

(1988) 07 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Petition No"s. 93 and 94 of 1988

Andrew Simon King

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-07-1988

Acts Referred:

Citation : (1988) 3 Crimes 33 : (1988) 35 DLT 435 : (1988) 2 RCR(Criminal) 521

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Ashok Arora and R.P. Lao, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) This judgment disposes of Cr. Writ Petition No. 93 of 1988 and Cr. Writ Petition No. 94 of 1988 as the main question arising for consideration in both these petitions is common.

(2) Andrew Simon King, who is the petitioner in C.. Writ No. 93 of 1988 and Lesniewski Piotr, who is the petitioner in Cr. Writ No. 94 of 1988 have been detained in Central Jail, Tihar, New Delhi by virtue of two separate orders dated the August 25. 1987 passed by the Administrator of the Union Territory "of Delhi u/s 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA). The said orders were passed with a view to preventing the petitioners from smuggling goods, viz., gold into India. The grounds of detention also dated the August 25, 1987 were served on the petitioners on August 31,1987, while they were in judicial custody.

(2) The facts leading to the passing of the detention order so far as they are relevant may be set out The Directorate of Revenue Intelligence had received report that one person, namely Ashok alias Ravi Jain was actively involved in receiving and distributing smuggled gold which was being brought to India through carriers coming by air at Delhi Airport. The Officers of the said

Directorate kept a watch on the movements of Ashok alias Ravi Jain as well as on the movements of certain suspect foreign nationals. On June 19, 1987 the officers were able to identify the two petitioners namely, Andrew Simon King, a British national and Lesniewski Piotr, a Swedish national who had succeeded in smuggling gold into India through the Delhi Airport and were to deliver the same to the said Ravi Jain. The intelligence report suggested that the petitioners who had arrived from Amsterdam by Klm flight in the morning hours of June 19, 1987, were to deliver the gold to Jain at Maurya Sheraton Hotel. The petitioners had checked into room No 1107 of that hotel. The officers of the Directorate kept a discreet watch to await arrival of the said Ravi Jain who was to pick up the gold which had been smuggled by the petitioners.

(3) At about 11.40 A.M. on June 19, 1987 two persons later identified as Ravi Jain and Daulat Singh arrived at the hotel and entered the room which was occupied by the petitioners herein. They were followed by the Dri officers accompanied by two independent witnesses. The petitioners were found present in the said room. In the presence of the independent witnesses the room was searched and as a result a blue rexine bag was recovered from a cupboard. The search of the said blue rexine bag resulted in the recovery of 22 pieces of gold slabs bearing foreign markings. On enquiry Andrew Simon King admitted that the bag belonged to him. The 22 pieces of gold slabs were seized in the reasonable belief that those were smuggled into India and were liable to confiscation under the Customs Act. The value of the seized gold was assessed to be Rs. 59.84.000.00 .

(4) In his statement recorded u/s 108 of the Customs Act 1962, Lesniewski Piotr stated that he had come to India on June 2, 1987 for "one week on a sight seeing tour. On his return to Amsterdam he met one Cassio who offered him (Piotr) quite a bit of money if he carried gold of foreign origin to India. Cassio's proposal was agreed to by that petitioner herein as he was in need of money. On June 17, 1987 12 bars of gold weighing kg each were handed over by Cassio to Lesniewski Piotr to be carried to India on the petitioner's person. Cassio had promised to give him 100 (JS for one Kg of gold for smuggling it into India. He had also given to him an air ticket for the journey. This petitioner further admitted that he was introduced to Andrew Simon King at Amsterdam Airport by Cassio and both travelled to Delhi by Klm flight No. 833 which reached New Delhi approximately at 6.30 A.M. on June 19, 1987. The petitioner further admitted that during the air journey he had strapped the 12 gold bars weighing I Kg each on his legs i.e., six pieces of gold bars on each leg with cello tape.

(5) It is contended by the respondents that the statement made by Lesniewski Piotr was dictated by him to the other petitioner i.e., Andrew Simon King. On each page of the statement there is a note on the left hand side by King which reads : "written by me as dictated by Mr. Piotr". On the right hand side there is an endorsement by the petitioner. It is in capital letters and reads : "DITCATED By Me And Understood By ME". It may be noticed that in the first instance the

petitioner had written "My" and the letter "Y" has been changed into "E" at both the places. At the end the petitioner has endorsed that "I state that I can understand English but I cannot read/write it fluently. My statement has been written by Mr. King, my friend, as dictated by me and I have understood the contents of the same and this may be treated as my true statement."

(6) The other petitioner, namely, Andrew Simon King in his statement u/s 108 of the Customs Act disclosed almost similar facts with one exception that he had carried and smuggled only 10 gold bars of 1 Kg each instead of 12 gold bars which the other petitioner was made to carry.

(7) The common plea which is being raised on behalf of the petitioners by Mr. Ashok Arora, their counsel, is that the admissions alleged to have been made by the petitioners in their respective statements of the June 19, 1987 were retracted by an application made by them to the Additional Chief Metropolitan Magistrate, New Delhi and that "retraction" was forwarded by the Superintendent, Central Jail to the learned Magistrate vide endorsement of the June 30, 1987. The submission is that the "retraction" not having been placed before the Detaining Authority, the impugned orders of detention dated August 25, 1987 and also the two declarations in respect of the petitioners made u/s 9(1) of the Cofeposa on September 24, 1987 by the Government of India are liable to be quashed.

(8) The ground is averred in ground No. ix -in Criminal Writ No. 94 of 1988 and ground No. vii in Cr. Writ No. 93 of 1988. It is stated that the petitioners had sent the "retraction" dated the June 30, 1987 through the Superintendent Central Jail to the Additional Chief Metropolitan Magistrate, New Delhi. It is claimed that the Sponsoring Authority did not place the "retraction" before the Detaining Authority". The common averment is that : "had these documents been placed before the Detaining Authority, it would have influenced the mind of the Detaining Authority one way or the other. The Sponsoring Authority by not placing these documents before the Detaining Authority has rendered the impugned orders illegal and void". The respondents in their counter-affidavit have taken up the plea that the "retraction" was not received by the Directorate of Revenue Intelligence, the Sponsoring Authority. It is stated in reply to the said grounds : "in reply to these paras, it is submitted that no retraction was received, as alleged by the Directorate of Revenue Intelligence.....".

(9) The petitioners have placed before us photostat copies of (1) letter dated 30th June, 1987 by the Superintendent, Central Jail, Tihar, New Delhi addressed to Shri Bharat Bhushan, Additional Chief Metropolitan Magistrate New Delhi forwarding the application/petition of the petitioners for further action; (2) photocopy of the hand written signed application by Andrew Simon King which has also been signed by the other petitioner, Lesniewski Piote wherein it has been alleged that their statements were obtained not only by coercion but after giving them physical beating. It was further stated therein, "Sir, I would like to state on behalf of Mr. Lesniewski that he cannot write English, his statement was dictated

to me by two officers, he speaks tiny fragment of English and was totally unaware of all the proceedings following his arrest. He has assured me and showed me his marks plus the fact I was given beating on two occasions, that he was also beaten, the two statements took all night to write. I was in a state I have never experienced before I was totally abused to produce them".

(10) The fact that the "retraction" statement is on the file of learned Additional Chief Metropolitan Magistrate, New Delhi cannot be disputed as the petitioners were supplied with the certified copy of the same by the court. Learned counsel for the petitioners has shown us the certified copy. The further fact that the above retraction statement was forwarded by the Superintendent, Central Jail, Tihar, New Delhi on 30th June 1987 cannot be disputed as the certified copy of the letter has been produced for our perusal and the photo-copy placed on the record.

(11) Mr. Lao, learned counsel for the State submits that the plea taken in the counter-affidavit is to be upheld as it was for the petitioners to have sent a copy of the "retraction" statement to the office of the Directorate of Revenue Intelligence. His further argument is that atleast the petitioners were expected to request the court of the Additional Chief Metropolitan Magistrate to send the copy of the "retraction" statement to the office of the Directorate of Revenue Intelligence. According to him, till that was done, there was no obligation on the Sponsoring Authority to place the document before the Detaining Authority. During arguments, Mr. Lao submitted that neither the counsel for the Directorate of Revenue Intelligence nor the department had any knowledge that the admissions made on June 19, 1987 have been retracted before the passing of the detention order against the petitioners herein.

(12) We may note that admittedly the Detaining Authority has supplied copies of a number of documents on the court file, of various dates w.e.f. 1st July, 1987 onwards to the detenus Along with the grounds of detention. Those documents are mentioned at Serial nos. 75 to 82 in the list of documents. Some of those documents are copies of the detailed orders passed by the Magistrate from to time time after the receipt of the "retraction" statement, Along with the endorsement dated the June 30, 1987. Those orders could only have been obtained by counsel for the Sponsoring Authority on inspection of the case file. The department concerned on inspection of the file knew or ought to have known that the petitioners have retracted their earlier statement dated the June 19, 1987. An argument about not knowing a particular fact by the respondents specially about the obligation of not collecting relevant material was urged before the Supreme Court in Union of India (UOI) and Others Vs. Manoharlal Narang, . The plea was to the effect :

"IT is well known that the different Ministries of the Government carry out different types of work in different ways and the detaining authority is not required under the law to take notice of work of the Ministries or Court proceedings. The Court proceedings and adjudication proceedings are initiated

and conducted by different authorities which are not required under the law to submit their reports or communicate their actions to the detaining authority. The detaining authority, in turn, is not required under the law to carry out the process of collection of any material about any Court proceeding or proceedings before other authorities for the purpose of issuance of a detention order. The contents of the paragraph refer the such proceedings which are not required to be collected by the detaining authority from such authorities or court."

(13) While negating the arguments, the Supreme Court has observed that it is the duty of the authority concerned to collect the relevant material and place it before the detaining authority. In that case. *inter alia*, the plea of the respondents was that the Government had no knowledge about an order passed by the Court. However, the law enunciated is applicable in the present case to the extent that in a case where the petitioner has retracted the statement made before a Customs Officer and that retraction has been duly forwarded by the Jail Superintendent to the Court concerned where the remand proceedings are going on and bail applications are being heard, it is not open to the sponsoring authority to take the plea that it was unaware of the retraction statement which was on the record of the court case. It was the responsibility of the counsel and the officers of the Directorate of Revenue Intelligence who were, it is clear from the record, inspecting the file from time to time for obtaining copies of the orders and other documents to take note of the retraction statement and to place the same before the detaining authority.

(14) We repeatedly asked Mr. Lao, learned counsel for the respondents to suggest as to what course other than the one adopted by the petitioners was open to them to retract the statement. He, however, could not suggest any.

(15) Mr. Lao submits that his plea is not that retraction statement by itself is not required to be placed before the detaining authority. His submission, which we have noticed above, is that as the Sponsoring Authority was unaware of the fact that the admissions had been retracted, Therefore, that fact could not be placed before the detaining authority. We have already negated that contention. We are of the view that it was the duty of the Directorate of Revenue Intelligence to collect and place all the relevant material including the "retraction" which is admittedly relevant to the question of detention before the detaining authority. On that score the impugned detention orders as well as the declarations made thereafter are liable to be quashed.

(16) On behalf of the petitioner in Criminal Writ No. 94/88, Lesniewski Piotr, who has been also referred to as Piotr Lesniewski, it has been urged that neither the grounds of detention nor the documents in support thereof were supplied to him in the language which he understood. It is a common ground that the order of detention, the grounds of detention, the list of documents and the documents relied upon by the respondents were supplied to him in English. Mr. Lao submits that on the petitioner's own showing he understands English and, Therefore, the plea that as he was unable to make effective representation his right under

Article 21(5) of the Constitution of India was violated, is to be rejected. The counsel's reference is to the endorsement made by this petitioner underneath the statement recorded u/s 108 of the Customs Act. The endorsement has already been noticed above. Therein the petitioner had stated that he understood English but made it clear that he could not read or write it fluently. Mr. Arora, learned counsel for the petitioner has again taken us through the endorsements made in capital words by the petitioner underneath each page of the statement. The counsel has also shown us the endorsement whereby the petitioner acknowledged having received copies of the documents. After carefully going through those endorsements it can be said that the petitioner was unable to read and fully understand contents of the grounds of detention. We may note that on 9th March, 1988 as well as on 17th April, 1988, the petitioner had been produced before from us jail. We had closely questioned this petitioner. This petitioner cannot converse in English. The endorsement relied upon by Mr. Lao only shows that he understands English. He had clearly stated therein that he could not read or write it. The plea that he did not know English has been made very clear in the retraction statement which was submitted by him through the Jail Superintendent on 30th June, 1987. The ground taken by the respondents that they were unaware of that statement has been rejected by us. They ought to have known about it. Their insistence to obtain an endorsement from him "DICTATED By Me And Understood By ME" itself shows their doubt that the petitioner did not know much of English. The petitioner in his representation dated the 30th Dec. 1987 (Copy Annexure "E") has made a categorical complaint about not knowing English. The respondents were aware that he is a Swedish citizen holding a Swedish passport.

(17) We are of the view that the documents ought to have been supplied to him in the language which he knew and understood. The result is that the writ petitions are allowed. The impugned detention orders as well as the declarations made thereafter u/s 9(1) of the Cofeposa are quashed and the Rule is made absolute. The petitioners if not required in any other case be released from custody.