(1986) 01 DEL CK 0005

In the Delhi High Court

Case No : Criminal Writ Petition Appeal No. 181 of 1985

Kalu Sing APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 22-01-1986

Acts Referred:

Citation : (1986) ILR Delhi 488

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : Harjinder Singh and N.S. Mehta, for the Appellant;

Judgement

Malik Sharief Ud-Din, J.

(1) RULE. D. B. The petitioner Kallu Singh has been detained by an order dated 17-41-85 passed-by Shri K.K. Owiyedi Joint Secretary to Government of India. The detention order is under, section'' 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1974 (for short Opeposa Act). This order has been purportedly passed to prevent him from abetting smuggling goods and engaging in. transporting smuggling goods, dealing in smuggled goods otherwise'' than by engaging in concealing and keeping smuggled goods. Along with detention Order grounds of detention of even date were served upon the detenue (petitioner) and he was also informed of his entitlement to make a representation both of the detaining authority and to the Central Government and also to the Advisory Board. By this petition he has challenged the aforesaid detention order.

(2) Earlier he was arrested on 7-11-84 and was produced before the Magistrate on'' 8-11-84. He was remanded to judicial custody and was released on bail on 22-11-84. On 29-11-84 he filed an application before the Magistrate that his confession was extracted under coereion. The dention order was served upon him on , through according to him he was taken into custody on 27-4-85 itself.

(3) The basis for issuing the said detention order is that on 7-11-84 on

information that the petitioner has received a good number of cameras and lenses of foreign origin and has concealed the same the officers of the Customs (Preventive Branch) West Bengal raided the temporary stall of ready-made garments on the foot-path near the gate of American Library on S. N. Banerjee Road, Calcutta which w:is in possession and ownership of Mbhd Mostaque Ahmed and his employee Siddique Hussain. The Customs Officials recovered two olive. green coloured canvas hand bags containing cameras and camera and lenses of Japanese origin valued at Rs. 1,36,000.- and also arrested the aforesaid two persons in possession of the stall.

(4) On the same day both Mohd. Mostaque Ahmad and Siddiqus Hussain made voluntary statements staling inter-alia that these goods belonged to the petitioner who owned a shop at Chowringhee Market. ''They further disclosed that the petition was & notorious person of the locality and out of fear they had to work for him. They further stated that petitioner had kept these two bags thereon the morning of 7-11-84. The customs officers on that very day seized account sheets and exercise books containing entries evidencing huge transactions of cameras etc. from Shankar Store controlled by the petiptioner. The customs authorities also recovered camera lenses, filter, camera stand. Flash gun etc. of foreign origin collectively valued at Rs. 3,060.00 from M/s Saraswati Store which too was owned by the petitioner. All these were seized under the provisions of Customs Act.

(5) On the same day i.e. 7-11-84 a summons was served upon the petitioner u/ s. 108 Customs Act, 1962 in pursuance of which he appeared and after being identified by Mohd. Mostaque Ahmed and Mohd. Siddique Hussian as the owner of these goods the petitioner made a statement wherein he stated inter alias that customs officers seized account books from his shop Mis Shankar Store and also seized foreign made goods from Saraswati Store which were both under his control end that none of these shops is notified under Customs Act. The petitioner also admitted to be the owner of all the cameras & lenses seized and which had been concealed under the stall of Mohd. Mostaque Ahmed and also admitted that these goods were given to him by three persons who had brought these from Nepal. The petitioner further disclosed that he knew both Mohd. Mostaque Ahmed and Mohd. Siddique Hussain. The petitioner also disclosed that he was engaged in smuggling of these goods for the last ten years. The petitioner also stated that he has no documents or vouchers for the seized cameras and lenses. The petitioners son Gautam Singh in whose name license of Saraswati Store has been issued also failed'' to produce the purchase documents for the goods of foreign origin recovered from that Shop.

(6) The challenge to the order of detention as disclosed in the grounds set out in the petition is on several grounds "but we are not concerned with all as at the time of arguments challenge was restricted by Shri Harjinder Singh learned counsel for the petitioner on one ground namely ground No. V(b) raise in the petition and elaborated by him during the course of arguments, lie ground is as

under :-

"The onus to prove that these goods were liable to confiscation either U/s 111 or u/s 113 of the Customs Act lies on the department. Admittedly most of the alleged goods seized from the said premises are neither notified U/s. 123 of the Customs Act nor are they specified under Chapter Iv A of the Customs Act."

(7) To elaborate, the contention of Shri Harjinder Singh is that these good''s are not notified u/s 123 of the Customs Act and that only cameras and not the lenses are notified u/s 11B of the Customs Act. Argument Therefore is that there was no material before the dataining authority that these goods were smuggled. Perhaps the suggestion is that customs people should have conducted an inquiry into the fact that goods are smuggled and the material on which such a conclusion was drawn should have been placed before the detaining authority. Shri Harjinder Singh as such urges that the failure to place such material before the detaining authority vitiates detention as the conclusion of detaining authority that the goods are smuggled are not based on any material.

(8) The question as much boils down to this. Whether there was any material before the determing authority on the basis of which the detaining authority concluded that the goods are smuggled and whether the subjective satisfaction arrived at as such was based on some probative material?

(9) Mr. N. S. Metha appearing for the respondent invited our attention to the Customs Tariff Act of 1975. Under heading 90.01 end 90.02 lenses are shown as dutiable goods, and any person found in possession of such goods of foreign origin is bound to show that these are: lawfully imported and that duty has been paid therein. The contention farther is that if that is not done, these are liable to be confiscated as smuggled '' goods u/s 111(i) of the Customs Act and that if the goods were-notified then the special procedures u/s 11C, 11d, He and 11F of the Customs Act will have to be observed by the person who importe goods. To our mind there appears to be considerable weight in the contention of Mr. Mehta but we are not going into this aspect as for altogether different reasons we do not find any force in the contention raised before us by Shri Harjinder Singh.

(10) At this stage before dealing with the contention of Shri Harjinder Singh we would lie to make it clear that this Court while sitting in its jurisdiction under Article 226 of the Constitution will always be reluctant to substitute itself either for the detaining authority or for the Advisory Board. The personal liberty of a person which the Courts so jealously guard can also be taken away by the procedure established by law, when such liberty, is used to jeopardise public good. In such a case the petitioner will have to show violation of Article 21 or Article 22 of the Constitution. This Court as such is neither entitled to assume the role of detaining authority nor that of Advisory Board. The Court as such is not entitled to go into the sufficiency or insufficiency nor into the truthfulness of the material. Thus if the procedural safeguards have been properly complied with and no violation of Article 21 o" 22 of the Constitution is shown there hardly any

scope fur interference.

(11) In this case we find that goods recovered arc of foreign origin, these were concealed at a place other than the one belonging to the petitioner. About the ownership of these goods there is the admission of the petitioner and the evidence of Mohd. Mostique Ahmed and Hohd. Siddique Hussian. The goods are dutiable. Who, if we may so ask, if not the petitioner has to show. that these have been lawfully imported? That apart, there is the relevant and admissible statement of the petitioner that he has smuggled these goods and that he has been in the smuggling business of these goods for the last ten years. Could under these circumstances it be said that there was no material before the detaining authority that the goods are smuggled? To the reply would be a positive no. The detaining authority on the basis of this material was completely justified in concluding that these goods are smuggled. This would have been so, even in the absence of the admission of the petitioner. This subjective satisfaction could reasonably be arrived at on the basis of relevant material that goods are of foreign origin, and belonged to the petitioner who had concealed the same. Where was the question of concealing lawfully acquired goods? All these facts coupled with the admission of the petitioner leaves one in no manner of doubt about the activities of. the petitioner. The fact that he has resoled from his admission on 29-11-84 is of no consequence. He does not do so when he was produce before the Magistrate first on 8-11-84. Thus, this retraction is obviously inspired, Shri Harjinder Singh is reliance on a Division Bench judgment of High Court of Bombay in Criminal Writ Petition No. 4 of 1985 (Smt. Nirmalaben Devchandbhai Tondel V. Union of Indian and others) decided on 2-7-85 is misplaced. In that case, there was no material to show that the goods were smuggled. The detaining authority in that case assumed that the goods to be smuggled on the basis of para 3 of the Imports (Control) Order 1955. In the case in hand, we have, however, noticed that apart from legal submissions that the goods are smuggled, there was enough material before the detaining authority to infer that the goods indeed are smuggled.

(12) For the aforesaid reasons, we hold the detention of the petitioner valid and dismiss this petition.

