

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE FAISAL ARAB

**CRIMINAL APPEAL NO. 35-K F 2016**

(Against the judgment dated 16.06.2016  
of the High Court of Sindh, Karachi  
passed in CrI. Appeal No. 7/2016)

The State/Anti Narcotics Force

*Appellant(s)*

**VERSUS**

Parvez Hassan Haravi & another

*Respondent(s)*

For the Appellant(s) : Raja Inam Ameen Minhas, Spl. Prosecutor, ANF  
Ch. Ehtasham ul Haq, Spl. Prosecutor, ANF  
M. Tariq, Dy. Director

For Respondent No. 2 : Mr. M. Akram Sh, Sr. ASC  
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 12.02.2018

## JUDGMENT

**MAQBOOL BAQAR, J.** Having failed in their attempts to

obtain an order for forfeiture of a property bearing Bungalow No. 22-A, KDA Scheme No. 2, Karachi, under section 40 of the Control of Narcotics Substance Act, 1997 (**CNS Act**) before the Special Court, Control of Narcotics Substance-II, Karachi (**The Special Court**), and thereafter before the High Court of Sindh, the appellant through the instant appeal has, with the permission of this Court, assailed the said two orders declining their request by the Special Court and the High Court on 05.11.2015 and 08.6.2016 respectively.

2. The property sought to be forfeited is in the name of the respondent No. 2, who is an ex-wife of respondent No. 1. The appellant claimed before the Courts below that the property has been purchased by respondent No. 1 with the money he acquired through trafficking in narcotics substances, and that since he has been convicted by a Court in United Kingdom on the charge of attempting to smuggle narcotics, the property is liable to be confiscated under section 40 of the CNS Act.

3. The CNS Act was promulgated on 11.07.1997 for controlling the production, possession and trafficking of narcotic drugs and

psychotropic substances. The Act also provides a comprehensive scheme for tracing, identifying, freezing and forfeiture of assets acquired through trafficking in narcotic substances, and thus section 37 of the Act empowers the Special Court trying an offence punishable under the Act to order freezing of the assets of the accused, but as stipulated in the said provision itself, such can only be done, where it appears to the Court that there are reasonable grounds for it to believe that the accused has committed such an offence. Whereas sub-section (2) of section 37 empowers even the Director General and so also the officers authorized under section 21, to freeze the assets of the accused where the said officer is of the opinion that an offence under the Act has either been or is being committed by the accused, but the officers are required to, within seven days of the freezing, place before the Court, the relevant material enabling the Court, either to allow, or to disallow the freezing to continue.

4. The purpose of tracing, identifying and freezing the assets of the accused, his relatives and associates during the investigation or trial, as stated through sub-section 3 of the above provision, is the ultimate forfeiture thereof by the Special Court. Whereas section 38 of the Act mandates that on receipt of a complaint or credible information or where

a reasonable suspicion exists about any person of his having acquired assets through illicit involvement in narcotics related activities, within or outside Pakistan, the officers, as designated therein, shall proceed to trace and identify such assets. Sub-section (2) of section 38 provides that where a citizen of Pakistan is charged before a foreign Court of competent jurisdiction for an offence which is also an offence under the CNS Act, the officers designated thereby, shall proceed to identify the assets of the said persons, and subject to the provision of sub-section (3), may freeze the said assets. Whereas in terms of sub-section (3) of section 38 information about the assets traced as above has to be laid before the Special Court for the purpose of section 13 and section 19 in case action under the CNS Act, or any other law for the time being in force is initiated, and in case the person has committed the offence is outside Pakistan, before High Court for the purpose of forfeiture of assets under section 40.

5. Whereas section 12 of the CNS Act places prohibition on possessing, acquiring, using, converting, assigning or transferring any assets which have been derived, generated or obtained directly or indirectly, either in his own name or in the name of his associate, relatives or any other person through an act or omission relating to narcotic

substances which constitutes an offence punishable under the CNS Act, the Customs Act, the Prohibition (Enforcement of Hudd), Order, 1979 etc or constituted an offence under any law repealed by the CNS Act. It also prohibits holding or possessing on behalf of any person any assets as mentioned hereinabove. The minimum punishment for contravention of section 12, as prescribed through section 13, is 5 years imprisonment. It also provides for forfeiture of such property to the Federal Government. Another provision for forfeiture is section 19 of the Act which reads as follows:

*"19. **Forfeiture of assets of an offender.**—Notwithstanding anything contained in section 13, where the Special Court finds a person guilty of an offence punishable under this Act and sentenced him to imprisonment for a term exceeding three years, the court shall also order that his assets derivable from trafficking in narcotic substances shall stand forfeited to the Federal Government unless it is satisfied, for which the burden of proof shall rest on the accused, that they or any part thereto, have not been so acquired."*

In terms of section 39 of the Act, in the event the accused is convicted under section 13, or is otherwise sentenced to imprisonment by the Special Court for more than 3 years, the Director General, Anti Narcotic Force (ANF), may through an application, request the Special Court for forfeiture of the identified assets of the convict or, as the case may be, his associate, relatives or any other person holding or possessing

such assets on his behalf. However, the order for forfeiture as ordained by sub-section (2) of section 39, can only be made by the Court upon its satisfaction that the assets sought to be forfeited were derived, generated or obtained in contravention of section 12 or/are liable to be forfeited under section 19, meaning thereby that only those assets shall be forfeited which have been acquired through an act or omission relating to narcotics substance which constitutes an offence punishable under the CNS Act. It is to ensure the satisfaction of the Court that the above criteria is fully met, that section 39 also required that no order thereunder be made without issuing a notice to show cause, and provides a reasonable opportunity of being heard to the persons being affected by such order.

6. In the present case since the appellants are seeking the forfeiture on the basis of a conviction by a foreign Court, they have invoked section 40 of the CNS Act, which section provides that the Special Court, may, on an application of the Director General, Anti Narcotics Force, order for forfeiture of the assets acquired in Pakistan by its citizen who has been convicted by a foreign Court for an offence which is also an offence punishable under the CNS Act. It also provides that no order thereunder shall be made without providing an opportunity of being

heard to such citizen. Though section 68 of the Act provides for drawing a presumption that the assets acquired by a person before or at the time of, or after the commission of an offence under the Act, were so acquired, generated or obtained through cultivation, manufacture, production, sale, purchase, and dealing or trafficking of narcotics drugs, psychotropic substances or controlled substances. However the essential pre-requisite, as prescribed through the above provision itself, is the existence of a reasonable ground to believe that the assets were in fact so acquired i.e. through the above noted illicit acts, and that there was no other likely source of acquiring such assets.

7. From the foregoing resumes of the relevant provision of law it can be seen that under the CNS Act prohibition on acquisition and possession is in respect only of those assets that have been derived from narcotics offences (section 12) and that the violation of the above, inter alia, entails forfeiture (section 13). Though the Director General and Officers authorized under section 21 may also freeze the assets of the accused, but within seven days of the freeze such officers has to place before the Court the relevant matter enabling the Court to decide either to allow, or to disallow the freeze to continue (sub section (2) of section

37). Even freezing of the assets of an accused, being tried for an offence punishable under the CNS Act cannot be ordered by the Court without there being reasonable grounds available for the Court to believe that the accused has committed such an offence (section 37). And further that even where the Special Court convicts a person for an offence under the Act, and sentence him to imprisonment for a term exceeding 3 years, the mandate of the Court to order forfeiture of his assets under section 19, is limited to only such assets which are "derivable" from trafficking in narcotic substances, however the word "derivable" as used in section 19, has not been so used to convey any attribute to any asset, as all and every asset, acquisition whereof is otherwise not barred or restricted by any law, is capable of being acquired, therefore it is only in the context of the means, capacity and capability of the convict that the word "derivable" has been used, and thus in this view of the matter, the assets of the convict can be forfeited only when there is a probability of the same having been acquired through illicit dealings in narcotics substances, and even then the accused has a right to be offered an opportunity to prove that the property has not been so secured (section 19). This besides being the only plausible interpretation, also get support



from the provisions of section 38 in terms whereof in the first place the authorised officer of the ANF can proceed to trace and identify the assets of only those regarding whom there is a complaint, or credible information or reasonable suspicion of having acquired assets through illicit involvement in narcotics, and secondly information about such asset for the purpose of section 40, is required to be placed before the High Court, so that, in our view, the Court may satisfy itself that the assets have been derived from the means and resource acquired through illicit involvement in narcotics. This view is further fortified, endorsed by the provision of section 39, which provides for forfeiture of the assets of a convict under the CNS Act, upon the request of the Director General, ANF, as in terms of thereof also, the satisfaction of the Court, that the assets sought to be forfeited were derived, generated or obtained in contravention of section 12, or/are liable to be forfeited under section 19, is essentially required.

8. So it can safely be said that under the CNS Act only those assets of a convict can be forfeited which have been derived, obtained or acquired through his illicit involvement in narcotics trade. Though section 40 of the CNS Act, which provides that where a citizen of Pakistan is convicted by a foreign Court for an offence which is also punishable

under the CNS Act, Special Court may on an application by the Director General or any other authorized officer, order that the assets acquired in Pakistan by such citizen shall be forfeited to the Federal Government, without explicitly saying that the acquisition of such assets should have been through illicit dealing in narcotics substances, however in view of the entire scheme of the law, particularly the provisions relating to tracing, identifying, freezing and forfeiture of the assets, which as noted hereinbefore, require not just a nexus between the asset(s) and the convict, but also that the assets should have been acquired or derived from narcotics trade, even when the investigation, trial and conviction has been conducted/rendered in Pakistan and therefore it would be wholly untenable to say that in case of a foreign conviction, the acquisition of the assets through illicit involvement of the convict in narcotics is not required to be shown, more so, when the section (section 40) employs the word "acquisition" rather than the words like "owned" or "possessed" to connect the property with the convict, and makes it mandatory for the court to provide an opportunity of hearing to the convict before ordering forfeiture. Indeed as noted earlier, section 68 allows a presumption as to the source/genesis of the assets, being

narcotics, but such, as prescribed by the said provision itself can only be presumed, where, firstly there are reasonable grounds to believe that the asset were acquired by a person, before or at the time of, or after the commission of an offence under the CNS Act, secondly, that there was no other likely source of acquiring such asset, and the presumption, so drawn as provided by the said section (section 68) is rebuttable.

9. However, in the present case the appellant's far from showing that the subject property has been derived or generated through any act or omission relating to narcotics, have not been able to show that the same has ever been purchased by respondent No.1, or that he has in any manner contributed towards its purchase. The property admittedly is in the name of respondent No.2, having been purchased by her from the previous owner, namely, Begum Azra Faruki, for a sale consideration of rupees nine lacs fifty thousands (Rs.950,000/-) on 02.2.1987, through a registered sale deed duly executed and registered on the said date. The said deed is exclusively in favour of respondent No.2, and the same does not, in any manner, refer to respondent No.1. The payment of the entire sale consideration amount being Rs.950,000/- is also shown to have been made to the seller by respondent No.2 only. However the appellant in

their feeble attempt to connect the properties with respondent No.1 have relied upon a photo copy of a purported supplemental agreement to sell dated 20.10.1986, allegedly executed between the said Mrs. Azra Faruki and the respondent No.1. A narration clause whereof reads as under:-

“AND WHEREAS the Agreement dated 3.6.85 sets out the manner in which part payment was affected for Rs.8,50,000/= and vacant possession given on 01.07.85”

And through its clause 1, it acknowledges payment of the purported balance sale consideration amount as follows:-

“The Purchaser herewith pays to the Seller the outstanding balance of the sale price amounting to Rs.1,00,000/= the receipt of which the Seller does hereby acknowledge.”

Whereas clause 5 of the said agreement stipulates as under:-

“In the event of the failure of the Purchaser to complete mutation of the said property before the Registrar, before 30<sup>th</sup> January, 1987, the Purchaser agreed to pay to the Seller a further sum of Rs.1,00,000/- (Rupees lone lac only) as compensation to the seller.”

In the first place as noted hereinabove, the above purported document, merely being an unattested, photo copy, cannot be relied upon, secondly, the same even otherwise neither can possibly prove that the property was conveyed to respondent No.1 on the basis thereof, nor has it been otherwise proved that it was in fact on the basis of the alleged payment mentioned in the said agreement that the property was

conveyed in favour of respondent No.2, whereas the sale deed in favour of respondent No.2 acknowledges receipt of the entire sale consideration from the said respondent, it neither refers to any payment from the respondent No.1 nor makes any mention of the aforesaid purported supplemental agreement to sale. The investigation officer of the appellant force, has admitted during his cross examination in the case that neither is there any evidence "that the property was purchased from drug money, except the conviction of Pervez Hassan Haravi", the respondent No.1, in UK, nor is there any reasonable suspicion, or any proof that the property was purchased by respondent No.1 from drug money.

10. In the circumstances, there was/is absolutely no justification to allow confiscation of the subject property, merely for the reason that the same was purchased by respondent No.2, while she was wedded to respondent No.1, and that too some 8 years before his arrest and about 13 years before his conviction.

11. Even otherwise, the provisions of section 40 of the CNS Act, which Act was promulgated on 11.7.1997, cannot be invoked for the forfeiture of the property purchased way back on 02.2.1987, when there was no provision for forfeiture of a property purchased by someone who

has been convicted for narcotics related offence by a foreign Court, as the same would be violative of the provisions of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973. The provisions of section 40 of the CNS Act could have been invoked and applied in respect of such purchase, only if the application of the said provisions would have expressly been made retrospective. We therefore do not find any substance in the above appeal and would therefore dismiss the same.

JUDGE

JUDGE

JUDGE

Announced in open Court On **04.5.2018**  
at Islamabad

**JUDGE**

**"APPROVED FOR REPORTING"**  
Aamir Sh./