

(1985) 01 DEL CK 0064

In the Delhi High Court

Case No : Criminal Writ No. 129 of 1984

Mohamed Hanif Abdul Hamid Shaikh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-01-1985

Acts Referred:

Citation : (1987) 27 ELT 252

Hon'ble Judges : Prakash Narain, C.J;B.N. Kirpal, J

Bench : Division Bench

Judgement

Prakash Narain, C.J.—The petitioner is the brother of one Izharul Huq Abdul Hamid Shaikh alias Izu Shaikh. He has moved us for the issue of a writ a humans corpus in respect of his brother, the aforesaid Izharul Huq Abdul Hamid Shaikh alias Izu Shaikh, who has been detained by virtue of an order passed by the Central Government u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the Act") with a view to prevent him from engaging in keeping smuggled goods.

2. Originally this very detenu was detained by virtue of an order under the said Act passed on 29th June, 1984 as a consequence of seizure of some goods from a godown on 10th February, 1984. The grounds of detention in respect of the order dated 29th June, 1984 were given also on 29th June, 1984. That order has been passed with a view to prevent the detenu from smuggling goods u/s 3(1) of the Act. A petition under Article 226 of the Constitution of India bearing No. 94 of 1984 was filed in this Court on July 23, 1984 to challenge that detention. Notice was issued by this Court returnable on August 9, 1984. In the meanwhile, on July 26, 1984 a show cause notice had been issued to the detenu u/s 124 of the Customs Act in respect of the seizures made on 10th February, 1984. On July 30, 1984 a declaration u/s 9(1) of the Act was made in respect of that detention. Representation date July 30, 1984 moved by the detenu to the detaining authorities and the Advisory Board was rejected on August 10, 1984. When the petition came up for hearing on August 9, 1984, the respondents sought time to

file their counter-affidavit by way of return. Time was granted and the case was adjourned to 16th September, 1984. On August 30, 1984 the order of detention dated June 29, 1984 was revoked. The said order of revocation was served on the detenu on August 15, 1984. Before the said order could be served on the detenu, a second order of detention was passed by the Central Government on August 14, 1984. This is the order which has been challenged before us by the present petition. The detenu was detained on August 15, 1984. On September 13, 1984, a declaration u/s 9(1) of the Act was made in respect of this detention. It was served on the detenu on September 17, 1984. On the same day the present petition under Article 226 of the Constitution was filed by the brother of the detenu. Representations were made to the detaining authority, the Central Government and the Advisory Board by the detenu on October 11, 1984.

3. The present detention has been challenged on various grounds. In the view that we are going to take it is not necessary to notice all of them. One of the grounds of challenge taken is that the show cause notice issued to the detenu on July 26, 1984 was never placed before the detaining authority. It was a relevant document. In reply the respondent admit that the show cause notice was not placed before the detaining authority. It is, however, urged on behalf of the respondents that the show cause notice was relevant only for adjudication proceedings under the Customs Act and had no relevance to the preventive detention resorted to by virtue of the order passed by the detaining authority.

4. In our view the contention of the respondents has no force. The point is no longer rest integra. It is covered by two decisions of this Court. One is in *Rajindar Parshad Soni vs. Union of India and Ors.* Crl. Writ No. 130 of 1983 rendered on December 15, 1983 and the other is *Smt. Ansuyaben Babubhai Raviabhai v. Union of India and others*, Crl. Writ No. 101 of 1984 rendered on 13th November, 1984. We have perused a copy of the show cause notice that was issued to the detenu. In that the allegation made are in regard to smuggling and dealing in smuggled goods. There is no allegation regarding keeping of smuggled goods which is sought to be prevented by the impugned detention order dated August 14, 1984. It cannot be disputed that the issue of the show cause notice u/s 124 of the Customs Act well before the passing of the detention order was a relevant circumstance. What was said in the show cause notice has some importance of bearing and the document was a relevant document which should have been placed before the detaining authority. The perusal of the show cause notice and the allegations contained therein along with the proposal to detain a person in order to prevent him from engaging in keeping smuggled goods had to be considered by the detaining authority. The reading of that document and the circumstance of issue of the show cause notice could have affected the detaining authority, one way or the other. The detaining authority was aware of the adjudication proceedings having commenced. He was also conscious of the fact that prosecution proceedings were likely to be initiated. He has, however, not aware of what was the precise case of the Custom Department in the adjudication proceedings. That he could have been made aware of only if

he had seen the show cause notice. This he could not do because the show cause notice was not placed before him. The grounds of detention served on the detenu in respect of the impugned detention do not show that the detaining authority was aware of the contents of the show cause notice of the basis on which the adjudication proceedings had been commenced. Even in the counter-affidavit filed on behalf of the respondents this aspect has not been made clear or adverted to. May be the detaining authority could have taken a view that the sponsoring authority in the adjudication proceedings takes one stand while in the proposal for detention takes another. In that situation the detaining authority might well have come to a different conclusion than the one which is reflected in the impugned detention order. It is not for us to say that his conclusion would have been suffice it to say that a very relevant document if not placed before the detaining authority if not considered by him vitiates the satisfaction postulated by section 3(1) of the Act. We, Therefore, hold that the impugned order suffers from the vice of satisfaction arrived at without all the relevant documents being made available to the detaining authority and is, Therefore, vitiated.

5. Another point that was urged on behalf of the petitioner is that the conclusion of the detaining authority as reflected by the grounds of detention supplied to the detenu in English and translation thereof supplied in Gujarati is at variance. One or two examples thereof were brought to our notice. There seems to be some variance. The petitioner states that his brothers does not know English and knows Gujarati. It could materially affect the right of representation postulated by Article 22(5) of the Constitution if the English version and the Gujarati version are at variance. Mr. Bagai, learned counsel for the respondents, has cited before us the case of Binod Bihari Mahato Vs. State of Bihar and Others, , to contend that in such a situation the Gujrati version has to be taken as the correction version. Now it is not in dispute that the original order and the grounds are in English. Mr. Dwivedi, Joint Secretary to the Government of India has expressed his mind in English. It is evident from a reading of the counter-affidavit filed on behalf of the respondents that Mr. Dwivedi did not know Gujrati and in fact the documents in Gujrati had to be translated to him in English by one Mr. Bakshi, Deputy Secretary. If the Gujrati version is taken to be the correct version, it obviously does not reflect that Mr. Dwivedi wanted to convey. We leave this point at this stage having made the above observations and comment no more.

6. In view of our decision regarding the satisfaction having been vitiated, we strike down the impugned order of detention dated 14th August, 1984 and direct that the detenu Izharul Huq Abdul Hamid Shaikh alias Izu Shaikh be set at liberty forthwith unless required to be detained under any other valid order of any Court or an Authority.

7. A formal order may be given date to the learned counsel for the petitioner.