 1945. On 30.7.75 Basant Lal was ordered

to be detained u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him

from dealing in smuggled goods viz. foreign marked smuggled gold otherwise then by engaging in transporting or concealing or keeping smuggled

goods.

3.1. On 27.9.77, the Income Tax Office, Spl.Circle-VI (Addl.), New Delhi furnished an information u/s 16(2) of the Act to the Competent

Authority. By reference to the property stated hereunder the ITO communicated that the said property was illegally acquired property (as far as

known to the Income Tax Deptt.) within the meaning of Section 3(1)(c)(iv) of the Act:

2. Parmeshwari Dass "Rs. 14,915/-

Ramrichpal Bansidhar Rs. 15,226/-

Orient Electric Co. Rs. (SIC), 000/-

Hirachand Jain Rs. 6,000/-

Ratanlal Rs. 10,000/-

3. Union Bank of India Rs. 4,683/-

cash in hand Rs. 8,721/-

Rs. 60,5467-

It was also stated that Smt. Shanti Devi was the wife of Basant Lal and hence a relative within the meaning of Section 2(2) of the Act.

3.2. On 29.7.78 notice was issued by the Competent Authority to the petitioner calling upon her to indicate the sources of her income, earnings or

assets out of which or by means of which the said properties could have been acquired Along with evidence and other relevant information and

particulars. The petitioner participated in the proceedings.

3.3. By order dated 28.4.80 the Competent Authority formed an opinion that the said properties were illegally acquired properties of Smt. Shanti

Devi within the meaning of Section 3(l)(c)(i) to (iv) of the Act. The Competent Authority also expressed an opinion that the affected person had

completely failed to discharge her burden which u/s 8 of the Act is cast on her. Hence the properties were forfeited to the Central Government free

from all encumbrances.

3.4. As already stated the petitioner preferred an appeal which has been dismissed.

4. At the hearing the learned Counsel for the petitioner submitted that the petitioner is confining her challenge to the impugned orders to the extent

of house property only and was giving up her claims to the remaining properties. We would Therefore, notice hereafter the facts relevant only to

the house property.

5. It may be placed on record that Smt. Shanti Devi, the petitioner who had originally filed this petition has expired during the pendency of the

petition. Her sons and daughters have sought for their substitution which has been allowed. However, the term petitioner wherever occurring in this

order, refers to the original petitioner Smt. Shanti Devi.

6. It is in not dispute that the house property was acquired by registered deed of sale dated 17.2.61 (Annexure-D). The petitioner Shanti Devi is

co-owner to the extent of one-half; the other half having been purchased in the name of Smt. Kalawati, the mother-in-law of the petitioner. Before

her death Smt. Kalawati executed a Will as to her half share bequeathing (he same to the eldest daughter-in-law of Smt. Shanti Devi, whose name

is Smt. Veena Devi. Proceedings under the Act have been initiated only against the petitioner Smt. Shanti Devi. No proceedings appear to have

been initiated by the Competent Authority against the legal heirs of Smt. Kalawati Devi in respect of other one-half share in the property. Hence it

is the one-half share of Smt. Shanti Devi in the house property which alone is under scrutiny.

7. The Appellate Tribunal has recorded a finding in its appellate order that Basant Lal had been the subject of search by the Custom Preventive

Staff in 1967 when on the search of the business premises of Basant Lal four gold biscuits with foreign markings weighing 10 tolas each and 13

gold ginn is and Rs. 10,000/- in Indian currency were found. 5 gold ginn is were recovered from the residence of Basant Lal. The house property

was purchased by Smt. Shanti Devi in 1961. In the opinion of the Appellate Tribunal the event of purchase of house property was not very far

removed from the time when the Customs Authorities became aware of the smuggling activities of Basant Lal. Inasmuch as the petitioner had failed

in explaining satisfactorily the availability of means for acquiring the property, the same has been rightly held liable to be forfeited.

8. It was submitted by the learned Counsel for the petitioner that since the provisions of the Act entail forfeiture of the property belonging to a

citizen and thereby entail penal and adverse consequences, the provisions have to be strictly construed. Though the burden of proving that the

property was not an illegally acquired property lies on the petitioner, still the applicability of the said rule of evidence would not be attracted unless

and until there was a foundation laid by material available on record establishing some link between the alleged illegal activity of the person

detained and the acquisition of the property by a relation. The learned Counsel for the respondent has however maintained that the findings

recorded by the Competent Authority and the Appellate Tribunal are all findings of fact and this Court while exercising writ jurisdiction would not

sit in appeal over the findings so recorded and interfere with the orders which are within the jurisdiction of the Authority and the Tribunal.

9. It is not necessary to extract and reproduce in extenso the several provisions of the Act. It would suffice to make a brief reference thereto.

9.1. The Preamble indicates that it is an Act to provide for the forfeiture of illegally acquired properties of smuggling and foreign exchange

manipulators and for matters connected therewith or incidental thereto. As a historical background leading to the encashment of the Act it is also

noted that the persons indulging in smuggling activities and foreign exchange manipulations have in many cases been holding the properties acquired

by them through gains by violation of wealth tax, Income Tax or other laws or by other means in the names of their relatives, associates and

confidants in clandestine manner.

9.2. The Competent Authority may u/s 7 forfeit property on recording a finding that the properties in question were illegally acquired properties.

Notice of forfeiture u/s 6 has to be given by the Competent Authority on having reason to believe to be recorded in writing, that all or any such

properties were illegally acquired properties. Sections 4 prohibits as from the commencement of this Act any person to whom this Act applies to

hold any illegally acquired property either by himself or through any other person on his behalf.

9.3. Vide Section 2, the provisions of the Act are applicable to a person in respect of whom an order of detention has been made under

COFEPOSA 1974 amongst others and also to every person who is a relative of such a person. "Relative" includes spouse of such person.

Explanation 4 provides for the avoidance of doubt that the question whether any person is a person to whom the provisions of this Act applied

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.

9.4. Illegally acquired property has been defined by Clause (c) of Sub-Section (1) of Section 3. The definition is very wide and sweeping. It

includes every acquisition by illegal means and not satisfactorily explained. Section 8 is a very significant provision which provides that in any

proceedings under this Act the burden of proving that any property specified in the notice served u/s 6 is not illegally acquired property shall be on

the person affected.

9.5. We have briefly quoted and referred to the relevant provisions of the Act in as much as all these and other provisions of the Act have been

extensively dealt with and examined by nine-Judges Constitution Bench of the Apex Court in the case Attorney General for India and Others Vs.

Amratlal Prajivandas and Others, , wherein the constitutional validity of the Act was challenged. One of the questions (question No. 4) arising

before their Lordships was whether the definition of illegally acquired property in Clause (c) of Section 3(i) of SAFEMA is vocative of the

fundamental rights of the petitioners guaranteed by Articles 14, 19 and 21 and whether the inclusion of SAFEMA in the Ninth Schedule to the

Constitution cures such violation if any. The question has been dealt with vide para 42 of the judgment. Yet another question (question No. 5)

posed was whether the application of SAFEMA to the relatives and associates of detenus is vocative of Articles 14, 19 and 21. The question has

been dealt with vide para 43 of the judgment.

10.1. While dealing with the constitutionality of the provision placing the burden of proof on the person concerned, their Lordships have observed

(vide para 42):

We can take note of the fact that persons engaged in smuggling and foreign exchange manipulations do not keep regular and proper accounts with

respect to such activity or its income or of the assets acquired there from. If such person indulges in other illegal activity the position would be no

different. The violation of foreign exchange laws and laws relating to export and import necessarily involves violation of tax laws. Indeed, it is a

well-known fact that over the last few decades, smuggling, foreign exchange violations, tax evasion, drugs and crime have all got mixed-up.

Evasion of taxes is integral to such activity. It would be difficult for any authority to say, in the absence of any accounts or other relevant material

that among the properties acquired by a smuggler, which of them or which portions of them are attributable to smuggling and foreign exchange

violations and which properties or which portions thereof are attributable to violation of other laws (which the Parliament has the power to make).

It is probably for this reason that the burden of proving that the properties specified in the show cause notice are not illegally acquired properties is

placed upon the person concerned. May be this is a case where a dangerous disease required a radical treatment. Bitter medicine is not bad

medicine. In law it is not possible to say that the definition is arbitrary or is couched in unreasonably wide terms.

(pages 2202-2203)

10.2. What their Lordships have held (in para 43) while clearing with Question No. 5, needs to be extracted and reproduced extensively for in our

opinion the law laid down by their Lordships provides key to solving the riddle posed before us. Their Lordships have held:

43. Question No. 5: It is contended by the Counsel for the petitioners that extending the provisions of SAFEMA to the relatives, associates and

other holders is again a case of over-reaching or of over-breadth, as it may be called --a case of excessive regulation. It is submitted that the

relatives or associates of a person falling under Clause (a) or Clause (b) of Section 2(2) of SAFEMA may have acquired properties of their own,

may be by illegal means but there is no reason why those properties be forfeited under SAFEMA just because they are related to or are associates

of me detenu or convict, as the case may be. It is pointed out that the definition of the "relative" in Explanation (2) and of "Associates" in

Explanation (3) is so wide as to bring in a person even distantly related or associated with the convict/detenu, within the net of SAFEMA, and

once he comes within the net, all his illegally acquired properties can be forfeited under the Act. In our opinion, the said contention is based upon a

misconception. SAFEMA is directed towards forfeiture of "illegally acquired properties" of a person falling under Clause (a) or Clause (b) of

Section 2(2). The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or

detenu, acquired or kept in their names, do not escape the net of the Act, It is a well-known fact that persons indulging in illegal activities screen

the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to mem may

be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties (sic. - of)

convict/detenu whether as a Benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those

properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act he cannot put forward any

defense once it is proved that that property was acquired by the detenu--whether in his own name or in the name of his relatives and associates. It

is to counter-act the several devices that are or may be adopted by persons mentioned in Clauses (a) and (b) of Section 2(2) that their relatives and

associates mentioned in Clauses (c) and (d) of the said sub-sections are also brought within the purview of the Act. The fact of their holding or

possessing the properties of convict/detenu, furnishes the link between the convict/detenu and his relatives and associates. Only the properties, of

the convict/ detenu are sought to be forfeited, wherever they are. The idea is to reach his properties in whosoever's name they are kept or by

whosoever they are held. The independent properties of relatives and friends, which are not traceable to the convict/detenu, are not sought to be

forfeited nor are they within the purview of SAFEMA\*\*. We may proceed to explain what we say. Clause (c) speaks of a relative of a person

referred to in Clause (a) or Clause (b) (which speak of a convict or a detenu). Similarly, Clause (d) speaks of associates of such convict or detenu.

If we look to Explanation (3) which specifies who the associates referred to in clause (d) are, the matter becomes dearer. "Associates" means: (i)

any individual who had been or is residing in the residential premises (including outhouses) of such person ("such person") refers to the convict or

detenu, as the case may be, referred to in Clause (a) or Clause (b); (ii) any individual who had been or is managing the affairs or keeping the

accounts of such convict/detenu; (iii) any association of persons, body of individuals, partnership firm or private company of which such convict/

detenu had been or is a member, partner or director; (iv) any individual who had been or is a member, partner or Director of an association of

persons, body of individuals, partnership firm or private company referred to in Clause (iii) at any time when such person had been or is a member

partner or Director of such association of persons, body of individuals, partnership firm or private company referred to in Clause (iii); (vi) the

trustee of any trust where (a) the trust has been created by such convict/detenu; or (b) the value of the assets contributed by such convict/detenu to

the trust amounts, on the date of contribution not less than 20% of the value of the assets contributed by such convict/detenu to the trust amounts,

on the date of contribution not less than 20% of the value of the assets of the trust on the date, and (vii) where the Competent Authority, for

reasons to be recorded in writing, considers that any properties of such convict/detenu are held on his behalf by any other person, such other

person. 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/detenu or

traceable to such detenu I 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 Explanation (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 purchases 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 favor 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 the 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 a which, as mentioned above, is upon the relative associate. In this view of the for 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.

10.3. Summing up the conclusions, their Lordships have held (vide para 55):

(5) The application of SAFEMA to the relatives and associates (in Clauses (c) and (d) of Section 2(2) is equally valid and effective inasmuch as

the purpose and object of bringing such persons within the net of SAFEMA is to reach the properties of the detenu or convict, as the case may be,

wherever they are howsoever they are held and by whomsoever they are held. They are not conceived with a view to forfeit the independent

properties of such relatives and associates as explained in this judgment. The position of holders" dealt with by Clause (e) of Section 2(2) is

different as explained in the body of the judgment

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11. At the risk of repetition, we may reiterate and emphasise that their Lordships have very clearly held that so far as the properties of relatives and

associates are concerned they are not liable to be forfeited unless some connecting link or nexus between such properties and the activities of such

detenu/convict is brought out. Once there is some material available before the Competent Authority which would enable recording of reasons to

believe that all or any such properties are illegally acquired properties so as to issue a notice of forfeiture u/s 6 of the Act the rule of evidence

enacted by Section 8 casting the burden of proof on the person affected would come into play. In the total absence of such connecting link or the

nexus being available the said rule of evidence enacted by Section 8 would not be attracted.

12. A perusal of the order of the Appellate Tribunal shows that though the petitioner had tried to explain and establish the source of acquisition of

the said house property as accountable to her own means, but the Tribunal found such Explanation extending only to part of the value of the

property and not the entire value of the property. However, the fact remains that on the record there is nothing available to show the detenu Basant

Lal having indulged into any illegal activity prior to the year 1967. It was not disputed by the learned Counsel for the respondents that on the

material as available on record and dealt with by the Competent Authority and the Appellate Tribunal, the earliest period to which the illegal

activities of the detenu Basant Lal could be suggested to have extended was the year 1967.

13. Mr. Arun Jaitely, the learned Senior Counsel for the petitioner submitted that the provisions have to be reasonably construed keeping in view

the object sought to be achieved and placing a literal construction may lead to absurdity not contemplated by the Legislature. The learned Counsel

gave a few apt illustrations out of which we may refer only to two.

13.1. A female named Y acquires a property in the year 1965. In the year 1975 she is married with X. In the year 1985 X is detained u/s 3(1) of

COFEPOSA. Notice u/s 6 of the Act is served on Y proposing to forfeit her property. Y fails to explain the source of acquisition. On a literal

reading of the provisions of the Act, Y being a relation of X and having failed in discharging the burden of proving that it was not illegally acquired

property, her property would be liable to be forfeited.

13.2. A male has a property standing in his name. Y is his wife. Y enters with her paramour Z and the two indulge into illegal smuggling activities

leading to their detention is served with a notice of forfeiture u/s 6 and fails to explain the source of his acquisition. Here again X being spouse of Y

who has been detained and having failed in discharging the burden of proof cast on him by Section 8 shall have to lose his property being forfeited

to the Central Government.

14. Let us try to search the logic behind enactment of Sections. Burden of proof cast thereby is a rule of evidence. It can be said that once a notice

is served u/Sec. 6, the property specified in the notice may be presumed to be illegally acquired property unless such presumption is dislodged by

the person proceeded against. We have already noted the submission of Mr. Arun Jaitley, the learned Senior Counsel for the petitioner, that the

statutory provisions under which the impugned action is initiated are penal in nature entailing adverse consequences and should therefore, be

strictly construed. It was also submitted that being referable to the domain of criminal law the burden of proof could not have been cast on the

person proceeded against and even if so cast by the law yet the onus of proving the facts attracting the applicability of presumption would lie on the

State.

15. Salmond states in his work on Jurisprudence (12th Edn. at page 14):

Here we must notice that peculiarity of English Law, the penal action. At one time it was a frequent practice, when it was desired to repress some

type of conduct thought to be harmful, to do so by the machinery of the civil rather than of the criminal law. The means so chosen was called a

penal action, as being brought for the recovery of a penalty and it might be brought according to the wording of the particular statute creating the

penal action, either by the Attorney-General on behalf of the State, or by a common informer on his own account.

Since penal actions follow all the forms of civil actions, and are governed by the same rules, we must regard them as civil actions, and ignore for

the purpose of classification their resemblances to criminal law.

15.1. The necessity of proof has led to development of rules of evidence. One of the rules of evidence is conditional presumptions or rebuttable

presumptions. The learned author states: "Many of these presumptions are based on no real estimate of probabilities, but are established for the

purpose of placing the burden of proof upon the party who is best able to bear it or who may most justly be made to bear it." (Salmond, *supra*, at

p. 130)

16. Presumptions arise as follows: They are either, (1) a procedural expedient, or (2) a rule of proof production based upon the comparative

availability of material convenience to the respective parties, or (3) a conclusion firmly based upon the generally known results of wide human

experience, or (4) a combination of (1) and (3). (EVIDENCE, Cases & Materials, "American Casebook Series" Fifth Edn. at page 146)

17. Dealing with formation of concepts, Edgar.. Bodenheimer states in Jurisprudence (Revised edition, at p.379):

It is one of the essential functions of the law to reduce the multitude, variety, and diversity of human actions and relations to a reasonable degree of

order and to promulgate rules of standards of conduct applicable to certain circumscribed types of action or behaviour. In order to accomplish this

task successfully, the legal order must undertake the formation of technical petitions and concepts desired to aid in classifying the multifarious

phenomena and events of social life. It thereby lays the basis for subjecting equal or essentially similar phenomena to a unified and consistent

regulation or treatment. Legal concepts may thus be viewed as working tools used for the purpose of identifying, by a shorthand description,

typical situations which are characterised by identical or common elements.

(p. 379)

Concepts are necessary and indispensable instruments for the solution of legal problems. Without circumscribed technical notions, we could not

think clearly and rationally about legal questions.

(*supra* p. 381)

18. "For Dworkin, Judges are always constrained by the law. There is no law beyond the Law. Dworkin's conception of the dominion of law is of

a gapless legal universe where in every adjudication, even in the so-called hard cases, there are controlling standards which the Judge is obligated

to follow".

(Lloyd's Introduction to Jurisprudence, 6th Edn. p. 1270)

19. The rule of evidence enacted by Section 8 of the Act is thus an outcome of rule of necessity. It is within the domain of civil law. Experience

guided the Legislature in placing burden of proof on the person best able to bear it or who may most justly be made to bear it. It is combination of

procedural expedient and conclusion firmly based upon the results of wide human experience earned by the framers of the rule. It takes care of

unusual situations brought into being by evaders of law. The rule may in individual cases prove to be too hard but has to be sustained in the interest

of society at large. While applying the rule controlling standards shall have to be associated with its applicability else the rule may turn out to be

"law beyond the law"--to borrow the phrase from Lloyd. Such "controlling standards" are to be found in the Act itself and in the law laid down by

their Lordships in the case of Attorney General v. Amrit Lal (supra).

20. The language of Section 8 itself is suggestive of its applicability depending on availability of two factors, namely: (1) there must be proceedings

under this Act, (ii) there must be a notice u/Sec. 6 specifying the property as illegally acquired property. Section 6 provides the third relevant factor

(iii) the Competent Authority must have reason to believe that such properties are illegally acquired properties. Their Lordships have held in Amrit

Lal's case (supra) that the purpose and object of the Act is to reach the properties of the detenu or the convict; the Act is not conceived to forfeit

the independent properties of relatives and associates. These, are the "controlling standards" over the rule of evidence expressed as burden of

proof in Section 8, a cautious and conscious application whereof would enable the Judge of facts discerning the "independently acquired properties

of relatives and associates" from the "properties illegally acquired by the convict/detenu though standing in the name of such relatives associates",

and thereby achieving the object and purpose of the Act.

21. It is thus clear that the question of applying rule of evidence enacted by Section 8 casting the burden of proof on the person affected shall come

into play only on some connecting link or nexus being established or traced between the holding of the property or assets by the person proceeded

against and illegal activity of the date u/convict. In the case at hand undisputedly the house property was acquired by the wife in the year 1961. The

detenu (husband) did not indulge in any illegal activity prior to the year 1967. No connecting link or nexus between the holding of the property by

the petitioner in the year 1961 has been traced to the illegal activities of the detenu which on the material available on record commenced in the

year 1967 only. The notice of forfeiture u/s 6 could not have been issued to the petitioner, there being no reason to believe available to the

Competent Authority within the meaning of Section 6, providing jurisdictional foundation for issuance of notice of forfeiture; a decision adverse to

the petitioner forfeiting her property could not have been taken solely by relying on the rule of evidence enacted by Section 8 of the Act and merely

because of me petitioner being a relative of the detenu Basantlal.

22. For the foregoing reasons, the petition is allowed. The impugned notice of forfeiture dated 29.7.78 (Annexure-F), the impugned order of the

Competent Authority dated 28.4.80 (Annexure-B) and the order of the Appellate Tribunal dated 1.8.94 (Annexure-A) are hereby quashed and

set aside to the extent of 1/2 share of me petitioner in the house property bearing No. 1135, Chatta Madan Gopal, Maliwara, Delhi.