

(1986) 02 DEL CK 0049

In the Delhi High Court

Case No : Criminal Writ Appeal No. 283 of 1985

Lakshman T. Advani

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-02-1986

Acts Referred:

Citation : (1986) 3 Crimes 197 : (1986) 30 DLT 40 : (1986) 10 DRJ 303 :
(1986) 1 RCR(Criminal) 571 : (1986) RLR 229

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.

(2) The joint Secretary to the Government of India, Sh. K.K.. Dwivedi, passed an order of detention against the petitioner on 20th August, 1985. The detention order was passed u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing the petitioner from acting in any manner prejudicial to the augmentation of foreign exchange. The grounds of detention of were served upon the petitioner in jail within the period prescribed by law. The petitioner has challenged the detention order inter alias on the ground that on 30th October, 1985 when the petitioner appeared before the Advisory Board with his counsel he submitted to the Advisory Board that three of his witnesses, Mr. P.P. Thukral, Chartered Accountant of the firm Mr. Prakash and Mrs. Advani were present outside and that they be examined as witnesses on behalf of the petitioner in rebuttal of the allegations made against him in the grounds of detention. According to the petitioner these witnesses were very relevant as Mr. Prakash had to prove that the alleged chit document No. 10 was not recovered from his person. He further states that P.P. Thukral was to prove the accounts and amount of Indian currency recovered from him as lawful

and legal and Mrs, Advani had brought relevant documents with her to show the same but these witnesses were not examined inspire of repeated requests made by the petitioner's counsel. The petitioner states that he has been deprived of his valuable right of representing his case before the Advisory Board and the appropriate Government which is vocative of Article 22 of the Constitution and makes his detention illegal.

(3) The facts are that in pursuance of an information the officers of the Enforcement Directorate raided the residential premises of the petitioner situated at L-3 New Delhi South Extension, Part II New Delhi, as also the business premises of the petitioner situated at 1402/12 A, Tilak Bazar as a result of which some incriminating documents and Indian currency of Rs. 1,75,000.00 were recovered. Incriminating documents were recovered from the business premises of the petitioner. On the same day the petitioner has made a statement u/s 40 of the Foreign Exchange Regulation Act, 1973 in which he has admitted that he was clandestinely dealing in the purchase and sale of foreign exchange. He has also admitted that this he started right from 1983. While explaining the possession of Indian currency of Rs. 1,75,000.00 he is also stated to have admitted that this is out of the money which he received from one N.C. Jain for selling foreign currency.

(4) The petitioner was put under arrest on 24th April, 1985 and the proceedings under the Foreign Exchange Regulation Act were started against him. On 24th April, 1985 the petitioner was sent to judicial custody by the Additional Chief Metropolitan Magistrate and was released on bail on 26th April, 1985. The petitioner had in his statement also explained that the code words used by him in the documents recovered indicated various kinds of foreign currencies in which he was dealing. The detaining authority on the basis of these facts felt satisfied that even though adjudication and prosecution proceedings under the Foreign Exchange Regulation Act, 1973 are likely to be initiated against the petitioner, it was necessary to detain him to stop him from acting in a manner prejudicial to the augmentation of foreign exchange.

(5) The case of the petitioner as evidenced by his representation which he has made is that an amount of Rs. 1,75,000.00 recovered from him was his lawful earning which could be accounted for and it has nothing to do with the foreign exchange. The representation made to the detaining authority by the petitioner was rejected on 28th October, 1985 and he was produced before the Advisory Board on 30th October, 1985 and also on 31st October, 1985.

(6) The case of the petitioner is that even though he had specifically stated before the Advisory Board that his three witnesses were present and they be examined, the Advisory Board refused to examine them on the ground that they were not relevant for purposes of rebuttal.

(7) In the return the respondents have met this contention by stating that the request of the detenu was considered and rejected by the Advisory Board on the

grounds narrated in the report.

(8) We have gone through the report of the Advisory Board and we find that the Advisory Board refused to examine the witnesses of the petitioner on the ground as it felt that no useful purpose would be served in examining the witnesses regarding allegedly stale transactions.

(9) This the Advisory Board did on the ground that the grounds for detention clearly indicate that some of the incidents are recent and alive. This impression was gathered by the members of the Advisory Board from paragraphs 6 of the grounds of detention.

(10) We have heard Mr. Herjinder Singh, learned counsel for the petitioner as also Mr. N.S. Mehta learned counsel for the respondents.

(11) We are of the view that the contention raised by Mr. Herjinder Singh cannot be brushed aside so lightly. The law on the point is very clear. The Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, , has clearly held that the detenu has a right to present his own evidence in rebuttal of the allegations made against him. The only rider is that the witnesses he wants to examine in rebuttal must be present at the appointed time and no obligation is cast upon the Advisory Board to summon them. We have very recently in our judgment dated 5th September, 1985 in Criminal Writ No. 127 of 1985 :Madan Lal Girdhar v. Union of India and others also held that the failure on the part of the Advisory Board to examine the witnesses of the detenu in rebuttal who were present has resulted in failure of justice.

(12) In the present case the fact that the witnesses which the detenu desired to examine were present, is not disputed. We also find it from the record of the Advisory Board that a request in this behalf was made but it was declined on the ground that they were not relevant. It would appear that the grounds on which the petitioner has been detained comprises of series of incidents starting from 1983. The Advisory Board felt that since these witnesses were only brought to rebut the incidents of 1983, the examination of the witnesses would not serve any useful purpose as the incidents for detention pertaining to 1983 were treated by the Board as stale

(13) The contention of Mr. Herjinder Singh is that the petitioner was deprived of effectively representing his case before the authority in as much as if he had been allowed to examine the witnesses he would have shown that the amount of Rs. 1,75,000.00 which was seized from his possession in the year 1985 was acquired by him by lawful means and he could have accounted for the same. One has to bear in mind the fact that this money from the possession of the petitioner was recovered in the year 1985. It is difficult to believe that he could have detained it with himself from the year 1983 when he was supposed to have sold foreign exchange to one N.C. Jain. Mr. Herjinder Singh further contended that he had been allowed to examine his witnesses he would have been able to persuade the Advisory Board that there were no sufficient grounds for the

detention. Mr. Herjinder Singh further urged that even after the examination of the witnesses if the Advisory Board had felt that there was sufficient material for the detention of the petitioner, it had to submit the entire record to the appropriate Government which may not have confirmed the detention order at all if the testimonies of his witnesses in rebuttal had been recorded and forwarded to the appropriate Government.

(14) We find that there is a considerable force in the contention urged by Mr. Herjinder Singh that by declining to examine the witnesses of the petitioner, which were present, the petitioner has been deprived of his valuable right of effectively representing his case before the appropriate Government which is not permitted by the Constitution. In our view this vitiates the detention of the petitioner. We accordingly accept this petition and quash the detention of the petitioner. The petitioner shall be released forthwith.