



SC: Holds Benami Act amendments as substantive in nature; Forfeiture envisaged, punitive in nature, cannot be retroactive

In the case of M/s Ganapati Dealcom Pvt Ltd

SC holds that the Benami Transactions (Prohibition) Amendment Act, 2016 (2016 Act) prescribes substantive provisions and is not merely procedural; Holds Section 3(2) of the Benami Transactions (Prohibition) Act, 1988 (unamended Benami Act) as unconstitutional for being manifestly arbitrary and holds Section 3(2) of the Prohibition of Benami Property Transactions Act, 1988 (amended Benami Act) also as unconstitutional for being violative of Article 20(1) of the Constitution; Holds provisions under Section 5 of unamended Act providing for in rem forfeiture, is unconstitutional for being manifestly arbitrary and expounds that forfeiture provision under Section 5 of amended Benami Act is punitive in nature, thus, can only be applied prospectively and not retroactively; SC makes it clear that the authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., Oct 25, 2016, thus, quashes all such prosecutions or confiscation proceedings; SC leaves question of forfeiture of property under the amended Benami Act open for adjudication in appropriate proceedings; SC holds that the unamended Benami Act was an inconclusive law where essential features were to be prescribed through delegation and the gaps were not merely procedural, rather the same were essential and substantive; SC observes that without substantive provisions, the law was fanciful and oppressive at the same time, thus, manifestly arbitrary as the open texture of the law did not have sufficient safeguards to be proportionate; SC holds Section 3 (criminal provision) read with Section 2(a) and Section 5 (confiscation proceedings) of the unamended Benami Act as overly broad, disproportionately harsh, and operating without adequate safeguards in place; Remarks that such provisions were stillborn law and never utilized in the first place and finds Sections 3 and 5 of the unamended Benami Act to be unconstitutional from their inception; With regard to the amended Benami Act, SC observes that the criminal provisions are applicable only prospectively as the relevant Sections of the unamended Benami Act have been declared as unconstitutional and the question of retroactive applicability of the penal provisions of the amended Benami Act does not arise;