

(1990) 02 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 18551 of 1988

B.M. Abdul Rahiman

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 06-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Smugglers and Foreign Exchange Manipulators Forfeiture of Property) Act, 1976 —
Section 6 (1)

Citation : (1990) CriLJ 2406 : (1990) 27 ECC 89

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : N.B. Bhat, for the Appellant; L.K. Srinivasamurthy, Govt. Pleader and D.V. Shylendra Kumar, Central Govt. S.C., for the Respondent

Judgement

1. This matter coming up for orders, by consent of Counsel and after hearing the Counsel for parties, is disposed of by the following order.

2. The short question that falls to be answered is, whether the petitioner may invoke the jurisdiction of this Court under Article 226 of the Constitution to seek the following reliefs i.e., to set aside the order of detention dated 30-6-76 and notices issued as at Annexures-"D" and "E" under sub-section (1) of Section 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property Act,) 1976, inter alia on the ground that the respondent No. 2 the competent authority under the aforementioned Act has no jurisdiction to proceed with any action under the notice as the detention order itself is liable to be set aside as being illegal and in violation of the constitutional rights of the petitioner. That the petitioner was detained under the Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) as far back as in the year 1976 is evidenced by Annexure-A. He never challenged that detention order earlier. It is only after receipt of Annexures "D" and "E", he has challenged the detention order itself inter alia on the ground that he was not supplied with the grounds of detention as required by the provisions of Conservation of Foreign

Exchange and Prevention of Smuggling Activities Act.

3. In identical circumstances, the Supreme Court in the case of Union of India (UOI) and Others Vs. Haji Mastan Mirza, affirmed the decision of the Bombay High Court wherein respondent the said Haji Mastan had challenged the detention order in the year 1981. In doing so, the Supreme Court further quashed the proceedings initiated against the said Haji Mastan under the provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 on the ground that if the detention order is held to be ab initio void and illegal, thus no proceedings under the latter Act may be initiated to confiscate the properties.

4. The facts of this case are similar. In the objection statement filed on behalf of the 2nd respondent, the stand taken is that the petitioner is guilty of laches and that proceedings initiated before the Kerala High Court in certain Civil Misc. Petitions and a writ petition came to be dismissed as premature and therefore this Court at this late stage should not interfere with the detention order and quash consequential proceedings initiated under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property), Act.

5. Both the objections must be overruled in the light of the decision of the Supreme Court in Union of India (UOI) and Others Vs. Haji Mastan Mirza, which this Court has followed in the other cases. Right to personal liberty under Article 21 is a very important right, violation of which cannot be looked at lightly by the Court. Similarly, right to property is also a Constitutional right under Article 300A of the Constitution. That right cannot be deprived except in accordance with procedure known to law.

6. As already noticed in Union of India (UOI) and Others Vs. Haji Mastan Mirza, the petitioner before the Bombay High Court, he approached the Court for relief of getting the detention order quashed only in 1981 though the order in question was passed in 1974. Therefore, there cannot be any question of laches. Something has been done contrary to law. Mere delay in approaching this Court cannot clothe illegal action with legality. Therefore, the stand taken by the petitioner that petitioner had failed to receive the relief because he had approached the Court belatedly must be rejected. The grounds of detention were not served within the time prescribed under the provisions of COFEPOSA is not disputed. Therefore, the order at Annexure-A is liable to be quashed on that ground.

7. In so far as second stand is concerned, that the petitioner did not succeed in the Kerala High Court, this Court must only notice that argument to reject it. The Kerala High Court refused the relief only on the ground that Civil Misc. Petition and the writ petition were premature. They were not disposed of on merit. Therefore, no question was decided which would operate as constructive res judicata. It is only when he has been threatened with the notices as at Annexures "D" and "E", petitioner has chosen to challenge the detention order.

8. Having regard to the decisions of Supreme Court cited supra, this Court has no choice but to strike down the detention order. Therefore, Annexure-A is liable to be quashed. Consequently, as observed by the Supreme Court, any action initiated pursuant to the illegal order also cannot be sustained. Therefore, Annexure-D and E are also liable to be quashed.

In the circumstances of the case, there will be no order as to costs. Rule will accordingly issue and be made absolute.

9. Petition allowed.