

(1991) 03 DEL CK 0062

In the Delhi High Court

Case No : Criminal Writ Appeal No. 322 of 1990

M.K. Kunhi Mohamed

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-03-1991

Acts Referred:

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

Constitution of India, 1950 — Article 226

Citation : (1991) 44 DLT 539

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : S.R. Setia, Subhash Chand, J.P. Verghese, G. Prakash and T.T.K. Kannan, for the Appellant;

Judgement

Arun B. Saharya, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioner has challenged his detention in pursuance of an order dated 4th of October, 1989 made by the Government of Kerala u/s 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act) with a view to preventing him from smuggling goods. It is prayed, inter alia, that a writ of habeas corpus be issued directing the respondents to release the petitioner and set him at liberty forthwith.

(2) The order of detention was executed on 20th of October, 1989. The grounds of detention and the documents relied upon were served on the petitioner on 21st of October, 1989. On 9th of November, 1989, the Central Government issued a declaration u/s 9(1) of the Act.

(3) Counsel for the petitioner has pressed only on ground which is based upon the pleadings in para 21; of the petition. It reads as follows :-

"IT is submitted that the declaring authority has not stated in the declaration or

informed the detenu otherwise that he has a right to make a representation against the declaration. The Petitioner as a layman is not supposed to know the law. The Petitioner/detenu has a right to make a representation against the declaration and the Petitioner not having been informed of his right, he has been deprived of making a representation against the declaration."

(4) In response to Rule Nisi, the Central Government has not filed any counter-affidavit. The Government of Kerala, in its return, simply states that the declaration u/s 9(1) is issued by the Government of India. As such, the ground pleaded by the petitioner has not been traversed.

(5) The law on this aspect has been laid down by the Supreme Court in *Jagprit Singh v. Union of India* 1990(3) S.C. 293 which was followed in *Mohan Lal Nai v. Union of India and others*, Crl. W. 288/90 decided by this Court on 4th of February, 1991.

(6) Now, it is well-settled that it is enjoined upon the authority making the declaration to appraise the detenu, more so when he is a layman and he is not conversant with his rights under the law, that he has a right to make a representation against the declaration to the Central Government and to the Advisory Board. This has not been done either in the body of the declaration or contemporaneously in any other way. On this short ground, the continued detention of the petitioner, beyond the original period of one year, is vitiated and is set aside.

(7) The respondents are directed to set the detenu at liberty forthwith unless he is required to be kept in custody for any other cause.

(8) The Rule is made absolute and the petition is, accordingly, allowed, with costs as against respondent No. 1. Counsel's fee Rs. 2,200.00 .