

(1986) 03 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 178 of 1986-S

Krishnaveni

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 13-03-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 22, 226
Customs Act, 1962 — Section 108

Citation : (1986) 9 ECC 161

Hon'ble Judges : T. Kochu Thommen, J;M.M. Pareed Pillay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T. Kochu Thomman, J.—The petitioner is the wife of Shri. V. Jayakumar who has been detained u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (the "Cofeposa Act"). She prays for a writ of habeas corpus and other reliefs. Her husband (hereinafter referred to as the "detenu") was arrested on 9-9-1985 under the provisions of the Customs Act, 1962. He was produced before the Additional Chief Judicial Magistrate for Economic Offences on 10-9-1985. The learned Magistrate released him on bail subject to certain conditions, by his order dated 17-9-1985. Thereafter, by the impugned order, Ext. P1 dated 4-11-1985, made by the Government of Kerala u/s 3(1) of the Cofeposa Act, he was arrested on 21-11-1985 and has since been detained in Central Prison, Trivandrum. Ext. P1 reads:--

GOVERNMENT OF KERALA HOME (SS. A) DEPARTMENT

ORDER

No. 68576/SSA1/85/Home

Dated, Trivandrum, 4-11-1985

Whereas the Government of Kerala is satisfied with respect to the person known as Shri. V. Jayakumar, S/o Shri. K. Velappan Pillai (1) Saroj, Thevally, Quilon, (Managing Partner, M/s Jaya Cashew Corporation, Quilon (3) Flat No. 8, Ponnamma Aroma Bhavan, Beach Road, Quilon (4) M-8, M.I.G. Flats, Nandanam. Madras), that with a view to preventing him from smuggling goods, it is necessary to make an order directing that the said person shall be detained.

Now, therefore, in exercise of powers conferred by Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), the Government of Kerala direct that the said Shri. V. Jayakumar be detained and kept in custody in the Central Prison, Trivandrum.

By order of the Governor, Sd/- N. Kaleeswaran Commissioner & Secretary (Home)

On 22-11-1985--i.e., a day after the arrest--the grounds of detention, Ext. P 7, together with 25 documents were supplied to the detenu. The list of those documents, attached to Ext. P 7, describes them as the documents "based on which the grounds for detention are prepared". Thereupon the detenu by Ext. P 8 letter dated 26-11-1985 addressed to the second respondent, requested him to furnish him with copies of 26 documents which, according to him, were referred to in Ext. P 7, but not supplied to him along with it. However, the detenu filed before the second respondent, Ext. P 9 dated 7-12-1985 which is styled as "representation filed in accordance with the requirement and as enjoined by Article 22(5) of the Constitution". This is a detailed representation fully stating his case in answer to Ext. P 7. It contains no complaint that the documents asked for in Ext. P 8 have not been furnished to the detenu or that the representation could not be fully and effectively made for want of them. The Government rejected the request contained in Ext. P 8 by Ext. P 10 dated 18-12-1985 stating as follows:--

With reference to your petition cited I am to inform that the grounds for detention were prepared, relying on the 25 items of documents served on you along with Government letter No. 68576/SSA1/85/Home dated 4-11-1985. Therefore your request for supply of the documents which were not relied on while passing the order of detention cannot be acceded to.

1. Finally the second respondent sent Ext. P 14 dated 10-1-1986 to the detenu answering his representation (Ext. P 9 dated 7-12-1985) in the following words:

With reference to your representation cited, I am to inform that the said representation has been carefully considered by Government; but it is regretted that your request for release has been rejected. This order to detain you has been issued after considering all the necessary materials of the case and after fully satisfying that it is necessary to detain you with a view to prevent you from indulging in prejudicial activities.

2. The main contentions of the petitioner are: The detention of the detenu on the

basis of Ext. P 1 is void and invalid for several reasons. Ext. P 1 is an order of the first respondent, the Government of Kerala, but the counter-affidavits filed on behalf of respondents 1 and 2 refer to the second respondent as the detaining authority. The averments in the counter-affidavit show that Ext. P 1 was made on the satisfaction of the sponsoring authority, namely, the Collector of Customs and not on the satisfaction of the Government. The detenu has not been afforded an adequate opportunity of making effective representation against the order of detention as warranted under Article 22(5) of the Constitution of India insofar as about 26 documents listed and asked for by him in Ext. P8 have not been given to him, even though these documents were referred to in Ext; P7 grounds. No satisfactory explanation has been given for not complying with the request for the documents, apart from stating that no reliance had been placed upon them by the authority in ordering the detention. Furthermore, Ext. P 9 representation made by the detenu with reference to the grounds of detention supplied to him along with 25 documents remained unanswered for about 36 days and no reasonable explanation for the delay has been furnished by the respondents. Ext.P1 was passed on the basis of the recommendation of the "Screening Committee" consisting of the Law Secretary to the Government of Kerala, the Director General of Police and the Collector of Customs. This shows that Ext. P 1 was influenced by an extraneous authority. So run the averments and the arguments in support of the petition.

3. In the two counter-affidavits filed on behalf of respondents 1 and 2 the allegations contained in the petition have been controverted. It is said that Ext. P 1 was made on a proper consideration of the material facts supplied by the Collector of Customs and on proper inference having been drawn therefrom and strictly in accordance with the satisfaction of the detaining authority. The detenu was given without any delay all the grounds of detention together with the 25 documents relied upon by the detaining authority. No extraneous authority had influenced the decision of the detaining authority. The detenu was afforded an effective opportunity for making his representation in accordance with the constitutional guarantee. His request for another set of 26 documents was not complied with for the reason that they were neither relevant to the grounds of detention nor relied on by the detaining authority. The allegation regarding delay is unfounded for there is proper explanation for the time taken in answering Ext. P 9.

4. The case against the detenu is that the firm of which he has been the Managing Partner (the other partners being his mother and sister) tendered before the customs authorities for export to Singapore a consignment of 325 cartons containing what was declared as cashew kernels. On examination of the consignment by the authorities on 7-9-1985 it was found that 181 cartons of the said consignment contained 56,813 pieces of snake skins valued at Rs. 15 lakhs. The detenu was summoned on 9-9-1985 u/s 108 of the Customs Act and his statement was recorded between 11.45 A.M. and 5 P.M. At about 8 P.M. that evening he was arrested. He was produced before the Additional Chief Judicial

Magistrate for Economic Offences on 10-9-1985, The learned Magistrate later released him on bail and it was thereafter that the impugned order Ext. P 1 was made.

5. Exts. P 1 and P 7 show that the detaining authority is the Government of Kerala. It is true that in the counter-affidavit sworn on behalf of the State of Kerala by the Secretary to the Government, Home Department on 28-2-1986 there is a reference to the deponent as the detaining authority. That was obviously a misdescription, for the detaining authority was undoubtedly the Government of Kerala and the order of the detention was made by the deponent, the second respondent, for and on behalf of the Government of Kerala and by the order of the Governor. We see no substance in the contention that the detention order was made by the Government solely on the satisfaction of the Collector of Customs or that of the Screening Committee and not on its own independent satisfaction. The fact that the Government had taken into account the material supplied to it by the Collector of Customs or that of the basic facts had been subjected to a scrutiny by the Screening Committee consisting initially of the Law Secretary to the Government of Kerala, the Director General of Police and the Collector of Customs does not show that the Government either abdicated its responsibilities as a detaining authority or that it made the detention order otherwise than on proper satisfaction based on relevant material. The grounds stated in Ext. P 7 and the relevant averments in the counter-affidavits clearly indicate that the Government fully applied its mind to the basic facts and the supporting documents and drew therefrom an inference before reaching the requisite satisfaction that preceded the impugned order.

6. In Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, it was stated that if there were any documents, statements or other materials relied upon in the grounds of detention, they ought to be promptly communicated to the detenu as part of the grounds so as to enable him to make a proper representation in exercise of his constitutional right. In Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, , the Supreme Court pointed out that the detaining authority should communicate not only the decision but also the grounds on which the decision was founded. The grounds communicated to the detenu should pertain to pertinent and proximate matters and should comprise all the constituent facts and material that influenced the mind of the authority.

7. An opportunity to make a representation against the order of detention as guaranteed under Article 22(5) of the Constitution implies that the detenu has to be informed not merely of the inference of fact but of all the basic or primary facts which have led to the inferences of fact. If he is not so informed the opportunity guaranteed by the Constitution would become an exercise in futility; Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, This principle has been affirmed by the Supreme Court in a series of decisions: State of Punjab and Others Vs. Jagdev Singh Talwandi, .

8. It must however be remembered that what is required to be supplied to the detenu is a full statement of the basic facts as distinguished from the factual details or subsidiary facts. His constitutional right is to receive every material particular without which an effective and full representation cannot be made. He is not entitled to receive material which is not relevant to, or required to, make an effective representation against, the order of detention. The basic or primary facts and the inference drawn therefrom alone are sufficient for the purpose. As stated by the Supreme Court in *Vakil Singh Vs. The State of J. and K. and Another*, :

? Apart from conclusions of facts "grounds" have a factual constituent, also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details.

What is required is that the detenu should be given all essential particulars forming the basis of the grounds of detention. Unless the particulars furnished are insufficient for making an effective representation, he has no right to call for more particulars. Furthermore, the grounds must be specific and not vague (see *Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another*, Merely because certain documents happened to be mentioned in the grounds, it is not imperative that copies of those documents should be furnished to the detenu, unless they are documents upon which reliance has been placed by the detaining authority. The accent is on the reliance and not on mere reference to them. The fundamental question therefore is whether the documents sought by the detenu are necessary for making an effective representation: see *State of Punjab and Others Vs. Jagdev Singh Talwandi*, ; *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, . Where it is seen that the order of the detaining authority is based on relevant material on record, the court would not in exercise of its jurisdiction under Article 226 of this Constitution proceed to consider the adequacy of such material: *State of Gujarat Vs. Adam Kasam Bhaya*, . 9. In the light of these principles, the question has to be considered whether the detenu has been supplied with all the documents which are essential for making an effective representation. Along with the grounds 25 documents were furnished as "documents based on which the grounds for detention are prepared". It is clearly stated in the counter-affidavits sworn on behalf of the respondents that no reliance was placed on any document other than the 25 documents furnished with the grounds. It is also stated that the additional documents called for by the detenu are neither relevant to the grounds of detention nor relied upon by the authority for the purposes of detention. We have carefully perused the grounds and we are satisfied that the 25 documents furnished with them amply supply the primary material for an effective representation against the order of detention. We see no substance in the contention to the contrary.

10. The contention regarding delay is based on the fact that Ext. P 9 representation dated 7-12-1985 was not answered until Ext. P 14 dated 10-1-1986 which is alleged to have been served on the detenu only on

17-1-1986. It is stated in the counter-affidavit of respondents 1 and 2 dated 22-2-1986 that Ext. P 9 was forwarded to the Collector of Customs on 12-12-1985 for his comments on the allegation that the detenu was ill-treated while in the custody of the customs authority. The comments of the Collector of Customs were received by the Government on 4-1-1986. On a careful consideration of the detenu's representation and the Collector's explanation, the detaining authority rejected Ext. P 9. That decision was communicated by Ext. P 14 dated 10-1-1986. It is true that there was a delay of 36 days between the receipt of Ext. P 9 by the Government and the receipt of Ext. P 14 by the detenu. However, it must be remembered, as stated by the Supreme Court in *Pushpa v. Union of India*, 1979 Cri LJ 1313, 1320:

? Where a citizen is deprived of his liberty and grounds of detention are furnished to him, his representation must be examined as expeditiously as possible, but as has been said in *Jayanarayan Sukul Vs. State of West Bengal*, there is no hard and fast rule as to the measure of time taken by the authority for consideration of the representation?.

The question is, as pointed out by the Supreme Court in *Sat Pal Vs. State of Punjab and others*, , whether the detenu has had an effective opportunity, despite the unexplained delay, of making a representation to the Government and whether the Government duly considered the representation. The mere fact that there was a delay of 36 days in answering the representation?the delay in *Sat Pal Vs. State of Punjab and others*, was 75 days--does not by itself invalidate the order of detention, unless there is reason to suspect that the representation, in view of the delay, was not properly and effectively considered by the Government. From the facts disclosed and the averments on both sides, we are not satisfied that there was any such failure. The representation of the detenu was duly considered, and the mere fact that a delay occurred in answering the representation is not, on the facts and in the circumstances of this case, sufficient to invalidate the order of detention. "The court must look at the substance of the matter and not act on mere technicality". *Sat Pal Vs. State of Punjab and others*, , 19 (supra).

11. In the circumstances, we see no merit in the challenge against the impugned order. The Original petition is accordingly dismissed. We make no order as to costs.