
(1992) 11 DEL CK 0052

In the Delhi High Court

Case No : Criminal Writ Petition No. 98 of 1992

Bishan Dayal Vaish

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1993) 2 Crimes 641 : (1993) 25 DRJ 131

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : Sangeeta Nanchaha and Ashish Wad, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) The petitioner through the present writ petition filed under Articles 226 & 227 of the Constitution of India has approached this Court for quashment of the detention order bearing F.No. 673/29/92-Cus. Viii dated 29.1.92 passed by Shri Mahender Prasad, Joint Secretary, Government of India, against the petitioner.

(2) Brief facts which led to the present petition are as under; that during the intervening night of 5th & 6th January, 1992 the officers of the Directorate of Revenue Intelligence laid a raid at a godown situated at Rewari Road, village surana, Narnaul, District Mahendergarh (Haryana), which was in the occupation of the petitioner and his son Shri Vishwanath, as a corollary whereof silver weighing 5301.384 kgs. valued at Rs. 4,18,80,933.00 and Indian currency to the tune of Rs. 2,25,000.00 besides some incriminating documents, were recovered. The petitioner and his son Shri Vishwanath were arrested on 6.1.1992. They were forced to make a statement u/s 108 of the Customs Act. They were produced before a Magistrate on 7.1.1992. The petitioner and his son Shri Vishwanath through their application dated 21.1.1992 retracted their statements made by them u/s 108 of the Customs Act. The petitioner made a representation against his illegal detention on 6.2.1992. The said representation was rejected

vide order dated 5.3.1992. The petitioner made another representation on 11.3.1992 addressed to the Secretary, Government of India, Ministry of Finance, Department of Revenue. The said representation of the petitioner was rejected on 3.4.1992. The detention order dated 29.1.1992 is illegal and invalid inasmuch as the detaining authority while passing the impugned detention order look into consideration quite a good number of irrelevant documents which have got absolutely no nexus, proximity or link with the alleged prejudicial activities of the petitioner.

(3) The respondent through their counter have not challenged the facts of the present case. However, through their counter they have asserted that the impugned detention order is quite legal and valid and the same was passed after due deliberations and after taking into consideration all the documents annexed with the detention order and which were supplied to the petitioner. Thus, the present writ petition, is liable to be dismissed.

(4) Learned counsel for the petitioner Mrs. Sangeeta Nanchahal has contended with all the vehemence at her command that the impugned detention order is illegal and invalid inasmuch as the detaining authority before passing the said impugned order took into consideration all sorts of irrelevant documents which go to show and prove that there was non application of the mind and the said detention order was passed in a casual, mechanical and perfunctory manner. Learned counsel for the respondent Mr. Ashish Wad has urged to the contrary.

(5) It is manifest from above that the only ground on which the learned counsel for the petitioner has sought the quashment of the impugned detention order is that the detaining authority took into consideration all sorts of irrelevant documents which go to show and prove that the detaining authority did not apply its mind properly to the facts of the present case and pass the detention order in a casual ,mechanical and perfunctory manner. Since we are concerned in the instant case with the only point as to what sort of material is to be considered by the detaining authority at the time of the passing of the impugned order. It would be just and proper to examine a few authorities in connection therewith.

(6) A matter very much akin to the matter in band i.e. what sort of material is to be considered by the detaining authority at the time of the passing of the impugned . order came up for interpretation before their Lordships of the Supreme Court as reported in 1980 Cr. L.J. 1487, Smt. Shalini Soni Vs. Union of India and Others. Their Lordships opined as under- it is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote,"

(7) Their Lordships of the Supreme Court in another case as reported in Sadha Roy Vs. The State of West Bengal, Air 1975 Sc 919, observed as under-

" THE satisfaction ,though attenuated by "subjectivity" must be real and rational,

not random divination,. most flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases."

(8) A similar matter to the matter in hand came up for consideration before a Single Judge of this Court as reported in *Diwan Singh Verma Vs. Union of India* 1988 (2) Del Law 197....."In the present case, both in the grounds of detention as also in the return the detaining authority insists that it has relied on this set of documents also in arriving at subjective satisfaction. The documents are the same as are appearing at pages 63 to 72 of the Writ Petition and I have already indicated that there is nothing in these documents which would show any link of the detenu or his accomplice with the alleged prejudicial activity. If the detaining authority had really applied its mind and if the subjective satisfaction was really I based on proper application of mind the detaining authority would not have said that it has also relied on this set of documents. There was nothing to prevent the detaining authority from stating that these documents were also placed before it but they were not relied upon. However, that type, of statement could only be made if the detaining authority had really applied its mind. This clearly goes to show that the application of mind in the present case is totally casual and mechanical and it is not the type of the application of mind which the law insists upon. If the detaining authority says that it has also relied on a set of documents which provided no evidence against the detenu, it naturally follows that he has not cared to go into the material."

(9) It can be safely gathered from above that a document to be relevant for the purposes of consideration at the time of the passing of the impugned order should be "such which is likely to sway the mind of the detaining authority in one way or the other. Thus, a document to be pertinent must have some proximity, link or nexus with the pit judicial activities fn the petitioner in order to fall within the domain of the relevant document". In case the detaining authority relies upon a material which is irrelevant and not pertinent then it will go to show that the detaining authority did not attach any importance to the liberty and freedom of a citizen which is guaranteed by the Fundamental Rights as enshrined in our Constitution.

(10) Learned counsel for the petitioner Mrs. Sangeeta Nanchahal while an advertng on the documents which are alleged to have been relied upon by the detaining authority at the time of the passing of the impugned order has invited my attention to the documents mentioned at Sr. Nos. 5,6,10,13 and 18. A close scrutiny of the said documents reveals that Sr. No. 5 is a application dated 10.1.92, for allowing the counsel for the petitioner to meet him in jail and the order of the court thereon, Sr. No. 6 is an application dated 11.1.92 for holding the court outside the court premises. Whereas Sr. No. 10 is again an application for legal interview dated 13.1.92 moved on behalf of Shri P.C. Luniya. Sr. No. 13 is D.D. No. 77B dated 13.1.92 and D.D. No. 34B dated 14.1.92 of Ps Darya Ganj regarding detention and release of Shri P.C. Luniya. The last, but not the least, is an application for grant of "B" Class facility to Shri P.C. Luniya. The said

documents have got absolutely no connection, link or proximity with the alleged prejudicial activities of the petitioner. They cannot be said to be even remotely connected with the alleged smuggling activities of the petitioner. The detaining authority i.e. Shri Mahendra Prasad, Joint Secretary, Government of India, has stated in unequivocal terms at page 11 of his order that "while arriving at the subjective satisfaction I have relied upon the documents and statements annexed herewith. Thus, it can be safely concluded from above that all the documents alluded to above were relied upon and considered at the time of the passing of the impugned order. The respondents, for the reasons best known to them, have not denied this fact in their counter dated 22.5.1992.

(11) This crystal clear from above that this is not the case of the respondents that certain irrelevant and immaterial documents were also placed before the detaining authority, but the same were not taken into consideration and were just ignored at the time of the passing of the detention order. Rather, the detaining authority i.e. Mr. Mahendra Prasad, Joint Secretary, has stated very categorically that all the documents were relied upon and taken into consideration. This goes to show a complete non application of the mind of the detaining authority in not separating the relevant from the irrelevant or so to say the grain from the chaff.

(12) In the circumstances staged above I am of the view that there was no application of mind at the time of the passing of the impugned detention order which the law insists upon. It thus vitiated the subjective satisfaction of the detaining authority. Thus, the order in question is liable to be set aside as the same has been passed in a casual, mechanical and perfunctory manner. The petitioner is thus entitled to succeed. The writ petition is allowed. The petitioner be set at liberty in case he is not required to be detained in any other case.