

(1992) 05 DEL CK 0008

In the Delhi High Court

Case No : Criminal Writ Appeal No. 353 of 1991

Dhiraj Singh Madan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-05-1992

Acts Referred:

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

Citation : (1993) CriLJ 514 : (1992) 2 Crimes 903 : (1992) 23 DRJ 257 : (1992) 2 RCR(Criminal) 366

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Sangeeta Nanchaha and P.K. Jain, for the Appellant;

Judgement

Usha Mehra, J.

(1) The detention of a person already in custody amounts to double detention. similarly, non supply of material documents and delay in disposal of the representation under Article 22 of the constitution renders the detention illegal and void.

(2) The allegations against Dhiraj Singh Madan, petitioner, are that on 11.4.91, on account of his personal search Us 5000 dollars were recovered from his possession. As a result of search of his vehicle certain other incriminating loose sheets were recovered. He was accordingly detained. He was served with a detention order dated 13.5.91, issued u/s 3 of the Conservation of Foreign Exchange end Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as Cofeposa Act). Reasons assigned for detention are "to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange". The petitioner was detained and kept in custody in Central Jail, Tihar, New Delhi. With this detention order, petitioner is stated to have been supplied the documents and grounds of detention.

(3) After receipt of the detention order, petitioner made a representation, dated 30.5.91, to the Secretary, Government of India, Ministry of Finance, Deptt. of Revenue. In this representation, the petitioner asked for documents. This representation was rejected on 20th June, 1991 without assigning any reason. In this representation, the petitioner had asserted that the Hindi translation of order of detention and grounds of detention were not the true translation of the original order of detention and the ground of detention, Therefore, amounted to non-supply of material documents. It was also asserted that the copy of the proposal sent by the sponsoring authority to the detaining authority, which was a document referred to and relied upon by" the detaining authority had also not been supplied to him. He asserted that the said documents be supplied to him in order to enable him to file an effective and purposeful representation. He also called upon the detaining authority to supply him the contents of the information parri passu the grounds of detention beside asking certain other documents.

(4) When these documents were not made available and representation was rejected, petitioner made another representation on 10.6.91, addressed to the President of India. In this representation he called for the documents like the summons issued to Ram Singh and Brahamjit Singh, statements of the said persons and the Panchnama, in respect of searches made. He further asked copies of seven loose sheets alleged to have been recovered from his vehicle. Only four sheets had been supplied to him, but the rest of the documents alleged to have been seized from his personal search and vehicle has not been supplied to him. It was reiterated that these documents Along with the documents already asked for in the earlier representation dated 30.5.91, be supplied in order to enable him to make an effective representation. This representation was rejected on 3.7.91, again without assigning any reason.

(5) Not being satisfied, the petitioner made yet another representation on 21.9.91, addressed to the President of India, in which he reiterated his demand of documents. He asserted that while rejecting his representation, no mention of the demand of documents made by him has been dealt with which amounted to casual consideration of the representation, and Therefore, amounted to violation of Article 22 of the Constitution of India. He reiterated his request of supplying of documents, and further asserted that the sponsoring authority did not place before the detaining authority certain documents which render the detention order illegal. This representation was rejected on 24.10.91, without assigning any reason.

(6) The petitioner has assailed his detention primarily on the following grounds:-

1)That his successive representations were not disposed of expeditiously rendering the detention illegal and void;

2)That the documents asked for and demanded by him which had a material bearing were not supplied to him nor any reason has been assigned for non supply of these documents.

3) That while he was under detention, he could not be booked under Cofeposa Act, particularly when there was no material justifying the same.

(7) So far as question of detention is concerned it is well settled principle of law that. it is only when detaining authority finds a compelling circumstance against a detainee for his likely involvement in smuggling activities that detention orders are passed. Supreme Court has observed that there has to be a proximity nexus between the preventive action and past activities of the detainee. If it is not then the order of detention should be struck down, as per *Dulal Roy Vs. The District Magistrate, Burdwan and Others*, .

(8) So far as the question of double detention is concerned, the counsel for the petitioner has not argued the same nor laid any foundation for the same as to how it is a case of double detention. In the absence of there being any evidence that the petitioner was in custody when he was served with the detention order this ground has no force and accordingly rejected.

(9) Now coming to the first ground, that his successive representation were not considered expeditiously, and Therefore, detention is bad. As pointed out earlier, the first representation under Article 22 of the Constitution was made on 30.5.91, which was rejected on 20.6.91. According to petitioner there was 14 days delay and this delay has not been explained. Similarly, in the second representation made on 10.6.91 and rejected on 3.7.91, there is a delay of 23 days. In the third representation made on 21.9.91 and rejected on 24.10.91, there is a delay of 33, days. According to petitioner these delays have not been substantially explained by the respondent. In the counter affidavit filed by the respondent it has been stated that the representation of 30.5.91 was received by the Cofeposa Unit of the Ministry of Finance on 4.6.91. On the same date, the representation was placed before the Joint Secretary, Cofeposa, who desired to have comments of the sponsoring authority. Letter to this effect was issued on 4.6.91 to the sponsoring authority asking for their comments. Comments were not received up to 12.6.91. Therefore, a reminder was issued on the same date. When the comments were received, these were processed and submitted to the Joint Secretary, Cofeposa, who marked the same to the Secretary, Revenue, on 18.6.91. Secretary, Revenue on 19.6.91, rejected the representation and communicated to the detainee on 20.6.91. Therefore, according to the respondent there is no delay in considering this representation.

(10) The file of the case was called. A perusal of the same showed that representation of 30.5.91 was received by the Joint Secretary on 4.6.91, 1st and 2nd June happened to be holidays. On 6.6.91, preliminary comments were sent by the sponsoring authority to the Cofeposa Deptt. Central Government, 8th and 9th June happened to be holidays. On 10.6.91, Cofeposa unit received the comments from the Ministry and sent the same to the Under Secretary, Central Government on 17.6.91, because 15th & 16th June happened to be holidays. On 18.6.91 comments were considered and rejected on 19.6.91. Counsel for the petitioner pointed out that there is no Explanation as to why from 10th to 17th

June, comments could not be sent to the Secretary, Central Govt., by the Cofeposa Unit, particularly when both the offices are situated in Delhi. On the other hand counsel for the Union of India contended that 15th & 16th June happened to be holidays, Therefore, there was no delay. Even otherwise for collecting the comments from the Central Government by the COFEPOSA. Unit it required time. I am afraid the respondent had not been able to explain the delay from 10th to 17th June, 1991, even though there were two intervening holidays i.e. 15th & 16th June.. For the sake of arguments, even if it is presumed that some time was consumed in collecting the comments, still the respondent has to justify as to why in disposing the second and third representation number of days were spent. No Explanation tur the delay has been given. For example the representation made on 10.6.91 was rejected on 3.7.91 and in its counter affidavit no Explanation has been given as to how 17 days were spent at President's Secretariat in sending the representation to Cofeposa Unit. As per the counter affidavit, the representation was received in the Cofeposa unit on 27.6.91 and was sent to the Joint Secretary, Revenue on 28.6.91, who forwarded the same to the Finance Minister, who rejected the same on 1.7.91 and communicated the same to the detenue on 3.7.91. Why this representation was sent to the Finance Minister when the earlier representation was rejected by the Secretary Revenue, has not been explained.

(11) Similarly, the third representation made on 21.9.91 was forwarded by the President Secretariate on 4.10.91 and was received in the Ministry on 8.10.91, who submitted the file to the Jt. Secretary on 9.10.91 and the Jt. Secretary in turn forwarded the same to the Secretary Finance on 11.10.91. Ministry of State for Revenue considered it on 21.10.91. and Finance Minister rejected it on 23.10.91. From 21st September till 4th October, 1991, no Explanation has been given. Similarly, from 4th October to 8th October, 1991. there is again no Explanation, similarly from 9th October to 11th October and from 11th October to 21st October, 1991, no Explanation has been given except indicating that the file was rotated from one office to the other. This unreasonable and unexplained delay renders the detention illegal held by the Supreme Court in the case of Asian Ahmed Zahira Ahmed Shaik Vs. U.O.I. & Ors. reported in Judgment Today 1989 (2) Sc 34, where it was observed that a representation should be considered with a reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by the slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22 of the Constitution. The delay in disposal of the third representation of the petitioner, is sought to be justified and explained by merely giving the file movement. In fact no Explanation has been given for 17 days delay in President's House from 22nd September to 8th October, 1991. Thereafter Ii days delay on the part of the

Finance Secretary in forwarding the same to the Minister of State for Revenue i.e. from 11th October to 21st October, 1991. In fact delay has remained unexplained.

(12) Counsel for the respondent-UOI contended that there was in fact no delay in disposing the first representation dated 30-5-91. For the successive representations made by the petitioner, the respondent was not duty bound to consider them expeditiously or with due promptitude. According to him Article 11 of the Constitution provides "a representation" and that representation dated 30.5.91 was disposed of expeditiously. Thereafter the petitioner cannot be given same treatment. To strengthen his arguments he placed reliance on the decision of the Madras High Court in the case of P. Subramani V. State of Karnataka reported in 1990 C L J 1106, where the Court observed that as per Article 22 of the Constitution a person who is detained has got a right to make a representation. That constitutional right as such can be exercised only once. Courts have successively held that a representation should be considered with due diligence. The order of detention is one which can be suspended and revoked at any time by the authority or Superior Authority. Therefore, from the constitutional representation which had to be considered with utmost diligence, it was open to the petitioner to file as many representations as he thought useful to put forward his case. He further relied upon the decision of Supreme Court in the case of Abdul Salam alias Thiyyan Vs. Union of India and others, here it has been held that if the Central Government gives a satisfactory Explanation then no negligence or callousness should be inferred. He, Therefore, contended that in the counter affidavit filed by the Central Government the movement of the representation has been explained satisfactorily and the action taken by the officers has also been enumerated, which shows that representation was disposed of with due diligence. He also placed reliance on the decision of the Supreme Court in the case of State of Uttar Pradesh Vs. Zavad Zama Khan, and contended that there is no duty cast upon the Government to consider with due promptitude and expedition the repeated representations of the petitioner. So far as proposition of law that successive representations need not be disposed as expeditiously as the first one is concerned there cannot be any quarrel.

(13) It is a settled principle Of law that repeated representation cannot be considered expeditiously and with due promptitude provided they are based on the same facts and same cause of action. But if new facts are brought on record and new grounds are alleged then it would amount to fresh representation .It would not amount to repeated representation. A fresh representation is required to be considered as expeditiously and with due promptitude as the first representation is required to be considered under Article 22 of the Constitution.

(14) In the light of the above observation we have to see that in these three successive representations, whether the petitioner has repeated the same facts and same cause or mentioned new grounds which required fresh consideration? In the first representation dated 30th May, 1991, petitioner had asked for the

Hindi translation of the order of detention and grounds, copy of the proposal sent by the sponsoring authority and the documents seized from his personal search as well as from the vehicle and also alleged that this was his solitary incidence. In the second representation dated 10.6.91, beside demanding the documents already asked for, he also demanded the documents relied by the detaining authority. In the third representation dated 21.9.91, beside demanding documents asked for earlier, he put up the ground that there was non-application of mind while rejecting his earlier representations, and Therefore, the detention order is liable to be set aside. He further requested that the detaining authority should consider his representation once again carefully and supply the documents. He also stated that it was a case of double detention. Further took up the plea that the sponsoring authority did not place before the detaining authority the documents namely detenu's application dated 1.5.92 for calling of his medical report from jail, reply to the detenu's second application dated 9.5.91 filed by the sponsoring authority in the Court and the order passed by the Court on the second bail application. According to him these documents were very material and since these were not placed before the detaining authority, the detention order was liable to be set aside. He further submitted that his mother was seriously ill and admitted in the hospital. Counsel for the petitioner, Therefore, contended that even though in the second representation no new facts were urged but in the third representation new grounds were urged, those were, that the material documents were not placed before the detaining authority which rendered the detention illegal. Fresh facts and fresh cause of action was pleaded, Therefore, this required to be considered expeditiously.

(15) I find force in this submission of the counsel for the petitioner that between the first and the second representation no new facts were urged before the detaining authority, Therefore, the question of expeditious disposal of the second representation did not arise nor could have been treated as a fresh representation nor it was obligatory on the part of the respondent to dispose that representation with due promptitude. But, so far as third representation is concerned, to my mind, petitioner alleged new facts regarding non-placing of documents by the sponsoring authority before the detaining authority which amounted to non application of mind. Therefore, fresh cause arose in his favor. Since fresh ground was pleaded, Therefore, this representation ought to have been disposed of expeditiously by the detaining authority. But from the facts enumerated above, it is clear that the respondent has taken 33 days in disposing this representation of the detenu/petitioner dated 21st/22nd September 1991 and no Explanation has been given for the delay from 21st September to 4th October, 1991 and from 4th October to 8th October, 1991 and from 11th October to 21st October, 1991. Even in the affidavit filed in response to the additional fact mentioned by the petitioner, no Explanation worth consideration has been given by the respondent. In the-affidavit in opposition to these averments of the petitioner, the only Explanation which has been given by the respondent is that the representation dated 22.9.91 was forwarded by the President Secretariate on

4.10.91 without indicating why so much time was spent in the President Secretariate. No Explanation has been given for subsequent delay as already discussed above. Third representation amounted to a fresh representation, it was obligatory on the part of the respondent to deal with it expeditiously. Having not done so, I am in agreement with the contention of counsel for the petitioner that the detention is liable to be quashed. This Court in several cases has taken the view that repeated representations when made on fresh facts and fresh cause of action are to be disposed of expeditiously and each representation will be treated as a fresh representation. In this regard reference can be had to the decision in the case of Kishore Kumar Kundhra V. Union of India & Ors. reported in 1989 (2) Delhi Law 337 by P.K. Bahri, J, and decision in CrI.W. No. 295/90, titled as Sabu Thomas V. Union of India & Ors., decided or-18.2.91.

(16) Petitioner has also taken the plea of non supply of documents and the prejudice the petitioner has suffered on account of that. In the repeated representations made petitioner had demanded documents but his representations were rejected summarily without assigning any reasons nor documents have been supplied. The documents called for and as referred to in his petition, according to him had material bearing on his case were vital documents. The non supply of documents though request repeatedly, would certainly constitutes violation of the provisions of the Act and would, Therefore, render the detention null and void.

(17) In the result, the petition is allowed, order of detention is set aside and the petitioner is set at liberty, unless required otherwise.