
(1991) 02 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Criminal Wit Petition No. 1836 of 1990

Lumbar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Citation : (1991) 1 RCR(Criminal) 583

Hon'ble Judges : S.D.Bajaj, J

Advocate : A. Mohunta, M.S. Dhillon, Advocates for appearing Parties

Judgement

S. D Bajaj. J.

1. Pages 1 to 9, 12, 15 and 16 of the loose sheets recovered from the conscious exclusive possession of the detenu petitioner Lumbar Singh on 16th November, 1989 along with Rs. 48,000/ cash revealed that the detenu petitioner had distributed Rs. 11,25,000/ to 32 persons detailed in the grounds of detention Annexure P.3 by way of compensation under instructions from Nirmal Singh of England and was yet to pay Rs. 44 00/ of Rs. 48.000/ recovered from him) to Smt. Banso on this score. In order to prevent him from acting in any manner prejudicial to the augmentation of foreign exchange, detaining authority passed against the detenu petitioner order Annexure P. 1 on 21st February,. 1990. After obtaining the opinion of the Advisory Committee, the order was confirmed vide Annexure P. 2 dated 23rd May. 1990.

2. Validity of the detention order Annexure P. 1 has been assailed by the detenu petitioner in Cr. WP No. 1836 of 1990 on the grounds that it was, made mechanically without application of mind by the detaining authority to the facts and circumstances of the case, that the representation made by the petitioner on 6th April, 1990 was declined by the Central Government on 7th May, 1990 after an inordinate and unexplained delay of more than a month, that the detention order was made because the detenu petitioner had been released on bail by the learned Chief Judicial Magistrate, Jalandhar, on 24th November, 1989 and is, therefore, punitive in character instead of being prohibitive and that the

detention order having been made 3 months and 5 days after the alleged recovery and enforced nearly three weeks thereafter on 14th March, 1990 when the petitioner surrendered to the authorities concerned of his own accord is liable to be quashed.

3. I have heard Shri M. S. Dhillon, Advocate, for the petitioner, Shri Ashutosh Mohunta, Advocate, for respondents 1 and 2, Shri B. S. Gill, A.A. G. Punjab for respondent No. 3 and have carefully gone through the relevant Annexures.

4. It is conceded before me at the Bar by learned counsel for the respondents that detention orders passed by the detaining authority against Ranjit Singh and Parmodh Kumar; through who the detenu Petitioner was receiving money and its distribution instructions from England have already been quashed by this Court. Ranjit Singh was in fact the carrier of money and Parmodh Kumar used to get instructions for its distribution from 'Mamaji' of England on telephone and passed it to the detenu petitioner.

5. Explanation for delay in the disposal of representation obtaining in clause (P) of para 7 of the reply filed by the Union of India reads :

"In reply to this para it is to state that representation dated 6.4.90 of the petitioner was forwarded through post by the Superintendent Central Jail, Jalandhar, on the same date which was received in the Cofeposa Unit of Ministry on 1041990 (7th and 8th were holidays) and on the same day the representation was placed before the Joint Secretary (Cofeposa) who directed that the comments from the Sponsoring Authority may be called for and the representation was sent to the Deputy Director, Enforcement Directorate, Jalandhar through post for his comments on 11.4.1990 which was received by the Deputy Director, Enforcement Directorate, Jalandhar, on 1641990 (13, 14 and 15 were closed holidays) and the Deputy Director, Enforcement Directorate, Jalandhar forwarded the comments vide his letter dated 17490 which was received in the Cofeposa Unit of the Ministry on 24490 (21st & 22nd April, 1990 were closed holidays). The concerned officer in the Cofeposa Unit submitted the case file to Joint Secretary on 25490 and on 26491 Joint Secretary (Cofeposa) forwarded the case file to the Ministry. The Hon'ble Finance Minister considered and rejected the representation of the petitioner on 3590 (27th, 28th & 29th April, 90 were closed holidays). The file was returned by the Minister and received by the Cofeposa Unit on 7.5.90 (5th & 6th May, 1990 were closed holidays). A memo intimating the petitioner about the rejection of the representation was issued on 7.5.90. In view of the foregoing, there is no delay in considering the representation of the petitioner and the facts are that the representation has been, considered expeditiously without any delay."

While commenting on almost similar explanation their lordships of the Supreme Court observed in *Harish Pahwa v. State of U.P. and others*, AIR 1981 SC 1126 :

"The only point that has been raised before us by Mr. Garg appearing on behalf of the appellant is that the representation made by him against his detention to

the State Government was not decided within a reasonable time and that the delay is fatal to the detention.

In order to decide the point we may refer to certain admitted facts. The order of detention is dated 16th May, 1980 and the representation made by the appellant against it from Varanasi Jail bears date the 3rd June, 1980. The State Government received the representation on the 4th June, 1980 but for two days no action was taken in connection with it. On the 6th of June, 1980 comments were called for from the Customs authorities with regard to the litigation to made in the representation and such comments were received by the State Government on the 3th June, 1980. On the 17th June, 1980, the State Government referred the representation to its Law Department for its opinion which was furnished on the 10th of June, 1980. The rejection of the representation was ordered on the 24th of June, 1980 and it was communicated to the jail authorities two days later.

The case of the State is that the representation was with the Customs authorities who were formulating their comments from 7th June, 1980 to the 12th of June, 1980 and that the representation was under the consideration of the Government for four days from 13th June, 1980 to 16th June, 1980, of its Law Department from 17th June, 1980 to 19th June, 1980 and than again under its own consideration for six days from 19th June, 1980 to 24th June, 1980.

In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter on consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th & 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representation of the character above mentioned with the utmost expedition which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention

unconstitutional."

6. In the case before the Supreme Court the delay was of three weeks only while in this case the inordinate and unexplained delay has been for more than a month. In terms of the guidelines aforesaid detention order Annexure P. 1 merits being quashed on this score alone.

7. Remaining three assertions of want of application of mind by the detaining authority, of the detention order being punitive in nature and of the delay in making the detention order after search and recovery are wholly without merit and consequently negatived.

8. In result the writ succeeds and is allowed. Petitioner Lumber Singh would be set at liberty forthwith; if not required to be detained in any other case.