

(1975) 06 DEL CK 0001

In the Delhi High Court

Case No : Criminal Writ Appeal No's. 13, 14 and 19 of 1975

Bhagwati Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-06-1975

Acts Referred:

Citation : (1975) ILR Delhi 791

Hon'ble Judges : Prakash Narain, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : F. Anthony, Harjinder Singh, S. Pappu and Harish Chandra, for the Appellant;

Judgement

M.R.A. Ansari, J.

(1) Shri Srikrishan Sharma, Shri Duli Chand and Shri Shyam Bihari Lal, who will be hereinafter referred to as the detainees, are partners of the firm, M/s Delhi Rajkot Enamel Works. They were detained under separate orders of the District Magistrate, Delhi, dated 22-10-1974 passed u/s 3(il) (c) of the Maintenance of Internal Security Act, 1971 (hereinafter called as the MISA) and the ground of detention on the basis of which they had been detained were served upon them as required u/s 8 (1) of the MISA. The detainees filed petitions in this Court under Article 226 of the Constitution challenging the validity of the detention orders passed against them. These petitions were registered as Cr.W. Nos. 59, 60 and 61 of 1974. By a common judgment in these cases dated December 11, 1974, a Division Bench of this Court, of which one of us, namely, Ansari, J; was member, quashed the orders of detention passed against the detainees and directed their release. In pursuance of the said judgment of this Court, the detainees were released on the same date. Subsequently, the Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act) which received the assent of the President of India on 13-12-1974. The Act came in to force from 19-12-1974. By virtue of section 14 of the Act, the amendments which had been introduced in

the Misa by Ordinance No. 11 of 1974 were repealed. Fresh orders were passed by the Central Government on 24-2-1975 u/s 3(1) of the Act directing the detention of the detenues in order to prevent them from abetting the smuggling out of India of goods, namely, silver and by virtue of the said orders, the detenues were again arrested and detained. Thereafter, orders mentioning the grounds of detention were also served upon them. The present petitions have been filed on behalf of the detenues challenging the validity of the detention orders passed against the detenues.

(2) In the write petitions, the detention orders passed against the detenues have been challenged on various grounds. But Mr. Frank Anthony, learned counsel for the petitioners, has challenged the validity of the detention orders on the following grounds, namely :-

(I) that in view of the judgment of this Court dated December 11, 1974, the detention of the detenues on the same grounds on the basis of which the earlier orders of detention under the Misa had been passed against the detenues, was illegal, (ii) that the grounds on the basis of which the present impugned orders of detention have been passed were vague, irrelevant or non-existent or showed lack of application of mind on the part of the detaining authority, and (iii) that the present orders of detention were mala fide inasmuch as they are passed at the instance of certain officers of the Customs Department who bore a grudge against the detenues and were determined to harass them in spite of the direction by this Court to release them.

(3) Before proceeding to consider the first contention of the learned counsel, it is necessary to state a few facts. The earlier orders of detention passed against the detenues under the Misa were based upon the following three main grounds :-

"(I) You have been indulging in the supply and disposal of contraband goods in your capacity as partner in the firm known as M/s Delhi Rajkot Enamel Works. Your firm has been in the adverse notice of the Custom Department for the past 16 years. On same occasions, it has been possible for the Customs Department to take action against this firm, though on some, action could not be taken for want of sufficient evidence. (ii) You or your firm have been involved in the following specific cases. (iii) Intelligence reports indicate that in your activities related to smuggling you maintain links with other smugglers. Investigations conducted at Ahmedabad have revealed that Daya Bhai Soma Bhai Patel of Anand to whom you have been dispatching silver from Delhi, in turn has links with smugglers on the Western Coast of the country like Lallu Jogi, Ikbai Bachu and Syed Ahmed Bewa Murtuza Miyan of Bombay and Vinoobhai Prabhubhai Patel of Nadiad etc. A list of your known associates is enclosed at annexure "A"."

Main ground No. (ii) referred to three specific cases and one of the specific cases viz, ground (ii) (a) was stated in the following terms:-

"ON 19-2-1958 Indian currency amounting to Rs. 49,000.00 was seized in

Sriganganagar from M/s Maturam, Babu Lal, Sagar Mal and Naroung on the reasonable belief that it was being smuggled to Pakistan. During the course of investigations it was learnt that the said currency had been the sale proceeds of the smuggled gold which had been given to one Harbans Lal of M/s Ishar Das Sant Lal of 113-D, Kamla Nagar, Delhi. During investigations revealed that M/s Ishar Das Sant Lal had sold a huge quantity of gold to your firm M/s. Delhi Rajkot Enamel Works on the day receipt of smuggled gold from M/s. Maturam and others. Thereupon your business premises were searched and your account books were taken into custody. Investigations revealed that your firm M/s Delhi Rajkot Enamel Works had sent gold "passas" purchased by them from M/s Ishar Das Sant Lal to Rajkot. Accordingly a message was sent to Rajkot Customs wherein they were requested to detain these gold "passas". As a result 224 gold "passas" were seized. On the basis of evidence on record a show cause Memo was issued to your firm and a penalty of Rs. 1,000.00 was imposed on it."

This Court held that ground No (ii) (a) reproduced above was on irrelevant ground; it was non-existent so far as detenu Srikrishan Sharma was concerned and it was vitiated by mala fides. The second specific case under ground No. (ii) viz, ground No. (ii) (b) was in the following terms :-

"ON3-11-1968 a consignment of 18 bars of silver was dispatched by M/s Delhi Rajkot Enamel Works to M/s Rai Chand & Co of Rajkot. This consignment reached Rajkot on 5-11-1968 and was thereafter stored in a vacant bungalow situated at 22, Jaganath, Plot Rajkot. This consignment of 6 bars of silver which were dispatched by M/s. Manhar Lal & Co., Delhi to M/s. Rai Chand & Co. of Rajkot. These bars were also deposited in the same bungalow at Rajkot. All these 24 bars of silver were seized by police officials of Rajkot on 6-11-1968 under the order of Collector, Central Exise, Baroda. The silver slabs were seized by the Preventive and Intelligence staff of Rajkot on 25-3-1969 for action under the Customs Law. The silver seized was valued at Rs- 3,62,000.00 Investigations in the matter revealed that the silver had been brought and stored at Rajkot for the purpose of unauthorised export out of India. Evidence collected also revealed that an attempt had been made to remove part of the goods in a rickshaw towards Bedi Naka, near the coast of India for the purpose of being unauthorisedly exported out of India. On the basis of evidence on record a show cause memo was issued to your firm M/s. Delhi Rajkot Enamel Works. However, for want of sufficient evidence the silver bars were later released."

With regard to this ground, this Court, taking note of the order of the Collector, Central Excise, dated 18-5-1968 exonerating the partners of M/s Delhi Rajkot Enamel Works of the charges leveled against them, held that ground No. (ii) (b) reproduced above was irrelevant for the purpose of passing the detention order against the detenues.

(4) The present impugned orders of detention passed against the detenues do not support to be based upon grounds No. (ii) (a) and (ii) (b) mentioned above which were held by this court to be bad and these grounds do not find a place in

the grounds of detention on the basis of which the present impugned orders of detention have been passed against the detenues. The present orders of detention are based only upon three grounds and they will be reproduced at the appropriate stage. For the present, it is sufficient to notice that in substance these three grounds were the same as some of grounds on the basis of which the earlier orders of detention had been passed against the detenues but which were, however, not commented upon by this Court in its judgment dated December 11, 1974. In other words, there was no finding of this Court either holding that these grounds suffered from any infirmity or did not suffer from any infirmity. The question for consideration is whether the judgment of this Court dated December 11, 1974 will operate as a bar against the passing of the detention orders under the Act against the detenues on the basis of the same grounds on which the earlier orders of detention had been passed but with regard to which there was no finding of the Court.

(5) The learned counsel for the petitioners invokes the general principles of res judicata, estoppel outrefois acquit as well as the provisions of section 6(c) of the General Clauses Act and the principles underlying section 13(2) of the Preventive Detention Act, section 14(2) of the Misa and section 11(2) of the Act in support of his contention that the impugned orders of detention were illegal in view of the quashing of the earlier orders of detention by the judgment of this Court dated December 11, 1974. Before considering the contentions of the learned counsel, it has to be recalled that the earlier order of detention was quashed by this Court by its judgment dated December 11, 1974 on the ground that two of the grounds of detention on the basis of which the earlier orders of detention had been passed, namely, ground Nos. (ii) (a) and (ii) (b), were irrelevant for the purpose of passing the detention orders against the detenues. These grounds which were held to be irrelevant do not find a place in the present grounds of detention and the present order of detention is based upon some of the grounds contained in the earlier grounds of detention which were not considered by this Court and in respect of which no finding had been given by this Court either that they were non-existent or irrelevant. This Court had also observed in its judgment dated December 11, 1974 as follows :-

"IT is not necessary to consider the other grounds mentioned in the grounds of detention, as it is now well-settled that even if one of the grounds of detention is bad, the entire order of detention is vitiated because the Court cannot predicate what the subjective satisfaction of the authority would be on the exclusion of such grounds."

What the detaining authority has now done is that it has excluded grounds Nos. (ii) (a) and (ii) (b) from consideration and it is claimed that the subjective satisfaction has been arrived at on the basis of the other grounds which had not been considered by this Court. The question is whether it is open to the detaining authority to pass a fresh detention order against the detenues on such grounds.

(6) The learned counsel for the petitioners has sought support for his contention

from the following observations of Lord MacDermott in *Sambasivarn v. Public Prosecutor, Federal of Malaya*, 1950 A.C. 458, which were quoted with approval by the Supreme Court in *Pritam Singh and Another Vs. The State of Punjab*, :-

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim "*res judicata pro veritate accipitur*" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

We find it difficult to apply the above rule to cases of preventive detention, because in cases of preventive detention, there is no trial and there is no acquittal. But even if we apply the rule laid down by the Supreme Court to the present case, the detenu will only be entitled to plead that no fresh further order of detention can be passed against him on the basis of the same grounds which have been considered by this Court and held to be bad. It is not open to the detenu to further plead on the basis of the said rule that no fresh order of detention can be passed against him on the basis of the grounds in respect of which there is no finding of the Court. On the other hand the converse position namely that there can be a fresh order of detention passed on the same facts provided they have not been held to be bad by the Court is supported by authorities. In *Rex v. Secretary of State for Home Affairs, Ex parte Budd*, (1942) 2 K.B. 14, an order of detention dated June 11, 1940 made by the Home Secretary under regulation 18B(1A) of the defense (General) Regulations 1939 was quashed by the Court on the ground that as a matter of fact no such order had ever been made by the Home Secretary and the document was false from beginning to end including the statement at the foot that it had been signed by the Home Secretary. Thereafter, on 5-6-1941, another order of detention was made by the Home Secretary under regulation 18B of the said regulations and one of the grounds on which the said order was challenged was that it was based upon the same grounds upon which the earlier order of detention had been passed and which had been quashed by the Court. Lord Greene M.R., speaking for the full Court, however, upheld the second order of detention and rejected the contention based upon the quashing of the earlier order of detention and made the following observations :-

"The argument presented to us was based on the proposition that a person who has been released from custody on a writ of habeas corpus cannot be subjected to a second detention for the same cause. This argument is, in our opinion, misconceived. The first detention of the applicant was illegal in that the prerequisites of a lawful detention had not been complied with. In the case of the present detention, those prerequisites have been complied with and the

detention in lawful. The decision in the first case was not on the ground that the real order made by the Home Secretary was one which he had no power in law to make ** ** but on the ground that the terms of that order had not been communicated to the applicant in such a way as to enable him to make his representations to the Home Secretary under sub-reg.4. There is nothing in principle or in authority to justify the view that the result of the earlier proceedings can assist the applicant in any way."

These observations of the Court of Appeal were quoted with approval by the Federal Court in AIR 1945 18 (Federal Court) . The appellant in that case was arrested under an order dated 19-3-1942 purporting to be made by the Governor of Bihar in exercise of the powers conferred by rule 26 of the defense of India Rules. This order was challenged by the appellant by an application u/s 491 of the Code of Criminal Procedure. Before this application could be heard. Ordinance III of 1944 was promulgated and in view of the promulgation of this Ordinance, the order of detention dated 19-3-1942 was cancelled by the Governor of Bihar on 3-7-1944. But on the same date, he passed another order directing the detention of the appellant. It was argued as a matter of law that once the order of 19-3-1942 had been cancelled, there was no power to pass a fresh order of detention except on fresh materials. This argument was repelled by the Federal Court and Spens C. J" who delivered the judgment of the Court, made the following observations:-

"The first step in this argument seems to us unwarranted. The observations of the Court of Appeal in R. v. Home Secretary, Ex parte Budd, show that in this broad form the proposition is untenable. It may be that in cases in which it is open to the Court to examine the validity of the grounds of detention a decision that certain alleged grounds did not warrant a detention will preclude further detention on the same grounds. But where the earlier order of detention is held defective merely on formal grounds there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the Courts."

(7) The same principle was enunciated by Supreme Court in Jagdev Singh Vs. State of Jammu and Kashmir, . The petitioners in that case were detained under rule 30(I)(b) of the defense of India Rules, 1962 under orders passed by the State Government in March, 1965. Their detention was continued from time to time after review under rule 30A. One review was made in February, 1967 when no opportunity was given to the petitioners to represent their cases and their detention was continued for a further period of six months. But in view of the judgment of the Supreme Court in P.L. Lakhanpal Vs. The Union of India (UOI) and Another, , the Government held another review in April, 1967 and notice was given to the petitioners and they were given a hearing. Thereafter, an order was passed in each case on April 27, 1967 by which the State Government directed the continuance of the detention orders for a further period. These orders dated April 27, 1967 were challenged by the petitioners on two grounds, namely,-

(I)that as the first review held in February 1967 when no opportunity was given to the petitioners to represent their cases was illegal, the continuance of the detention thereafter was not justified and that there were no orders to be continued in April 27, 1967 when the petitioners' cases were again reviewed after giving an opportunity to them to represent their case, and (ii) that the order of detention dated April 27, 1967 could not be passed on the same grounds on which the earlier order of detention had been passed.

The Supreme Court upheld the first contention but rejected the second contention and in doing so, made the following observations :- This brings us to the next question, namely, whether it is open to the State Government to pass a fresh order in the circumstances of the present cases. In this connection reliance is placed on behalf of the respondent on two cases of this Court, Ujagar Singh v. The State of Punjab and Godavari Shamrao Parulekar v. State of Maharashtra and others. The first case was under the Preventive Detention Act (IV of 1950). In that case, it was held that "if the authority making an order is satisfied that the ground on which a detenu was detained on a former occasion is still available and that there was need for detention on its basis no *mata fides* can be attributed to the authority from the fact that the ground alleged for the second detention is the same as that of the first detention." In the latter case what had happened was that detenues were first detained under the Preventive Detention Act. Later that order was revoked and they were detained under r. 30 of the Rules and the order was served in jail. The second order of detention was apparently based on the same facts on which the first order of detention was passed. This Court held that the second order of detention was perfectly valid and its service in jail did not make the detention illegal. These cases certainly show that a fresh order of detention can be passed on the same facts, if for any reason the earlier order of detention has to be revoked by the Government. Further we do not find anything in the defense of India Act xx. xx. xx. and the Rules which forbids the State Government to cancel one order of detention and pass another in its place. Equally we do not find anything in the Act or the Rules which will bar the Government from passing a fresh order of detention on the same facts, in case the earlier order of detention or its continuance is held to be defective for any reason. This is of course subject to the fact that the fresh order of detention is not vitiated by *mala fide*. So normally a fresh order of detention can be passed on the same facts provided it is not *mala fide*, if for any reason the previous order of detention or its continuance is not legal on account of some technical defect as in the present cases."

(8) The learned counsel for the petitioners seeks to invoke the principles underlying section 13(2) of the Preventive Detention Act, 1950, section 14(2) of the Misa and section 11(2) of the Act in support of his contention that the impugned order of detention passed on the basis of the same facts on which the earlier order of detention was passed was illegal. Section 13(2) of the Preventive Detention Act is in *pari materia* with section 14(2) of the MISA. Therefore, it is sufficient to refer to section 14(2) of the Misa which is in the following terms:-

"The revocation of expiry of a detention order shall not bar the making of a fresh detention order u/s 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer as the case may be, is satisfied that such an order should be made."

A detention order referred to in sub-section (2) above is defined in section 2(b) of the MISA as follows :- "Detention order" means an order made u/s 3." Therefore, prima facie, section 14(2) of the MISA applies to the revocation or expiry of a detention order made u/s 3 (1) (c) of the MISA. It does not apply to the quashing of an order of detention by the Court.

(9) The learned counsel for the petitioners seeks to rely upon the following decisions in support of his contention that in view of the judgment of this Court dated December 11, 1974, the present impugned order of detention cannot be passed on the same grounds on which the earlier order "of detention had been passed and which had been quashed by this Court, namely,-

(I) Hadibandhu Das Vs. District Magistrate and Another, . (ii) Masood Alam etc. Vs. Union of India (UOI) and Others, . (iii) Chotka Hembram Vs. State of West Bengal and Others, .

The first case cited considered the principles underlying section 13(2) of the Preventive Detention Act, 1950 and the others two cases the principles underlying section 14(2) of the MISA. In Hadibandhu Das's (7) case, the Supreme Court noticed the difference in the legal position prior to the amendment of section 13(2) of the Preventive Detention Act in 1952 and the position after the amendment. Referring to the position before the amendment, the Supreme Court observed as follows:-

"The phraseology of sub-section (2) of section 13 before it was amended was explicit : there was no bar against a detaining authority making a fresh order of detention after revoking a previous order based on the same or other grounds. It contained no implication that a fresh order may be made only if it was founded on fresh grounds."

The position after the amendment was explained by the Supreme Court in the following terms :-

"There is nothing in section 13(2) which indicates that the expression "revocation" means only revocation of an order which is otherwise valid and operative: apparently it includes cancellation of all orders invalid as well as valid. The Act authorises the executive to put severe restrictions upon the personal liberty of citizens without even the semblance of a trial and makes the subjective satisfaction of an executive authority in the first instance the sole test. of competent exercise of power. We are not concerned with the wisdom of the Parliament in enacting the Act, or to determine whether circumstances exist which necessitate the detention on the statute book of the Act which confers

upon the executive extra-ordinary power of detention for long period without trial. But we would be loath to attribute to the plain words used by the Parliament a restricted meaning so as to make the power more harsh and its operation more stringent. The word "revocation" is not, in our judgment, capable of a restricted interpretation without any indication by the Parliament of such an intention. Negligence or inaptitude of the detaining authority in making a defective Order or in failing to comply with the mandatory provisions of the Act may in some cases ensure for the benefit of the detenu to which he is not entitled. But it must be remembered that the Act confers power to make a serious invasion upon the liberty of the citizen by the subjective determination of facts by an executive authority, and the Parliament has provided several safeguards against misuse of the power. The very fact that a defective order has been passed, or that an order has become invalid because of default in strictly complying with the mandatory provisions of the law bespeaks negligence on the part of the detaining authority, and the principle underlying section 13(2) is, in our view, the outcome of insistence by the Parliament that the detaining authority shall fully apply its mind to and comply with the requirements of the statute and of insistence upon refusal to countenance slipshod exercise of power."

(10) In Masood Alam's (8) case, the principle enunciated by the Supreme Court in Habibandhu Das's (7) case was reiterated and applied by the Supreme Court to a case u/s 14(2) of the Misa and it was held as follows :-

"The principle underlying this section has its roots in the vital importance attached to the fundamental right of personal liberty guaranteed by our Constitution. The Act fixes the maximum period of detention to be 12 months from the date of the detention with the proviso that the appropriate Government can revoke or modify the detention order at any earlier time: Section 13. It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to the camouflage of making a fresh order operative soon after the expiry of the period of detention, as also to minimise resort to detention orders that section 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made. The power of preventive detention being an extraordinary power intended to be exercised only in extraordinary emergent circumstances the legislative scheme of section 13 and 14 of the Act suggests that the detaining authority is expected to know and to take into account all the existing grounds and make one order of detention which must not go beyond the maximum period fixed. The submission on behalf of the State that the petitioner's activities are so highly communal and prone to encourage violent communal activities that it was considered absolutely necessary to detain him in the interest to security of the State and maintenance of public order cannot prevail in face of the statutory restrictions and the guaranteed constitutional right which is available to all persons. The rule of law reigns supreme in this Republic and no person on the soil of free India can be deprived of his personal liberty without the authority of

law."

(11) In the case of Chotka Hembram (9), while reiterating the principles enunciated in Masood Alam's case, the Supreme Court observed as follows:-

"The matter can also be looked at from another angle. Section 13 of the Act provides that the maximum period for which any person may be detained in pursuance of any detention order, which has been confirmed u/s 12, shall be 12 months from the date of detention. It is, Therefore, plain that the maximum period for which a person can be detained on account of specified acts should not exceed 12 months. If for the same acts repeated orders of detention can be made, the effect would be that for the same acts a detenu would be liable to be detained for a period of more than 12 months. The making of a subsequent order of detention in respect of the same acts, for which an earlier order of detention was made, would run counter to the entire scheme of the Act. It would also set at naught the restriction which is imposed by section 13 of the Act relating to the maximum period for which a person can be detained in pursuance of a detention order."

(12) The learned counsel for the petitioners contends that the principles enunciated by the Supreme Court in the cases cited are of a general nature and apply to all cases where orders of detention have been either revoked by the Government or quashed by the Courts or where the maximum period of detention has expired and such persons are again detained under fresh orders of detention on the same grounds on which the earlier orders of detention had been passed. We are unable to accept this contention. The principles enunciated by the Supreme Court in the cases cited, in our view, were made in the context of the statutory provisions in the Preventive Detention Act and the MISA. In the present case, the earlier order of detention was not revoked by the Government u/s 14(2) of the MISA. The earlier order of detention was quashed by this Court on the restricted grounds mentioned in the judgment of this Court dated December 11, 1974. The principles enunciated by the Supreme Court in the cases cited by the learned counsel have no application to the present cases. On the other hand, the principles that apply to the present cases are those which have been laid down in the decisions of the Court of Appeal, the Federal Court and the Supreme Court referred to in the earlier portion of this judgment.

(13) Section 11(2) of the Act on which the petitioners' learned counsel seeks to rely is in the following terms :-

"The revocation of a detention order shall not bar the making of another detention order u/s 3 against the same person."

The words "detention order" appearing in section 2 are defined in section 2(b) of the Act as follows :-

"Detention order" means an order u/s 3."

Therefore, as in the case of section 14(2) of the Misa, sub-section (2) of section

11 of the Act is applicable only to a detention order passed under the Act and not to a detention order passed under any other law, like the MISA. Further, the restriction placed u/s 14(2) of the Misa, namely, that the fresh detention order should not be on the same facts on the basis of which the earlier order of detention was passed is conspicuous by its absence in subsection (2) of section 11 of the Act. It clearly indicates the intention of the Legislature that it did not intend to re-enact section 14(2) of the Misa in section 11(2) of the Act.

(14) The learned counsel for the petitioners then invokes the provisions of section 6(c) of the General Clauses Act in support of his contention that the present impugned order of detention cannot be passed on the same grounds on which the earlier order of detention has been passed. Relying upon section 6(c) of the General Clauses Act, it is contended that in view of the judgment of this Court dated December 11, 1974 quashing the earlier order of detention, a right has accrued to the detenues not to be re-detained on the same facts on which the earlier order of detention was passed. Section 6(c) of the General Clauses Act is in the following terms :-

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not- (a) xx. xx. xx. xx. (b) xx. xx. xx. xx. (c) affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed."

The scope of section 6(c) of the General Clauses Act has been considered by us in our judgment in Cr. W. No. 21/75 (Khem Prakash Kumar v. Delhi Administration and another dated May 30, 1975(10), and we have held that the right if any, which has accrued to the person by virtue of section 14 of the Misa is restricted to a fresh order of detention passed u/s 3(1)(c) of the Misa on the same facts on which the earlier order had been passed and that it does not extend to an order passed u/s 3 (1) of the Act. Assuming for the sake of arguments that by virtue of section 14(2) of the Misa a right has accrued to the detenues and that right is available to them even in respect of orders of detention passed under the Act, than the question for consideration is what is the nature of the right that has accrued to the detenues as a result of the judgment of this Court dated December 11, 1974. The grounds on which the earlier order of detention had been quashed by this Court have been already stated. The right if any, that has accrued to the detenues is only to this extent, namely, that no order of detention can be passed under the Act on the grounds which have been held to be had by this Court in its judgment dated December 11, 1974- Admittedly, the present order of detention is not passed on the basis of the grounds which have been held to be had by this Court. The right of the detenues does not extend to a right not to be detained on the basis of the other grounds which have not been considered by this Court. Therefore, it has to be held that the judgment of this Court dated December 11, 1974 does not prohibit the passing of the present impugned order of detention on the basis of some of the

grounds on the basis of which the earlier order had been passed but which had not been considered by this Court.

(15) The learned counsel for the petitioners next contends that if a fresh order of detention can be passed on the same grounds on which the earlier order was passed but which were not considered by the Court, it would lead to an anomalous situation. It is argued that according to the rule which is now well-established an order of detention may be quashed even if one of the grounds of detention is found by the Court to be bad. A fresh order of detention passed on the basis of the remaining grounds may again be quashed by the Court if it finds that one of such grounds is again bad. In this manner, successive order of detention may be passed until only one of the old grounds of detention is left. If there is no infirmity in this ground, then the Court may have to uphold the order of detention. This would mean that if the order of detention is based on a number of grounds, such order of detention may be upheld even if one of the grounds is good and all the other grounds are bad. This would be directly opposed to the well-established principle that an order of detention has to be quashed even if one of the grounds of detention is bad. The argument of the learned counsel, no doubt, emphasises the anomalous position which " would result if successive orders of detention are passed on the same facts. But such successive orders would not be barred by applying the principles of res judicata or the principles underlying section 13(2) of the Preventive Detention Act or section 14(2) of the MISA or even section 11(2) of the Act. Such successive orders are however, liable to be quashed on the grounds that they are mala fide and that they have been passed under colourable exercise of the power given to the executive under the Act. It cannot be said that in the present cases, the impugned order of detention is vitiated either by mala fides or by colourable exercise of power by the detaining authority. As observed earlier, this Court quashed the earlier order of detention passed against the detenus only because it found that two of the grounds were irrelevant and non-existent and also because it could not be predicated what the subjective satisfaction of the detaining authority would be if these grounds were excluded from consideration. The judgment of this Court thus, left it open to the detaining authority to consider the question of the detention of "the detenus on the basis of the remaining grounds which had not been considered by this Court. The detaining authority has now taken into consideration such grounds and it has arrived at its subjective satisfaction on the basis of such grounds. This does not amount to a mala fide action on the part of the detaining authority or a colourable exercise of the power by it. The present order of detention cannot, Therefore, be said to be illegal merely by reason of the earlier judgment of this Court dated December 11, 1974.

(16) This leads us to a consideration of the grounds on which the present order of detention has been passed. The present order of detention has been passed on the basis of three grounds which are reproduced below:-

"1.Intelligence was received on 20-5-1974 and 25-5-1974 by the officers of the Central Excise Collectorate, Delhi that large quantities of foreign marked gold smuggled across the Indian coastline off Surat in Gujarat State was being brought and disposed of in Delhi and that the silver purchased in Delhi with the sale proceeds the said smuggled gold was to be transported to Surat/ Bombay for the purpose of smuggling out of India. Further, that the firm M/s. Delhi Rajkot Enamel Works,. Chandni Chowk, Delhi were concerned in this and that a truck No. GTK-2067 had arrived on 25-5-1974 for transporting silver. Pursuant to the said intelligence, the officers of the Central Excise Collectorate, Delhi, kept watch near Kingsway Camp area and chased the said truck and intercepted it on the night of 25/26th May, 1974 near Filmistan Cinema, Delhi. At the time of the interception of the said truck, the following persons were found present therein:- (a) Shri Maganbhai S/o Shri Motibhai of village Garndi, Anand (Gujarat State)-Driver. (b) Shri Budhabhai S/o Shri Motibhai of village Gamdi Anand (Gujarat State)--Cleaner. (c) Shri Mohd. Ali S/o Shri Mohd. Sidique, r/o 33/35, Astabal Street, Kamatipura, Bombay. The truck was piloted by a person in a Fiat Car who on seeing the officers of the Customs aforesaid managed to make good his escape. The identity of these persons was later established as Suresh Chand S/o Shri Nand Kishore Verma residing at 3930, Roshanpura, Nai Sarak, Delhi. Examination of the truck revealed that it had a false bottom and in it were concealed 150 bars of silver wrapped in cotton cloth bags weighing in all 4591.684 kgs. (app.). Enquiries revealed that the seized silver was loaded in the false bottom of this truck from house No. 213, Tagore Park, Delhi. Enquiries also revealed that those premises were under the control of the partners of M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi you being one. The seized silver was stored in the said premises for transport and eventual smuggling out of India. The said silver bars were concealed in the specially designed cavity of the aforesaid truck belonging to Shri Dayabhai Somabhai Patel of Anand to avoid detention. The said truck was to have transported the aforesaid silver to Anand and then to Surat which is situated in the specified area declared u/s 11-H(c) of the Customs Act 1962, without transport voucher as required u/s 11-K of the said Act. The truck in which the said silver was recovered was to have been piloted by the aforesaid Shri Suresh Chand for the safe conduct of the truck with the silver concealed therein out of Delhi- When the search of the premises, 213, Tagore Park, Delhi was in progress, two persons, namely, Srikishan, your partner in the firm M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi, and the aforesaid Suresh Chand visited the said premises. One of the three persons found in the truck, namely, Shri Mohd. Ali, had previously come to the adverse notice of the Customs Department in that he had been previously arrested on 9-10-1973 while transporting silver weighing 293.700 kgs. valued at Rs. 2 lacs (app) without statutory documents in Car No. MRG-5524 at Kashi-inira, Dashisara specified area near Bombay. He was on bail in the said case. Enquiries further revealed that the aforesaid silver would have been transported to specified area viz. Surat/Bombay via Anand without any transport voucher for smuggling out of India but for the seizure of the said silver by the officers of the

Central Excise Collectorate, Delhi M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi of which you are a partner, in charge of and responsible for the conduct of its business had made preparation in collusion with the afore- said Shri Dayabhai Somabhai Patel of Anand and Shri Suresh Chand s/o Shri Nand Kishore Verma r/o 3930. Roshanpura, Nai Sarak, Delhi for the smuggling of the aforesaid silver out of India. In this connection, a show cause Memo bearing C. No. Viii (SB) 10/86/74 dated 20-11-1974 has been issued to you and your associates, namely, S/Shri Maganbhai, Budhabhai, Mohd. Ali, Dayabhai Somabhai Patel, Srikishan, Dali Chand, Harish Vora, Suresh Chand, M/s. Ganguli, Ram Richpal, Arvind K.umar, Dalip Singh, M/s. Delhi Rajkot Enamel Works, Delhi, M/s. Dinesh Transport Corporation, Baroda, by the Collector, Central Excise Delhi, asking why the silver seized should not be confiscated and penalty imposed on you and your associates mentioned under the provisions of the Customs Act, 1962 and as to why the truck viz, GTK-2067 which was being used to transport the said silver be also not confiscated under the provisions of the. said Act. 2. On the basis of disclosures made by S/Shri Maganbhai and Budbabhai referred to in ground No. 1 above, M/s. Delhi Rajkot Enamel Works, Delhi of which you are one of the partners, in charge of and responsible for the conduct of its business, were responsible for sending silver slabs numbering 95 and valued at Rs. 30 lac (app.) to Shri Dayabhai Somabhai Patel. The said slabs were loaded from house No. 213, Tagore Park, Delhi which premises were under the control of the partners of M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi-you being one of the partners and were transported to Anand in Gujarat State by concealment in specially designed cavity in the aforesaid truck driven by Shri Maganbhai s/o Motibhai of village Garndi, Taluka Anand. The said slabs were thereafter transported by truck No. GTB-7077 to Udawada, which is situated in the specified area declared u/s 11-H(c) of "the Customs Act, 1962 with a transport voucher obtained from an appropriate officer as required under rules framed u/s 11-K of the Customs Act. 1962 for eventual smuggling out of India. Investigations could not trace the aforesaid silver which was liable to confiscation under the Customs Act, 1962. 3. On the basis of disclosures made by the aforesaid Maganbhai, Budhabhai and Mohd. Ali, it has further come to light that on or about 17-5-1974, M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi, of which you are and were one of the partners in charge of and responsible for the conduct of its business, sent silver slabs numbering 72 and valued at Rs. 25 lacs (app) to Shri Dayabhai Somabhai Patel of village Garndi, Taluka Anand in truck No. GTK-2067 belonging to the said Shri Dayabhai Somabhai Patel- The said slabs were loaded from house No. 213, Tagore Park, Delhi which premises were under the control of the partners of M/s. Delhi Rajkot Enamel Works, Chandni Chowk, Delhi-you being one of the partners and were transported to Anand in Gujarat State by concealment in specially designed cavity in the aforesaid truck driven by Shri Maganbhai s/o Shri Motibhai of village Camdi, Taluka Anand, escorted by Shri Mohd. Ali s/o Shri Mohd. Sidique of Astabal Street, Kamatipura, Bombay. The said slabs were thereafter transported by truck Ho. GTB-7250 to a place near Surat on the highway leading to Surat which is situated in the specified area

declared u/s 11-H(c) of the Customs Act, 1962 without a transport voucher obtained from an appropriate officer as required under rules framed u/s 11-K of the Customs Act, 1962 for eventual smuggling out of India. Investigations could not trace the aforesaid silver which was liable to confiscation under the Customs Act, 1962. A show cause Memo. bearing C. No. VIII(SB) 10/86/75 dated 17-12-1974 has been issued to you and to your associates viz. S/Shri Srikishan, Doli Chand, Harish Vora, Maganbhai, Roshan Anand Rao Rajput, Ismail Abdul Sheik, Dayabhai Somabhai Patel, Vithalbhai Patel, Lallubhai Jogibhai Patel, Mohd. Ah, M/s. Delhi Rajkot Enemals Works, Delhi and M/s. Dinesh Transport Corporation, Baroda, by the Assistant Collector of Customs (Preventive). New Delhi asking you and your associates named above to show cause to the Collector, Central Excise, Delhi, why a penalty should not be imposed on your and your associates named above under the provisions of the Customs Act, 1962 for being concerned in the smuggling of tile 85 and 72 slabs of silver referred to in this ground and ground No. 2 above which were liable to confiscation under the provisions of the Customs Act, 1962. A show cause Memo in respect of the "trucks Nos. GTB-7250 and GTB-7077 referred to in this ground and ground No. 2 respectively has also been issued by the Additional Collector of Customs, Ahmedabad vide No. Viii (10)-88/Collr./74 dated 2-12-1974."

(17) The main attack against these grounds is two-fold, namely :-

(I)that the statements of the three persons referred to in these grounds, namely, Maganbhai, Budhabhai and Mohd. Ali, do not implicate the detenues, and (ii) that in the prosecution launched against these three persons by the Customs authorities u/s 135 of the Customs Act, these persons had filed a bail application in which they had alleged that their statements u/s 108 of the Customs Act had been obtained under coercion and these allegations made by these persons had been withheld from the detaining authority and were not considered by him at the time of passing the detention Order.

The respondents in their reply affidavit have denied that the statements of these three persons did not implicate the detenues but have not denied that the allegations made by these persons in their bail application, namely, that their statements had been obtained by coercion had not been brought to the notice of the detaining authority at the time of passing the detention order. The respondents have proceeded to state in the reply affidavit that apart from the statements of these three persons, the detaining authority had taken into consideration the statements of other persons also in which the detenues have been directly implicated. In the rejoinder filed by the petitioners, it has been contended that it is not open to the detaining authority to pass the detention order on the basis of the material which had not been disclosed in the grounds of detention communicated to the detenues and further that even such statements which had been relied upon by the detaining authority had been retracted by such persons and the fact that these persons had retracted their statements had been withheld from the detaining authority and was not considered by him at the

time of the order. It is further contended by the petitioners in the rejoinder that in order to verify the facts stated by these persons in their statements the Customs authorities had made enquiries with the check-post at the Golden Bridge and that the report obtained from this check-post which revealed that none of the trucks mentioned in the grounds of detention had crossed the Golden Bridge on the relevant dates, was withheld from the detaining authority. The questions that arise for consideration are-whether the consideration by the detaining authority of material other than what is disclosed in the grounds of detention vitiates the order of detention, and secondly, whether the fact that not only the three persons named in the grounds of detention but also the other persons on whose statements the detaining authority is alleged to have relied, had retracted their statements, ought to have been considered by the detaining authority at the time of passing the detention order and whether his failure to do so vitiates the detention order.

(18) Before considering these questions, it is necessary to state a few facts. Copies of the statements of Maganbhai, Budhabhai and Mohd. Ali recorded u/s 108 of the Customs Act have been filed along with the petition. It is not necessary "to reproduce the statements. It would be sufficient to state that none of these persons had stated that they were acting on behalf of or under the instructions of any- of the detenues and, on the other hand, they had stated that they were acting under the instructions of Dayabhai Somabhai Pate). These persons had, however, stated that the silver slabs were. loaded from house No. 213, Tagore Park, Delhi which, according to the respondents was under the control of M/s. Delhi Rajkot Enamels Works, Chandni Chowk, Delhi, of which the detenues were partners. The firm of M/s- Delhi Rajkot Enamels Works were admittedly carrying on the business of purchase and sale of silver bullion. Sale of silver or even its transport to places which re no.: specified u/s 11-H(c) of the Customs Act is not an offence. It is not the case of the respondents the the statement"s of these three persons referred to in the grounds of detention by themselves incriminate the detenues. Their case is that these statements have to be read along with the statements of other persons and that when all these statements are read together, they implicate the detenues. According to the respondents, these other persons are-(1) Arvind Kumar, (2) Dalip Singh, (3) Roshan Anand Rao Rajput, and (4) Ismail Abdul Sheikh. The statements made by these persons have been produced before us by the respondents. It is not necessary to reproduce the statements made by these persons. But it would be sufficient to state "that these four persons in their statements established the connection between the detenues on the one hand and the smuggling of silver out of India by Dayabhai Somabai Patel on the other. It may, however, be stated that Ismail Abdul Sheikh and Roshan Anand Rao Rajput had made two statements each, one on 5-6-1974 and the other on 15-6-1974. The statements dated 5-6-1974 were innocuous statements and did not incriminate either themselves or the detenues. It is only in the statements dated 15-6-1974 that they implicated the detenues as well as Dayabhai Somabhai Pa"tel.

(19) Maganbhai, Budhabhal and Mohd. Ali, as already stated, were prosecuted u/s 135 of the Customs Act and in these proceedings they filed a bail application dated 28-5-1974. In that application, they alleged that they had been tortured and mercilessly beaten by the officers of the Customs Department and that they had been coerced and induced by force to put down something on record which was not their voluntary version. They further alleged that they were kept in wrongful confinement so that they could be tortured and a statement to the choice of the Customs Department obtained from them and that in fact they had been tortured and involuntary statements had been obtained from them, rather they had been forced to say what the Customs officers desired them to say, because otherwise the Customs officers themselves would be in jeopardy because they had made an illegal seizure which was beyond their power. A copy of the bail application in annexure "K" to the writ petition.

(20) Arvind Kumar and Dalip Singh, on whose statements the respondents now seek to rely received show cause notices from the Collector of Customs dated 20-11-1974 in connection with the seizure of 150 slabs of silver referred to in ground No. 1. In reply to these notices, both Arvind Kumar and Dalip Singh filed affidavits before the Collector of Customs in which they retracted their statements made u/s 108, Customs Act, and alleged that they were only made to sign some papers without reading the contents thereof and that what the statements contained was not true.

(21) Dayabhai Somabhai Patel against whom an order of detention u/s 3(l)(c) of the MISA had been passed had filed a petition Cr. W. No. 149/74 in the Gujarat High Court for quashing the said order of detention. In that petition, he filed the affidavits of Ismail Abdul Sheikh and Roshan Anand Rao Rajput. Copies of these affidavits have been filed by the petitioners as Annexures "P" and "Q" with the petition and in these affidavits, they had retracted the statements made by them u/s 108 of the Customs Act and alleged that the statements were obtained from them under coercion. It may also be stated that the writ petition filed by Dayabhai Somabhai Patel was subsequently dismissed as withdrawn.

(22) With regard to the contention that the orders of detention were vitiated by reason of the detaining authority taking into consideration material which has not been disclosed in "the grounds of detention, the reply of the learned counsel for the respondents is two-fold, namely, that such additional material was in fact disclosed in the grounds of detention and secondly, that even if it was not disclosed, it may amount to a violation of Article 22(5) of the Constitution, but the order of detention itself is not vitiated in view of the suspension of Article 22(5) of the Constitution by the Presidential Order under Article 35(1) of the Constitution- In support of the argument that the additional material considered by the detaining authority was disclosed in the grounds of detention, it is pointed out that the grounds of detention referred to three show cause notices, namely, one dated 20-11-1974, the second dated 2-12-1974 and the third : dated 17-12-1974. The show cause notices dated 20-11-1974 and 17-12-1974 were

issued to the detenues and other persons, but the show cause notice dated 2-12-1974 was not issued to "the detenues. Copies of these show cause notices have been filed by the respondents. The show cause notice dated 20-11-1974 refers to statements made by Arvind Kumar and Dalip Singh and the show cause notice dated 1.7-12-1974 refers to the statements not only of Arvind Kumar and Dalip Singh but also to the statements of Roshan Anand Rao Rajput and Ismail Abdul Sheifch. But the reference to the show cause notices in the grounds of detention only means that the detaining authority had knowledge that these show cause notices had been issued and it is stated as a matter of fact in the ground that the notices had been issued to the detenues. The specific reference in the grounds of detention to the disclosures made by Maganbhai, Budhabhai and Mohd. Ali and the omission in the grounds of the names of the other persons or the statements made by them can only mean that the grounds of detention on the basis of which the order of detention had been passed against the detenues did not include the disclosures made by the other persons who are not named in the grounds. The file that was placed before "the Administrator in respect of the detenues proposing the detention under the Act was placed before us also. We found on a perusal of that file that the draft grounds had been prepared and even voted by the Judicial Department of the Delhi Administration prior to the file being put up to the Administrator. The draft grounds did not contain any mention about the disclosures made by these other persons. There is not even an averment in the reply affidavit filed on behalf of the respondents that the reference in the grounds of detention to the show cause notices implied that the statements of the other persons also formed part of the grounds. We have perused the records relating to the detention orders passed against the detenues and we do not find any indication that the statements of any persons other than Maganbhai Budhabhai and Mohd. Ali were considered by the detaining authority. We cannot, Therefore, accept the contention of the learned counsel for the respondents that by implication the statements of these other persons which are now being relied upon as supporting the orders of detention formed part of the grounds of detention which were communicated to the detenues.

(23) We are equally unable to accept the alternative contention of the learned counsel for the respondents that the omission to mention the statements of the other persons in grounds of detention does not vitiate the detention order. It is no doubt true that by reason of the Presidential Order issued under Article 359(1) of the Constitution, the detenues cannot complain that the omission to mention the names of the other persons in the grounds of detention have deprived them of an opportunity of making an effective representation. But the suspension of Article 22(5) of the Constitution by the Presidential Order does not absolve the State from the duty of complying with the mandatory provisions of the Act. As observed by us in our judgment in Cr. W. No. 1/75 (Smt. Manekben v. Union of India) dated 18-4-1975(11) "Article 21 as such has not been suspended. The enforcement of what we have called the corresponding right stands suspended. So though a citizen or other person will not be able to enforce

this corresponding right, the State is still under an obligation to act in consonance with the injunction placed on it by Article 21." These observations apply to Article 22(5) also. An order of detention has necessarily to be based upon certain grounds which are called grounds of detention and the nature and extent of these grounds of detention have been explained by the Supreme Court in *Khudiram Das Vs. The State of West Bengal and Others*, . In the words of Bhagwati, J.

"The grounds mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, Therefore, the order of detention is based."

Again in the words of Sarkaria, J., in *Golam Mallick v. The State of West Bengal*, W.P. No. 270/74, decided on 12-9-1974(13), which have been quoted by Bhagwati, J.,-

"In the context, "grounds" does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of section 3 of the Act; nor is its connotation restricted to a bare statement of conclusions of fact. It means something more. That "something" is the factual constituent of "the "grounds" on which the subjective satisfaction of the authority is based. The basic facts and material particulars, Therefore, which are the foundation of the order of detention, will also be covered by "grounds" within the contemplation of Article 22(5) and section 8, and are required to be communicated to the detenu unless their disclosure is considered by the authority to be against the public interest."

We are aware of the fact that the above observations were made with reference to Article 22(5) of the Constitution. But, in our view, the above observations are equally applicable even to cases like the present where the detenu is deprived of seeking any relief under Article 22(5) of the Constitution, but the State itself is not absolved from its duty to comply with the mandatory provisions of the Act.

(24) To accept the contention that all the basic facts and materials which had been taken into account by the detaining authority in making the order of detention and on which the order of detention is based need not be included in the grounds of detention drawn up and communicated to the detenu, would result in an anomalous position. If, for instance, the grounds of detention communicated to the detenu mentioned only three grounds, all of which are remote and stale, and the detenu challenges the order of detention on the ground that these grounds, being stale, could not form the subjective satisfaction of the detaining authority, would it be open to the detaining authority to say that in addition to these three grounds, there was a fourth ground which was not State or remote and which was taken into consideration by the detaining authority but which was not communicated to the detenu ? We are of the view that it would not be open to the detaining authority to take such a plea. Therefore, in our view, "the order of detention is vitiated by reason of the fact that in addition to the material disclosed in the grounds of detention

communicated to the detenu, the detaining authority has taken into consideration such other material which was, however, not mentioned in the grounds of detention."

(25) The order of detention is also vitiated, in our view, by the omission on the part of the detaining authority to take into consideration certain relevant facts. According to the grounds of detention, the detainees are involved in the incidents mentioned in the grounds only by reason of the disclosures alleged to have been made by Maganbhai. Dudhabhai and Mohd. Ali. These disclosures were made on 26-5-1974. They were arrested on the same date and they were detained in custody till they were produced before the Additional Chief Metropolitan Magistrate, New Delhi, on 28-5-1974. On that date, they filed the bail application in which they alleged that they were tortured and their statements had been obtained from them by coercion. In other words, these persons had retracted their statements at the earliest opportunity. They had made these retractions before a Magistrate in the proceedings instituted against them by the Customs authorities themselves. The Customs authorities were, Therefore, aware of these retractions made by these persons. These retractions were, Therefore, relevant facts which ought to have been brought to the notice of the detaining authority and considered by him. Admittedly, they were not brought to the notice of the detaining authority nor considered by him at the time of passing the detention order. The statements made by the other persons, namely, Arvind Kumar, Dalip Singh, Roshan Anand Rao Rajput and Ismail Abdul Sheikh, on which also the detaining authority now seeks to rely in support of the detention order were also retracted by them and the Customs authorities were also aware of such retractions. These retractions were relevant facts which ought to have been placed before the detaining authority for his consideration. Admittedly, they were not placed before him nor were considered by him at the time of passing the detention order.

(26) The retractions which, in our opinion, were relevant facts and which the detaining authority was bound to take into consideration, assume even greater importance in view of the nature of grounds Nos. 2 and 3. Unlike ground No. 1, where acting on intelligence the Customs authorities were actually able to seize 150 slabs of silver while the same were being transported in a truck, the silver said to have been smuggled in grounds Nos. 2 and 3 could not be traced. Even the allegation that 72 slabs of silver were transported on one occasion and 85 slabs of silver on another occasion from Delhi to Anand and from there to Surat depends entirely upon the alleged statements of the three persons named in grounds Nos. 2 and 3. The alleged transport of silver is not even based upon any intelligence received by the Customs Department. Perhaps, it was in this context that the Customs authorities thought it necessary to make enquiries to find out whether any of the trucks had gone into the specified area via the Golden Bridge over the Narbada. The reply received from the check-post at the Golden Bridge (Annexure R-8) shows that none of the trucks mentioned in the grounds went by that way into the specified area. The reply received from the check-post

(Annexure R-8) was, thus, a relevant document for the purpose of checking the veracity of the statements of these persons. Admittedly Annexure R-8 was not placed before the detaining authority prior to his passing the detention order. The retractions made by the persons whose statements had been recorded by the Customs authorities were also admittedly not placed before the detaining authority. Inasmuch as grounds Nos. 2 and 3 can at best be regarded as having been formulated on the basis of the statements of these persons, the retractions made by them and Annexure R-8 were of great importance as relevant material. These not having been placed before the detaining authority vitiate his satisfaction as having been arrived at by not considering very relevant material.

(27) For the reasons stated above, we hold that the orders of detention passed against the detenues are illegal. They are hereby quashed and the respondents are directed to release the detenues at once. The petitions are accepted.