
(1989) 05 DEL CK 0049

In the Delhi High Court

Case No : Criminal Writ Petition No. 566 of 1988

Adesh Aggarwal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-05-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)

Citation : (1989) 2 Crimes 523 : (1989) 38 DLT 331

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Advocate : R.M. Bagai and U.L. Watwani, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) The challenge in this writ petition is to the order of detention passed on June 27, 1988 by Shri K.L. Verma, Joint Secretary to the Government of India, against Adesh Aggarwal, the detenu on whose behalf the petition has been filed. The order was made by the specially empowered officer u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the Cofeposa Act") with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange.

(2) The grounds of detention also date the June 27, 1988 reveal that on information received by the Enforcement Directorate, Department of Revenue, Ministry of Finance to the effect that Adesh Aggarwal was making payments in large scale in India on instruction from persons residing in Singapore, searches were conducted on May 12, 1988 at the residential as well as business premises of the detenu. In paragraph 2 of the grounds of detention, it is mentioned that those searches resulted in the seizure of Indian currency of Rs. 90,000.00 from the residential premises of the detenu and documents from his business premises. In the list of documents relied upon only one page of those documents finds mention i.e. at item No. 7. However, the panchnama, which has also been

relied upon, in respect of the search of the business premises shows that in all 17 documents in loose sheets were seized.

(3) The plea raised in the petition and which has been raised before me during arguments is that the other 16 documents were not placed before the detaining authority by the sponsoring authority at the time of passing of the impugned detention order. It is urged that as the relevant material has been withheld from the detaining authority, subjective satisfaction is to be held vitiated. The plea has been taken in grounds "B" and "C" of the petition.

(4) Respondents have filed the affidavit of Shri S.K. Chowdhry, Under Secretary in the Ministry of Finance, Department of Revenue, New Delhi. In reply to paragraphs "B" and C of the grounds the deponent while denying the allegations has, however, a versed :

"B.....it is stated that out of the several documents seized as a result of searches at the residential/business premises of the petitioner, the document which was considered relevant for detention was duly placed and considered by the detaining authority. It was not necessary for the detaining authority to have gone through all the documents seized as a result of searches conducted in this case. C. In reply to ground C it is stated that out of the several documents which were seized as a result of searches, copy of the document which was relied upon in the detention order was duly served on the petitioner on 1.7.88 i.e. within five days of his detention on 27.6.88."

It is thus clear from the return filed by the respondents that apart from one document out of the 17, on other document which was seized on May 12, 1988 vide panchnama (Annexure-P-5) was placed before the detaining authority. The only document placed has, however, been relied upon. The case of the respondents, as is apparent from the above quotation, was that it was not necessary for the sponsoring authority to place all the documents which were seized during the search before the detaining authority. The sponsoring authority considered only one document relevant for detention and, Therefore, placed the same before the detaining authority. The contention raised by the respondents, in my view, supports the plea of the petitioner. It has to be held in the present case that the detaining authority did not apply his mind to the relevant material and, Therefore, the order of the detention is vitiated. I am fortified in this view from the observations made by a Division Bench of this Court Govind Ram v. Union of India & others 1985(1) Crimes 777. In that case one of the points which had arisen was whether certain documents had been placed before the detaining authority, which documents found mention in panchnama. The Court observed :

"The list shows the "Panchnamas", already referred to earlier. It also refers to certain documents. It would have indeed been very strange if the detaining authority had merely seen the Panchnamas and not the documents mentioned therein to arrive at the subjective satisfaction as, to whether the person should be detained or not. Had that been so, we would have had no doubt in saying that

the detaining authority had not applied its mind to all the relevant material."

In another case reported in *Debabrate Das v. The Jt. Secretary to the Government of India and 4 others* 1986(2) Crimes 593, while dealing with the similar question this Court, observed that :

"Material documents which could have thrown light on the matter one way or the other were not placed before the detaining authority."

The case *Rajinder Anand. Union of India and others* 1989(1) DL150 in Criminal Writ No. 517/88, decided on January 9, 1989, cited by Mr. U.L. Watwani. learned counsel for the respondents has no application to the facts of the present case. In that case the plea was that the detenu had been deprived from making an effective representation as he had not been supported with copies of certain documents even when he requested for the same. It was found that the documents asked for were not even casually referred to in the grounds of detention.

(5) I hold that the material documents which were likely to effect the mind of the detaining authority either way were not placed before him by the sponsoring authority at the time when he passed the detention order. The subjective satisfaction is thus vitiated.

(6) I allow this petition and make the rule absolute. The petitioner, if not required to be detained under any other valid order passed by a Court or any other Competent Authority, be set at liberty forthwith.