

(1992) 09 DEL CK 0035

In the Delhi High Court

Case No : Criminal Writ Appeal No"s. 247 and 256 of 1992

Devender Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 50 DLT 370

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : Harjinder Singh and B.P. Aggarwal, for the Appellant;

Judgement

Mohd. Sharnim, J.

(1) These are two criminal writ petitions bearing No .247/92 & 256/92 moved by Shri Trilochan Singh and Shri Devender Singh under Articles 226 and 227 of the Constitution of India for issue of a writ of habeas corpus or any other appropriate writ for the immediate release of the petitioners and for setting aside the detention order bearing F.No.673/83/92-CUS. Viii and F. No. 673/81/92-CUS. Viii, dated March24, 1992 u/s 3 of the Conservation of Foreign Exchange &Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "theCOFEPOSA") issued by Sh. Mahender Prasad, Joint Secretary to the Government of India. Ministry of Finance, Department of Revenue. The writ petitions are being taken up together as common questions of law and facts are to be gone into while disposing them of.

(2) It would be just and proper to examine in brief the facts which led to the presentation of the above said two petitioner in order to fully and properly appreciate the points involved herein,

(3) The officers of the Department of Revenue Intelligence on the basis of an intelligence gathered and developed by them on 1/03/1992intercepted a Gypsy Maruti Car with registration No. DL-3C-A-9591 at Hyderpur Market near Shalimar

Bagh, New Delhi, with petitioner Devender Singh and one Ram Gopal therein. Rummaging of the said vehicle resulted to the recovery and seizure of 110 foreign marked gold bars of 10 tolas each which weighed 12.830.40 gm. and valued at Rs. 59.66,136.00. On demand neither Shri Devender Singh nor Shri Ram Gopal could produce any evidence, documentary or otherwise, for the lawful possession of the aforesaid gold. Hence, the same was seized u/s 110 of the Customs Act. As a follow-up action premises bearing No. 175, Raja Garden, New Delhi, belonging to one Gautam Morarji Pandit Pautra, a friend of the petitioner Shri Trilochan Singh, was searched. It led to the recovery of three briefcases, one polythene bag and one raxin bag containing 50 foreign marked gold bars Rs. 27,11,880.00 and Indian currency amounting to Rs. 12,05,000.00 from the possession of Trilochan Singh petitioner. Maruti Car bearing registration No. DL-2C-7407 parked outside the residence alluded to above which was in possession of the petitioner Trilochan Singh was also searched. It resulted in the recovery of Indian currency amounting to Rs. 24 lacs and foreign currency \$ 42,284 and 2080.

(4) Both the petitioners and Shri Ram Gopal made statements on being interrogated u/s 108 of the Customs Act. They were arrested and produced before a Magistrate on the following day. They retracted from their statements as the same, according to them, were obtained under duress and after torture and use of third degree methods. They were remanded to judicial custody. While they were in judicial custody the orders of detention were passed on 24/03/1992 by Shri Mahender Prasad, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, against the petitioners. The detention order against Shri Trilochan Singh petitioner was passed to prevent him from engaging in keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing smuggled goods in future. Whereas the order of detention against Shri Devender Singh petitioner was passed to prevent him from engaging in transporting smuggled goods and dealing in smuggled goods otherwise than by engaging in concealing or keeping smuggled goods in future. The detention orders were served on the petitioners on 25/03/1992. The petitioner Trilochan Singh made a representation against the said detention order on 10/04/1992. However the same was sent from the jail to the respondent on 22/04/1992. The representation made by Shri Devender Singh petitioner on 10/04/1992 was sent to the respondent on 20/04/1992 through the Superintendent, Central Jail, Tihar. The representations have neither been considered by the respondent nor were disposed of.

(5) The detention orders thus passed against the petitioners are illegal and invalid as the same were passed in flagrant disregard of Articles 14, 19, 21 and 22 of the Constitution of India. Hence, the same are sought to be quashed through the present writ petitions.

(6) The respondents put in contest. They have filed a counter affidavit. According to the respondent the impugned detention orders passed against the petitioners

are perfectly legal and valid and are in no way violative of Articles 14, 19, 21 and 22 of the Constitution of India.

(7) Learned Counsel for the petitioner S. Herjinder Singh has vehemently contended that the Detaining Authority in the instant case while passing "the impugned orders dated 24/03/1992 did not rely upon the relevant and material documents connected with and related to the alleged smuggling activities of the petitioners. According to the learned Counsel they took into consideration quite a good number of documents which are in no way and even remotely, connected with the impugned alleged smuggling activities of the petitioners. The contention of the learned Counsel proceeds further that if this is so, it vitiated the subjective satisfaction of the Detaining Authority and the impugned detention orders are liable to be quashed on this ground alone. The learned Counsel in support of his argument has led this Court through various authoritative pronouncements made by the Hon'ble Supreme Court and this Court. This aspect of the matter as to which is the material which is to be considered by the Detaining Authority while forming the subjective satisfaction about the passing of the detention order came up for consideration before their lordships of the Supreme Court in *Smt. Shalini Soni v. U.O.I.*, 1980 CrL. L.J. 1487. Their Lordships opined asunder:.....

"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."

(8) Their Lordships of the Supreme Court as far back as the year 1975 laid down certain guidelines for the Detaining Authority to arrive at a subjective satisfaction while passing the detention order as reported in *Sadhu Roy v. The State of West Bengal* Air 1975 Sc 919..... "The satisfaction, though attenuated by "subjectivity" must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases."

(9) A matter very much akin to the matter in hand came up for determination before a Single Judge of this Court as reported in *Diwan Singh Verma v. Union of India and Others* 1988 (2) Delhi 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 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 those 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."

(10) It is fully manifest from the authorities alluded to above that the detaining authority while passing the impugned order should take into consideration only those discerning few documents which are relevant and material and which are connected with the prejudicial activities of the detenu. He should not take into consideration the documents of the material which is in no way connected with the prejudicial activities of a detenu. In case this is not done then it will show that there was no proper application of mind and the detaining authority dealt with a matter which relates to the freedom of an individual in a casual, mechanical and a perfunctory manner.

(11) With the above background let us now see as to whether the detaining authority arrived at the subjective satisfaction after fully applying its mind ? The learned Counsel for the petitioner in order to show and prove that this was not so has led me through para 14(xiii) of the petitioner being Criminal Writ Petition No. 247/92 (Page 18), and para 13(xii) of the Criminal Writ Petition No. 256/92 (Page 16). It has been stated therein that the detaining authorities took into consideration as many as 18 documents which were absolutely irrelevant and immaterial to form an opinion with regard to the detention of the petitioner. According to the petitioners the detaining authority took into consideration application for grant of "B" Class, a divorce deed dated 16/12/1991, a receipt pertaining to the gift items, house-hold items and Istridhan, a progress report of Kanwarjit Singh from Sanwal Shah Model School. This goes to show the non-application of mind and makes the detention illegal and bad in law. The respondent in their counter-affidavit have nowhere denied in the corresponding paras that they did not consider and rely upon the said documents. They have simply contented themselves by stating that all the documents relied upon by the detaining authority at the time of the passing of the impugned order were relevant and material. Learned Counsel for the respondent, however, has miserably failed to show me as to how the said documents were relevant and material. In fact, he has not argued any thing on this point except stating that the said documents were quite relevant and material. However, to my mind, a simply saying so would not make a document relevant and material for the purpose of the detention of a petitioner. Relevancy of a particular document is to be determined while keeping in mind its proximity and link with the prejudicial activities of a detenu, A document can be said to be relevant and material in a given situation when it is likely to sway the opinion of detaining authority one way or the other.

(12) This is not the case of the respondent that there were certain irrelevant and immaterial documents in the list of documents relied upon, but they were not

taken into consideration by the detaining authority at the time of the passing of the impugned order. On the other hand, the respondent has in their counter stated that the said documents were quite relevant and material for the purpose of the present case. I fail to understand as to how an application for grant of " B" Class to the petitioners, a divorce deed, receipts with regard to the gift items, house-hold items and Istridhan and progress report of Kanwarjit Singh from Sanwal Shah Model School can be said to be relevant and material to affect the subjective satisfaction of the detaining authority. A duty has thus been cast on the shoulders of the detaining authority to separate the relevant from the irrelevant that is to say grain from the chaff. Only those documents which are relevant and material are connected with the prejudicial activities are to be taken into consideration at the time of passing the detention order. If this is not done it goes to show that the detaining authority did not apply its mind and passed the order in a mechanical, casual and perfunctory manner.

(13) In view of the above I conclude that the consideration of the irrelevant documents vitiated the subjective satisfaction of the detaining authority. Hence, the detention orders are liable to be quashed.

(14) Since the impugned detention orders are liable to be quashed on this ground alone, this Court need not go into the other grounds.

(15) The Writ Petitions bearing Nos. 247/92 and 256/92 are hereby allowed. The detention orders dated 24/03/1992 are hereby quashed. The petitioners be set at liberty at once in case they are not required to be detained in any other case.