

(1987) 08 DEL CK 0060

In the Delhi High Court

Case No : Criminal Writ Appeal No. 233 of 1987

Durga Dass Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-08-1987

Acts Referred:

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

Citation : (1987) 3 Crimes 579 : (1987) 33 DLT 173 : (1987) 32 ELT 652

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Harjinder Singh, Naveen Malhotra, Sat Pal and Muninder Singh, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) The petitioner has challenged the validity of his detention which took place on 23-4-1987 in pursuance of a detention order passed on 28-4-1986. The detention order was passed on the basis of an event which took place on 19-4-1986 in which one Karim Yusuf, Ravinder Bali and one Satya Narain were hauled up for violation of the provisions of Customs Act. They were found smuggling foreign made gold. They were arrested by the D. R. I. Officers and on 20-4-1986. They were produced before the Duty Magistrate with an application for remand. Pursuant to this the house of the petitioner was searched at Jammu on 22-4-1986. The detention order as stated earlier was actually served on the detenu on 23-4-1987 since which date he is supposed to be in detention on the basis of this detention warrant.

(2) The case of the petitioner is that he was all along in his house at Jammu and that on 13-4-1987 he was taken into custody by Jammu Police and was confined till 22-4-1987 without the authority of law though on 23-4-1987 the impugned detention warrant was served upon him. In this regard the detenu had moved habeas corpus petition before the High Court of Jammu & Kashmir u/s 491 of the

(3) Challenge to the validity of detention is thrown on a variety of grounds but Mr. Harjinder Singh confident of his success has raised two main contentions. In the first place Mr. Harjinder Singh contends that there has been a total non-application of mind by the detaining authority inasmuch as the detaining authority while serving the grounds of detention on the petitioner-detenu has almost in verbatim reproduced the contents of the remand application which was submitted to the court by the D. R. I. Officials. Secondly Mr. Harjinder Singh has vehemently argued that the detention order that was passed on 28-4-1986 was executed on 23-4-1987, almost after one year of its passing and thereby it has frustrated the purpose of detention and there is no nexus between the alleged activity and the purpose for which the detention is sought to be made. It may be noticed that the detention order Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, in respect of the detenu has been passed with a view to prevent him from smuggling the goods, abetting the smuggling of goods, engaging in transporting the smuggled goods and dealing in smuggled goods. The purpose for which the detention is made clearly shows that it was thought necessary to pass the detention order with a view to prevent the petitioner from indulging in smuggling activities. That being the object the detention order ought to have been executed with utmost urgency unless there were circumstances in existence which prevented the detaining authority from executing the same.

(4) This petition is to be allowed essentially on one very important ground which is that the detaining authority has failed to apply his mind inasmuch as the grounds of detention formulated by him are verbatim copy of the remand application submitted to the court by the Revenue Intelligence people. I need not stretch this point too far in this order as in the case of Co-detunes in Criminal Writ No. 297 of 1986, Karim Yusuf v. M.L. Wadhawan and others, Crl. Writ No. 303 of 1986 Satya Narain v. Shri M.L. Wadhawan and others, Crl. Writ No. 317 of 1986 and Om Parkash Bah v. M.L. Wadhawan and others and Crl. Writ No. 318 of 1986, M/s. Sital Sharma v. M.L. Wadhawan and others, this court by its order dated 7th of January, 1987 has held for detailed reasons that the detaining authority had failed to apply his mind as the grounds of detention delivered to the detenus were almost verbatim copies of the remand application and throughout the grounds of detention the detenus have been addressed in their names instead of addressing them as "you". This court in this case felt that it was necessary in order to clearly convey to the detenu that the allegations mentioned pertained to him. The court further held that the grounds conveyed to the detenu must always be clear and specific and further they must clearly tell the detenu as to what are the allegations attributed to him which form the basis for his detention. The court after pursuing the grounds of detention and remand application in those connected cases came to the conclusion that the detaining authority has not applied his mind to the material and facts before arriving at a satisfaction and that accounts for the mechanical copying of the contents of the

remand application and the grounds of detention. The court in those petitions felt that in view of the consistent view of this court the detention orders cannot be sustained. In any case for this simple reason the detention orders in all the four detentions involved in the same incident were quashed. It cannot be disputed that the grounds of detention delivered to the petitioner are in no way different than the grounds of detention which were delivered to his co-detenu. That being the case there is hardly any scope for further examination of the matter particularly in view of the fact that in this case also the position is do different, and the grounds of detention barring a change in paragraph is almost the same as given in the remand application. On the ground alone, Therefore, the detention has to be quashed.

(5) Mr. Harjinder Singh, however, has also raised the question of delay in the execution of the detention order. I have already made a mention of the fact that the detention order admittedly has been executed almost after more than 11" months and the detention order was passed with a view to prevent the detenu from indulging in smuggling activities. That being the compelling reason for passing the detention order it is anybody's guess that the execution thereof could not be delayed and ought not to have been delayed if the purpose really was to prevent the petitioner from indulging in smuggling. The petitioner has raised an averment that he was all along available at his home. The respondents in their return have denied this fact and have stated that the petitioner was not available and was absconding and, Therefore, the detention order could not be executed. If the delay in execution of the detention order is attributable to the fact that the petitioner was absconding, its validity cannot be challenged. But If the delay is attributable to the indifference of the detaining authority, then the detention order has to be quashed. While explaining the cause for delay the respondents have given & different dates up to August 1986 stating that the summons was sent to the petitioner u/s 108 of the Customs Act but he did not appear on any occasion. This is absolutely an irrelevant answer as these summons are issued by the Revenue Intelligence people and the detaining authority has nothing to do with it. The respondents have, however, stated that attempts were made to serve the detention order on the petitioner through J&K Police but by a letter dated 28-2-1987 they were informed that the detention order could not be served as the petitioner was "not found at his place of residence. One does not know when the detention order was sent to the J&K. Police for service nor has the court been taken into confidence by the respondents in this regard. The respondents, however, stick to their stand that the delay was caused because the petitioner avoided his arrest.

(6) I am not inclined to trust the stand taken by the respondents. The attempt seems to be somehow to justify the delay and not come forward with true facts and the answer is left as vague as possible. More so, after passing the detention order u/s 3 the Act, lays down the mode for execution of the detention order. Section 4 of the Cofeposa clearly says that the detention order may be executed at any place in India provided for the execution of warrants of arrest. In the

present case it appears that no attempt was made in the first instance to send the detention warrant for execution as required by Section 4, Cr. P.C. and instead the authorities started issuing summons u/s 108 of the Customs Act to procure attendance of the petitioner. In any case assuming though not granting that the petitioner was absconding the procedure to be adopted in that event is provided u/s 7 of the Act and before the detaining authority can take a stand in court that the warrant could not be executed as the detenu was absconding it must show that it did make attempt to execute the warrant by taking resort to Section 7 of the Act. If the detenu in the present case was really absconding, one would expect the authority to take steps for his arrest as envisaged by section 7 of the Act. If this is not done the indifference in execution of the warrant needs no further proof. I am, Therefore, of the view that there is undue and unexplained delay in the present case in execution of the detention order and there is no direct nexus between the detention order and the purpose sought to be achieved. In view of these observations the petition has to be allowed. It is accordingly allowed. The detention order is quashed. The petitioner shall be released forthwith from the detention unless otherwise wanted.