A COMPETENT AUTHORITY, AHMEDABAD ETC.

v.

AMRITLAL CHANDMAL JAIN AND ORS. ETC.

APRIL 29, 1998

B [M.M. PUNCHHI, CJI., K.T. THOMAS AND D.P. WADHWA JJ.]

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976-Sections 6 and 8—Notice of Forfeiture—Preventive Detention—Proceedings initiated under SAFEMA on the basis of an earlier detention C *order made under COFEPOSA—Such order of detention cannot be questioned unless the same was challenged by the detenu or his relatives or his associates when the order was in force and that challenge had either been upheld or negatived—But where on the ground of the release of detenu, the Writ of Habeas Corpus is disposed off without going into the question of validity of* D *the order , detenu cannot be made to suffer holding that he did not successfully challenge his detention order—Such detenu or his relatives or his associates are not debarred from challenging said order of detention subsequently when notices under Section 6 of SAFEMA are issued to them.*

Constitution of India, Articles 22(5), 32 and 226—Detention—Writ of E *Habeas Corpus filed—Challenge is in effect to the legality and validity of grounds of detention—Detenu need not file separate writ seeking Writ of Certiorari to challenge validity of grounds.*

The first respondent was detained under Section 3 of COFEPOSA by order dated July 21, 1982. He challenged the detention order before this F **court by Writ of Habeas Corpus. The appellants-State revoked the detention order, by order dated 18.10.1982. But on the same day, by separate order on same grounds, the respondent was again detained and this led to filling of second Writ Petition before this court by the respondent. Subsequently the first Writ Petition was dismissed as infructuous. During the pendency of the second Writ Petition, by order dated 8.11.1982, the respondent was ordered** G **to be released on parole and in the meanwhile his detention period was reduced till 16.08.1983 and he was released on that day. This led to the disposal of the second Writ Petition with the observation that the period of parole would be taken into account for the purpose of detention.**

On 10.10.1985 the competent authority issued notice under Section 6 H **of SAFEMA to the respondent. The respondent challenged this before the**

High Court. Subsequently the appellants revised the grounds of notice under Section 6 and issued another notice which led to filing of another Writ Petition, following which notice under Section 8 of SAFEMA was issued which was challenged by the Respondent before High Court. Since the foundation of action against the respondent was earlier detention, Writ Petitions were allowed holding that the order of detention of the respondent was illegal and the proceedings under SAFEMA were quashed.

Thereafter, the search and seizure operations were conducted at the premises of the Respondent by the Income—Tax Authorities and 1465.201 kgs of silver was seized. The respondent approached the Settlement Commissioner and the Settlement Commissioner passed orders for releasing the seized silver to the Respondent. However, the competent authority requested Commissioner of Income—Tax, Gujarat not to release the seized silver but CIT, Gujarat refused to do so. Against this the Competent Authority approached the High Court in a Writ Petition challenging the order of CIT. But the same was withdrawn unconditionally and another writ petition was filed by competent authority claiming the same relief. Thereafter, by impugned judgment dated 23.06.1993, High Court dismissed the Writ Petition of Competent Authority holding the same as infructuous, as proceedings under SAFEMA had been quashed.

In these appeals, challenging order dated 29.04.1993 and 23.06.1993 the Competent Authority, relying on the law laid down in *Amratlal Prajivandas case* submitted that proceeding under SAFEMA could not be challenged on the alleged ground of detention being illegal unless the detenu chose to question his detention before the Court during the period when such order of detention was in force or he is unsuccessful in his attack thereon.

Dismissing the appeals, this Court.

HELD : 1.1. The challenge to the order of detention by respondent was not unsuccessful and the respondent or his relatives or his associates were not debarred from challenging the order of detention subsequently when notices under SAFEMA were issued to them because the second Writ of Habeas Corpus was disposed off without going into the question of validity of the order of detention but on the ground that detenu had already been released from detention. [70-F]

1.2. Once the detenu is released during pendency of his Writ of Habeas Corpus by the detaining authority it cannot always be said that writ petition

had become infructuous and that the grounds on which the order of detention was based became invalid. But then if the Court refuses or itself does not go into the merits of controversy in Writ of Habeas corpus when detenu is released, the detenu on that account cannot be made to suffer holding that he did not successfully challenge his order of detention. [71-B]

Union of India **v.** *Hazi Mastan Mirza,* **AIR (1984) SC 681 and** *Attorney General of India & Ors.* **v.** *Amratlal Prajivandas & Others,* **[1994] 5 SCC 54, referred to.**

2. When there is challenge to the legality of detention in Writ of Habeas Corpus the challenge is in effect to the legality and validity of the grounds on which the order of detention is made. It is not that to challenge the legality and validity of the grounds on which order of detention is passed the detenu has to file a separate writ petition seeking a Writ of Certiorari. [71-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2 of 1994 ETC.

From the Judgment and Order dated 28/29.4.93 of the Gujarat High Court in S.Crl. Application No. 499 of 1991.

N.N. Goswami, K.G. Shah, Kapil Sibal, Sunjawala, T.L.V. Iyer, D.S. Mehra, M.P. Mullick, Ms. Hemantika Wahi, Ms. Neithono Rhetso, R.N. Keshwani, H.A. Ahmadi, Chandrakant Nayak, V.T. Francis, P.I. Jose, (Ms. Laxmi Arvind) (A.C.), and B.Y. Balram Das for the appearing parties.

The Judgment of the Court was delivered by

D.P. WADHWA, J. These are three appeals. Two appeals (Criminal Appeal Nos. 2/94 and 574/94) are directed against the judgment dated April 29, 1993 of a Division Bench of the Gujarat High Court and have been filed respectively by the Competent Authority and the State of Gujarat. By this impugned judgment the High Court allowed two writ petitions filed by the respondents declaring that the order of detention passed against the first respondent Amritlal Chandmal Jain ("Amritlal") under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA') was illegal and it quashed the proceeding initiated under the Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act, 1976 (for short 'SAFEMA') against the respondents. The third appeal (Civil Appeal 1487/94) has been filed by the Competent Authority

and is directed against the judgment dated June 23, 1993 of another Division Bench of the Gujarat High Court by which the High Court dismissed the writ petition filed by the Competent Authority in which the Competent Authority had sought directions restraining Commissioner of Income-tax, Gujarat-1 from releasing seized silver to M/s. Agra Bullion Company and Amritlal. In this appeal Commissioner of Income-tax, Gujarat-I is also respondent. The Competent Authority has been constituted under the SAFEMA and it means an officer of the Central Government to perform the functions under SAFEMA.

By order dated July 21, 1982, passed under Section 3 of the COFEPOSA by the State of Gujarat Amritlal was detained. He challenged his detention by filing a writ of habeas corpus under Article 32 of the Constitution in this Court (WP 1151/82). State of Gujarat, however, revoked the order of detention by order dated October 18, 1982 but by separate order on the same grounds and passed on the same day Amritlal was again detained. This led to filing of second writ of habeas corpus by Amritlal in this Court (WP 1342/82). First writ petition was disposed of on October 20, 1982 by the following order:-

> "Shri Ram Jethmalani, learned counsel for the petitioners states that the impugned order of detention in each of these cases has since been revoked and the petitioners were thereafter released. The learned counsel further states that sometime after their release, on the day of release itself, each of the petitioners, has been served with a fresh order of detention and taken into custody. He proposes to file fresh petitions under Article 32 of the Constitution. Such petitions, if and when filed, may be listed for preliminary hearing. Liberty to mention.
>
> The petitions are, therefore, dismissed as infructuous."

During the pendency of the second writ petition the detenu Amritlal was ordered to be released on parole by order date November 8, 1982. In the meanwhile the period of detention of Amritlal was reduced by the detaining authority up to August 16, 1983 when he was released from detention. Second writ petition was disposed of on July 10, 1985 by the following order:-

> "In so far as these cases are concerned, the period during which the petitioners were on parole shall be taken into account while calculating the total period of detention. The order of detention was passed more than two and half years ago.
>
> The writ petitions will stand disposed of in terms of this order."

A On October 10, 1985 Competent Authority issued notice under Section 6 of the SAFEMA to the respondents in Crl. As. 2/94 and 574/94. That was challenged by filing a writ petition in the Gujarat High Court (SCA 5684/85). Subsequently, however, the grounds on which notice of forfeiture under Section 6 of SAFEMA was issued were revised and other notice under B Section 6 was issued. That led to filing of another writ petition in the Gujarat High Court (*S. Crl. A. 499/91*). When notice under Section 8 of SAFEMA was issued on July 28, 1991 yet another writ petition (SCA 5900/91) was filed. Since the very foundation of action under SAFEMA was the order of detention passed against Amritlal under COFEPOSA, that very orders were challenged C in these writ petitions. By the impugned judgment dated April 29, 1993 SCA 5684/85 was allowed to be withdrawn and S.Crl.A. 499/91 and SCA 5900/91 were allowed. It was held that the order of detention of Amritlal was illegal and the proceedings initiated under SAFEMA on the basis of said illegal order were quashed.

D To understand the third appeal (CIVIL APPEAL NO. 1487/94) we may refer to some of the facts. Search and seizure operations were conducted at the premises of Amritlal by the authorities under the Income-tax Act, 1961 on December 24, 1981, which led to seizure of 1465.201 kgs. of silver. Out of that M/s Agra Bullion Company claimed ownership of 301.203 kgs. of silver. E Amritlal approached the Settlement Commissioner under the Income-tax Act on December 7, 1984 and the proceedings were admitted by the Settlement Commission. The Settlement Commissioner, it would appear, passed orders in favour of Amritlal and Agra Bullion Company for releasing the seized silver to them. By letter dated October 21, 1991 the Competent Authority requested the Commissioner of Income-tax, Gujarat-I not to release the silver to Amritlal F and Agra Bullion Company until the proceedings under SAFEMA, which had been initiated in the meanwhile, were concluded. Commissioner of Income-tax, Gujarat-I by his letter dated November 4, 1991 expressed his inability to accede to the request of the Competent Authority and said it was not possible to hold back the silver ordered to be released to Amritlal and Agra Bullion G Company by the Settlement Commission. This prompted the Competent Authority to file writ petition (SCA 309/92) in the Gujarat High Court challenging the order of Commissioner of Income-tax, Gujarat-I which had been communicated to the Competent Authority by letter dated November 4, 1991. This SCA 309/92 subsequently came to be unconditionally withdrawn on April 8, 1991. Having thus withdrawn SCA 309/92 the Competent Authority, H it is stated that under legal advice, filed another writ petition (SCA 7623/92)

practically claiming the same reliefs which it had prayed earlier in SCA 309/92. The High Court was called upon to decide the validity and legality of the order passed by the Settlement Commission under the Income-tax Act as well as that contained in the letter dated November 4, 1991 of the Commissioner of Income-tax, Gujarat-I. By impugned judgment dated June 23, 1993, SCA 7623/92 was dismissed by the High Court holding the same infructuous as proceedings under SAFEMA had been quashed against Amritlal and others. High Court also did not go into the question whether second writ petition by the Competent Authority was maintainable after the first having been withdrawn when relief claimed in both the writ petitions was practically the same. High Court took notice of decision dated April 29, 1993 of another Division Bench where it was held that detention of Amritlal was illegal and since the very foundation for initiation of proceedings under SAFEMA was knocked out the proceedings under SAFEMA had come to an end and there was nothing further that was required in SCA 7623/92 to be considered which had thus become infructuous. Aggrieved by the judgment dated June 23, 1993 (in SCA 7623/92) Competent Authority has filed appeal in this Court (CIVIL APPEAL NO. 1487/84).

We may also note that the High Court in its judgment dated April 29, 1993 had held that the order of detention of Amritlal was bad on two counts, viz., (1) that second order of detention on the same grounds could not be passed and (2) the order of revocation of the first detention order was itself null and void. High Court, however, did not consider other challenges to the validity of detention order.

Mr. Goswamy, learned counsel appearing for the Competent Authority, submitted that the Division Bench in SCA 7623/92 did not go into the merits of the controversy and had solely relied on a decision of this Court in *Union of India* v. *Haji Mastan Mirza,* AIR (1984) SC 681, which was held not to be good law in the 9 Judges Bench decision of this Court in *Attorney General of India and Ors.* v. *Amratlal Prajivandas and Ors.,* [1994] 5 SCC 54. Mr. Goswamy did not refer to the decision of the Gujarat High Court dated April 29, 1993 which was the subject matter of two other appeals when all the three appeals were being heard together. He confined his attack to the judgment of the High Court dated June 23, 1993. However, whatever he said also touched upon the validity of the order of the High Court dated April 29, 1993. Mr. Goswamy said that the order of detention passed in 1982 was being challenged in 1991 which he said could not be done in view of the law laid

A by this Court in *Amratlal Prajivandas* case. His submission was that proceeding under SAFEMA could not be challenged on the alleged ground of detention being illegal unless the detenu chose to question his detention before the Court during the period when such order of detention was in force or he is unsuccessful in his attack thereon. To support his submission he relied upon detailed observations of this Court in paras 40,41 and 42 of the B judgment in *Amratlal Prajivandas* case and particularly to para 56 where this Court summarized its decision on various issues raised before it in that case. We are concerned with sub-para 3(b) of para 56 which is as under:-

> "(b) An order of detention to which Section 12-A is applicable as well C as an order of detention to which Section 12-A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detenu and to his relatives and associates provided such order of detention does not attract any of the sub-clauses in the proviso to Section 2(2)(b). If such detenu did not choose to question the said detention (either by himself or through his next friend) before the D Court during the period when such order of detention was in force, - or is unsuccessful in his attack thereon, - he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates."

E None of the appellants questioned validity of the order of the High Court in the judgment dated April 29, 1993 holding that second order of detention on the same grounds could not have been passed and on that account order of detention was illegal. Their only contention was that the order of detention had not been challenged at the appropriate time and that the impugned judgment could not be sustained in view of decision of this F Court in *Amritlal Prajivandas's* case. That does not appear to us to be quite correct. We may at this stage refer to challenges made to the orders of detention by Amritlal when the orders of detention were in force. First order of detention was itself revoked by the detaining authority. This, therefore, ceased to exist. This is apart from the fact that High Court had held that G revocation was not validly made. Nevertheless the detenu had been released. Second order of detention was challenged on various grounds but this Court again did not go into the validity of the order of detention. If Amritlal had not challenged his order of detention during the period the orders of detention were in force Mr. Goswamy would have been right but, unfortunately, for him that is not so. There were challenges to both the orders of detention. True, H it is not enough that there is a mere challenge and that challenge has to be

upheld or negatived by the Court. When there is challenge to the legality of detention in writ of habeas corpus the challenge is in effect to the legality and validity of the grounds on which the order of detention is made. It is not that to challenge the legality and validity of the grounds on which order of detention is passed the detenu has to file a separate writ petition seeking a writ of certiorari. Once the detenu is released during pendency of his writ of habeas corpus by the detaining authority it cannot always be said that writ petition had become infructuous and that the grounds on which the order of detention become invalid. But then if the Court refuses or itself does not go into the merit of controversy in writ of habeas corpus when detenu is released the detenu on that account cannot be made to suffer holding that he did not successfully challenge his order of detention. That is exactly what has happened in this case. Writ petition 1342/92 came to be disposed of an July 10, 1985. This writ petition along with others was being heard together. This Court did not go into the question of validity of the order of detention but disposed of the matter on account of the fact that detenu had already been released from his detention. We, therefore, cannot say that challenge to the order of detention by Amritlal was not unsuccessful and that he or his relatives or his associates were in any way debarred from challenging the order of detention subsequently when notices under SAFEMA were issued to them.

Accordingly, we do not find any merit in these appeals. These are dismissed.

N.J. Appeals dismissed.