
(1986) 08 DEL CK 0045

In the Delhi High Court

Case No : Criminal Writ Appeal No. 170 of 1986

Harbans Lal

APPELLANT

Vs

M.L. Wadhwan and Others

RESPONDENT

Date of Decision : 26-08-1986

Acts Referred:

Citation : (1987) 31 DLT 32

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : Ram Jethmalani, Ram Jethamalani, W. Singh and Ratan Lal, for the Appellant;

Judgement

This Judgment has been overruled by : Harbans Lal Vs. M.L. Wadhawan and Others, AIR 1987 SC 217 : (1987) 62 CompCas 747 : (1987) CriLJ 324 : (1987) 1 Crimes 89 : (1987) 12 ECC 128 : (1987) 27 ELT 584 : (1986) 1 JT 960 : (1986) 2 SCALE 925 : (1987) 1 SCC 151 : (1987) 1 SCR 425 : (1987) 1 UJ 510

Jagdish Chandra J.

(1) This criminal writ is directed against the order of detention dated 31-3-1986 passed by Shri M.L. Wadhawaa, Additional Secretary to the Government of India specially empowered u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 (As Amended) who felt satisfied about the passing of the same with respect to Om Prakash S/o Harbans Lal r/o 5/23, West Patel Nagar, New Delhi (hereinafter to be referred to as the "detenu") with a view to preventing him from smuggling goods, engaging in keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting and concealing smuggled goods and who further ordered that the detenu be detained and kept in custody in Central Jail Tihar, New Delhi. The petitioner Harbans Lal is the father of the detenu.

(2) The allegations, as per the grounds of detention, are that a specific information was received from Deputy Commissioner of Police, South by the

Directorate of Revenue Intelligence on 19-3-1986 that large quantities of contraband goods were in possession of the detenu reportedly owner of "New Lahore Dairy" at Shadipur Main Bazar and that the contraband goods had been hidden in his premises No. 5/23, West Patel Nagar, New Delhi. Consequently, officers of Directorate of Revenue Intelligence conducted search of detenu's house No. 5/23, West Patel Nagar (1st Floor) New Delhi in the early hours of 20-3-1986 and as a result of the search wrist watches, watch movements watch parts, foreign liquor and other goods of the total value of Rs. 21.86.330.00 were recovered from the aforesaid house and the same were seized under a panchnama dated 20-3-1986. The detenu had made a number of trips to Hong Kong between 10-5-85 and 19-3-86 when he is alleged to have brought the seized articles. He was arrested on 20-3-1986. He was, however, granted bail by Sri V.B. Bansal, Additional Sessions Judge, New Delhi vide his order dated 29-3-1986.

(3) The learned counsel for the petitioner pointed out that five witnesses were kept present by the detenu on 29-4-1986 which was the date of hearing before the Advisory Board and the detenu's legal adviser intimated the presence of those witnesses to the Advisory Board and by the testimony of those witnesses the detainee varied to prove that the premises No. 5/23, West Patel Nagar, New Delhi in which the alleged contraband was found were not the premises in possession of the detenu who in fact lived at some other place, viz., House No. 267, Shadipur Main Bazar, New Delhi and further that a false confession had been extorted from him by the use of third degree methods. It was further pointed out by the learned counsel that the Advisory Board told the counsel of the detenu that it would not examine those witnesses and instead suggested that their affidavits should be filed. On these allegations it was urged that the detenu, thus lost an opportunity of examining his witnesses in defense which he was within his right to have those witnesses examined and that the Advisory Board violated his constitutional right as declared by the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, which is set out below :-

One of the three rights for which Shri Jethmalani contends is the right of the detenu to lead evidence in rebuttal before the Advisory Board. We do not see any objection to this right being granted to the detenu. Neither the Constitution nor the National Security Act contains any provision denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him. The detenu may therefore offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. We would only like to add that if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Advisory Board, like any other tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power to limit the time within which the detenu must complete his evidence. We consider it necessary to make this observation particularly in view of the fact that

the Advisory Board is under an obligation u/s 11(1) of the Act to submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned. The proceedings before the Advisory Board have Therefore to be completed with the utmost expedition,"

(4) It was further pointed out that the detenu being in custody could not personally do anything in the matter of securing the affidavits of his witnesses and in fact even the detenu's legal advisers did their best to secure their affidavits but for some reasons did not succeed and so when the Advisory Board resumed hearing on 1-5-1986, the said witnesses were brought again and written application was made to the Board to examine them but the Board, inspired of that written application, chose not to examine those witnesses, and thereby the detenu's constitutional right of examining his witnesses in defense having been violated. his continued detention was rendered illegal. On the other hand, the counter-affidavit deposed to by Shri A.K. Agnihotri, Under Secretary Ministry of Finance, Govt. of India, New Delhi and filed by the respondents goes to show that the Advisory Board directed the detenu that he may file first their affidavits for which he took an adjournment for 1-5-1986 on which date the counsel for detenu submitted that the witnesses were not prepared to file the affidavits and as the witnesses were not willing to file the affidavits the Board did not think it proper to adjourn the case for recording oral evidence. Admittedly as these witnesses were not required under the law to be subjected to cross-examination, the Advisory Board was right in suggesting to the learned counsel for the detenu to file the affidavits of those witnesses. Whatever those witnesses were to depose before the Advisory Board the same could have deposed to by them in the affidavits and that could have saved the hard-pressed time of the Advisory Board. The detenu could not gain anything further by producing the witnesses before the Advisory Board for their statements. Even though the detenu was in custody, his father Harbans Lal petitioner could procure the affidavits of the witnesses and file the same before the Advisory Board. The plea that the witness declined to file their affidavits is just flimsy and without any valid reason. The further contention of the learned counsel for the petitioner that evidence in the shape of affidavits which are not subjected to cross-examination or close scrutiny by questions asked by the Advisory Board, is an inferior type of evidence and that honest witnesses may create much more favorable impression by deposing before the Advisory Board than by reducing their testimony in the form of affidavits hardly deserves any worthwhile consideration. If or, perusal of the affidavits the Advisory Board considered to call any of those deponents before them it could have been done. The matter of any more favorable impression by deposing before the Advisory Board is a factor quite far-fetched. As already pointed out above cross-examination of these witnesses is not permissible under the law. For these reasons it cannot be said that the detenu was deprived of his right of defense before the Advisory Board.

(5) The next contention raised on behalf of the detenu that the Advisory Board failed to send the entire record of the proceedings before it to the Central

Government and the Central Government was in turn under an obligation, under the Constitution, to apply its mind to the entire material and then proceed to make the order of confirmation, and the Board was in particular, bound to inform the Central Government about the presence of the five" witnesses and its refusal to record their evidence. This Contention, in the context of the present case hardly arises in the face of the direction of the Advisory Board for the filing of the affidavits of the witnesses.

(6) No contentions were raised by the learned counsel for the petitioner in regard to the other grounds averred in the writ petition. But grounds Nos. Iv and Vi referred to in the writ petition find urged in the written submissions in rejoinder only. According to ground no. Iv the detenu through his advocate's letter dated 12.4.1986 (Annexure"D") requested the detaining authority to supply him certain pieces of information which were vitally necessary in order to enable him to make an effective representation against his detention and the said request for information was rejected by the detaining authority by communication dated 25.4.1986 (copy Annexure"E"). It is urged that the detenu's aforesaid letter had been misconstrued and misunderstood as a representation to the detaining authority and it was obviously rejected on that supposition. Grievance is further made that a three-fold prejudice had thereby been caused to the detenu-in the first place he was not supplied information which was necessary for making an effective ; representation in the second place it was disposed of without knowing what it was and no total misconception of its contents and at the third place the detenu had been permanently put in a position of disadvantage because on the record of the Central Government there is a rejection of his representation. There appears only a confusion in nomenclature. Information sought by the detenu through his advocate's letter was described in the reply as a representation. The information asked for in the said letter appears to be unnecessary in the fact of the ground of detention and the relevant documents already supplied to the detenu and which the detenu was called upon to represent against the dislodge and which he could have done by producing the affidavits of the witnesses deemed necessary in the regard. In the face of the contents of the said letter no prejudice can be caused to the detenu if it is on the record of the Central Government, merely because the reply there to mis-describes it as a representation. I here is, thus, no force in this ground.

(7) It was next urged in the written submissions that the order of detention had been passed without application of mind to the non-existing fact especially asserting that the detenu was not found at the time of search of premises No. 5/23, West Patel Nagar, New Delhi, but was taken there and that he was not the sole inmate of the said premises and that the contraband had been falsely planted at the said premises. The counter affidavit of the respondent shows that the information received by the Directorate of Revenue Intelligence already referred to above clearly indicated that the goods were in possession of the detenu and he was very much present at the time of the seizure thereof as would be evidence from panchnama besides his statement before the authorities that

the seized goods belonged to him and further that one Ramesh Chander Jain of Bombay who was also found present at the time of search had stated u/s 108 of the Customs Act, 1962 before the Custom Authorities that all the goods seized under the panchnama dated 20.3.86 from detenu's house, i.e. 5/23, West Patel Nagar, New Delhi belonged to the detenu. The incitement of non-application of mind by the authorities cannot be accepted. Even the assertion of the planting of contraband cannot find favor for the reason that had there been any intention of planting, it could have been planted at the detenu's claimed residence, i.e. House No. 2671, Shadipur Main Bazar, New Delhi.

(8) No other point was urged and in view of the above discussion, the writ petition is dismissed.