
(1991) 03 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 4066 of 1989

Balbir Singh alias Bhappa

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Citation : (1991) 1 CurLJ 668 : (1991) 3 RCR(Criminal) 43

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Sh. N. S. Bhoparai, Seema, Advocates for appearing Parties

Judgement

J.S. Sekhon, J. (Oral)

1. The detenu through this petition filed under Articles 226, 227 of the Constitution of India, seeks the quashment of detention order Annexure P I dated 24th May, 1989, passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. (hereinafter to be referred as COFEPOSA), inter alia on the ground that he has been denied a right to file effective representation due, due to nonservice of declaration under Section 9 of the COFEPOSA Act.

2. The brief resume of the facts, figuring in grounds of detention annexure P2 relevant for the disposal of this writ petition are that on 22nd January, 1989, on the basis of secret information regarding the indulgence of the petitioner in smuggling of gold from Pakistan, the petitioner was apprehended by the officers of the Border Security Force from his tubewell. On interrogation, the petitioner admitted having dumped smuggled gold wrapped in cloth in his field 93 biscuits having foreign markings and got it recovered. This gold was seized by the Custom Authorities under the provisions of the Gold (Control) Act, 1968, read with Section 11 of the Customs Act, 1962. etc. The petitioner was then interrogated by the Custom Authorities. In his statements tendered on 23rd, 25th and 27th January, 1989, the petitioner admitted the recovery of the above referred gold biscuits from his possession besides stating that the petitioner had smuggled the gold from Pakistan and dumped the same in his field in the month

of November, 1988, as Angrej Singh alias Pappu, failed to collect this gold after he brought it from Pakistan in pursuance of the previous arrangement. The detenu escaped from the dragnet of Border Security Force which had started searching the area. Thereafter the petitioner contacted the aforesaid Angrej Singh and asked him to help in the recovery of dumped gold biscuits but aforesaid Angrej Singh ultimately refused to accompany the petitioner. The petitioner also admitted having contacted Balbir Singh alias Bira of his village and accordingly, on the night of 30th December, 1988, brought the gold biscuits to their village and dumped the same in the sugarcane fields. The aforesaid Balbir Singh when interrogated by the Custom Authorities admitted these facts which resulted in passing the above referred detention order. It was served on 19th July, 1989. The grounds of detention in Annexure P2 were also served upon the detenu.

3. I have heard the learned counsel for the parties.

4. Apart from the other objections in para 4 (v), the petitioner has averred that he has been deprived of his right to make effective representation against the declaration made by the concerned authority under Section 9 of the Act, Para 4(v) read as under :

"That the petitioner was not supplied with any declaration under section 9 of the Confeposa Act. So, the petitioner was denied his right to make the effective representation. The State Government should be put on strict proof that whether any declaration was made and if made it was served upon the petitioner. As the declaration is not supplied to the petitioner, so the petitioner was denied his right to make the effective representation."

The detaining authority in the return had replied to the corresponding para as under :

"The contents of this subpara are wrong and baseless. A copy of the declaration No. 171/89 dated 2871989 made by the Govt. of India and a, copy of its Punjabi version was sent to the Superintendent Central, Jail Bathinda, vide letter dated 2581989 with the direction to serve the same on the petitioner."

5. A bare glance through the above referred assertion of the petitioner and the reply thereto leaves no doubt that although in the return filed by Shri S. K. Bhalla. Under Secretary to Government Punjab, Department of Home Affairs and Justice, Chandigarh, it is averred that the declaration No. 171 of 1989 dated 2871989, issued by the Government of India, alongwith a copy of its Punjabi version was sent to the Superintendent Jail, Bathinda, vide letter dated 2581989, with the direction to serve the same upon the petitioner but there is no specific averment whether such declaration was actually served upon the detenu by the concerned Superintendent, Central Jail. The respondents had not even cared to file any affidavit of the concerned Superintendent Jail, in support of the declaration under Section 9 of the Act, having been served upon the detenu. Thus, it has to be presumed that the declaration was not served upon the

petitioner.

6. The law is well settled on the point that nonservice of declaration under section 9 of the Act, on a detenu apprising him that he has right to file representation clearly, violates the mandate enshrined in Article 22(5) of the Constitution. The observations of the apex Court in Jagprit Singh. Union of India and others, 1990(3) Recent Criminal Reports 331 (SC) : 1990(2) C.C. Cases 66 (SC), can be referred with advantage in this regard. Thus, under these circumstances, there is no escape but to conclude that further detention of the petitioner beyond the period of one year stands vitiated due to nonservice of the declaration under section 9 of the Act. The petitioner is, therefore, directed to be released forthwith, if not required in any other case, by accepting this petition.