
(1997) 08 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1779 of 1996

Avinash Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

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

Citation : (1998) CriLJ 356 : (1997) 4 RCR(Criminal) 359

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : Vikram Chaudhary, for the Appellant; D.D. Sharma, for No. 1 and
M.C. Berry, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

H.S. Brar, J.—In this Criminal Writ Petition filed under Article 226 of the Constitution of India, a prayer has been made for quashing the detention order dated 3-7-1996 as well as the grounds of detention dated 3-7-1996 issued to Hardip Singh u/s 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short hereinafter called "COFEPOSA Act") by the Principal Secretary, Government of Maharashtra, Home Department (Preventive Detention) and Detaining Authority.

2. The factual position as disclosed in the petition is that the detenu Hardip Singh was taken into custody at the Sahar International Airport, Mumbai on 13-9-1995. The detenu is a constable in the police (under suspension) and is apartment resident of Sunis, Police Station Batala, District Gurdaspur (Punjab). The detenu approached the learned Sessions Judge at Bombay for bail which was granted to him by the learned Sessions Judge on 16-9-1995. However, he was detained by an order of detention dated 3-7-1996 issued u/s 3(1) of the COFEPOSA Act by respondent No. 3. The order was issued with a view to prevent the detenu from

smuggling goods. The grounds of detention dated 3-7-1996 were served upon the detenu on 22-8-1996.

3. The detention order and the grounds of detention have been assailed on various grounds but they are not necessary to mention at this stage as in the written reply filed to the petition the Union of India and the State of Maharashtra have raised a preliminary objection that High Court of Punjab and Haryana at Chandigarh has no jurisdiction to entertain and hear this petition, as the order of detention has been issued by the Officer specially empowered by the State of Maharashtra at Mumbai which is outside the territorial jurisdiction of the Punjab and Haryana High Court at Chandigarh. Though the detenu is a permanent resident of Punjab, the order of detention was executed by the Batala police on the request of the State of Maharashtra. The prejudicial activities in which the detenu is involved took place in Mumbai, and he has been detained in respect of prejudicial activities in the State of Maharashtra. The detenu was also arrested at Mumbai and was produced before the Chief Metropolitan Magistrate, Mumbai and the application for bail was also moved by the detenu before the Court of Sessions for Greater Mumbai and further application for reduction of bail amount was moved by the detenu before the Bombay High Court at Mumbai and order was also obtained from the High Court, Mumbai for the same. The entire cause of action, according to the respondents, therefore, arose within the State of Maharashtra and, thus, Punjab and Haryana High Court at Chandigarh has got no jurisdiction to entertain this Crl. Writ Petition.

4. So this preliminary objection about the jurisdiction of the High Court to entertain this petition is going to be decided first.

5. I have heard the learned counsel for the parties and have gone through the record very carefully.

6. Learned counsel for the petitioner has submitted that the Punjab and Haryana High Court at Chandigarh has got jurisdiction to entertain and decide this petition as in consequence to the detention order, the detenu was arrested by the Punjab Police though at the direction of the State of Maharashtra and, the part of cause of action arose in Punjab, and thus, this petition filed under Article 226 of the Constitution of India could be filed in Punjab and Haryana High Court at Chandigarh. He has cited the following authorities to substantiate his argument.

7. The first one is the single Bench Judgment of this Court (H. K. Sandhu, J.) in *Tirlok Nath Mittal v. Union of India* 1994 (1) All CLR 546. In that case though the detention order was not passed in Punjab and the prejudicial activities of the detenu also did not relate to the State of Punjab but the respondent-State in that case had been sending summons to the petitioner at his Ludhiana address. On that basis, the learned Judge held that when the respondents have been sending summons to the petitioner at his Ludhiana address, it cannot be said that no cause of action arose to the petitioner within the jurisdiction of this Court and the contention of the learned counsel for the respondents that Punjab and Haryana

High Court at Chandigarh had no jurisdiction was held without any merit.

8. Another single Bench Judgment of this Court (G.S. Chahal, J.) cited in this connection is D.N. Anand v. Union of India, Ministry of Finance 1993 (2) All ICLR 220. This judgment is also to the same effect as the first one cited above.

9. Next judgment cited by the learned counsel for the petitioner is Harish Taneja v. Union of India (1984) 2 All ICLR 130.

10. Last judgment cited by the learned counsel for the petitioner is Ramchand Santumal Bhatia v. Tarun Roy 1988 Cri LJ 641. In that case, it was held that part of cause of action certainly arose when the detenu was taken into custody to serve out the period of detention. The detention order was served under the jurisdiction of the Bombay High Court and, thus, it was held by a Division Bench of the Bombay High Court that the petition under Article 226 of the Constitution of India for quashing the detention order was competent in the Bombay High Court.

11. On the other hand, learned counsel for the respondents, have cited the following judgments. The first one is Vijender Kumar Jain v. Union of India 1994 (1) RCR 194. In that case the order of detention was passed in Delhi. The accused was arrested in Delhi. A writ petition against the detention order was filed before the Punjab and Haryana High Court, which was held to be not maintainable as no cause of action or part of cause of action did arise at Jalandhar; even if the detenu had started residing at Jalandhar.

12. Another judgment cited by the learned counsel for the respondents is Kimiti Lal Sethi v. Union of India 1994 (1) RCR 519. In that case detention order was passed in Delhi. The petitioner was arrested in Delhi and foreign currency was recovered from him in Delhi. The contention of the petitioner in that case for maintainability of the writ petition in Punjab and Haryana High Court at Chandigarh, as the detenu was the resident of Punjab, was repelled and it was held that mere residence of the petitioner in Punjab did not entitle him to invoke the jurisdiction of the Punjab and Haryana High Court at Chandigarh and the petition was, thus, dismissed as not maintainable.

13. Another judgment cited by the learned counsel for the respondent is In Re: Kalyan Kumar Thavarchand Shah 1989 (94) CWN 367. In that case apprehending detention under COFEPOSA Act, the petitioner moved a writ petition before the Calcutta High Court. On a preliminary objection raised about the jurisdiction of entertainment of the writ petition in that Court, it was held as under:

Held, where the search was initially made at Bombay, Panchnama was prepared there, the petitioner was called and appeared before the Enforcement Officer at the said place, arrested, produced and released on bail there from of COFEPOSA, the petitioner can only move a writ petition before the Bombay or the Delhi High Court. No relief against the actions culminating in the order of detention as claimed by the petitioner can be granted nor does any cause of action arise in

the State of West Bengal or in the Andaman and Nicobar Island.

14. Another judgment cited by the learned counsel for the respondents is Ex. Major Gurnam Singh v. Union of India 1994 (4) SLR 76, In that case, after his dismissal from service, the petitioner had settled at Patiala and he filed a petition before the Punjab and Haryana High Court at Chandigarh for challenging his order of dismissal as also the General Court, Martial proceedings. Learned single Judge of this Court held that mere service of notice at Patiala where the petitioner chose to settle in life after his dismissal from service did not give him any cause of action to challenge his order of dismissal as also the General Court-Martial proceedings in the Punjab and Haryana High Court at Chandigarh. The petition was, thus, dismissed on the point that Punjab and Haryana High Court at Chandigarh had no jurisdiction to entertain that petition.

15. Another judgment cited by the learned counsel for the respondents is P. K. Mondal v. Union of India 1990 Lab IC 185. In that case the petitioner had challenged his dismissal order before the Calcutta High Court. The Calcutta High Court had dismissed his petition as that High Court had no jurisdiction to entertain the petition, as according to the learned Judge of that Court, no cause of action arose to the petitioner under the territorial jurisdiction of the Calcutta High Court though charge-sheet was received by the petitioner in Durgapur within the jurisdiction of the Calcutta High Court.

16. Lastly, a judgment of the Hon'ble Supreme Court cited by the learned counsel for the respondents is State of Rajasthan and Others Vs. Swaika Properties and Another, . In that case, land was acquired which was situated in Rajasthan. Notice under Rajasthan Act was served to the owner in West Bengal. The Hon'ble Supreme Court held that mere service of notice did not give rise to cause of action in West Bengal and the Calcutta High Court had no jurisdiction to entertain the petition challenging acquisition.

17. The Bombay High Court in Ramchand Santumal Bhatia's case (supra) has tried to distinguish the cases pertaining to COFEPOSA Act and has held as under:

Mr. Agarwal says that the place of service of the detention order is not relevant, for the order takes effect as soon as it is passed. Counsel relies upon State of Rajasthan and Others Vs. Swaika Properties and Another, , in support of the above submission. In that case a notice prescribed by Section 52(2) of the Rajasthan Urban Improvement Act, 1959, relating to the noticee's property in Rajasthan was served upon the noticee at its registered office at Calcutta. The noticee moved the Calcutta High Court under Article 226 and obtained an order staying further proceedings pursuant to the notice served upon them. The State of Rajasthan contended that there was total lack of inherent jurisdiction in the Calcutta High Court to entertain the petition. This contention was sustained by the Supreme Court. But in this case the offending act was the issue of notification u/s 52(1) of the aforementioned Act where under the property vested in the Rajasthan Government free from all encumbrances. That notification,

rather than the service of notice u/s 52(2), constituted the cause of action. Is it correct to say that in detention matters the place of service of the detention order is totally irrelevant? The analogy of the service of a notice in the above precedent does not appear to be apposite to service of a detention order, when the latter is challenged in a habeas corpus petition. In that case, the actionable cause had arisen antecedent to the service of the notice. In the latter case, the making of the order creates no cause that can be questioned in a writ petition. The cause to do so arises when the detenu is taken into custody to serve out the period of detention. This position is fortified when the detenu is served with the order and grounds of detention at the very time he or she is taken into custody and moved en route to the place where the detention is to be served. Therefore, the place where the detention order and grounds are served, would be a place where part of the cause of action has arisen.

18. In *Manjit Singh Dhingra v. Union of India* ILR 1987 P & H 61, Hon''ble Mr. Justice M.M. Punchhi, J. as my Lord then was, had while determining the question of jurisdiction in *Sardar Ujagar Singh Sekhwan v. The State of Punjab* Crl. W.P. No. 426 of 1986, expressed the following view :

...Furthermore, this Court would be slow to assume jurisdiction over a matter on which a sister Court can, with more efficacy, promptitude and exactitude, hold an inquiry and grant relief. In making this observation, this Court has in mind the availability of the Rajasthan High Court at Jodhpur which can grant prompt and adequate relief to the petitioners.

19. It was further observed by the Hon''ble Judge as under :

...Let us assume that this Court has the jurisdiction (not by any means now holding so) but it cannot be denied that the Rajasthan High Court too has jurisdiction. The petitioners thus must be relegated to seek their remedies in that Court. Though, the power under Article 226 of the Constitution is wide and extraordinary, it yet remains discretionary with this Court to exercise it or not in a given set of circumstances.

Finally, the Hon''ble Judge held as under :

I am still of the same view. It is the Bombay High Court which can grant adequate relief to the petitioner and the petitioner is relegated to seek his remedy there. That Court has the necessary equipment to grant prompt and adequate relief to the petitioner. That Court has all the means to expand and enquire into the subject and have its orders obeyed in a better way.

For the foregoing reasons, this petition is dismissed in limine.

20. In the case in hand, the order of detention was passed in the State of Maharashtra and his prejudicial activities also concerned with the Maharashtra State. The detenu was detained by an order of detention dated 3-7-96 issued u/s 3(1) of the COFEPOSA Act by respondent No. 3 i.e. the State of Maharashtra. The grounds of detention and the detention order were also served to the detenu

at Central Prison, Mumbai and not in Punjab. The detenu made his representation against the detention order to the Advisory Board at Mumbai and his representation was also heard and decided by the Advisory Board in Maharashtra.

21. Thus, the facts of the case mentioned in Ramchand Santumal Bhatia's case (supra) are not applicable to the facts of this case. In this case the detention orders were served to the petitioner in the State of Maharashtra.

22. In Tirlok Nath Mittal's case (supra) was not discussed that if in pursuance of a detention order passed in a different States and the person concerned in pursuance of that detention order is arrested in some other State and is detained in that State which had issued the detention order in that event a case of action even partly arise in the jurisdiction of the latter State where the detenu was only arrested. This question was neither posed nor discussed in that case.

23. The other authority cited by the learned counsel for the petitioner in D.N. Anand's case (supra) is also to the same effect. Thus, they are distinguishable from the facts of this case.

24. Harish Taneja v. Union of India 1984 (2) All ICLR 130, is also not applicable to the facts of this case. In that case representation was made by the detenu to the Central Government which was ultimately rejected by the Central Government at Delhi. It was only in that situation it was held that the Delhi High Court had got jurisdiction to entertain the writ petition.

25. After going through all the judgments cited by both the parties, I find that by mere arrest of the detenu in Punjab, when the detention order has been passed at Mumbai, the detention order and grounds of detention were also served in the State of Maharashtra and his prejudicial activities also concerned with that State, no cause of action even in part arose within the jurisdiction of this Court. Consequently, I hold that this petition is not maintainable in this High Court as this High Court has got no jurisdiction to entertain the same.

26. Resultantly, this petition is dismissed on the point of jurisdiction only.