

(2001) 01 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 24674 of 2000

Chanda Chawla

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-01-2001

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)(i), 3(1)(ii), 7(1), 8(b), 8(f)
Constitution of India, 1950 — Article 22(5)

Citation : (2001) 1 KLJ 383

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : K.K. Dinesan and B. Raman Pillai, for the Appellant; Jose Thettayil, Govt. Pleader and Dinesh R. Shenoy (ACGSC), for the Respondent

Final Decision : Allowed

Judgement

Sankarasubban, J.—This Original Petition has been filed by one Chanda Chawla seeking the release of her husband, Jay Prakash Chawla, who has been detained under Ext. p1 order issued u/s 3 (1) (i) and Section 3(1) (ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the "COFEPOSA Act") and for other consequential orders. On 23.4.1984, M/s. Nigil Exports (India), Cochin tendered 250 cartons of Frozen Cargo stated to contain 200 cartons of Frozen cat fish fillets and 50 cartons of Grouper ICF wholes under S. Bill No. 1360 dated 19.4.1984 for shipment to M/s. Fheonix Food Incorporated, New York. On information that these consignments contained dangerous drugs, the consignments were subjected to cent percentage examination. As a result of these, 37 cartons were found to contain 500 slabs of Hashish weighing 516.502 kgs. Concealed inside fish skin. The drugs were thereupon seized under mahazar by the Examining Officers of Customs on 24.4.1984. Investigation conducted by the Customs Department, revealed that Jay Prakash Chawla @ J.P. Chawla @ Kumar brought the consignment of Hashish to Thevara, Cochin by a lorry transport where he

was received by the Antony John and E.G. Narayanan, the other two associates in the case. It also shows that Jay Prakash Chawla in active association with three others, carefully pre-planned, organised and attempted to export 516.502 Kgs of Hashish. Based on the proposal from the Collector of Customs, Ernakulam, Government have issued detention order against him on 7.1.1985 after examining the case in detail and arriving at the subjective satisfaction of the detaining authority. But the detenu was evaded arrest. Action u/s 7(1) of the COFEPOS A Act was initiated against him on 14.6.1985. He has all along been evading apprehension on the strength of stay orders issued by various High Courts. The Calcutta High Court vide its judgment dated 12.5.2000 dismissed the writ petition and vacated all interim orders. Consequently, the detenu was apprehended on 26.5.2000 and he was admitted in the Central Prison, Thiruvananthapuram on 29.5.2000.

2. The grounds of detention and all the connected documents were served upon him in time. The detenu submitted a representation on 23.6.2000, which was received by the Government and a reply was given to the detenu on 6.7.2000. As required u/s 8 (b) of the COFEPOS A Act, the case of the detenu was referred to the COFEPOSA Advisory Board on 24.6.2000. The Advisory Board met on 31.7.2000 heard the detenu in prison, perused the records of the case and his representation and opined that there is sufficient cause for detention. The Government examined the ease afresh with full application of mind and confirmed the detention u/s 8 (f) of the COFEPOSA Act and fixed the period of detention for one year with effect from 26.5.2000. Copy of the above order is produced as Ext. P6. It is further seen that the detenu had submitted petitions on 23.6.2000 and 29.6.2000 dated 29.6.2000.

3. Petitioner raised many grounds in the Original Petition. Subsequently, the Original Petition was amended highlighting the submission of representation to the Union of India on 26.6.2000. It was further stated that the fact of the above representation was not mentioned in the orders passed. Further, the Central Government also has not passed any orders on the above representation, which is produced as Ext. P 4(a).

4. A reply affidavit was also filed by the petitioner wherein the petitioner has produced Ext. P7, which is the copy of order passed by the Deputy Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau dated 19.9.2000 dismissing the detenu's representation dated 29.6.2000. Counter affidavits have been filed by the State Government as well as the Central Government.

5. Even though many contentions have been raised at the time of argument, two contentions were stressed; one is that the grounds of detention have not stated that the detenu can file a representation to the authorities and the second is that the Central Government disposed of the representation dated 29.6.2000 only by Ext. P7 order dated 19th September, 2000. which is after the confirmation by the State Government. In the counter affidavit filed by the State Government, the

State Government has produced Ext. R1. Ext. R1 is the instruction from the Joint Secretary. It is dated 20.8.1990. It refers to various infirmities passed in the orders under the Act. There is an annexure, which laid down the infirmities in the matter of detention. In item 14 of the Annexure, it is stated as follows: "Some detaining authorities are not indicating the detenu has a right to represent against the detention to the Central Government. The grounds of detention should invariably indicate the right of representation of the detenu to the detaining authority, Advisory Board and the Central Government". There is no dispute that this was not stated in the grounds of detention. But the respondent then submitted that this instruction is only in August, 1990 and that the original order of detention was passed earlier to that, viz, in 1985 and that the detenu was apprehended on 26.5.2000 and hence, Ext. R1 has no application. We are of the view that this is not correct. A perusal of Ext. R1 clearly shows that instructions have been issued to rectify the mistakes which have been found by the court, which have paved the way for setting aside the detention orders.

6. Item 14 of Annexure to Ext. R1 shows that there is a duty on the part of the detaining authorities to inform the detenu that he has a right to represent to the Central Government. In fact, it has been stated in a number of decisions of the Supreme Court that the detenu should be informed that he has a right to represent before the Central Government. According to us, the present grounds of detention are vitiated in the sense that the detenu has not been informed that he has got a right to represent before the Central Government. Even otherwise we find that the detenu sent a representation dated 29.6.2000 to the Central Government, which has been disposed of only by Ext. P7 order dated 19th September, 2000. Confirmation order was passed on 10th August, 2000. Even though we gave an opportunity to the Central Government to file an affidavit for explaining the circumstances, which lead to the delay in disposing of the representation, Ext.P4 (a), no explanation has been submitted. Learned Central Government Standing Counsel was not able to explain the delay in disposing of the representation. It is true that the grounds were taken only in the amendment. But the detenu received orders rejecting the representation only after the filing of the Original Petition and hence, that grounds could be raised only later.

7. As has been stated, it is a settled law that in cases of preventive detention expeditious action is required on the part of the authorities in disposing of the detenu's representation. In *Jayanarayan Sukul Vs. State of West Bengal*, it was held that "consideration of the representation of the detenu by the appropriate authority was entirely independent of any action by the Advisory Board including the consideration of the representation by the Advisory Board. There should not be any delay in the matter of consideration..... The burden of explaining the departure from the time imperative is always on the detaining authority". In *T.A. Abdul Rahaman Vs. State of Kerala and others*, it was held that the representation of the detenu had not been given prompt and expeditious consideration, and was allowed to lie without being properly attended to. The

explanation that the delay has occurred in seeking the comments of the Collector of Customs etc. is not a convincing and acceptable explanation. The delay of 72 days in the absence of satisfactory explanation is too long a period for ignoring the indolence on the part of the concerned authority. Hence, the unexplained delay in the disposal of the representation of the detenu is violative of Article 22 (5) rendering the order of detention invalid. In *Julia Jose Mavely v. Union of India and others* -1993 SCC (Crl.) 234, it has been held that the undue delay of about 28 days in obtaining comments from the sponsoring authority not explained by giving all material particulars rendered the detention order invalid. Hence, we are of the view that the delay in disposing of Ext. P4(a) representation has not been explained and that has vitiated the detention. Hence, Ext. P1 detention order and the consequential orders are hereby quashed. The detenu Jaya Prakash Chawla. S/o. Jagdir Rai Chawla is directed to be released, if he not required in any other case.

Original Petition is allowed.