

(2010) 01 P&H CK 0201
In the Punjab And Haryana At Chandigarh

Kuresh Taher Rajkotwala

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 226

Citation : (2010) CriLJ 2612

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Judgement

Ajai Lamba, J.—This criminal writ petition has been filed by Kuresh Taher Rajkotwala under Article 226 of the Constitution of India, praying for issuance of a writ setting aside order of detention bearing No. PSA- 1207/CR-113(2) SPL-3(A) dated 22.5.2008 (Annexure P-1), passed by the Principal Secretary (Appeals and Security), Government of Maharashtra, Home Department and Detaining Authority (respondent No. 3) u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Learned Counsel for the petitioner contends that the issue is, now, squarely covered by the judgment rendered by the Hon''ble Supreme Court of India in Deepak Bajaj Vs. State of Maharashtra and Another, . In the case of co-detenu of the petitioner, relief has been granted and the detention order has been quashed on the ground that retraction statements given by the co-detenu were not communicated by the Sponsoring Authority to the Detaining Authority and, therefore, the same could not be considered.

3. Learned Counsel for respondents No. 2 and 3 has not been able to dispute the fact that retraction statements given by the petitioner, indeed, were not placed before the authorities. Learned Counsel for respondents No. 2 and 3 has further not been able to dispute that the judgment cited is in the case of a co-detenu of the petitioner relates to the same incident.

4. I have considered the issue.

5. In Deepak Bajaj's case (supra), this very issue has been considered, as is evident from the following extracted portion:

37. The most important of these documents which were not placed before the Detaining Authority were the retractions given by Kuresh Rajkotwala to the DRI dated 4.12.2006, Kuresh Rajkotwala's affidavit filed before the learned Addl. Chief Metropolitan Magistrate, Esplanade, Mumbai, Bharat Chavhan's retraction to DRI dated 9.5.2008, Bipin Thaker's retraction to DRI dated 19.1.2008, Sharad Bhoite's retraction dated 24.4.2007 before the Addl. Chief Metropolitan Magistrate, Esplanade Mumbai and its affidavit filed before the same authority etc.

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39. Most of the retractions were made to the DRI, and he belongs to the same department as the Sponsoring Authority, who is the Additional Director, Revenue Intelligence. Hence, it was the duty of the DRI to have communicated these retractions of the alleged witnesses to the Sponsoring Authority, as well as the Detaining Authority. There is no dispute that these retractions were indeed made by persons who were earlier said to have made confessions. These confessions were taken into consideration by the Detaining Authority when he passed the detention order. Had the retractions of the persons who made these confessions also been placed before the Detaining Authority it is possible that the Detaining Authority may not have passed the impugned detention order/Hence, in our opinion, the retractions of the should certainly have been placed before the Detaining Authority, and failure to place them before him, in our opinion, vitiates the detention order.

40. It has been repeatedly held by this Court that if a confession is considered by the Detaining Authority while passing the detention order the retraction of the confession must also be placed before him and considered by him, otherwise the detention order is vitiated. Thus in Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another, this Court observed (vide para 7):

Further, in passing the detention order the detaining authority obviously based its decision on the detenu's confessional statements of December 13 and 14, 1977 and, therefore, it was obligatory upon the Customs Officers to report the retraction of those statements by the detenu on December 22, 1977 to the detaining authority, for, it cannot be disputed that the fact of retraction would have its own impact one way or the other on the detaining authority before making up its mind whether or not to issue the impugned order of detention. Questions whether the confessional statements recorded on December 13 and 14, 1977 were voluntary statements or were statements which were obtained

from the detenu under duress or whether the subsequent retraction of those statements by the detenu on December 22, 1977 was in the nature of an afterthought, were primarily for the detaining authority to consider before deciding to issue the impugned detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority one way or the other were neither placed before nor considered by the detaining authority it must be held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the impugned detention order invalid and illegal.

41. It may be noted that in the above decision, this Court has held that it was the duty of the Customs Officer to have reported the retraction of the statements to the Detaining Authority. Hence, even if the retractions in the present case were not placed before the Detaining Authority that will not be of any avail to the respondents since it has been held that it was the duty of the authorities before whom the retractions were made to have forwarded them to the Detaining Authority and the Sponsoring Authority. We entirely agree with the above view.

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46. In our opinion, failure to place the retractions and other materials referred to in paragraph 4 of the petition before the Detaining Authority would certainly vitiate the impugned detention order.

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50. In our opinion, it is not necessary to go into this submission of Shri Soli Sorabjee since we are of the opinion that the petition deserves to be allowed on the first ground, namely, that the relevant material was not placed before the Detaining Authority, and this vitiates the detention order.

51. The detention order in our opinion was clearly illegal and deserves to be set aside. We order accordingly. The writ petition is allowed. The impugned detention order dated 22.5.2008 stands quashed. No costs.

6. In this petition, it has specifically been pleaded in para 9-B (Grounds) that the detention order is illegal and is liable to be set aside on the ground of non-placement of relevant material and documents by the Sponsoring Authority before the Detaining Authority, leading to their non-consideration. In ground 9-B, the documents i.e. retraction statements given by the petitioner and others have been specifically mentioned at Sr. Nos. 13 to 23.

7. Respondent No. 3-Detaining Authority has filed a reply in this regard. It has been admitted in the following terms:

...However, the documents at Sr. No. 1 to 11, 13 to 23 and 33 to 38 were not

forwarded by the Sponsoring Authority to me....

8. A consideration of the facts and circumstances narrated above show that the petitioner had retracted the statement. The retraction was not placed before the Detaining Authority for its consideration. The retraction would have its own impact and, therefore, is required to be considered by the Detaining Authority before an order in regard to detention, or otherwise is passed. It was required of the Detaining Authority to consider whether the confessional statement earlier recorded was voluntary or otherwise in the context of the retraction. Since the retraction was not placed before the authority, the relevant aspect of the matter could not be considered by the Detaining Authority before passing of the order of detention.

9. Considering the facts and circumstances of the present case, in the context of the law laid down in Deepak Bajaj's case (*supra*) i.e. the case of a co-detenu of the petitioner, the petition is allowed. Detention order (Annexure P-I) is hereby quashed.