
(1987) 06 BOM CK 0016
In the Bombay High Court
Case No : Criminal W.P. No. 119 of 1987

Abdulla Kozukhal Assainar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-06-1987

Acts Referred:

Citation : (1989) 39 ELT 47

Hon'ble Judges : D.N. Mehta, J;A.D. Tated, J

Bench : Division Bench

Judgement

Mehta, J.—The Petitioner, Abdulla Kozukhal Assainar, has filed this Criminal Writ Petition impugning the Order of Detention, dated 30-5-1986, passed against him by the Government of Maharashtra under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Act LII of 1974), hereinafter referred to as "the said Act".

2. Shri Kotwal, learned Counsel appearing on behalf of the Detenu, has canvassed only one submission before us challenging the Order of Detention. Shri Kotwal pointed out that, in the instant case, the Detenu was arrested on 3-1-1986 and soon thereafter the residential premises of the Detenu at his native place were searched by the Customs Authorities. However, nothing incriminating was recovered. According to Shri Kotwal this Panchanama, although it is termed as "nil Panchanama", was a vital and material document which was likely to have affected the subjective satisfaction of the Detaining Authority one way or the other. According to learned Counsel, it was incumbent upon the Sponsoring Authority to place the nil Panchanama before the Detaining Authority. Failure to place the nil Panchanama before the Detaining Authority had adversely affected the subjective satisfaction of the Detaining Authority while arriving at the conclusion whether the Order of Detention ought to be passed or not.

3. On behalf of the Respondents, a counter Affidavit-in-reply has been filed by one N. R. Ranganathan, Home Secretary, Government of Maharashtra, in which the said officer has admitted the fact that the Detenu's residential premises had

been searched by the Customs Authorities and nothing incriminating had been found. The officer then went on to state that it was not necessary to place the nil Panchanama before the Detaining Authority as the same was of no consequence and it would not have affected the subjective satisfaction of the Detaining Authority on way or the other.

4. We are not inclined to agree with the reasoning of the Home Secretary. To our mind, a Search Panchanama of the residential premises, whether it was successful in recovering some contraband or whether it failed to produce any result, was a vital and material document which would have affected the subjective satisfaction of the Detaining Authority in arriving at his decision whether or not to issue the Order of Detention.

5. We are fortified in the view which have taken by the observations of a Division Bench of this Court at Nagpur in the case of Tholammannil Mommudu Kunhann v. The Secretary to the Government of Maharashtra, Home Department, Special, Bombay (Criminal Writ Petition No. 7 of 1987), decided by Qazi and Lonoy, JJ., on 6-4-1987, in which case a similar situation arose. The learned by Judges were pleased to observe :-

"From the affidavit it is clear that the challenge which is raised in para 11(a) has not at all been replied to. It is obviously evasive. The challenge which is raised is that the Authorities had searched the residential premises of the petitioner in the presence of panches and it was discovered that nothing incriminating was found therein. Therefore, for submissions are that this circumstances should have been placed by the Sponsoring Authority before the Detaining Authority. To this, there is no reply at all. The absence of any reply on affidavit, we have no reason to doubt that the premises of the petitioner were actually searched. In our view, when the premises of the petitioner were searched, it was necessary that the search panchanama and other relevant papers showing that nothing incriminating was found in the residential house of the petitioner should have been placed before the Detaining Authority. We are fully satisfied that in the absence of the aforesaid relevant material the subjective satisfaction of the Detaining Authority is vitiated.

6. Our attention has been drawn by Shri Kotwal to another decision of a Division Bench of this Court (to which one of us, Mehta, J., was a party) in the case of Pawan Kumar Goswami v. The State of Maharashtra and Others (Criminal Writ Petition No. 1284 of 1986), decided by R. A. Jahagirdar & D. N. Mehta, JJ. on 25-3-1987) wherein it was observed :-

"From this it can be easily seen that the panchanama dated 13th January 1986, which showed that nothing incriminating was found in the house of the petitioner, was not placed before the detaining authority. In our opinion, this panchanama was a vital document which would have affected one way or the other the formation of the subjective satisfaction of the detaining authority as to the necessity of detaining the petitioner. Whether it would have affected in one way

only cannot, naturally, be decided by us, but the fact that the document showed that nothing incriminating was found in the house of the petitioner, despite the suspicions of the Customs Authorities to the contrary, was, in our opinion, a vital fact. Since it was not placed before the detaining authority, the order of detention must be said to have been vitiated on that account."

7. In the instant case, as we have pointed out earlier, the Sponsoring Authority had failed to place the Panchanama in which it was shown that nothing incriminating was discovered from the residence of the Detenu. We consider this Panchanama to be a vital document which would have materially influenced the Detaining Authority in arriving at his subjective satisfaction whether or not to issue the Order of Detention. The argument that a nil Panchanama is of no consequence, as stated by the Home Secretary, is unacceptable. Failure to place the material and vital document before the Detaining Authority, therefore, vitiated the Order of Detention.

8. In the result, the Rule is made absolute. The Detenu shall be released forthwith.