

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
C.P. No. D-3796 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For hearing of CMA No. 18832/2016
2. For hearing of main case.

08.03.2019

Present: Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

Mr. Asfanyar Jehangir, advocate for the petitioners
Mr. Manzoor-ul-Haq, Advocate for the Respondents No. 3 & 4
Mr. Jan Muhammad Khuhro, Assistant Advocate General
alongwith Nighat Khan, State Counsel

Muhammad Ali Mazhar.J:- Petitioner No. 2 is the son of deceased Zafar Alam s/o Yousuf Ali (Petitioner No. 1). At page-23 of the Court file, death certificate of Zafar Alam is attached, showing the date of demise i.e. 21.02.2001. The Petitioner No. 2 has challenged the judgment dated 18.03.2010 passed by Adjudicating Officer, Foreign Exchange Adjudicating Court, Foreign Exchange Adjudication Department, State Bank of Pakistan. The judgment was passed in FER Case No. 63/2006 on the basis of complaint filed by Foreign Exchange Operations Department, State Bank of Pakistan Banking Service Corporation through its authorized Foreign Exchange Officer against S. Kifait Hussain, Syeda Bilqees Akhter and Muhammad Ilyas Ahmed. Initially first show cause notice was issued on 25.11.2006 to the aforesaid persons, however, during proceedings upon the pointation of the authorized dealer (MCB), the name of Zafar Alam was also arrayed in the proceedings and show cause notice was issued thereto on 28.06.2007. It is also mentioned in the impugned judgment that a show cause notice was issued to Zafar Alam on 28.06.2007, which was served at his residential address but the accused Zafar Alam did not appear before Adjudicating Court. It is further stated in the impugned judgment

that on 10.09.2007, the representative of Authorized Dealer attended and informed that even after all efforts have been made but he could not succeed to locate the accused Zafar Alam, therefore, ordered for publication of Court Notice in two daily newspaper.

At the end of the proceedings, the Adjudicating Court passed the order and concluding paragraph is reproduced as under:-

“Order

Since the charge against the accused having been proved beyond any doubt, I convict 1) S. Kifait Hussain s/o Syed Yawar Hussain Shah (Managing Director) 2) Mst. Syeda Bilqees Akhtar w/o S. Kifait Hussain (Director) 3) Muhammad Ilyas Ahmed s/o Farid Ahmed (Signatory/Director) and 4) Zafar Alam s/o Yousif Ali (Director) of M/s. U.T.C (Pvt) limited, Karachi, for violation of provisions contained in Section 12(1) of F.E.R. Act, 1947 read with Foreign Exchange Rules, 1952 and Notification No. F.E. 3/2001-SB dated 28th September, 2001 and impose penalty of Rs. 3,900,000/- (Three million nine hundred thousand only) upon them under Section 23B (4) ibid. This amount is payable immediately to this Court for onward credit to appropriate account of the Federal Government.

Pronounced in the open Court.

Given under my hand and seal of the Court, this 18th Day of March, 2010.

Adjudicating Officer”.

Learned Counsel for the petitioner argued that Zafar Alam expired on 21.02.2001, therefore, the initiation of proceedings there against and his subsequent conviction recorded by the Adjudicating Court in 2010 was unlawful. Counsel for State Bank could not convert this fact, however, he relied on Section 23G of Foreign Exchange Regulation Act, 1947, which pertains to continuance of proceedings in the event of death or insolvency. Niceties of this section make it unequivocally clear that this applies where a penalty has been imposed under Section 23B on any person and no appeal against the order imposing such penalty has been preferred, or where any such appeal has been preferred and where in either case, such person dies or is

adjudicated an insolvent during the pendency of the proceedings before the Adjudicating Officer or the Appellate Board or before preferring an appeal, it shall be lawful for the legal representative of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Board, or as the case may be, to continue the proceedings or appeal before the Adjudicating Officer or the Appellate Board and in either case any such proceedings before the Adjudicating Officer or Appellate Board shall not abate but be continued as if such person were not dead or adjudged as insolvent.

Why this section is not applicable is very much clear that Zafar Alam expired on 21.02.2001 and the complaint was lodged in the year, 2006, culminating in the conviction of accused persons in 2010. Whereas it is not the case that during the proceedings Zafar Alam expired so his legal heirs may file an appeal before the Appellate Board simply for the reasons that under the mandate of Section 23G, the proceedings could not be abated but here much before the proceedings even started, the person had died, therefore, this section has no application in the circumstances of the present case and its reference is misconceived.

Learned Assistant Attorney General is also of the view that no conviction could be recorded against a dead person and submits that to the extent of accused Zafar Alam, the impugned conviction may be set-aside.

As a result of our above discussion, this petition is disposed of alongwith listed application(s) in the terms that impugned order to the extent of accused Zafar Alam is set-aside.

JUDGE

JUDGE

