

Karimaben K. Bagad

Vs

State of Gujarat and Others

Criminal Appeal No. 688 of 1998

(Dr. A. S. Anand, V. N. Khare JJ)

22.07.1998

ORDER

1. Leave granted.

2. The husband of the appellant was detained by an order of detention, dated 25-2-1977 under the provisions of COFEPOSA. That order of detention was challenged by filing a writ petition, being Special Criminal Application No. 101 of 1977 in the High Court of Gujarat. During the pendency of the petition, the order of detention was revoked by the Government on 4-8-1977 and the Court on 8-8-1977 made the following order :

"As the detention is revoked, the petition does not survive. Hence rule discharged with no order as to costs."

3. The High Court, thus, did not go into the merits of the case and the various grounds on which the order of detention had been questioned.

4. After the order of detention was revoked, it appears, that a notice under Section 6 of SAFEMA was issued to the husband of the petitioner. While the proceedings under SAFEMA were pending, the husband of the petitioner died. Respondent 4 then made an order on 23-3-1993 holding that the petitioner was a person who fell within the ambit of the mischief of Section 2 of SAFEMA and directed proceedings under Section 7 of SAFEMA to be taken against her. The petitioner questioned the proceedings on various grounds, including that on the date when proceedings were started against her, there was no valid and existing order of detention against the husband of the petitioner, which was a condition precedent to initiate proceedings under SAFEMA. Reliance was placed on the revocation of the order of detention in support of this submission. While challenging the proceedings of the competent authority and the Appellate Tribunal constituted under SAFEMA, the petitioner also put in issue the validity of the order of detention made against her husband on various grounds which had been raised in the writ petition filed by her husband and which the High Court had dismissed as "infructuous" without going into the merits of the case. The High Court took the view that the revocation of the order of detention was inconsequential insofar as proceedings under SAFEMA were concerned and also declined to go into the merits of the challenge to the order of detention on the ground that the petition filed by the husband of the petitioner had been dismissed as "infructuous" in the year 1977 and the same could not be "revived" after a period of about twenty years. The writ petition of the petitioner was, therefore, dismissed on these two grounds. The judgment of the High Court has been put in issue before us.

5. We have heard learned counsel for the parties.

6. Admittedly, the order of detention was challenged by the husband of the petitioner on various grounds at the appropriate time. The High Court declined to go into the merits of the case being of the opinion that since the order of detention had been revoked, the writ petition had been rendered "infructuous". The High Court returned no finding on the merits of the challenge to the order of detention. When proceedings under SAFEMA were initiated against the petitioner, after the death of her husband, she could question the correctness of the grounds of detention while assailing the order of detention since a valid order of detention is a condition precedent for initiating proceedings under SAFEMA. Since the validity of the order of detention had been put in issue through a writ petition and the High Court returned no findings on the merits of the case, the petitioner was entitled to question the order of detention while assailing the proceedings initiated under SAFEMA against her. To deny her that right on the ground that after twenty years, the challenge to the order of detention could not be revived, was unjust and improper. Since there had been no adjudication on the merits of the order of detention by the High Court, though the order had been challenged, the High Court ought to have gone into the question of validity of the order of detention, since the existence of such an order was the sine qua non for initiating proceedings under SAFEMA. The order of detention had been challenged and that challenge was not unsuccessful on merits.

7. A three-Judge Bench of this Court in *Competent Authority v. Amritlal Chandmal Jain* ((1998) 5 SCC 615) considered a somewhat identical situation and opined :

"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 (sic) 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 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 No. 1342 of 1992 came to be disposed of on 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 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."

8. The view expressed by the three-Judge Bench in *Amritlal Chandmal Jain* case ((1998) 5 SCC 615) lends enough support to the view taken by us.

9. For what we have said above, we find that the impugned order of the High Court cannot be sustained. We, accordingly, set it aside and remand the writ petition to the High Court to be disposed of on merits. The appeal succeeds and is allowed in the above terms. We clarify that we shall not be taken to have expressed any opinion on the merits of the writ petition, hereby remanded to the High Court for its fresh disposal.

10. There is no order as to costs.