

(1990) 01 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No's. 5027 and 5869 of 1989

K. Natarajan alias Murugan and another

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

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

Citation : (1991) CriLJ 756

Hon'ble Judges : T.S. Arunachalam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : Mr. N. Natarajan, for M/s K.A. Jabbar and R.S. Hameed, for the Appellant; Mr. G. Krishnamoorthy, Addl. P.P. and Mr. A.P. Suriya Prakasam, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

1. These two writ petitions have been filed for issue of writ of habeas corpus to quash the orders of detention passed in G.O. No. SR/I/1036-7/87

dated 8-12-1987 and G.O. No. SR/I/1036-8/87 dated 8-12-1987 by the first respondent and to direct, the respondents to set the detenus, N.

Natarajan alias Murugan and E. Mani, now detained in the Central Prison, Madras at liberty.

2. The facts leading to the passing of the said orders of detention are as follows :- On 13-4-1987, on the basis of information received from the

Collector of Central Excise, Madras, the Customs Officers stopped the lorry TMA 4767 at Konalai on the Trichy Madras Trunk Road and found

five occupants in the cabin. The persons admitted their name as follows :-

1. C. Mani, Taxi Driver.

2. M. Vijayakumar, Lorry Driver.

3. P. Kothandam, Lorry Driver.

4. N. Lakshmanan, Lorry Cleaner.

5. A. V. Srinivasan, Lorry Cleaner.

3. On examining the lorry, 21 gunny bags in wet condition were found beneath the Fertilizer bags which were covered by Tarpaulin. When they

were opened in the presence of witnesses, they were found to contain many foreign Video cassettes, Video Cassette tapes totalling 2,240 and

Cassette tapes 1,580 in number BASF Cassette tapes 100 and Funai Video Cassette Players 8, all valued at Rs. 5,70,300/-. As there valid permit

for import, they Were seized by the custom Officers along with lorry and Urea bags for taking further action under the Customs Act. On the

confession statement made by the detenus, S. Mani and M. Vijayakumar, the other detenu F. Natarajan was traced as the person engaged in

transport of smuggled goods from Tuticorin to madras by lorry. The detenu Natarajan also gave a statement admitting the transport of smuggled

goods. After further investigation the impugned orders of detention were Passed by the first respondent u/Ss. 3(1)(ii), 3(1)(iii) and 3(1)(iv) of the

COFEPOSA 1974 with a view to preventing them from abetting the smuggling of goods, engaging in transporting smuggled goods and dealing in

smuggled goods otherwise than by engaging in transporting or concealing or keeping the smuggled goods.

4. The impugned orders of detention have been challenged on various grounds in the affidavits filed in support of these writ petitions. A counter

affidavit has been filed denying the allegations made in the said affidavits. However, Mr. Natarajan learned counsel appearing for the Petitioners

confined his arguments to two points viz., that the representations of the detenus were not considered by the Central Government but only by the

Under Secretary who is an empowered officer and that the documents demanded by the detenu were not furnished to them.

5. It was contended on behalf of the detenus that the representations sent by them were not considered by the Central Government but the same

was considered and disposed of by the person who is not legally empowered to consider the same. This fact has not been disputed in the counter

affidavit. On the other hand, it is admitted that the representations were rejected by the empowered officer. Reliance was placed on the decision of

this Court in W.P. Nos. 14855 to 14857 and 14954 of 1988 dated 17-8-1989 (Iskala Bala Venkata Krishnaiah alias I. B. v. Krishnaiah etc. v.

The Joint Secretary to the Govt. of India, Ministry of Finance Depart of Revenue, New Delhi) and the decision of the, Supreme Court in State of

Maharashtra and Another Vs. Sushila Mafatlal Shah and Others, wherein the Division Bench in which we both of us were parties considered this

question elaborately. The Bench took note of the decision of the Supreme Court in State of Maharashtra and Another Vs. Sushila Mafatlal Shah

and Others, which held that the provisions of the Act do not confer any power of revocation on an officer of the Central or State Government nor

does it empower the Central or State Government to delegate the power of revocation to any of its officers. The said ruling of the Supreme Court

makes it clear that the specially empowered officer has to pass on the representation even if it was received by him, to the concerned officer or the

Minister empowered by the Rules of business and the representations cannot be disposed of by him because the Government concerned would

constitute the detaining authority under the Act and not the officer concerned who made the order of detention. Therefore, once the representation

of the detenu has not been considered by the Central Government or the State Government as the case may be, the non-consideration by the

detaining authority of the representations made by the detenus would make the detention of the respective detenus in each of these writ petitions

illegal.

6. The abovesaid principles would squarely apply to the facts of the present case. It is clear that irrespective of the fact that detention order is

being passed by the officer empowered the detaining authority under the Act is not the officer concerned but the Government and it is to that

Government the detenu should be afforded an opportunity to make representation which has to be disposed of expeditiously by the Government

and not by the officer empowered who has only a duty to forward it to the concerned officer or minister of the Government for the disposal of the

representation. In view of this legal position, we have to hold that the continued detention of these detenus will not be in accordance with law and

therefore, they will have to be necessarily quashed. Accordingly, the writ petitions are allowed and the impugned orders of detention are quashed

and the detenus are directed to be set at liberty forthwith unless they are required in any other case. No costs.

7. Petition allowed.