

(1983) 07 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 378 of 1983

Anil

APPELLANT

Vs

Additional Chief Secretary, Government of M.P. and Others

RESPONDENT

Date of Decision : 15-07-1983

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11, 11(1), 3(1)
Constitution of India, 1950 — Article 226

Citation : (1987) 30 ELT 429

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vijaywargya, J.—By order No. F. 31-2/82/X-I dated 1-3-1983 the Government of Madhya Pradesh detained the detenu Sharad-chandra son of Dattatriya Bhandari u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (No. 52 of 1974) (for short : "the Act1).

2. By this petition under Article 226 of the Constitution the detenu's son has assailed the order of detention and prayed that the detenu may be set at liberty.

3. The detenu has been detained on the grounds that he was engaged in smuggling by way of keeping and dealing in smuggled goods and to prevent from from so to do it was necessary to detain him. The grounds of detention and the particulars thereof and copies of the documents relied upon for detaining the detenu were duly supplied to him.

4. It is not necessary to narrate in detail the facts leading to the detention of the detenu because we have come to the conclusion that this petition deserves to be allowed on the short ground that the representation on behalf of the detenu to the Central Government for revocation of the detention order was not forwarded to the Central Government and therefore the detenu was deprived of a valuable

right of having his representation considered by the Central Government.

5. On 23-4-1983 the detenu handed over to the Superintendent, District Jail, Indore two copies of the representations under a covering letter Anx. "8" with the request that the enclosed representations be submitted to respective authorities for consideration. Both the copies were addressed to the Additional Chief Secretary, Government of M.P. and the second copy bore an endorsement to the following effect:

"Copy submitted to the Government of India, Ministry of Finance for consideration and revocation of detention order."

The Superintendent, District Jail, Indore forwarded both the copies to the State Government. However, the State Government rejected the re- presentation made to it but did not forward the copy meant for the Government of India to that Government with the consequence that the representation submitted by the detenu to the Government of India was not considered by it. The petitioner contends that by the failure of the State Government to forward the copy of the representation to the Central Government the detenu was deprived of a valuable right available to him for getting the detention order revoked u/s 11 of the Act.

6. in the return, it is submitted that as both the copies were addressed to the Additional Chief Secretary and in the copy of the representation there was no such prayer that the other copy should be forwarded to the Government of India and that an endorsement on the second copy reproduced above was indicative of the fact that the copy has already been submitted to the Central Government, the said copy was not forwarded by the State Government to the Central Government and that the detenu cannot take advantage of the clever device adopted by him. The learned Deputy Governor strenuously contended that in the circumstances of the case in not forwarding the copy to the Central Government no illegality was committed by the State Government and the detenu is not entitled to any relief in this petition.

7. The contention of the Learned Deputy Government Advocate is not well founded. Section 11(1) of the Act confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. Thus, the representation made on behalf of the detenu to the Central Government ought to have been forwarded by the State Government to that Government.

8. There is no merit in the submission of the learned Deputy Government Advocate that the representation was addressed only to the Additional Chief Secretary because on the second copy there was an endorsement to the effect that copy be submitted to the Central Government for revocation of the detention order. Both these copies were handed over to the Superintendent, District Jail, Indore with a request that they should be forwarded to the authorities concerned. The Superintendent of the Jail forwarded both the copies to the State Government and it was for the State Government to have

transmitted the copy meant for the Central Government to that Government. It seems that someone tripped somewhere and the representation meant for the Central Government was apparently never forwarded to it, with the inevitable result that the detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental rights to personal liberty.

9. In *Rattan Singh and Anr. v. State of Punjab and Ors.* (AIR 1982 SC 1) on similar facts the Supreme Court quashed the order of detention. In that case the Supreme Court has held as follows:

"But the unfortunate lapse on the part of the Authorities is that they overlooked totally the representation made by the detenu to the Central Government. The representations to the State Government and the Central Government were made by the detenu simultaneously through the Jail Superintendent. The Superintendent should either have forwarded the representation separately to the Governments concerned or else he should have forwarded them to the State Government with a request for the onward transmission of the either representation to the Central Government. Someone tripped somewhere and the representation addressed to the Central Government was apparently never forwarded to it, with the inevitable result that the detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. May be that the detenu is a smuggler whose tribe (and how their numbers increase) deserves no sympathy since its activities have paralysed the Indian Economy. But the laws of preventive detention afford only a modicum of safe-guard to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus. Section 11(1) of COFEPOSA confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply the right in a detenu to make a representation to the Central Government against the order of detention. The failure in this case on the part of State Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. The continued detention of the detenu must therefore be held illegal and the detenu set free."

10. The facts of the present case are similar. Failure in this case on the part of the State Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by the Government u/s 11 of the Act. The continued detention of the detenu must therefore be held illegal and the detenu set free.

11. As a result of the discussion aforesaid this petition is allowed. The continued detention of the detenu Sharadchandra son of Dattatriya Bhandari is illegal and he should be set at liberty forthwith. There shall be no order as to costs of this petition.