

(1991) 11 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petitions No's. 101 and 102 of 1991

Abdul Rahiman and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
(COFEPOSA) — Section 3, 8, 9
Constitution of India, 1950 — Article 22
Customs Act, 1962 — Section 108

Citation : (1992) CriLJ 3277 : (1991) ILR (Kar) 4457 : (1992) 1 KarLJ 533

Hon'ble Judges : M.N. Venkatachalaiah, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : Sri. J. Jesthmal, for the Appellant; Sri. Shailendra Kumar, CGSC and Sri B. Somayaji, Govt. Pleader, for the Respondent

Judgement

1. In these writ petitions the detenus who are detained under S. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act ("the COFEPOSA Act" for short) have challenged their detentions.
2. The petitioners were part of the crew of a vessel (fishing trawler) Al-Sahara. These petitioners are Pakistani nationals, though this has no material bearing on the questions raised in the writ petitions.
3. The authorities of the Customs Department and DRI had information that silver was being smuggled into India from abroad. On the basis of this information they boarded Coast Guard Vessel Varuna on 13-4-91. After two days of continuous sea patrolling the Coast Guard Vessel was on the waters of Malpe area on 15-4-91 and at about 10-05 hours the aforesaid fishing trawler Al-Sahara was sighted. The officers found the movement of the vessel suspicious and the said fishing trawler tried to move away from the Coast Guard Vessel on seeing the Coast Guard Vessel by changing its course. The coast guards fired a few warning shots and chased the trawler to bring it to a halt. Thereafter the

members of the crew of the trawler identified themselves and gave the name of the trawler but no acceptable material was produced about the registration of the vessel and the members of the crew had no sea man card/identity card, etc. These facts are found in the grounds of detention as also in the affidavit filed on behalf of the respondents. The members of the crew revealed that the trawler was carrying 255 gunny rapped packages containing silver ingots brought from Khorfakkan for the purpose of smuggling them into India. The said trawler was thereafter brought to Mangalore Port along with its 7 crew members. The master of the trawler was the first petitioner herein (Abdul Rahiman). The authorities investigated further in the presence of the witnesses. The officers found 255 gunny packages containing silver ingots which were kept in the forward position, aft position and also in the engine room of the trawler. The officers also found the silver ingots bearing foreign markings. Thereafter these gunny packages were loaded into a lorry and were taken to the DRI office at Mangalore for detailed examination, along with members of the crew and the witnesses, as it was not possible to complete the investigation at the port. The silver ingots were examined and weighed and the certified goldsmith certified the silver ingots to be of foreign origin and the total weight of the silver was 8918.491 kgs. The expert opined the purity of the silver as 999. The value of the silver was at that time was Rs. 6,15,37,588/-. The silver ingots were 285 in number. They were seized, on the reasonable belief that they were smuggled into India, under a mahazar dated 16/17-4-91. The fishing trawler valued at Rs. 7 lakhs was also seized. The statements of the crew were recorded thereafter under S. 108 of the Customs Act. They were also produced before the Magistrate on 18-4-91 after they were arrested on the previous day i.e., 17-4-91. The crew members were remanded to judicial custody. On 25-4-91, the Joint Secretary to the Government of India made the detention orders under S. 3(1) of the COFEPOSA Act (hereinafter referred to as "the Act"). The orders were served on the petitioners on 30-4-1991. Subsequently a declaration was made under S. 9 of the Act declaring that the petitioners were likely to engage themselves in the smuggling activity in the vulnerable area as stated in the declarations. This declaration was made by the Additional Secretary to the Government of India on 21-5-91. These declarations were served on the petitioners on 4-6-91 along with a corrigendum dated 3-6-91, the later being signed by a Senior Technical Officer of the Government of India, Ministry of Finance. The corrigendum was necessitated because in the declarations reference was made to Government of Maharashtra by mistake instead of Government of India.

4. Sri Jesthmal, the learned Counsel for the petitioners, advanced the following contentions in support of these writ petitions :

I. Declarations under S. 9 were made without the application of the mind by the authority concerned and they were based on non-existent facts.

II. The vessel in question was seized not in Indian Custom Waters, but on high sea. Therefore there was no smuggling at all into India.

III. There was a wide time gap of 14 hours between the interception of the vessel and its berthing at New Mangalore Port and a further time gap of 14 hours between the berthing of the vessel and the mahazar. Thus the silver was seized 28 hours after the seizing of the vessel; in these circumstances, the mahazar is an irrelevant document.

IV. Statements of the petitioners were recorded on 17th April 1991 which is after a long delay subsequent to the seizing of the vessel and therefore the statements had no probative value.

V. The satisfaction arrived at by the Detaining Authority that the petitioners are likely to indulge in smuggling activity is not genuine and real, since the petitioners were arrested and produced before the Magistrate on 18-4-1991 and ever since thereafter, they were in judicial custody as they have not moved for bail. As the petitioners are not free to move about and indulge in any offending activity, question of preventing them from indulging in such activity does not arise.

Now, we proceed to consider these contentions. As the facts are similar, for the sake of convenience we refer to one of the writ petitions.

5. Re : Contention I :

The detention order is dated 25-4-1991 and bears the signature of the Joint Secretary to the Government of India (Ministry of Finance, Department of Revenue) and it was served on the detenu on 30-4-91. Thereafter, the Additional Secretary to the Government of India (of the same Department), on 21st May 1991, made a declaration under S. 9 of the Act. Declaration No. 55/91 reads as follows :

"Whereas shri Abdul Rahiman was detained on 30-4-91 in pursuance of order No. 673/189/91-Cus. VIII dated 25-4-91 of the specially empowered officer of the Government of Maharashtra made under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him from smuggling goods :

And whereas, I, the undersigned, specially empowered in this behalf by the Central Government, have carefully considered the grounds of detention and the material served on the detenu;

Now, Therefore, I, the undersigned, hereby declare that I am satisfied that the aforesaid Shri Abdul Rahiman is likely to smuggle goods into and through Indian custom waters off Malpe coast in the State of Karnataka which is an area highly vulnerable to smuggling as defined in Explanation 1 to 9(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Shri Abdul Rahiman has a right to represent to the Central Government as well as to the Advisory Board against the declaration in the manner specified in the grounds of detention.

Sd/- (K. Prakash Anand) Additional Secretary to the Govt. of India."

It is stated that this was served on the detenu on 4-6-1991 along with a corrigendum, which reads thus :-

"Corrigendum to Declaration No. 55/91 dated 21-5-91 Issued u/S 9(1) of the COFEPOSA Act

An inadvertent typographical error crept in the abovementioned declaration. In the third line of the first para for the words "Government of Maharashtra" the words "Government of India" may be substituted.

Sd/- (M. Ram Mohan Rao) Sr. Tech. Officer."

6. Mr. Jesthmal urged that the opening sentence in the declaration signed by the Addl. Secretary, proceeds on the assumption that the detenu was detained in pursuance of the order of the specially empowered officer of the Government of Maharashtra, under S. 3(1) of the Act. This assumption is entirely erroneous; therefore, it is clear that the Authority making the declaration under S. 9 has not at all applied his mind to the relevant facts and that he has relied on a basic fact which never existed. The basic fact for making a declaration under S. 9 being the detention of the person in respect of whom the declaration is to be made under S. 9, non-consideration of such a basic fact vitiated the declaration. The learned Counsel, further, pointed out that the alleged corrigendum dated 3rd June 1991 was not a correction made by the Authority who made the declaration, but by a different officer, who had no competence to make the declaration under S. 9; if the declaration contained any error, the same could be corrected (if permissible), only by the same Authority who made the declaration.

7. In the "Statement in Reply" filed by Mr. Prakash Anand, the above contention was met thus :-

"The S. 9(1) declaration against each petitioner is in accordance with the provisions of the Act. The title of the two declarations dated 21-5-91 have been inadvertently shown as under S. 3(1) of the Act instead of S. 9(1). Para 3 of the said declaration, however, clearly mentions that the same is issued under S. 9(1) of the Act. Further, due to inadvertent error, it has been mentioned that the detention orders against the petitioners were issued by the Government of Maharashtra. It is submitted that the detention orders numbers shown in the aforesaid declaration are the same as that of the actual detention order and the same could not have tallied with that of the Maharashtra Government order at any cost. In this view, the question of placing of and Maharashtra Government order before the declaring authority did not arise at all. The declarations thus made are not invalid in law or null and void or unconstitutional as alleged by the petitioners.

Re. Para 20 of the petition : Due to inadvertence in the declarations dated 21-5-91 it has been mentioned that the declaring authority has considered the detention order F. No. 673/189/91-Cus. VIII and F. No. 673/190/91-Cus. VIII

dated 25-4-91 of Government of Maharashtra instead of Government of India. As already mentioned in the previous para, no orders were issued by Government of Maharashtra against the petitioners at any time and the file numbers mentioned therein are of Government of India only. On noticing the discrepancy, immediately corrigendum has been issued in this regard. The corrigendum has been duly served on the petitioners through Jail Superintendent, Central Prison, Bangalore on 4-6-91. The original documents were shown to the counsel of the petitioners as well as the Hon'ble Members of the Advisory Board on 20-6-91. Therefore, allegations of the petitioners that they were not served with copies of corrigendum are factually incorrect. The corrigendum has been issued by the authorised officer of the Government of India and the same is valid and legal."

To consider the contention of the petitioners it is necessary for us to consider the scope of S. 9 and its bearing on the detention order.

8. S. 8 provides for the Constitution of Advisory Board, contemplated by Art. 22 of the Constitution. Within five weeks from the date of detention of a person (made in pursuance of the order under S. 3), the appropriate Government shall make a reference to the Advisory Board, in respect of the detention order to enable the Advisory Board to make the report under Art. 22(4)(a) of the Constitution. The Advisory Board shall have to make its report within eleven weeks from the date of the detention in question.

9. A declaration under S. 9 pertains to the area where the detenu is likely to indulge in the activity sought to be prevented by the order of detention. The area is referred as "area highly vulnerable to smuggling" and is defined in the Explanation I to S. 9(1). If the detenu's activity to be prevented is with reference to such an area, the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, especially empowered for purposes of S. 9, may make a declaration as contemplated by S. 9(1) on being satisfied that the person detained under S. 3 :-

(a) Smuggles or is likely to smuggle goods into, out of or through any areas highly vulnerable to smuggling; or

(b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or

(c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling.

Therefore the relevant factors to be borne in mind while making the declaration under S. 9(1), are the facts falling within clauses (a), (b) or (c) of S. 9(1), extract of which is given above. This declaration is to be made only in respect of a person against whom an order of detention is made under the Act. Inter alia, when there is an order of detention against a person under S. 3 of the Act, and the Central Government or the specially empowered Additional Secretary, is satisfied about the existence of the facts stated in any of the clauses (a), (b) or

(c), the declaration could be validly made, under S. 9. The declaration, however has to be made within five weeks of the detention of the persons detained.

10. The consequences of the declaration on the prescribed periods stated in Art. 22(4) of the Constitution and S. 8, are :-

(1) The requirement of obtaining the opinion of the Advisory Board as per Art. 22(4) of the Constitution, within three months of the detention of a person is relaxed and the said period gets enlarged to six months.

(2) The requirement of referring the case for the opinion of the Advisory Board within five weeks as provided by S. 8(b) is relaxed by enlarging the said period to four months and two weeks.

(3) The period of eleven weeks within which the Advisory Board to submit its report is enlarged to five months and three weeks.

Further, under S. 10, the maximum period of one year for which a person may be detained under S. 3, also gets enlarged to two years.

11. The declaration under S. 9 has nothing to do with the satisfaction arrived for making an order of detention under S. 3. The Central Government or the Authority empowered to make the declaration under S. 9 is concerned with the identity of the person against whom an order is made under S. 3 and the area where such a person is likely to indulge in the offending activity. Whether a competent person or Authority, made the order under S. 3, is not a factor to be considered while making the declaration under S. 9. Similarly, the declaration made under S. 9 in no way affects the powers vested in the appropriate Government under S. 11 to revoke the detention order. Making of the declaration under S. 9(1) involves both subjective satisfaction and objective identification of the relevant facts. As to whether the detenu is likely to indulge in any of the activities referred in clauses (a), (b) or (c) of S. 9(1), is a matter of subjective satisfaction for the Central Government or the specially empowered Secretary, to arrive at. But, the identification of the highly vulnerable area has to be strictly within the four corners of the Explanations I and II to S. 9(1). The area has to be identified; to that extent, the provisions of the Explanations are to be applied objectively, in the sense, the locality or the area should in fact fall within the boundaries stated in S. 9(1).

12. In the instant case, there is no dispute that the reference to the Advisory Board and the report of the Advisory Board were all within the periods stated in S. 8 (without reference to the enlarged periods under S. 9); therefore, the invalidity of the declaration under S. 9, if any, would not vitiate the continued detention of the detenu for a period of one year. Mr. Jesthmal, in fact, did not contest this proposition. The learned Counsel, urged very seriously, that, whatever be the position during the first year of detention, the petitioners are entitled to be released immediately thereafter in view of the invalidity of the declaration under S. 9.

13. The scope of S. 9 was considered by a Bench of this court in Syed Mohammed Ashraf v. State of Karnataka W.P. (H.C.) 165/1988 D.D. 22-3-1989, to which one of us (K. Shivashankar Bhat, J.) was a party. It was held therein :

"The scope of consideration under S. 9(1) was whether the petitioner was "likely to engage in transporting and keeping smuggled goods in Mangalore", which is a vulnerable area. The fact that, it was necessary to detain the petitioner "with a view to preventing him from engaging in transporting and keeping smuggled goods", is concluded, for this purpose, by the order of detention made under S. 3(1)(iii) of the Act. In other words, the suspicion that the petitioner is likely to engage in transporting and keeping smuggled goods, is the foundation for the preventive detention order made under S. 3. This basic fact (or the suspicion) resulting in the detention, holds the field until the said order is revoked or set aside. Existence of this order under S. 3, based on the satisfaction of the Detaining Authority as to the need to prevent the detenu from indulging in certain activity, confers the power on the "detaining authority" to act under S. 9.

The apprehended (or the suspected) activity of the detenu should have a location. The illegal activity cannot be carried on in vacuum. For the authority acting under S. 3, it is sufficient, if the material disclosed to his mind, the likelihood of the petitioner indulging in the illegal activity within India. But, whether the illegal activity is likely to be carried on in the vulnerable area is for the authority under S. 9 to consider. A declaration under S. 9 results in extending the period of detention. For this purpose, the authority acting under S. 9 has to proceed accepting the factual basis for the main detention order under S. 3 and then find out the area wherein the illegal activity is likely to occur. Any other construction of Section 9 will cut at the very basis of the power conferred under S. 3 on the detaining authority. If the authority under S. 9 does not make the declaration, such a refusal to make the declaration will not affect the order of detention made under S. 3 by itself. In a particular case, as in this case, a failure to make the declaration under S. 9 or the illegality of the declaration may have a bearing while computing the time-elements required to satisfy the procedural safeguards, under Art. 22 of the Constitution and other provisions of the Act. It cannot be said that, at the time of considering as to whether a declaration should be made or not under S. 9, every representation made by the detenu against the detention should be placed before him.

Under S. 9, the jurisdiction to make the declaration need not necessarily be vested in the same authority, who is empowered to revoke the detention under S. 11. The scope of considerations under these two provisions are quite different. Consequently, we are of the view that, failure to place before the authority acting under S. 9, all the representations of the detenu against an order of detention, by itself, will not vitiate the declaration.

It may be, in a particular case, a detenu may place or plead relevant material or circumstance, against an inference that he was likely to indulge in the illegal activity in a vulnerable area; such a plea is quite different from a plea that, he is

not at all indulging in the activity complained of against him, anywhere."

14. In the instant case, there is no dispute that the original declaration made under S. 9(1) gives the correct reference number and the date of the order; name of the detenu also is correctly stated; the date on which he was detained is also stated. The error was in mentioning the Government which empowered the officer to make the detention order. Whether the detention was made by the officer specially empowered in that regard by the Central Government or any of the State Government, is entirely irrelevant for the purpose of making the declaration under S. 9(1). The mistake committed while referring to the Government which authorised the officer to make the order has no bearing at all on the question of the requisite satisfaction to be arrived at by the Central Government or its officer under S. 9(1); similarly, it has no bearing on the question of identifying the area as "highly vulnerable area" under the said provision of law.

15. Mr. Shylendra Kumar, the learned Senior Central Government Standing Counsel, placed before us the original file of the Authority who made the declaration under S. 9(1). The requisite notings and the endorsements of the officer were with reference to the detention order made by the Joint Secretary of the Central Government. The draft of the declaration under S. 9 also correctly refers to the Government of India (and not the Government of Maharashtra). The mistake was committed, obviously, while preparing the order to be served on the detenu, which was rectified by the corrigendum signed by the Senior Technical Officer. The original order and the corrigendum were served together, on the detenu.

16. This is not a case of non-application of the mind to relevant facts. The case is one of typographical error, which in no way affects the substance of the matter.

17. Mr. Jesthmal contended that we should not look into the original file and the notings made by the officers of the department. We can't agree with this contention. Here, we are not examining the process of the subjective satisfaction formed by an authority. The Court called upon to opine that the authority never applied his mind. While considering this question, the Court may, under a given set of circumstances (as in the instant case), look into the original file to find out whether the authority acted mechanically or applied his mind to the existence of the jurisdictional facts.

18. We are of the view that the error pointed out in the declaration made under S. 9(1), is not a material error so as to vitiate the said declaration. We are also of the view that, the Authority who made the declaration had applied his mind to the relevant facts before making the declaration. Consequently we reject this first contention of Shri Jesthmal.

19. Re : Contention II :

According to the petitioners, the vessel was not in Indian Custom waters at all at

the time it was intercepted; the fact that it took nearly 14 hours to bring the vessel to Mangalore Port from the place of interception strengthens the assertion of the petitioners. The learned counsel contended that if the vessel was seized while it was on international waters, smuggling cannot be attributed to any one of the petitioners. This contention, again, cannot be accepted.

20. Admittedly, the vessel was intercepted by the coast guards along with the officers of the DRI and of Customs department, while the vessel was on the sea of Malpe area. It is said by the respondents that, on seeing the coast guard, the petitioners' vessel "started running away by changing its course". After a hot chase, the vessel was brought to a halt. In the affidavit of K. Rajendra, Deputy Commandant of the Coast Guard, Mangalore, the details of the petitioners' vessel and its location at the time of its interception are given and there is a categorical denial that the interception of the said vessel was in international waters. The question raised by the petitioners is basically one of fact and we don't find any reason to reject the assertions made on behalf of the respondents; the averments in the affidavit of Mr. Rajendran are to be accepted in this regard.

21. Re : Contentions III & IV :

The vessel was sighted by the authorities on 15th April 1991. In the affidavit of Mr. Rajendran, the time taken to bring it to Mangalore Port has been explained thus :

"At 1002 hrs. the ship's position was at St. Mary's North Island-041 degree-10.6 nautical miles. The ship was doing a course 355 degrees at this time and after three minutes going on this heading it observed a contact on its radar at 1005 hrs. in a direction 020 degrees-5.8 nautical miles from its position. Within next 2 minutes, port main engine on left side of the ship, started and clutched in at 1010 hrs.

Thereafter, the ship altered the course at the same time to 000 degree north. The ship went ahead with the increased speed and went to notch-7 on both main engines. At 1012 hrs. Order was given by a pipe (announcement procedure) for personnel to close up at action stations (Special position assigned to each individual to do specialised jobs during the time of operational actions). After 3 minutes at 1015 hrs. a few warning shots were fired in the air and 2 minutes later the ship altered its course to 010 degrees at which time the depth was observed to 26 metres. Three minutes later few more warning shots given by LMG and the ship increased speed to notch 8 ahead on both main engines. Five minutes later at 1025 hrs. the ship reduced speed to notch 6 ahead on both main engines, and altered course to 000 degree (north). Five minutes later the ship altered its course to 320 degrees and continued in the same speed. At 1035 hrs. ship reduced speed to notch 2 ahead on both main engines and at two minutes later it stopped and declutched both main engines. Fishing vessel was taken along side for investigation. On rummaging it was found to be carrying

contraband silver ingots. At 1037 hrs. the position of ship was 080 degrees St. Mary's North Island-8 nautical miles. At 1039 the vessel Al Sahara was apprehended in position 260 degree Malpe edge 9 nautical miles. At 1040 ship switched off both main engines. At 1500 hrs. the ship's starboard main engine (right side engine) started and at this time the ship's position was Malpe edge-078/258 degrees 9.2 nautical miles. Seven minutes later the engine was engaged and the ship started proceeding via Malpe, Kaup, Surathkal to New Mangalore Port and ship secured alongside at 2325 hrs. and engines were shut off at 2328 hrs. at New Mangalore Port."

22. Therefore, it cannot be said that the time taken for bringing the vessel in question to the port for further investigation, involved any undue delay. The vessel had to be moved along the coastal line from nearabout Malpe to New Mangalore Port. It cannot be disputed that the vessel had to be watched and guided all along. Petitioners have nowhere pointed out the normal time taken for a vessel to reach Mangalore Port from the place of the vessel's interception nearabout Malpe.

23. The vessel reached Mangalore on the midnight between 15th and 16th April. A thorough search of the vessel had to be conducted only thereafter. There were 255 gunny packages kept on the forward portion, apt position and also in the engine room. The affidavit of Mr. Mahendra Prasad, Joint Secretary of the Government of India, states that these gunny packages contained in all 285 silver ingots weighing about 8918.491 Kgs. The mahazar proceedings had to be conducted in the presence of independent witnesses and the entire proceedings continued till about 10.00 hrs. on 17-4-1991 (vide para 6 of the affidavit of Mr. Mahendra Prasad). It is only thereafter, statements could be recorded under S. 108 of the Customs Act.

24. In the circumstances, we are of the considered opinion that no delay can be attributed in the matter of the investigation and recording of the statements. The authorities acted diligently and worked continuously to complete the investigations. Court cannot be oblivious to the fact that 285 silver ingots had to be individually weighed, which in all weighed 8918.491 Kgs.

25. Statements recorded under S. 108 of the Customs Act are relevant and therefore cannot be ignored. The learned counsel contended that no probative value could be attached to them since the petitioners were in custody of the Officers for over 28 hours before making the statements. The learned counsel relied on a Full Bench decision of Madras High Court reported in Roshan Beevi and Others Vs. Joint Secretary to Government of Tamil Nadu and Others, The learned counsel further urged that as the petitioners were not produced before a Magistrate within 24 hours, entire statements should be rejected.

26. The Madras High Court in the aforesaid decision has pointed out that whether recording of the statement gets vitiated by any delay depends upon the circumstances of each case. In the instant case, we have already held that no

undue delay can be attributed to the authorities in conducting the investigation and recording the statements. The relevancy of the statements cannot be questioned in view of S. 108 of the Customs Act. Appreciation of a relevant material is left to the province of the authority who has to consider the material; it is not for the court to evaluate material. Detention order under S. 3 is the result of a subjective satisfaction based on relevant materials. Therefore, test of "probative value" applied by the learned counsel for the petitioner has no significant role to play, while judging the validity of the detention order.

27. Re : Contention V :

It is now a settled law that a person being in judicial custody already, is not a bar to make a detention order against him under S. 3 of the Act. Here, again, it is for the Detaining Authority to form his opinion based on several factors. In *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, the Supreme Court expressed thus :

"The submission of the learned Counsel is that the petitioner being in custody in India can no more indulge in smuggling and therefore the detention on the ground that he is likely to indulge in smuggling is non-existent. We see no force in this submission. The potentialities of the detenu as gathered from his act of smuggling that form basis for detention. It is difficult to comprehend precisely the manner in which such a detenu with such potentialities may likely to indulge in the activities of smuggling. It is for the detaining authority to derive the necessary satisfaction on the basis of the materials placed before him."

28. No other contention survives for consideration.

29. In the result, these petitions fail and are accordingly dismissed.

30. Petitions dismissed.