

(1982) 08 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 391 of 1982

Basanti Lal

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 09-08-1982

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 11B

Citation : (1983) 12 ELT 678

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : G.M. Chafekar, for the Appellant; Kulshrestha, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Shukla, J.—This is a petition under Article 226 of the Constitution of India for issuance of a writ or direction in the nature of Habeas Corpus to obtain the release of detenu Sajjanlal who is the brother-in-law of the petitioner.

2. In exercise of the powers conferred u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA hereafter) and order (Annexure-A) was passed by respondent No. 1 on 15th June 1982 for detention of Sajjanlal. This order along with grounds of detention was served on the detenu on 19th June 1982. The grounds were as under :-

(1) that you are engaged in smuggling by way of keeping and dealing in smuggled goods ; and

(2) that to prevent you from doing so it is necessary to detain you.

A Schedule was annexed with the order setting out the particulars on the basis of which the order was passed. Relevant particulars are as follows : -

(i) The detenu was running a shop named College Watch and Radio Service at Mandsaur and had been a dealer of "notified goods" as notified by the Government of India u/s 11B of the Customs Act, 1962. On 29-3-1973 the Customs and Central Excise Officers checked his shop and noted contravention of the provisions of the Customs Act. Unaccounted goods were seized and by order of the Collector Customs and Central Excise Nagpur they were confiscated. A penalty was also imposed under the Customs Act.

(ii) On 22-6-1973 again the shop was checked and similar contravention of the Customs Act was noted and personal penalty was imposed.

(iii) On 12-4-1982 detenu's shop was searched and contraband "notified goods" i.e., wrist watches, cassette tapes and radio cassette recorders of approximate value of Rs. 12045/- were recovered and : seized from the shop. The same day residential premises of the detenu were also searched and foreign goods worth about 13065/-were recovered and seized therefrom ;

(iv) the detenu was unable to produce any transport vouchers or other documents for acquisition and purchase of the seized "notified" and other foreign goods.

3. Learned counsel for the petitioner Shri Chafekar mainly canvassed two points to challenge the validity of the order of detention. One was that the acts of the detenu committed in 1973, being stale, could not be pressed into service for arriving at the subjective satisfaction that an order under COFEPOSA was necessary to prevent him from such activities. Second ground was that as there was only one infraction of the provisions of the Customs Act, the detenu could be prosecuted therefore and preventive action under COFEPOSA was unnecessary and unwarranted.

4. Learned Deputy Government Advocate Shri Kulshreshtra in reply contended that the past activities of the detenu were rightly taken into consideration for forming the subjective satisfaction required u/s 3(1) of the Act entitling the concerned authority to order detention. Shri Kulshreshtra submitted that till the year 1981 the detenu was a dealer in goods declared as "notified goods" under the Customs Act and was very well aware of the provisions of the said Act. In 1981 he intimated the Central Excise Department that he did not want to continue as a dealer in notified goods. Yet when the search party raided and searched his shop and the residential premises, "notified" and other foreign goods worth Rs. 25,000/-were recovered from his possession. According to Shri Kulshreshtra the earlier acts of infraction of the Customs Act could, therefore, be taken into consideration for forming the necessary subjective satisfaction u/s 3(1) of the Act warranting detention of the detenu to prevent him from dealing in smuggled goods in future. He further submitted that even though for the alleged infraction, the detenu could be and was being prosecuted, there was no bar to preventive action under COFEPOSA.

5. The detenu admittedly was dealing in foreign watches and other foreign goods

before 1981. He was twice penalised for contravening the provisions of the Customs Act in the year 1973. Though he had informed the Central Excise authorities in 1981 that thereafter he did not propose to deal in "notified" and other foreign goods, articles worth about Rs. 25,000/- were seized from his possession at the time of search of his shop and residence. It was not a case of a person who had been found once only in possession of unaccounted foreign goods. It was the case of a dealer who was hitherto dealing in such goods and was aware of the provisions of the Customs Act. Staleness of a particular act is a relative phenomenon. In the case of a dealer in foreign goods infraction of the Customs Act in past can very well be taken into consideration in forming the subjective satisfaction that the huge quantity found in his possession of such foreign and notified goods subsequently without any satisfactory explanation about their acquisition was for sale. Such a satisfaction, on facts, permitted the concerned authority to invoke the power to detention u/s 3(1) of the COFEPOSA.

6. As regards the second argument that prosecution for this solitary act was the only appropriate action to be taken by the concerned authorities and preventive detention was not necessary, we may refer to the following observations in

Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, :-

"The rule laid down is that a prosecution or the absence of it is not an absolute bar to an order of preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences."

In the instant case the detention order reads as under :-

"The above facts show that you are even at present engaged in smuggling by way of acquiring, keeping and dealing in smuggled goods and with a view to prevent you from further engaging yourself in keeping smuggled goods and dealing in smuggled goods, it is necessary to detain you."

The return also in paragraph 4 makes it clear that the detaining authority had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case and the said authority was satisfied that such prosecution was not sufficient for preventing the detenu from indulging in similar activities in future. This statement of the detaining authority satisfied the requirement of the rule laid down by the Supreme Court in Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others, .

7. In Hemlata's case (supra) and Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, , a single act of smuggling attributed to a person was held to be sufficient to warrant an inference that he will repeat his activities in future also. Since the detenu in this case was a dealer in watches and other electrical goods and was unable to give any satisfactory explanation for acquisition and

possession of foreign goods worth Rs. 25,000/- in his shop and residence, the detaining authority was justified in forming an opinion that detention of the detenu was necessary to prevent him from dealing in smuggled goods. This satisfaction was reinforced by the past history of the detenu and, therefore, whether he was prosecuted or not for violation of the provisions of the Customs Act was not a relevant circumstance in examining the validity or legality of the impugned order directing his preventive detention u/s 3(1) of the Act.

8. The petition is, therefore, "dismissed. There will be no order as to costs of this petition.