
(1989) 02 DEL CK 0047

In the Delhi High Court

Case No : Criminal Writ Petition No. 544 of 1988

Lalit Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-02-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3

Citation : (1989) ILR Delhi 238

Hon'ble Judges : M. Sharief-ud-din, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.M. Bagai, Rajender Dutt and Kamini Lao, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) By this writ petition Lalit Kumar is seeking issuance of a writ for quashing the impugned detention order passed on 5th March, 1988 by Shri K. L. Verma, Joint Secretary to the Government of India, specially empowered u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the Cofeposa Act) directing that the petitioner be detained in Central Jail, Amritsar. The order was made with "a view to preventing the petitioner from engaging in transporting smuggled goods. Till today that order has not been executed.

(2) A number of grounds have been urged in the petition but before us only two contentions were raised, i.e.

1.That the retraction statement of one Narinder Kumar against whom also an order of detention was passed on the very grounds which are the basis of the detention order in the present case, was not placed before the detaining authority prior to the issuance of the order; and

2.That the respondents have taken no steps to execute the order of detention for almost a year and, Therefore, the live link, if any, between the. objectives which

had to be achieved and the order of detention, stands snapped.

(3) In our view both the above contentions are well founded. However, before we deal with the rival submissions of the learned counsel, at the outset it may be noticed that because of the settled view which we have taken in a number of cases, the respondents are not objecting to the maintainability of the petition. In *Ram Kishore Gupta v. Administrator, Union Territory of Delhi*, Cri. Writ Petition No. 169/88 (decided on May 25, 1988) (1), while agreeing with the proposition of law laid by a Division Bench of the Bombay High Court in *Hira Lal Somabhai Damania v. Dr. Gopal Singh & Ors.* reported in 1988 (1) Crimes 857 (2), this Court held that such a petition seeking quashing of the detention order is maintainable. Contention No. I

(4) The impugned detention order was passed on 5th March, 1988. Two other orders of the same date were passed directing detention of Narinder Kumar and Smt. Kailasho. As we have noticed above, the impugned order is still to be executed. It appears from the pleadings on the record that after the passing of the detention order, the petitioner did in fact appear before the Superintendent, Customs at Amritsar on 19th June, 1988. This appearance was in compliance with the orders of the Sessions Judge, Jalandhar, before whom an application seeking, bail in the Clistcn''is case had been fled. The averment is contained in paragraph 8 of the petition which reads :

"8. That in compliance with the orders of the learned Sessions Judge, the petitioner reported before the Customs authorities, Amritsar on 19th June, 1988 and tendered his statement u/s 103 of the Customs Act. A copy of the said statement is annexed herewith as Annexure P 6."

(5) The respondents in their counter-affidavit do not deny the above averment. Further reply to para 10 of the writ petition, they admit this position. It is stated in para 10 that :

"10. Para No. 10 is admitted to the extent that the detention orders under the provisions of Cofeposa Act, 1974 had been issued by the Jt. Secretary, Govt. of India, Ministry of Finance (Deptt. of Revenue), New Delhi on 5-3-88, against the Petitioner and he joined the investigations before the Customs Department on 19-6-83 under the directions of the Sessions Judge Jullandur dated 16-6-1988. The detention orders under the provisions of Cofeposa Act, 1974, were sent to the Senior Supdt. of Police, Amritsar and thereafter the reminders were sent to execute the order of detention on 19-6-88 and 21-6-1988 vide letters (R/1 & R/2) sent to the Senior Superintendent of Police, Amritsar and copy to the Inspector General of Police, Amritsar. There is difference between the arrest under the provisions of Customs Act. 1962 and detention under the provisions of Cofeposa Act, 1974. As the Sessions Judge, Jalandhar had granted the interim bail to the petitioner, his arrest was not required but the detention orders under the provisions of Cofeposa Act, 1974 was issued in order to prevent the petitioner from keeping/transporting/concealing the smuggled goods and that

detention order, he was avoiding the execution as per the report of the police authorities."

(6) Thus it is obvious that not only on 19th June, 1988 but on 9th June, 16th June and 30th June, 1988, the petitioner was available to the Customs authorities for execution of the detention order. On the last three dates, i.e., 9th, 16th and 30th June, 1988, the petitioner had appeared before the Sessions Judge, Jalandhar. The order of 30th June, 1988 has been annexed with the petition as Annexure P. Vii (at page 34 of the petition). It shows that it was admitted by one Shri V. K. Dhawan, Inspector Customs, who was present in Court that the statement of the petitioner u/s 108 of the Customs Act had already been recorded, and that :

"His personal arrest is not required".

It was because of these reasons that the petitioner was granted bail. The Explanation given in para 10 of the return (quoted above) to our mind, is untenable. It was possible for the authorities to have detained the petitioner if not on other dates, atleast on 19th June, 1988. On this aspect what is more important is that so far the authorities have initiated no action u/s 7 of the Cofeposa Act, which clearly shows that the respondents are not all that keen to detain the petitioner by virtue of the impugned order. Contention No. 2

(7) Narinder Kumar and Smt. Kailasho, who are stated to be co-conspirators of the petitioner herein and against whom also detention orders had been passed, sought setting aside of those orders by filing two separate writ petitions, Narinder Kumar's petition (Cr. Writ Petition No. 233/88) was allowed by a Division Bench of this Court on 6th September, 1988. Smt. Kailasho's petition (Cri. Writ Petition No. 361/88) was also allowed on the same date. In those two cases it had been held that as the retraction statement of Narinder Kumar had not been placed before the detaining authority, the orders were liable to be quashed. Narinder Kumar had made an incriminatory statement u/s 108 of the Customs Act on 4th February, 1988. He had retracted the same vide his application dated the 10th February, 1988. The said application had been made to the Chairman, Customs and Central Excise, Government of India, Ministry of Finance, New Delhi with copies to (1) The Secretary, Ministry of Finance, Government of India, New Delhi and (2) The Collector of Customs and Central Excise, Chandigarh. It is averred that the retraction statement of the application was sent by registered A.D. post. It is admitted in the return that the Government of India had received the same on 18th February, 1988, i.e., prior to the making of the impugned order on 5th March, 1988. Mr. Rajinder Dutt, learned counsel turn the respondents submits that as the sponsoring authority had not received the retraction by then, it could not possibly place it before the detaining authority. This submission is mis-conceived. The detaining authority had already received a copy of the same. At any rate the sponsoring authority, i.e., the Collector of Customs and Central Excise, Chandigarh had been sent copy of this very retraction statement on 10th February, 1988.

(8) Mr. Rajinder Dutt has taken a further plea, which was not taken in the earlier two writ petitions. He submits that apart from the incriminating statement of Narinder Kumar, there was other material in the form of incriminating statements of Smt. Kailasho and another person, which material is enough for coming to the subjective satisfaction that the petitioner ought to be detained under the provisions of the Cofeposa Act. Mr. Dutt admits that the petitioner had not made any incriminating statement neither was anything incriminating recovered from his person.

(9) In our view the retraction statement made by Narinder Kumar was a basic material which ought to have been placed before the detaining authority as it could have effected his mind either way.

(10) The result of the above discussion is that the present petition is allowed. The impugned detention order is quashed and the Rule is made absolute.