
(1989) 10 DEL CK 0021

In the Delhi High Court

Case No : Criminal Writ Petition No. 522 of 1988

B.M. Ummar Farook

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-10-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 9

Citation : (1989) 39 DLT 31 : (1989) ILR Delhi 529 : (1990) 3 RCR(Criminal) 257

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Harjinder Singh, S.K. Mishra and S.K. Dubey, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition has been brought under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking quotient of the detention order dated May 11, 1988, passed by respondent No. 2 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA Act") with a view to preventing the petitioner from abetting the smuggling of goods and engaging in transporting smuggled goods. The petitioner has also sought quotient of declaration dated June 1. 1988, issued by respondent No. 3 u/s 9(1) of Cofeposa Act.

(2) As the period of more than one year has elapsed since the petitioner was detained, the learned counsel for the petitioner did not advance any arguments in challenging the detention order. The learned counsel for the petitioner has, however, contended that the continued detention of the petitioner has become bad inasmuch as the representation made by the petitioner against declaration dated June 1. 1988, has not been considered by the Central Government till now.

(3) The declaration dated June 1, 1988, was served on the petitioner on June 14, 1988. The petitioner had made a representation dated August 12, 1988, against

the aforesaid declaration. It is pleaded by the petitioner that the said representation against the declaration has not been considered by the appropriate authority on behalf of the Central Government and rather the said representation had been considered and rejected by the officer specially empowered who had issued the declaration. It is not disputed before me that the representation against the declaration was never considered by the Central Government i.e. by the Hon''ble Minister concerned and came to be considered and rejected by the officer specially empowered who had issued the declaration. It is now settled law that the detenu has a right to make a representation against the declaration which may be issued by the Central Government u/s 9(1) of Cofeposa Act. If that is so, the representation against the declaration has to be considered by the Central Government. It has been held in the case of Mohd. Saleem v. Union of India & Others 1989(3) DL 77(1), by a Full Bench of this Court that a detenu has a right to make a representation against the detention order and the said representation must be considered by the appropriate Government and not by the officer specially empowered who had issued the detention order. So, for parity of reasons, it must be held that the representation against the declaration also has to be considered by the appropriate Government and not by the officer specially empowered who had issued the declaration.

(4) The learned counsel for the respondent has, however, argued that the petitioner had made a representation dated June 17, 1988 and the same was duly considered by the Hon''ble Minister concerned Along with the earlier representation of the petitioner against the detention order and thus, there was no duty cast on the Central Government to consider the second representation made by the detenu against the declaration. There is no merit in this contention. The letter dated June 17. 1988. which has been read over to this Court and translation of the same has been filed, shows that by this communication the petitioner only elicited from the authorities as to intimate the reasons for issuance of the declaration. It was mentioned in this very letter that after the petitioner had received the reply he would make the necessary representation. So, by no stretch of reasoning this communication dated June 17, 1988. could be termed as a representation of the petitioner against the declaration. A perusal of the representation dated August 12, 1988, shows that the petitioner had taken a number of grounds in challenging the declaration. So, it was incumbent upon the Central Government to have considered the said representation at the level of the Hon''ble Minister concerned. The said representation could not have been legally disposed of by the specially empowered officer who had issued the declaration. So, it must be held that the representation dated August 12, 1988, made by the detenu against the declaration remains undecided by the appropriate Government until date which, hence, vitiates the continued detention of the petitioner.

(5) I allow the writ petition and quash the continued detention of the petitioner and direct that the petitioner be released forthwith if not required to be detained in any other case.