
(1990) 10 MAD CK 0085

In the Madras High Court

Case No : Writ Petition No's. 787 and 791 of 1990

Bhuvaneswari and another

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 22
Customs Act, 1962 — Section 122, 135

Citation : (1991) CriLJ 2961

Hon'ble Judges : K. Swamidurai, J; Bellie, J

Bench : Division Bench

Advocate : B. Kumar, for the Appellant; G. Krishnamurthy, Public Prosecutor, for the Respondent

Judgement

Bellie, J.—These two writ petitions have been filed for issue of writ of habeas corpus for releasing two persons viz., One Raghuraman and One Sundararajan two brothers who have been detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as COFEPOSA Act. Writ Petition No. 787 of 1990 is by Bhuvaneswari, wife of the said Raghuraman and Writ Petition No. 791 of 1990 is by Perumayeeammal, mother of the said Sundararajan.

2. The facts are (assign from the grounds of detention) :

On 18-8-1989, on information, the Customs Officers attached to C.I.U., Tiruchy searched the residential premises of the detenu Sundararajan at No. 6/287, L.I.C. Colony, Alagapuram, Salem-4. The Officers found one plastic wire bag containing 64 gold bars with foreign markings which totally weighed 7115 grams with 24 carat purity valued at Rs. 22,69,000/-. Sundararajan had no import licence or any other document to prove that the said gold bars were licit ones. Therefore on presumption that they had been smuggled the officers seized them.

Immediately the officers rushed to the residential premises of the detenu Raghuraman at 65-V, Achuramasamy Street, Shevapet, Salem-2 and when searched they found Indian Currency of Rs. 2,50,000/-. On questioning Raghuraman admitted that the said money was the sale proceeds of gold bars of foreign origin and there was no account for that. The Customs Officers therefore seized the said currency of Rs. 2,50,000/-. Sundararajan gave a statement before the Superintendent of Central Excise that he was assisting his brother Raghuraman in his silver jewellery shop and that Raghuraman had told him that he was going to Delhi to purchase gold on 14-8-1989 and that on 18-8-1989 at 4.30 a.m. Raghuraman came to his house and handed over one plastic wire bag containing 64 gold bars asking him to keep them safely and that he (Sundararajan) used to assist Raghuraman in selling gold bars of foreign origin. Raghuraman gave a statement of 18-8-1989 stating that in connection with his silver kolusu business he knew one Vinay Kumar of Delhi and the said Vinay Kumar gave him at Delhi 64 gold bars of foreign origin for selling and he (Raghuraman) brought it to Salem and he gave them to Sundararajan to keep them safely and it was at that time the Customs Officers went there and seized them.

Considering these and the other facts the detaining authority viz., State of Tamil Nadu was satisfied that the two detenus have indulged in engaging in transporting smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods and that if they are let to remain at large they would further indulge in such activities and recourse to normal criminal law would not have the desired effect of effectively preventing them from indulging in such activities and therefore the State Government considered that it was necessary to detain them under Sections 3(1) (iii) and 3(1)(iv) of the COFEPOSA Act, 1974 and accordingly orders were passed and they were detained.

3. Since both the detenus were engaged in the alleged activities in a same transaction and they are brothers both the petitions can be disposed in one common order.

4. Mr. B. Kumar, learned counsel, appears for both the petitioners in the two petitions. He raised a common point in both the petitions and also separate points in each of the petitions, The common Point argued by him is that in the grounds of detention, after mentioning that the Chief Judicial Magistrate, Salem, dismissed the bail applications filed by both the detenus, it is stated that both the detenus were released on 31-8-1989 on the expiry of the reward period, and this would show that the detaining authority has referred to and relied on some documents relating to the release of the detenus after the expiry of the remand period but no copy of those documents has been supplied to the detenus and this vitiates the detention order. We are not able to see any worthwhile point in this submission. The mere statement in the grounds of detention that both the detenus were released on 31-8-1989 on the expiry of the remand period does

not necessarily mean that the detaining authority referred to and relied on any document. It appears this statement has been made from what is seen in the proposal of the sponsoring authority. The statement in question in the grounds of detention is only a statement of a circumstance that the detenus were released on 31-8-1989 on the expiry of the remand period. Therefore there is no substance in the argument that the detaining authority relied on so document and copy of that document has not been given to the detenus. The learned counsel relied on one decisions like M. Ahamedkutti Vs. Union of India (UOI) and Another, which are to the effect that the detenu as right to copies of vital documents irrespective of whether he knows about the contents or not. But in view of what we have stated above, there is no document referred to or relied on by the detaining authority and hence these decisions will not be of any avail the detenus.

5. Next in respect of Writ Petition No. 791 of 1990 the learned counsel raised points. First he argued that there has been inordinate delay in considering the representation of the detenu and therefore Article 22(5) of the Constitution is not complied with and hence the detention order is unconstitutional. As regards this point raised in the Additional Affidavit filed by the petitioner a reply has been given in paragraph 12 of the counter-affidavit. It is mentioned therein that,

"..... the representation dated 18-1-1990 to the Chief Secretary to Government of Tamil Nadu, Madras-9 was received by the Secretary and Additional Secretary to Government, Public (Law and Order) Department on 20-1-1990. The next day 21-1-1990 was a holiday. The Under Secretary, Public (Law and Order) Department received the representation on 22-1-1990. This was in transit from 23-1-1990 to 29-1-1990 between the Sections in Public (Law and Order) Department. There were two intervening holdings on 26-1-1990 and 28-1-1990. Parawar remarks were called for from the sponsoring authority on 29-1-1990."

Then various other dates have been mentioned relating to the representation travelling from department to department, and then it was finally stated that, "It was decided by the Government to reject the representation of the detenu in Government letter No. 414/90-4, Public (Law and Order-D) Department dated 19-2-1990."

The learned counsel referring to the statement in the counter that the representation was in transit from 23-1-1990 to 29-1-1990 between the sections in Public (Law and Order) Department strongly argues that for seven days i.e., from 23-1-1990 to 29-1-1990 the representation was obviously unattended to and this shows the unexplained and inordinate delay. In reply to this submission the learned Public Prosecutor would show us the records which shows endorsements indicating that the representation has been considered on 24-1-1990 and 25-1-1990. Then 26-1-1990 and 28-1-1990 are holidays. From these it appears to us that it cannot be said that the representation was left unattended to from 23-1-1990 to 29-1-1990. Under such circumstances there was no inordinate delay in considering the representation as contended by the

learned counsel.

In this connection the learned counsel would bring to our notice a decision in Gazi Khan alias; Chotia Vs. State of Rajasthan and another, wherein seven days delay in not considering the representation was held to be vitiating the detention order. But in that case there was no consideration at all of the representation for seven days whereas in our case it is not so. The facts show that the representation was attended to on 24-1-1990 and 25-1-1990. Hence the said decision of the Supreme Court is not applicable to the facts in the instant case. Hence we find no merit in this contention also.

6. Secondly it is argued that the representation of the petitioner has been considered only after the confirmation of the order of detention and this renders the continued detention illegal. According to the learned counsel the representation was received on 20-1-1990 and it has been rejected only on 19-2-1990 but in the meanwhile on 16-2-1990 itself the detention order has been confirmed. But the learned Public Prosecutor submits that the representation was rejected on 16-2-1990 itself by the Law Minister upon a note put up to him and it is not correct say that it was rejected only on 19-2-1990. It is further submitted by the learned Public Prosecutor that a reply to the representation has been sent to the detenu and that is dated 19-2-1990 and that reply is not the rejection order as it is stated on behalf of the detenus. On going through the relevant records we find that there is merit in the submission of the learned Public Prosecutor. We find that the order of rejection has been made on 16-2-1990 itself i.e., on the date of confirmation of the detention order and the communication sent to the detenu is only a reply to the representation informing him of the order of rejection of the representation. Thus we find no merit in this submission also.

7. Then in respect of Writ Petition No. 787 of 1990 also the learned counsel put forth separately two points. First is that in the representation which is addressed to the Advisory Board a request has been made for permission to have the assistance of an Advocate but this request has not been considered by the Advisory Board and this vitiates the proceedings and therefore the detention is rendered invalid. But factually it is found that the representation is not addressed to the Advisory Board but it is addressed to the Chief Secretary. This being the position no question of consideration of the request for permission to have assistance of an Advocate by the Advisory Board arises at all. Certainly such a request does not warrant the Government to consider. Therefore this point raised by the learned counsel is devoid of any merit.

8. The second point raised by the learned counsel is that according to the grounds of detention Indian Currency of Rs. 2,50,000/- only has been seized from the house of this detenu and this being the case there is no point in asking this detenu to produce records to show any foreign goods is licit ones but still in paragraph (xiv) of the grounds of detention it is stated that as this detenu has not produced any document to prove the licit nature of the import of gold seized

he is liable for punishment u/s 135 of the Customs Act and also liable for penal action u/s 122 of the Customs Act and this shows that the detention order was made mechanically without application of mind. We do not agree with this submission. A close reading of the facts would clearly show that it is not a mere question of seizure of Rs. 2,50,000/- from the house of this detenu, but the detenu has been actively engaged in dealing with the goods viz., gold bars of foreign origin. A perusal of his confession statement would clearly show that he is the one who brought the 64 gold bars from Vinay Kumar at Delhi for sale and he had kept it for the time being in the house of his brother Sundararajan and that the said sum of Rs. 2,50,000/are the sale proceeds of disposal of foreign gold brought earlier. These would clearly show that the detenu was in possession of goods of foreign origin and it was without any document to show that they are licit ones. Hence there is no point in saying that the detaining authority has mechanically without application of mind passed the detention order. Thus there is no merit in this point also.

9. In the result therefore there is no merit in both the writ petitions. Accordingly they are dismissed.

10. Petitions dismissed.