

**(2006) 07 KAR CK 0077**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 83 of 2005**

G. Noor Mohammed

APPELLANT

Vs

State of Karnataka

RESPONDENT

---

**Date of Decision :** 18-07-2006

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974  
(COFEPOSA) — Section 3 (1), 3 (1) (ii), 3 (1) (iii)  
Constitution of India, 1950 — Article 22, 22 (5)  
Customs Act, 1962 — Section 108  
Penal Code, 1860 (IPC) — Section 107

**Citation :** (2006) CriLJ 4294 : (2006) 5 KarLJ 242 : (2006) 3 KCCR 1910

**Hon'ble Judges :** R. Gururajan, J;Jawad Rahim, J

**Bench :** Division Bench

**Advocate :** Kiran S. Javali, for the Appellant; Belliappa BA., GA., for the Respondent

---

## Judgement

R. Gururajan, J.—G. Noor Mohammed is before us seeking a writ to quash Annexure "A" thereby declaring the detention in terms of Annexure "A" dated 3.12.2003 as illegal and abinitio void.

2. The petitioner is the father of the detenu Sri. Zull Mohamed. On or about 3.12.2003, an order of Detention dated 3.12.2003 was issued by Sri. Adhip Chaudary, Secretary to the Home Department. It was stated that Sri. Adhip Chaudary is specially empowered u/s 3(1) of the COFEPOSA Act. He was satisfied with respect to the detenu that with a view to prevent him in abetting the smuggling of goods, it is necessary to make the order of detention. He therefore, in exercise of the powers conferred by Section 3(1)(ii) of the COFEPOSA Act directed that the detenu be detained and kept in custody in the Central Prison, Bangalore. Detenu does not know English. He was furnished with Tamil version of Order of Detention. Detention order was served on 22.6.2005. Grounds of detention was also made available to the detenu. Tamil version was also made available to him. He was served with a list of documents and copies of the

documents set out in the said list which were relied upon by the detaining authority for issuing the impugned order of detention. Aggrieved by the detention and the grounds, the petitioner is before us.

3. Notice was issued. State is represented. State has filed a very detailed counter affidavit. It is stated by the State that the order of detention was passed u/s 3(1) (ii) of COFEPOSA Act. After going through all the materials submitted by the Sponsoring Authority namely, Directorate of Revenue Intelligence, Bangalore (DRI), the second respondent was satisfied that the detenu did indulge in such activities abetting smuggling and has a high propensity to indulge in such activities in future which warranted an order of prevention of detention. Based on credible intelligence that a passenger would be carrying smuggled computer processors on the Indian Airlines Flight IC 771 from Kolkatta to Bangalore on 18.9.2003 surveillance was kept by the officers of Directorate of Revenue Intelligence, Bangalore (DRI) at the Domestic Arrival Hall of Bangalore Airport on 18.9.2003. The Intelligence was that the said passenger's seat number was 21D and his description was that he was a Tamilian, aged about 30 years, brown complexioned, black hair combed backwards, having moustache, medium built, wearing an off-white colour shirt and grey trousers and would be carrying a "Visa Club" brand blue trolley bag with him. The Intelligence officers intercepted him and verified. Verification shows the name of the passenger as Zull Mohamed from Trichy. He admitted that he was carrying smuggled computer microprocessors. Cross examination was conducted. It reveals that he was carrying 288 numbers of microprocessors valued at Rs. 19,00,800/-. He has no valid documents. He informed that six packets were concealed in the rear side left toilet of the aircraft and that he retrieved it from there and put into the black hand bag which he had carried for that purpose and that he was travelling from Chennai to Kolkata and Kolkata to Bangalore in the same aircraft on 18.9.2003. He produced the ticket. He stated that the ticket for travelling from Chennai to Kolkata was destroyed. During the course of flight, he was asked to recover the concealed Microprocessors from the aircraft toilet and bring . them to Chennai. Statement was recorded u/s 108 of the Customs Act. He admitted that the process was collected by him. He has done this on the instructions of one Raju of Chennai. Sri. Raju had to pay him Rs. 10,000 for this job. He was doing this kind of retrieval of smuggled goods for Sri. Raju for the past two to three years. He did not have any permanent job.

4. Sri. Javali, learned Counsel took us through the material on record to say that the impugned orders suffer from errors of law and errors of fact. He refers to Annexure "A", the English order to say that detention was made with a view to prevent the detenu from abetting the smuggling of goods. He refers to us the Tamil translation of Annexure "A" to say that a detention was made to prevent smuggling in terms of COFEPOSA Act. He also says that the translation is not in accordance with law and in that view of the matter, according to him, the detention has to be set aside. Learned Counsel also refers to the various material facts and thereafter he refers to us page 30 to say that the detention was made

in order to prevent the detenu from engaging in abetting of smuggling of micro processors using the modus operandi. He further says that detention was made under COFEPOSA Act. Learned Counsel says that the detention order was passed u/s 3(1)(ii) of the COFEPOSA Act. Learned Counsel therefore says that there is no application of mind in the case on hand. He also says that these defects would also come in the way of an effective representation in terms of Article 22 of the Constitution of India. He wants an interference,

5. Per contra, Sri. Belliappa, learned Counsel would plead before us that the detenu has committed an offence in terms of Section 107 of IPC and the detention is in accordance with law. He says that the material on record would show that the detenu is a regular law-breaker and no leniency has to be shown. He supports the order.

6. After hearing, we have carefully seen the order at Annexure "A". Annexure "A" reads as under:

Whereas, I, Adhip Chaudhuri, Additional Chief Secretary & Principal Secretary to Government of Karnataka, Department of Home and Transport, specially empowered u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52/1974) am satisfied with respect to the person known as Shri Zull Mohamed, aged 28 years, S/o. Noor Mohamed, resident of 42/30, Kuthbishanagar, Tennur, Trichy-17, that with a view to preventing him from abetting the smuggling of goods, it is necessary to make the following orders:

Now, therefore, in exercise of the powers conferred by Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), I hereby direct that the said Sri. Zull Mohamed be detained and kept in custody in the Central Prison, Bangalore

7. We have also seen Annexure "A1", a Tamil portion of the order, the English translation of which is provided by way of a memo. A reading of Annexures "A" and "A1" would show that the Tamil translation of Annexure "A" differs from the English version. In English version of the order, the detention is to prevent him from abetting smuggling whereas in Tamil translation, it is on account of smuggling. This naked difference as rightly argued by Sri. Javali, learned Counsel would affect the validity of Annexures "A" and "A1". At this stage, we must also see the grounds. The grounds given are only engagement in abetting of smuggling of microprocessors whereas in translation it is smuggling activities. If there is such a varied difference in translation, in our view, the detenu may not be in a position to provide a representation in terms of Article 22 of the Constitution of India. We find substance in the argument of Sri. Javali, learned Counsel.

8. At this stage, we also notice a Judgment of the Supreme Court in 1990 SC 1184. The Supreme Court notices the translation in the said Judgment in para 4. After noticing the Supreme Court has set aside the order on the ground of

inability to make an effective representation under Article 22(5) of the Constitution of India. The present set of facts squarely fit into the Judgment of the Supreme Court. The detention orders Annexures "A" and "A1" suffer in terms of the Judgment of the Supreme Court.

9. We also see from the order that detention is issued u/s 3(1)(2) of the Conservation of Foreign Exchange etc. Section 3 of the Act provides for power to make orders detaining certain persons. Detention is permissible under different circumstances. Section 3(1)(i) provides for detention with a view to prevent from smuggling of goods 3(1)(ii) provides for detention with a view to prevent from abetting the smuggling of goods. Similarly Sections 3, 4 and 5 provides for detention with a view to prevent from engaging in transporting or concealing or keeping smuggled goods or (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods. The grounds of order, if read as a whole, would show that at the most, either the detenu was engaging in transporting the smuggled goods, it cannot be said that you are abetting the smuggled goods in terms of Section 3(1)(ii) of the Act. Unfortunately, without noticing and without applying the mind with regard to Section 3 of the Act, the detaining authority for an act which may fall either Section 3(1)(i) or Section 3(1)(iii) has chosen to pass an order u/s 3(1)(ii) of the Act. Sri. Javali, learned Counsel is therefore right in submission that detention order even suffers on account of non application of mind in terms of Section 3 of the Act. We accept his submissions.

10. In fact, in somewhat identical circumstances, a Division Bench of this Court has considered a similar issue in W.P(HC). No. 8/1989 between Deelip V. Telisra and Government of India dated 26.6.1989. The Court has noticed in para 17 reading as under:

When Section 3(1)(ii) says that a person may be detained to prevent him from "abetting in smuggling of goods", i.e. even a Single act of smuggling, it cannot be said that the said provision of law does not permit the detention of a person from habitually or repeatedly abetting in smuggling of goods. Therefore, assuming that the word "engaging" connotes a habitual, frequent or repeated indulging in the offence, its user in the order of detention u/s 3(1)(ii) cannot be said to be beyond its scope.

The said Judgment also supports the petitioner.

11. In these circumstances, we have no hesitation in accepting this petition. The impugned orders are set aside. Liberty is however reserved to pass a fresh order in accordance with law and if available to them in law. This order is not to be understood as any expression or opinion on the merits of the matter for the purpose of considering any other criminal case pending against the detenu with regard to the incident. We also make it clear that this order is not to be understood as coining in the way of taking any action against the detenu in

accordance with law and if so advised in the given circumstances.