
(1991) 12 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition (HC) No. 145 of 1991

Mohammed Haji Alavi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

Citation : (1992) ILR (Kar) 623 : (1991) 3 KarLJ 745

Hon'ble Judges : Venkatachala, J;Vasanthakumar, J

Bench : Division Bench

Advocate : J. Jeshtmal, for the Appellant; B.J. Somayali, HCGP, for the Respondent

Judgement

Venkatachala, J.—In this Petition under Article 226 of the Constitution, the petitioner, by challenging the validity of the order of his detention made by the Karnataka Government u/s 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act") with a view to preventing him from engaging in keeping and transporting smuggled goods, has sought for issuance of a Writ in the nature of Habeas Corpus to the respondents directing his release from detention.

2. The order of detention under challenge in this Writ Petition has been made on 15-7-1991. Pursuant to that order of detention, the petitioner has been detained on 31-7-1991. That order of detention has been, thereafter, confirmed by the Karnataka Government on 3-10-1991.

3. The principal ground, on which the validity of the said order of detention is challenged by Sri J. Jeshtmal, learned Counsel for the petitioner, is that the grounds of detention did not disclose any material or circumstance, on the basis of which the Detaining Authority could have possibly reached the satisfaction that the petitioner was required to be detained with a view to preventing him from engaging in keeping and transporting smuggled goods and hence the detention order based on such satisfaction stand vitiated by illegality. If this ground of

challenge raised against the validity of the impugned detention order is well founded, there would be no option left to us except to quash the same and direct release of the petitioner from detention. We would, therefore, consider it most appropriate to examine the merit of the said ground of challenge at the first instance and proceed to do so.

4. Whether a Detaining Authority has possibly reached the subjective satisfaction on one or the other grounds available under Sub-section (1) of Section 3 of the Act for making the detention order respecting a person as envisaged therein since could be tested on the basis of the legal position enunciated in that regard by our Supreme Court in *KHUDIRAM DAS v. STATE OF WEST BENGAL AND ORS.*, AIR 1975 SC 515, that enunciation is excerpted :

"There is also one other ground on which the subjective satisfaction" reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in *Sharpe v. Wakefield*, 1891 AC 173 at P. 179:

"...when it is said that something is to be done within the discretion of the authorities .. that something is to be done according to the rules of reason and justice, not according to private opinion ... according to law and not humour, It is to be not arbitrary, vague, fanciful, but legal, and regular."

So far as this ground is concerned, the Courts in the United States have gone much further than the Courts in England or in this country. The United States Courts are prepared to review administrative findings which are not supported by substantial evidence, that is by "such relevant findings as a reasonable man may accept adequate to support a conclusion." But in England and in India, the Courts stop-short at merely inquiring whether the grounds on which the authority has reached subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. "If", to use the words of Lords Greene, M.R., in *Associated Provincial Picture Houses Ltd., v. Wednesbury Corporation* (1948)1 KB 223 - words which have found approval of the House of Lords in *Smith v. Rest Ellor Rural District Council* 1956 AC 736 and *Fawcett Properties Ltd., v. Buckingham County Council* 1961 AC 636 - "the authority has come to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere". In such a case, a legitimate inference may fairly be drawn either that the authority "did not honestly form that view or that in forming it, he would not have applied his mind to the relevant facts." *Ross v. Papadopollos* (1958)1 WLR 546. The power of the Court to interfere in such a case is not as an appellate authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned, and concerned only, to see whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided in it. It is on this ground that the order or preventive detention made by the District Magistrate in *Debu Mahato Vs. The State of West Bengal*, was struck down by this Court. There, in that case, one single solitary act of wagon breaking was relied upon by the District

Magistrate for reaching the satisfaction that with a view to preventing the detainee from acting in any manner prejudicial to the maintenance of supplies and services to the community, it was necessary to detain him. This Court pointed out subject to certain reservations that it was difficult to see how:

"one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking."

This Court did not go into the adequacy or sufficiency of the grounds on which the order of detention was based, but merely examined whether on the grounds given to the detenu, any reasonable authority could possibly come to the conclusion to which the District Magistrate did. It is true that this ground in a sense tends to blur the dividing line between subjective satisfaction and objective determination but the dividing line is very much there howsoever faint or delicate it may be the Courts have never failed to recognise it."

According to the said enunciation of the legal position made by our Supreme Court, the test to be applied by Courts to find whether a detention order made by the Detaining Authority on the basis of its subjective satisfaction could be interfered with, is whether a reasonable Authority could not have possibly reached such subjective satisfaction by reference to the material or circumstances constituting the ground on which such satisfaction was reached by the Detaining Authority. If we have regard to the said test, where there is no material or circumstances at all which could form the ground respecting which subjective satisfaction had to be reached by the Detaining Authority, the supposed subjective satisfaction to be reached by it to make the detention order would vitiate the detention order itself.

5. Coming to the instant case, the ground on which satisfaction is reached, is the prevention of the detained person (petitioner) from engaging himself in keeping and transporting smuggled goods. Whether the materials and circumstances, which have formed the ground of subjective satisfaction to make the detention order under challenge, could have really formed such ground for a reasonable Authority to arrive at such satisfaction, since cannot be found out without reference to the materials and circumstances on the basis of which the detention order under challenge is made, the same are excerpted:

"On 4-5-1991 at Kasurkode on N.H.17 Customs Officers, Kumta stopped a bus bearing Registration No. KLS 3552 belonging to Mahabaleswara Travels for checking suspected movement of contraband. During the course of check the officer spotted two suspects including yourself (petitioner). On enquiry you revealed your name as Mohammed Haji Alavi and other persons disclosed his name as Sri Chunai Kunnath Kassim. Both of you were asked to alight from the bus along with your luggage and were taken to the Customs Office at Honnavar, for detailed examination.

In the Customs Office at Honnavar, the personal search of Sri C.K. Kassim in the presence of panch witness resulted in recovery of two gold pellets with foreign marking of 24 carats purity weighing 20.000 gms each, totally weighing 40,000 gms valued at Rs.14,800/-. The gold pellets were seized by the Superintendent of Customs, Kumta under a separate mahazar dated 4-5-91.

The Customs Officers also searched your person and belongings of your in the presence of panchas. The search of your person resulted in the recovery of 20 gold coins and nine gold bangles. The 20 gold coins were concealed inside the waist portion of the black coloured trouser worn by you. The said nine gold bangles were found concealed in the said pockets of the trouser. Out of the said nine bangles, five gold bangles were found in the right side pocket and four gold bangles were found in the left side pocket of the trouser worn by you. The gold bangles were found wrapped in cream coloured gum tape. The said Superintendent sent for a goldsmith and one Sri Prakash Rama Krishan Shet appeared before the panchas and the Superintendent. The said gold smith, after testing, weighing, and examining, opined that all the twenty gold coins and nine gold bangles were of foreign origin and that the 20 gold coins were of 22 cts purity each. Weighing 8.0 gms and totally weighing 160.00 gms and the total value was estimated at Rs. 54,000/-. All the gold coins were having foreign markings on both the sides and all of them were similar markings as detailed in the panchanama. The nine gold bangles of foreign origin were of 21 cts. purity, weighed totally 124.5 gms and were valued at Rs. 39,200/-. You informed that you had come from Saudi Arabia and were on your way to your native place and showed the passport bearing No. Y.506877 issued at Jeddah on 27-6-87 and valid upto 26-6-92, On being questioned you the Superintendent of Customs you replied that you did not have any documents or evidence in support of licit possession of the said 20 gold coins, and nine gold bangles of foreign origin. The Custom Officers also searched your another belongings i.e., one suit case and one cardboard box and nothing objectionable was noticed in them. The Superintendent of Customs informed panchas that he had reasons to believe that the above mentioned 20 gold coins and 9 gold bangles of foreign origin were smuggled into India in contravention of the Customs Act, 1962 and were liable to seizure under the said Act. Accordingly, the Superintendent of Customs C.S.P. Kumta seized the aforesaid twenty gold's coins of foreign origin, and nine gold bangles of foreign origin. The Superintendent also seized the cream coloured gum tape which was used for wrapping the gold bangles and the black coloured trousers which was used for the concealment of the above mentioned gold coins and gold bangles.

In your statement dated 5-5-91, you stated inter alia that you had studied upto VI th Standard and you could read and write Malayalam and could speak Hindi also; that you had small house and a piece of land valued at Rs. 25,000/- at your native place; that you were travelling in a private luxury bus bearing Registration No. KLS 3552 belonging to Mahabaleswara Travels plying from Bombay to Kerala; that the Customs Officers intercepted the bus at Karakode on N.H.17 and started

checking persons and during the course of check the officers suspected you that a thorough search of your person resulted in recovery of 20 gold coins and 9 gold bangles of foreign origin totally valued at Rs. 93,200/- and the same were seized; that you had two volumes of Passport bearing No. Y.506877 issued at Jeddah and valid up to 26-6-1992; that you had been to Saudi Arabia in the year 1977 and since then you were working as a labourer in the Municipality at Dawandri and you were paid 400 Riyals per month; that your previous visit was in 1987; that you had purchased 20 gold coins at Saudi Arabia before your departure and were carrying the same to your native place with an intention to manufacture ornaments for your younger daughter who was getting married within a month; that you had purchased nine gold bangles at Saudi Arabia before your departure for the use of your elder daughter and your wife; that you had concealed the said twenty gold coins inside the waist portion of trouser and nine gold bangles inside the pockets of the trouser and nine gold bangles inside the pockets of the trouser to avoid detention by the Customs Officers; that you had not declared them at Sahar Airport, Bombay.

You were arrested on 5-5-1991 and produced before Hon''ble Chief Judicial Magistrate, Karwar. You were subsequently released on bail.

As a follow up action your residential premises at residence of your native place in Karwar were searched with nil results.

Shri C.K. Kasim who was detained by Custom Officers, from the same bus in which you were travelling was in no way connected with you or the goods seized from you. Copies of the documents connected with the search of Shri C.K. Kasim are not furnished you.

The gold under seizure attracts the provisions of Section 123 of the Customs Act, 1962, and as such the burden of proof that the said gold had not been smuggled into India is cast on you and on your failure to discharge the said burden to the authorities, the said gold came to be seized by the Officers. Importation of gold into India has been prohibited under the provisions of Section 13(1) of Foreign Exchange Regulation Act, 1973 except with the general or special permission from the Reserve Bank of India, you have not produced any such permission obtained from the Reserve Bank of India, for the importation of the said gold under seizure of the said gold. Therefore, the gold under seizure to the Competent Authorities at the time of the seizure is liable for confiscation under the Customs Act, 1962 and deemed to be smuggled goods within the meaning of Section 2(e) of the COFE POSA Act, 1974 read with Section 3(39) of the Customs Act, 1962."

6. As could be seen from the said material and circumstances, there is absolutely nothing therein to support the ground of detention, on which the petitioner is detained by the detention order under challenge, that if he was not to be detained by such detention order, he would be engaging himself in keeping and transporting smuggled goods. In fact, the said material and circumstances are

not even suggestive of any tendency on the part of the detained person of engaging himself in keeping or transporting smuggled goods, if not detained. The facts disclosed from the said material and circumstances, namely, that he earned some money by serving as a labourer for certain years in Dawandri Municipality in Saudi Arabia, bought out of such earnings 20 gold coins and 9 gold bangles and brought them to India stealthily so as to have ornaments made of the gold coins to his younger daughter in India, who has to be married, and 9 gold bangles to be given to his elder daughter and his wife in India, if anything, would negative the ground that if he was not prevented by detention, he would be engaging himself in keeping and transporting smuggled goods, for, the smuggled gold he had brought into India was intended to give by way of presents to his wife and daughters, whom he had left in India long ago and gone to Saudi Arabia with a view to earn some money for his future and the future of his family. In this situation, it is difficult to think or imagine that the materials and the circumstances, to which we have adverted and which formed the basis of the ground of detention of the petitioner, could have satisfied any reasonable man to come to the conclusion that the detention of such person was necessary with a view to preventing him from engaging himself in keeping and transporting smuggled goods. If that be so, the detention order under challenge calls to be necessarily interfered with by us as a Court which is called upon to examine the validity of such order.

7. As the manner in which our Supreme Court considered the detention order made u/s 3 of the Maintenance of Internal Security Act, 1971, in *Lal Kamal Das Vs. The State of West Bengal*, would support the manner in which we have dealt with the case on hand, the portion of the Judgment of the Supreme Court in that case, which bears on the manner in which it dealt with the matter, calls to be excerpted;

"It may be remembered that the power u/s 3 of the Act can be exercised only if the detaining Authority on the basis of the past prejudicial conduct of the detenu is satisfied about the probability of the latter acting similarly in future. This means the past activity of the detenu on the basis of which such a prognosis is made, must be reasonably suggestive of a repetitive tendency or inclination on the part of the detenu to act likewise in future. A simple, solitary incident of theft, such as the one in the present case, without anything more, is hardly suggestive of such a tendency. Here, it is not alleged that the commission of theft was accompanied by violence or show of force. Nor is it alleged that it was committed openly or in a daring fashion by overawing or overcoming resistance from any quarter, whatever. The theft was committed stealthily before 6 A.M., presumably under cover of night. Nor is it clear from the grounds that a large number of persons were concerned in this theft. All that is alleged is that the petitioner and his associates committed this theft. The number of the "associates" has not been indicated. Since the petitioner or any of his "associates" was not arrested on the scene of occurrence, the chief witness against him would be only the police officer who arrested him and recovered the

stolen property, if any, from him. We, therefore, find it impossible to accept the fanciful plea set-up in the counter for not following up the prosecution of the petitioner in Court,"

8. Thus, we are not left in doubt that the Detaining Authority, in making the detention order under challenge on the ground of preventing the petitioner from engaging himself in keeping and transporting smuggled goods-, in exercise of the power conferred upon it under Sub-section (1) of Section 3 of the Act, has not reached the pre-requisite subjective satisfaction required therein and the same has resulted in vitiation of the challenged detention order with illegality.

9. In the result, we quash the impugned order of detention dated 15-7-1991 made by respondent No. 1 State Government and later confirmed by it and issue a Writ of Habeas Corpus directing respondents 1 and 2 to set the petitioner at liberty forthwith.