
(1978) 02 DEL CK 0004

In the Delhi High Court

Case No : Criminal Writ Appeal No. 1 of 1978

Mohammed Masoom

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-02-1978

Acts Referred:

Citation : (1979) CriLJ 365 : (1979) ILR Delhi 764

Hon'ble Judges : T.P.S Chawla, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : A.K. Sen, N.C. Chawla, Charanjit Talwar and K.K. Sud, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) The petitioner, Mohammed Masoom, is being detained under an order dated 25th January 1975 made by the Administrator of Delhi u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 ("COFEPOSA"). This petition for a writ of habeas corpus has been moved on his behalf by his son Mohammed Saleem.

(2) Counsel for the petitioner attacked the order of detention on three grounds. First, and foremost, he said, that there had been unexplained and excessive delay in effecting the arrest of the petitioner after the order had been made, which showed that the satisfaction of the Administrator about the necessity for detaining the petitioner was not real or genuine. Secondly, he contended, that the grounds on which the order had been based were "stale" and could not justify the order. And, thirdly, that the Administrator had taken note of certain statements made by the petitioner to the customs authorities, but had not been informed, and had not taken note of the fact, that the petitioner had retracted those statements.

(3) In our opinion the petition must succeed on the very first ground, and hence it would be redundant to deal with the others. To properly appreciate that

ground, it is necessary to recite the history of the case.

(4) There were some incidents in April 1973, which gave reason to believe that the petitioner was engaged in smuggling gold into this country. He was arrested and interrogated by officers of the Directorate of Revenue Intelligence. Subsequently, he was released on bail. Nearly three years afterwards, on 31st March 1976, a complaint was filed against the petitioner in the court of the Additional Chief Metropolitan Magistrate, New Delhi, for offences alleged to have been committed by him u/s 135(b) of the Customs Act 1962 and section 85 of the Gold (Control) Act 1968. That complaint related to the incidents which occurred in April 1973, and proceedings thereon are still pending.

(5) In the intervening period, however, there were a number of other events. On 14th October 1974, the District Magistrate, Delhi, ordered the detention of the petitioner u/s 3(1)(c) read with section 3(2) of the Maintenance of Internal Security Act 1971 ("MISA"), so as to prevent him from smuggling or dealing in smuggled goods. The petitioner was arrested on 15th October 1974. On the same day he was supplied with the grounds for his detention. All of them pertained to the incidents of April 1973. The petitioner made a representation against the order to the State Government, and also filed a petition in this court seeking his release. The Advisory Board, which considered the representation made by the petitioner, formed the opinion that the order of detention was invalid. Consequently, the petitioner was set free on 5th December 1974. The petition which he had filed in this court, thus, became infructuous.

(6) After Cofeposa came into force on 19th December 1974, the Administrator made an order on 25th January 1975 u/s 3(1) of that Act for detaining the petitioner. That is the order now impugned. It was stated in the order that the Administrator was "satisfied" that it was necessary to detain the petitioner with a view to preventing him from engaging in various kinds of smuggling activities. The grounds on which the order was made again referred to the incidents of April 1973, and were substantially the same as the grounds on which the earlier order of 14th October 1974 had been made under MISA. As the petitioner could not be found, the order of detention could not be executed. Proceedings were then taken against the petitioner u/s 7(1) of Cofeposa as there was reason to believe that he had absconded or was concealing himself. Under an order of the Additional Chief Metropolitan Magistrate, Delhi, the petitioner's house No. 670, Sheesh Mahal, Sadar Bazar, Delhi, was attached and sealed on 12th February 1975. Nothing further seems to have happened for the next two years.

(7) The declaration of emergency under Article 352 of the Constitution was revoked on 23rd March 1977. On 24th April 1977, Mohammed Hanif, the father of the petitioner made an application on behalf of the petitioner and his son Mohammed Saleem for restoration of their house to them. The course of this application is rather mysterious. Three respondents were cited therein : (i) The State, (ii) The Special Secretary (Home), Delhi Administration and (iii) The Station House Officer, Police Station, Sadar Bazar, Delhi. In the margin of the

first page of the application there is an order dated 30th April 1977 reading "S.H.O. S.B. to report please by 30th April 1977. The date which this order bears is 24th April 1977. On the last page there is another order which reads "Notice given to Mr. Mahajan Adn. for 30th April 1977". This order is also dated 24th April 1977.

(8) In his affidavit, the Station House Officer of Sadar Bazar Police Station says that, as appears from the cause-title, this application was first presented to Mr. M. L. Sahni, Metropolitan Magistrate (Sadar Bazar), who held court at Tis Hazari. It seems that that Magistrate returned the application to the applicant with the order in the margin of the first page. It was then presented to Mr. P. K. Dham, Metropolitan Magistrate, New Delhi, whose court was on Parliament Street. He was the Magistrate before whom the prosecution against the petitioner was now pending. The order found on the last page of the application was presumably made by him.

(9) On 30th April, 1977, the only person who appeared for the respondents before Mr. P. K. Dham was an Advocate, Mr. V. D. Mahajan. He was conducting the prosecution on behalf of the customs authorities. A reply was filed by him to the application moved on behalf of the petitioner, in which he stated that "the orders of detention issued against Mohammed Masoom were revoked as a result of the revocation of the proclamation of emergency in the country". On the same day the Magistrate made an order restoring the house of the petitioner to him. This order was communicated to the Station House Officer, Police Station, Sadar Bazar, who gave effect to it by delivering possession of the house to the petitioner.

(10) On the basis of the statement contained in the reply filed by Mr. Mahajan, it was suggested, that the order of detention made against the petitioner had been withdrawn. Having regard to all the circumstances, that conclusion does not appear to be justified. Notice of the application was not served on any of the respondents mentioned in its cause-title, and it is so averred in the various affidavits filed on their behalf in this court. It is pleaded in those affidavits that Mr. Mahajan was under the mistaken impression that all orders of detention had automatically lapsed with the revocation of the declaration of emergency, and made the statement in question without obtaining any instructions. It is affirmed that the order of detention made against the petitioner is in force, and was never, in fact, withdrawn. In our opinion, the phraseology of the reply does give the impression of being a statement about the general legal position rather than of a particular fact. Besides, there is no reason to disbelieve the affidavits sworn by responsible officers on behalf of the respondents.

(11) However, the fact remains that in April 1977 the petitioner did actually appear in the court of Mr. P. K. Dham as the accused in the prosecution against him. He also appeared in that court on 25th July 1977, 3rd September 1977, 11th October 1977 and 7th December 1977. It is maintained by the respondents that the officers of the customs department dealing with the case became aware,

for the first time, on 27th May 1977 that the petitioner was appearing in court. After receiving this information, they approached the Station House Officer, Sadar Bazar Police Station, Delhi, on 1st June 1977, and requested him to take the petitioner into custody. But he said that after the revocation of the declaration of emergency, all unexecuted detention orders "had been returned to the higher authorities". Thereafter, the customs department requested Delhi Administration to issue appropriate instructions to the police authorities to execute the detention order. The affidavit of Mr. M. L. Badhwar, Collector of Customs and Central Excise, New Delhi, disposes of the rest of the story with the laconic statement that "During the period from 4th June 1977 to 17th December 1977 or thereabout the matter was re-examined and the said detention order was executed on 17th December, 1977".

(12) The petitioner has alleged that he was moving about openly and going about his business, at any rate, after March 1977. He says that he even voted at the election of Parliament and the Metropolitan Council of Delhi held in that month. His version is that, on 17th December 1977, he was called to the Police Station at Sadar Bazar on the pretext that some inquiries were to be made from him, and there he was suddenly taken into custody under the order of 25th January 1975.

(13) We do not think it is necessary to go into any disputed questions of fact in this case. On the admission of the respondents themselves it is plain that, at the latest, they knew on 27th May 1977 that the petitioner could be arrested, for he was recurrently appearing in the court of Mr. P. K. Dham. Nevertheless, for over six and a half months no attempt was made to arrest him. The affidavits filed on behalf of the respondents contain absolutely no Explanation for this delay, except only the sentence already quoted from the affidavit of Mr. M. L. Badhwar, Counsel for the respondents told us that the officers of Delhi Administration were seeking legal advice and pondering over the matter. Granting all that, the delay in arresting the petitioner was still too much. If the order of detention was made with serious intent, the officers concerned would have moved with greater speed, especially when they knew that the order had laid unexecuted for over two years. From their lackadaisical conduct, it is legitimate to conclude that the satisfaction of the Administrator, on which the order of detention was founded, was not real or genuine. Had it been truly necessary to detain the petitioner to prevent him from doing acts prejudicial to the economic interests of this country, one would expect prompt and immediate action to thwart his activities.

(14) In *Sk. Nizamuddin Vs. State of West Bengal*, , and *Sk. Serajul Vs. State of West Bengal*, , it has been held that delay in implementing the order of detention throws doubt on the reality of the satisfaction of the detaining authority. Obviously, the whole purpose of preventive action is lost with the lapse of time. So, when too much time is allowed to pass one can infer that the purpose was lacking. In one of those cases the delay in implementing the order was two and a half months, and, in the other six. Here, the delay is even more. It is true that

the cases before the Supreme Court arose under Misa, but the nature of the detention under Cofeposa is entirely the same. Only the grounds are different. The same principles must surely be applicable under both.

(15) For these reasons we are persuaded that the delay after 27th May 1977 in executing the order of detention dated 25th January 1975, establishes that the satisfaction expressed by the Administrator in that order was not real or genuine. Therefore, that order is not valid, and is hereby quashed.

(16) It is for these reasons that after hearing arguments on 31st January 1978 we allowed the petition, and directed the petitioner to be released forthwith. Of course, the authorities are free to arrest him if that be required in some other connection. Petition allowed Addendum

(17) After this judgment was ready for pronouncement a doubt arose in our minds as to the date it should bear. We had made a short order on 31st January 1978 announcing our decision, and the petitioner was released forthwith. The question is, when the court announces its decision on one day and delivers its reasons on another, what date should be written on the reasons? It appears that the practice in this Court has not been uniform. Some judges put the date on which the reasons are pronounced, whilst others antedate them to coincide with the earlier order. To resolve this doubt we had this case mentioned, and invited arguments from counsel.

(18) We are now quite clear that the reasons must bear the date on which they are made known in open court. This has been the practice of the Supreme Court: See *R. L. Butail v. Union of India and others* 1970 S.L.R. 926. It is also the practice of the Privy Council: see *Lowery v. The Queen* (1973) 3 All. E. R. 662. The Court of Appeal (Criminal Division) does the same: see *R. V. Kovacs* (1974) 1 All. E. R. 1236 and *R v. Willis* (1975) 1 All. E. R. 620.

(19) The argument for the opposite view is based on the analogy of Order 20 rule 7 of the CPC 1908 which says that "The decree shall bear date the day on which judgment was pronounced.". But this is a statutory departure from, and an exception to, the general rule that court proceedings must bear the date on which they occur. That rule results from the fundamental notion, essential to the administration of justice, that a judicial record must be faithfully drawn. It must: represent truly what happened, and when. The exception embodied in Order 20 rule 7, Civil Procedure Code, must not be extended beyond the particular document, namely, a decree, to which it applies. We are not here concerned with collateral questions, such as limitation for an appeal and so forth, which must await determination if, and when, they arise.

(20) Accordingly we have dated the judgment just delivered, incorporating the reason for our decision announced earlier, as of today. sd/- S/J T. P. S. Chawla, Judge sd/- Avadh Behari Judge 15th February 1978.