

(1999) 05 DEL CK 0041
In the Delhi High Court
Case No : Criminal Writ 326 of 99

Krishna Chaudhary (Shri)

APPELLANT

Vs

Union of India and Ors

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Citation : (1999) 4 AD 441 : (1999) CriLJ 3598 : (1999) 80 DLT 320 : (1999) 66 ECC 67

Hon'ble Judges : Kripa Shankar Gupta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Ms. Sangita Bhayana, for the Appellant; Mr. Rajat Sethi, Mr. S.K. Aggarwal, Mr. Neeraj Chaudhary Advs., for the Respondent

Judgement

K.S. Gupta, J.—This petition challenges the detention order dated 11th February 1999 passed by respondent No.2 against the petitioner u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act")

2. Facts which led to the making of the said detention order are these. On 29th July 1998 the petitioner was intercepted when he arrived from Kathmandu and was awaiting in the transit hall of IGI Airport for his flight to Dubai. As a result of the personal search and that of his baggage foreign and Indian currency collectively valued at Rs.17,44,380/- was allegedly recovered from him. Petitioner is alleged to have voluntarily made statement u/s 108 of the Customs Act, 1962 admitting the recovery of the said currency from his possession. Thereafter on 29th July 1998 petitioner was remanded to judicial custody by the Additional Chief Metropolitan Magistrate, New Delhi, and the remand period is being extended from time to time. Detention order is question was thereafter passed on 11th February 1999 while he was in custody. Representation of the petitioner dated 18th February 1999 for revocation of the said detention order was rejected by respondent No.1 on 19th March 1999 while by respondent No.2 on 11th March 1999. Petitioner alleges that he did not receive any reply to his

another representation dated 24th March 1999 made to the respondents.

3. Only submission advanced on behalf of the petitioner before us was that in the representation dated 24th March 1999 addressed to the Secretary, Government of India, Ministry of Finance (Department of Revenue), which was based on grounds different from those taken in the representation dated 18th February 1999, it was specifically stated that a copy thereof may also be forwarded to the Detaining authority (respondent No.2) for consideration. However, from the counter affidavit filed on behalf of respondent No.2 it is manifest that the said representation dated 24th March 1999 was rejected by the Detaining authority on 29th April 1999 and, Therefore, there was delay of more than a month in disposing of that representation and the detention order in question thus deserves to be quashed on that ground alone. In support of the submission reliance was placed on the decisions in Criminal Writ Petition No. 787/98 Mohd. Abdullahi Yusuf Vs. Union of India & Ors. decided by this court on 9th December 1998 and Shakil Ahmed Ansari Vs. Union of India, .

4. In the counter filed on behalf of respondent No.2 it is stated that the copy of representation dated 24th March 1999 addressed to the Secretary, Government of India, Ministry of Finance, New Delhi, was received in the Home Department on 26th April 1999 Along with the report of Advisory Board. Copy of this representation was not received by respondent No.2 from the Secretary to the Government of India. Said representation was put up to the Detaining authority only on 26th April 1999 and the Detaining authority considered and rejected it on 29th April 1999. Information regarding the rejection was communicated to the petitioner on 3rd May 1999, 30th April 1999, 1st and 2nd May, 1999 being gazetted holiday Saturday and Sunday. It is thus not is dispute that the representation dated 24th March 1999 after consideration was rejected by the Detaining authority on 29th April 1999. Contention advanced on behalf of the respondents was that in the second representation dated 24th March 1999 no new facts were pleaded and the same was, Therefore, not required to be formally disposed of by the Detaining authority. The Detaining authority still chose to consider and reject it on 29th April 1999. As such the delay in deciding the representation is of no consequence. In support of the contention strong reliance was placed on the decisions in Asha Keshavrao Bhosale Vs. Union of India (UOI) and Another, ; Jamal Haji Jakaria Vs. Union of India & Ors 1988(2) DL 409 and Mahesh Kumar Chauhan @ Banti Vs. Union of India and Others, .

5. Copies of the aforesaid representations dated 18th February 1999, which according to the contesting respondents is dated 24th February 1999, is placed at pages 26 to 31 and that of dated 24th March 1999 at pages 33 to 35 of the paper book. A bare reading of the later representation indicates that in substance grounds for revocation of the detention order is question taken therein, are that the petitioner was not supplied the documents as demanded and that the representation dated 18/24th February 1999 was considered in a casual and mechanical manner by the Central Government as also the Detaining authority. It

may be noticed that the ground regarding non-supply of documents also finds mention in the earlier representation dated 18/24th February 1999 and aforesaid another ground pertains to that representation only. In fact no new fact, which was not stated in the representation dated 18/24th February 1999 has been set out in the representation dated 24th March 1999, to seek revocation of the detention order in question.

6. In Smt. Asha Keshavrao Bhosale's case (supra) identical point came to be considered by the Supreme Court and in para 8 of the report it was held:-

"It is a fact that a representation was made by the petitioner on behalf of the detenu which was received in the office of the Chief Minister on November 28, 1984, and Mr. Jethmalani has accepted the position that orders on the representation were passed on January 23, 1985, and the said orders were received on January 28, 1985. In the representation made by the petitioner to the Chief Minister, the order of detention was casually impugned but lot of attention appears to have been bestowed on the necessity of keeping the detenu in a Bombay Jail instead of sending him to Nasik Road Prison as directed in the order of detention. A detailed representation was made by Secretary, Khed Taluka Maraha Seva Sangh challenging the detention. It appears that the detenu belonged to the Khed Taluka and his case was espoused by the sangh. It is not disputed before us that the said representation was received on November 29, 1984, in the Secretariat of the Chief Minister and was forwarded to the Home Department on December 3, 1984, and was finally disposed of on December 12, 1984, and the rejection thereof was communicated on December 13, 1984. This representation was a detailed one and on a due consideration thereof the representation had been expeditiously disposed of. The High Court looked into the two representations made by the Sangh and the other by the petitioner and on considering the contents thereof and the manner in which the Sangh's represent a corporation had been disposed of, came to hold that the representation made by the petitioner was a second one on the same score and delay in disposing of that representation did not really prejudice the detenu's case. On the facts and circumstances appearing in the record and as found by High Court, we are inclined to agree with the submission made before us that the petitioner is not entitled to make any tenable submission on the score of delay in disposal of the representation." 7. Para No.39 of the decision in Jamal Haji Jakaria's case (supra) which too is material reads thus:-

In this view of the matter, the argument of Mr. Mishra that the said representation dated 5th September 1998 in which no new or relevant facts and circumstances had been brought to light, was not required to be expeditiously disposed of, has considerable force. His reliance is on a recent decision of the Supreme Court in K. Aruna Kumari Vs. Government of Andhra Pradesh and others AIR 1988 SC 277, in support of his argument that a successive representation based on the same facts, is not required to be formally disposed of. In paragraph 9 of the said judgment, it has been held as follows:-

"So far as the second representation filed by Madhava Rao's cousin Lakshman Rao is concerned, it has, in fact, been disposed of by the Central Government but about 3 months later after its filing. It was argued that Section 14 of the Act clothes the authority with the power of revoking the detention order, and such a power carries with it the duty to exercise it whenever and as soon as changed or new factors call for exercise of that power. Reliance was placed on the observations of this Court at Page 786 in Haradhan Saha Vs. State of West Bengal. (1975) 2 SCR 778 and those in para 9 of the judgment in Sat Pal Vs. State of Punjab and others, . It is true that such a power coupled with the duty exists but the duty to exercise it arises only where new and relevant facts and circumstances come to light. This was not so here, and as observed in para 13 of the judgment in State of Uttar Pradesh Vs. Zavad Zama Khan, , there is no right in favor of the detenu to get his successive representations based on the same grounds rejected earlier to be formally disposed of again. In any event no period of limitation is fixed for disposal of an application u/s 14 and as we have seen earlier, the second representation filed by Lakshamana Rao indeed, was considered and rejected."

8. Division Bench decision in Jamal Haji Jakaria's case (supra) was followed in Mahesh Kumar Chauhan's case (supra) by a learned single Judge of this court.

9. Decision in Mohd. Abdullahi Yusuf's case (supra) relied on behalf of the petitioner is distinguishable from the facts of the present case in as much as in that case representation of the petitioner was not at all considered by the Detaining authority. Shakil Ahmed Ansari's case (supra) also has no applicability to this case as in that case representation of the petitioner dated July 7, 1995 was not considered by the Detaining authority independently of the opinion of Advisory Board.

10. On the ratio of the decisions in Smt. Asha Keshavrao Bhosale and Jamal Haji Jakaria's cases (supra) delay in disposing of the representation dated 24th March 1999, which did not disclose any new ground, by the Detaining authority, who did not receive the copy of the representation from the Secretary to the Government of India, Ministry of Finance, to whom the said representation was addressed, cannot be legally made the basis for quashing the detention order in question and the petition, Therefore, deserves to be dismissed.

11. Resultantly, the petition is dismissed.