
(1995) 05 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Criminal W.P. No. 51 of 1994

Dilbagh Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-05-1995

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 226

Citation : (1996) 64 ECR 47 : (1995) 3 RCR(Criminal) 389

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—This is a petition filed by Dilbagh Singh under Article 226 of the Constitution of India seeking quashing of the detention order dated 8.8.1994 passed by the respondent u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA").

2. As against the petitioner, it is alleged that on 20.1.1994 at about 3.15 hours a scooter was coming from the side of Bore Gangaosoo. The picket of the Central Reserve Police Force asked the scooter to stop. It had three riders. When the scooter stopped, all the three persons tried to escape. The petitioner and one Joginder Pal were apprehended while the third person escaped. The petitioner had tied a black belt around his waist It was checked and was found to be having 98 gold biscuits. The scooter was without number plate. The gold biscuits and the scooter were seized.

3. It is further alleged that petitioner confessed that he alongwith Mukhtiar Singh and Joginder Pal had gone upto the border. Mukhtiar Singh and Joginder Pal went across the border while petitioner waited alongwith his scooter. They were apprehended while they were coming back. He has further stated that he was

working for one Sarwan Singh and earlier 5 to 7 trips had been made to Pakistan. On these broad facts, detention order was passed u/s 3(1) of the COFEPOSA by the Joint Secretary to Government of India dated 8.8.1994.

4. The said order and grounds of detention are assailed by the petitioner on the ground that criminal proceedings under the Foreign Exchange Regulation Act, 1973 have been initiated when there is a specific remedy for the alleged activity of the petitioner, he cannot be detained by passing the impugned order. The detention order is alleged to have been passed after seven months of the said recovery of gold biscuits. Thus, as per the petitioner there is no proximity between the alleged activity and the impugned order of detention. The detention order is alleged to have been passed in a mechanical manner without application of mind and that merely because the respondent has reached the conclusion that the petitioner may be admitted to bail, there is no ground to pass the impugned order.

5. In the reply filed, preliminary objection has been taken that petitioner was intercepted by the Central Reserve Police Force in the State of Jammu and Kashmir. The recovery of gold biscuits was effected therein. The petitioner is detained in Central Jail, Jammu, therefore, this Court has no jurisdiction to entertain the petition. It was denied that the impugned order and grounds of detention were illegal. As per respondent there has been no delay in passing the order of detention. Further more, it was pointed out that investigation was conducted at different levels by the Customs authorities. Time was taken for translating more than 100 pages and that detention order could validly be passed as the petitioner was already in custody.

6. The main stress of the respondent in this regard was on the preliminary objection raised that the recovery of gold biscuits was effected in the State of Jammu and Kashmir. The petitioner is detained in the Central Jail at Jammu and therefore, this Court has no jurisdiction to entertain the petition.

7. Article 226(2) of the Constitution of India runs as under:

The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

8. It is apparent from aforesaid that powers under Article 226 of the Constitution can be exercised in relation to territory to which the cause of action arises. Normally, cause of action in the context would mean every fact if traversed would be necessary for the petitioner to prove in order to support his right to the judgment of the Court. It would include all material facts on which it is founded.

9. In this connection, reference with advantage may be made with the decision

of this Court in *Gurdeep Kaur v. Union of India and Ors.* 1990 (2) R.C.R. 20. A similar question was raised that the person was residing at Mohali and, therefore, Punjab and Haryana High Court had the jurisdiction to act under Article 226 of the Constitution of India. Therein, the recovery was effected near Ahmedabad. It was held that this Court had no jurisdiction to entertain the petition. Ld. Counsel for the petitioner urged that this Court will have the jurisdiction to hear the petition because his client is residing at Amritsar and in support of his claim he relied on the decision of this Court in the case of *Kuldip Singh v. Union of India* 1994 (1) R.C.R. 667. Perusal of the said judgment would reveal that it has been found that the police had tried to apprehend the petitioner in that case at his house in order to serve the order of detention. It is on these facts that it was concluded that this Court had the territorial jurisdiction in dealing with the Writ Petition. On facts, the cited case is distinguishable. The petitioner herein had been apprehended in the State of Jammu and Kashmir. There was no attempt made in the States of Punjab and Haryana to apprehend the petitioner. Consequently, this decision will not come to the rescue of the petitioner.

10. A right of action arises as soon as there is an invasion of right. But cause of action and right of action are not synonymous or interchangeable. A right of action is the right to enforce a cause of action. A person residing any where in the country being aggrieved by an order of Government, Central or State may have a right of action at law but it can be enforced or the jurisdiction under Article 226 of the Constitution can be invoked of the High Court within whose territorial limits the cause of action, wholly or in part arises. Cause of action arises by the action of the Government and not by residence of the person aggrieved.

11. Reverting back to the facts of the present case, it is crystal clear that no part of the cause of action arose outside the State of Jammu and Kashmir. The petitioner was apprehended in that State and recovery also effected therein. He is detained in the Central Jail at Jammu. Merely being a resident of Amritsar will not confer any jurisdiction of this Court to entertain the petition.

12. In face of the findings returned above, it becomes unnecessary to consider other pleas of the petitioner. For these reasons, the petition being without merit fails and is dismissed.