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UNION OF INDIA

v.

GHAMANDIRAM KEWALJI GOWANI

SEPTEMBER 23, 1994

B

[G.N. RAY AND FAIZAN UDDIN, JJ.]

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 :

C

Detention order—Challenge—Death of detainee—Substitution- application filed long after period of limitation—Pleading that the appeal does not abate since heirs of deceased were already on record in connected appeals—Connected appeals arising out of different cause of action—Substitution rejected and appeal held abated—Doctrine of representation of the estate of a deceased party held inapplicable.

D

An order of detention was passed against the respondent under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In view of the said detention order three notices were issued, one against the respondent and two against his sons under section 6 of the Smugglers and Foreign Exchange Manipulators (Forefeiture of Property) Act, 1976 (SAFEMA). The respondent challenged the detention order before the Bombay High Court but died during the pendency of the case and the High Court quashed the detention order. No application for setting aside the abatement was made.

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In the application for substitution, filed after the period of limitation, it was contended on behalf of the appellant that since the other appeals have also been preferred against quashing of notices issued under SAFEMA to the sons of respondent and in such appeals, the question of the validity of detention order also arises for determination, there is no question of abatement of the instant appeal because in other appeals some of the heirs of respondents are already on record. Reliance was placed upon the decision in *Mahabir Prasad v. Jage Ram & Ors.*, [1991] 3 S.C.R. 301.

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Dismissing the appeal, this Court,

HELD : In the *Mahabir Prasad's* case, the question of abatement of a proceeding was considered where, in the same proceeding one of the heirs of a deceased party was already on record. The said decision does not relate to abatement of a different proceeding which is independent of the other proceedings where an heir in his personal capacity is a party. In the aforesaid circumstances, the application for substitution which is otherwise hopelessly time barred is rejected. Consequently, this appeal abates. [61-B, C, D]

Mahabir Prasad v. Jage. Ram & Ors., [1991] 3 S.C.R. 301, held inapplicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 540 of 1982.

From the Judgment and order dated 23.2.81 of the Bombay High Court in Crl. Appeal No. 1320/1975.

S. Rajappa for the Appellant.

Anil B. Divan, S. Ganesh, M.A. Rana and Rajiv Tyagi for the Respondent.

The following Order of the Court was delivered :

The respondent Ghamandiram Kewalji Gowani was detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as COFEPOSA) in 1974. The said order of detention was challenged by the son of the detainee Shri Tej Raj before the Bombay High Court and after considering the grounds of detention, the Bombay High Court quashed the detention order by Judgment dated November 1, 1974. Sometime in June, 1975 during the period of emergency declared under the Constitution, another detention order was passed against the said Ghamandiram. The second detention order was also challenged in the Bombay High Court. By an interim order dated March 10, 1976, the Bombay High Court held that the detainee was entitled to challenge the grounds for detention and the petition presented before the High Court for such challenge was maintainable. On the revocation of the emergency, the detainee was released but the challenge to the detention order, was pursued and ultimately by the Judgment and Order dated February 23, 1981, the Bombay High Court set aside and quashed the second detention order.

A The instant appeal arises out of such judgment of the Bombay High Court dated February 23, 1881 quashing the second detention order. During the pendency of this appeal, the respondent Ghamandiram died on February 2, 1983. No application for substitution of the heirs of the legal representatives of the said deceased respondent Ghamandiram was made within the period of limitation. No application for setting aside abatement after condonation of delay has, also been made. It may be stated here that in view of the said order of detention passed against Ghamandiram, three notices were issued, one against the deceased Ghamandiram and two against two sons of deceased under Section 6 of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act (hereinafter referred to as SAFEMA). It has been contended in the application for substitution that since the other appeals have also been preferred against quashing of such notices issued under SAFEMA to the sons of Ghamandiram and in such appeals, the question of the validity of second detention order also arises for determination, there is no question of abatement of the instant appeal because in other appeals some of the heirs of Ghamandiram are already on record. Such contention has been seriously disputed by the learned counsel who has entered appearance for the sons of Ghamandiram in the other appeals by contending that they cannot be held to be on record of the appeal preferred against Ghamandiram in the matter of quashing detention order for allowing the application for substitution made long after the period of limitation. It may be stated here that it is not the case of the appellant that the appellant was not aware of the death of Ghamandiram because such fact of death was made known and in the application for substitution it has been stated that such application was not made earlier because in the connected appeals, the heirs of Ghamandiram were already on record.

The learned counsel opposing the prayer for substitution has contended that the other appeals preferred against some of the heirs of Ghamandiram are independent appeals and they arise out of a different cause of action. The notices under SAFEMA to sons of Ghamandiram were issued not in the capacity of their being heirs of Ghamandiram and holding the properties of Ghamandiram but on the basis that they being close relation of the detainee under COFEPOSA, within the meaning of SAFEMA, the properties owned by them were also liable to the confiscated under the provisions of SAFEMA. In such circumstances, learned H counsel opposing the application for substitution contends that the ques-

tion of doctrine of representation of the estate of a deceased party as sought to be raised in support of the application for substitution does not arise and the application for substitution being hopelessly time barred should be dismissed. A

The learned counsel for the appellant has, however, relied upon the decision of this Court in *Mahabir Prasad v. Jage Ram & Others*, [1991] 3 SCR 301, for contending that since in the connected appeals, the heirs of Ghamandiram were already on record, there was no question of abatement of this appeal. We are, however, unable to accept such contention. In the said decision the question of abatement of a proceeding was considered where in the same proceedings, one of the heirs of a deceased party was already on record. The said decision does not relate to abatement of a different proceeding which is independent of the other proceedings where an heir in his personal capacity is a party. In the aforesaid circumstances, the application for substitution which is otherwise hopelessly time barred is rejected. Consequently, this appeal abates and is therefore dismissed. B C D

C.A. Nos. 928/91 & 1198/91

List the matters on November 8, 1994 as prayed for by the learned counsel for the parties.

T.N.A.

Appeal dismissed.