
(1978) 03 KAR CK 0003
In the Karnataka High Court

Mrs. Swaran Ahuja

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-03-1978

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) — Section 3 (1), 3 (1) (ii)

Citation : (1978) CriLJ 1229

Hon'ble Judges : C. Honniah, Acting C.J.; M.N. Venkatachaliah, J

Bench : Division Bench

Judgement

M.N. Venkatachaliah, J.—This petition under Article 226 of the Constitution of India, is preferred by certain Mrs. Swaran Ahuja, challenging the detention of her husband, Vedaprakash, s/o Topanlal, under the provisions of Section 3 (1) (iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the Act") pursuant to the Order No. HD/112/SCF/77 dated 22-12-1977 made by the Commissioner for Home Affairs, Government of Karnataka.

2. The facts are : That on 30-9-1977 the Officers of the Central Excise searched the business premises of a firm carrying on business in the name and style "M/s. Selection House", Moosa Market, Commercial Street, Bangalore. The search is stated to have resulted in the seizure of 4 bottles of liquor of "smuggled nature" of a value of Rs. 1,350/- kept under a shelf in the office room of the detenu packed in a card board box. This, it is alleged, was not accounted for in the books of account of the detenu. It is further alleged that a case was registered against the detenu in the records of the Assistant Collector of Central Excise, Bangalore-III Division. The second ground was that on 29-10-1977 the Officers of the Central Excise, Bangalore conducted a search of the residential premises of the detenu situate at No. 2, Madras Bank Road, Bangalore, which is stated to have resulted in the seizure of 8 bottles of Whisky of "smuggled nature". It is alleged that the detenu admitted having received the said 8 bottles of whisky of foreign origin without any documents to show their illicit import.

3. The impugned order (Exhibit-A) of the Commissioner for Home Affairs reads:

GOVERNMENT OF KARNATAKA Karnataka Government Secretariat, Vidhana Soudha, Bangalore, D/- 22-12-1977.

No. HD/112/SCF/77

ORDER

Whereas, I, B. S. Hanuman, Commissioner for Home Affairs and Secretary to Government, Home Department, specially empowered u/s 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, am satisfied with respect to the person known as Shri Vedprakash S/o Topanlal, Partner M/s. Selection House, Moosa Market, Commercial Street, Bangalore, that with a view to preventing him from engaging in keeping and concealing smuggled goods, it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred by Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, I, B. S. Hanuman, Commissioner for Home Affairs and Secretary to Government, Home Department, direct that the said Shri Vedprakash S/o Topanlal be detained and kept in custody in the Central Prison, Bangalore.

(B.S. HANUMAN) Commissioner for Home Affairs and Secretary to Government, Home Department,

In the grounds of detention (Exhibit-B) which accompanied the impugned order, two grounds are put forward. The first ground is sought to be supported by two instances, viz., the search on 30-9-1977 resulting in the 4 bottles of liquor under circumstances alleged and there having been, allegedly, a case registered against the detenu. The second ground is based on four instances. They are, first, that the search of the residential premises of the detenu on 29-10-1977 resulted in the seizure of 8 bottles of whisky of "smuggled nature"; secondly that on the same day when the residential premises of a certain M. Sampathkumar situated at No. 8, Venkataswamy Street, Bangalore, alleged to be an employee of the firm "M/s. Selection House" was searched, a further quantity of 12 bottles of scotch whisky and a few items of cosmetics, cigarette lighters, razor set, etc., of smuggled nature" in all valued at Rs. 3.550/- were recovered and that - allegedly the said Sampathkumar had admitted that the goods under seizure belonged to the detenu and that the detenu had given the same to the former for safe custody; thirdly that the statements given by T. Y. Suleman Kutty s/o T. P. Yusuf of Cochin by K. M. Aboo s/o. late Mohammed of Cochin and by Kenneth Vivian s/o. A. M, Michel, residing at No. 11, Cambridge Road, Bangalore, showed that the detenu was regularly purchasing liquor of "smuggled nature" from them and that on the basis of those statements a case had been registered against the detenu as per the records of the Assistant Collector of Central Excise, Bangalore III Division, Bangalore, and fourthly that the intelligence collected also showed that the detenu had received ten cases of smuggled scotch which during the last

week of June 1977 from Goa. It is on these grounds that the Commissioner for Home Affairs was satisfied that the detention of the detenu was necessary with a view to preventing him from "engaging in keeping and concealing smuggled goods."

4. We have heard Sri G. Chander Kumar, learned Counsel for the Petitioner, and Sri S. G. Doddakalegowda, learned Government Advocate for the respondent.

5. The detention was on 22-12-1977. This writ petition was filed on 12-1-1978. Rule nisi was issued. On 17-2-1978 this Court made an order directing that the petition be posted for hearing to 27-2-1978. By the same order, this Court directed the respondent to file its return within one week from 17-2-1978. Despite this, respondent has not filed a counter. Indeed we even acceded to the request of the learned Government Advocate to permit him to file the counter affidavit after lunch recess today. However, no counter affidavit was forthcoming. The averments in the petition have gone untraversed. Where an order of detention is challenged and rule nisi is issued, State must satisfy the Court that the detention was legal and in conformity with the provisions of law. If sufficient cause is not shown by the respondent as to why rule should not be made absolute, or, no legal ground justifying the detention is made out, the order of detention cannot stand. Non-filing of an affidavit by the respondent in answer to the rule may, in conjunction with other circumstances, assume the shape of a serious infirmity leading the Court to declare the detention illegal.

Sri Chander Kumar, learned Counsel for the petitioner, urged that the instances alleged in support of both the grounds set out in the detention order do not satisfy the requirements of Section 3 (1) (iii) of the Act; and that even otherwise, the grounds alleged could not support the order of detention as the grounds are non-existent, vague and have no rational connection.

6. The scope of judicial review of an order of detention is limited to the examination whether the procedure prescribed by law has been followed and whether the order of detention is vitiated by the circumstance that the grounds in support thereof are non-existent, vague or indefinite, resulting in deprivation of an opportunity of making an effective representation or are irrelevant. Where the grounds alleged have no probative value; or where the grounds are vague, indefinite and non-existent and the inference is not possible the subjective satisfaction was not influenced thereby or where the ground is irrelevant having no rational connection with the satisfaction sought to be formed; or where the grounds are too distant and too trifling, the order is rendered infirm. However, it is no part of the power of judicial review to consider whether the grounds are sufficient or not; it is the subjective decision of the Government. In *Motilal Jain Vs. State of Bihar and Others*, adverting to the importance of conformity with and observance of the procedure laid under the Act before the powers of detention are invoked, the Supreme Court observed (at p. 36 of Cri LJ):

It must be remembered in this case we are dealing with the liberty of a citizen of

this country. The power given to the State under the Act is an "extraordinary power. It is exercisable under special conditions and is subject to definite limitations. The nature of the power is such that the liberty of an individual can be deprived on the subjective satisfaction of the prescribed authority that there is sufficient cause for his detention. A detenu has not the benefit of a regular trial or even an objective examination of the accusations made against him.

After noticing the procedural defects obtaining in the case, the Supreme Court held (at p. 37 of Cri LJ):

The defects noticed in the two grounds mentioned above are sufficient to vitiate the order of detention impugned in these proceedings as it is not possible to hold that those grounds could not have influenced the decision of the detaining authority. Individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by our Constitution to the citizens of this country. If that right is invaded, excepting strictly in accordance with law, the aggrieved party is entitled to appeal to the judicial power of the State for relief. We are not unaware of the fact that the interest of the society is no less important than that of the individual. Our Constitution has made provision for safeguarding the interests of the society. Its provisions harmonise the liberty of the individual with social interests. The authorities have to act solely on the basis of those provisions. They cannot deal with the liberty of the individual in a casual manner, as has been done in this case. Such an approach does not advance the true social interest. Continued indifference to individual liberty is bound to erode the structure of our democratic society.

Again the words of Mathew J. in *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, are worth recalling. His Lordship observed (at p. 301 of Cri LJ):

The facts of the cases might induce mournful reflection how an honest attempt by an authority charged with the duty of taking prophylactic measure to secure the maintenance of supplies and services essential to the community has been frustrated by what is popularly called a technical error. We say and we think it is necessary to repeat that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law. The need today for maintenance of supplies and services essential to the community cannot be overemphasized. There will be no social security without maintenance of adequate supplies and services essential to the community. But social security is not the only goal of a good society. There are other values in a society. Our country is taking singular pride in the democratic

ideals enshrined in its Constitution and the most cherished of these ideals is personal liberty. It would indeed be ironic if, in the name of social security, we would sanction the subversion of this liberty. We do not pause to consider whether social security is more precious than personal liberty in the scale of values for, any judgment as regards that would be but a value judgment on which opinions might differ. But whatever be the impact on the maintenance of supplies and services essential to the community, when a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, we think it our duty to see that that procedure is rigorously observed, however strange this might sound to some ears.

In *Biram Chand Vs. State of Uttar Pradesh and Others*, the Supreme Court while holding that the satisfaction of the authority is a subjective one, however, observed that if one of the grounds for the order is nonexistent or irrelevant or is not available under the law, the entire detention order will fall since it would not be possible to predicate as to whether the detaining authority would have made the order of detention even in the absence of the non-existent or irrelevant grounds. However by Section 5-A introduced by an amendment in the year 1975, it is now provided, inter alia, that where a person has been detained in pursuance of an order of detention under Sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever. The law as amended requires that the order of detention must be deemed to have been made distinctly on each of the grounds separately and that if the order can be upheld on any one of them, then the order is not rendered vulnerable by reason alone of the fact that the other grounds were shown to be vague, non-existent, irrelevant etc.

7. In the present case, so far as the first ground is concerned, the allegation is that 4 bottles of liquor of "smuggled nature" valued at Rs. 1,350/- were kept under a shelf in the office room of the detenu. It is admitted that the premises searched was the business premises of a partnership carrying on business in the name and style "M/s. Selection House" at Moosa Market, Commercial Street, Bangalore. It may be that any transgression of the law committed by an association of persons would under the customs law, render any member of that association also liable. The impugned order does not indicate that when the order employed the expressions "you" and "your business premises" in relation to the detenu, it really contemplated the firm and the firm's business premises and that the detaining authority was conscious of and had applied its mind to this aspect that the premises searched was that of a firm of partners. The liability of a partner for the acts of the firm of which he is a partner or of a member of association of individuals for the acts of that association is one thing; but it is quite another if it came to the question of detention of a particular member on

grounds allegedly arising from the activities of that firm or association. It may then be necessary for the authority to show that It had formed its satisfaction-even if it be a subjective satisfaction-as to the detention of that particular member in the association with the clear apprehension of the situation that the grounds for his detention stemmed from the activity of that association.

Then again, in so far as reference to and reliance upon registration of a case is concerned, the language of the order seems to imply that a case had been registered by the Assistant Collector of Central Excise, against the detenu himself. It is seen that a case has been registered against the partnership-firm. In our opinion, these circumstances, impart an infirmity to the first ground and the detention order is not supportable on the first ground.

It is not necessary for us to examine whether the contentions of Sri Chander Kumar that the allegations in the impugned order even if accepted, are not relevant for purposes of Section 3 (1) (iii) inasmuch as, they would, even if true, relate to the concept of "dealing" contemplated in Section 3 (1) (iv) and not to the idea of "keeping" or "concealing" obtaining in Section 3 (1) (iii) of the Act, has any merit.

That apart, it seems to us that it remains somewhat unexplained as to why the goods seized are referred to as goods of "smuggled nature" while what requires to be shown by the authorities is that the goods, in their opinion, are smuggled goods.

8. In the present case, one of the four instances on which the second ground is sought to be supported is that certain "T. Y. Suleman Kutty, s/o. T. P. Yusuf of Cochin", and "K. M. Aboo, S/o. late Mohammed of Cochin" had made statements which showed that they were regularly selling liquor of smuggled nature to the detenu. In the absence of a counter affidavit and from the statements made in the grounds of detention alone, it is difficult to say that these allegations are not vague and indefinite as to the identity of the persons referred to. Then again, another instance supporting the second ground is that the intelligence collected also went to show that the detenu "received 10 cases of smuggled scotch whisky during the last week of June 1977 from Goa". This allegation is also somewhat vague and uncertain. So far as the second ground is concerned, we are of the view that notwithstanding the introduction of Section 5-A, if one of the grounds on which the order of detention is made is sought to be sustained by several instances and if one or more of those instances is shown to be either irrelevant, stale, non-existent, indefinite or vague, or otherwise deficient, that ground itself must be held to have become infirm. Such a consequence is not provided against by the introduction of Section 5-A. We must therefore hold that the second ground also suffers from the infirmity of being vague and indefinite.

9. It is, no doubt, true that it is permissible for the detaining authority to consider the present and past activities of the detenu in the prognostication of the proclivities for future prejudicial activity on the part of the detenu and that

this is a matter of subjective satisfaction of the authority. It may also be true that what is detected by way of past and present activity may be but a small part of the real dimensions of prejudicial and antisocial activities and that what is visible is only the tip of the iceberg. But deprivation of personal liberty under this "jurisdiction of suspicion" in regard to likelihood of future acts is a serious matter and the detaining authority must show strict conformity with law.

In the present case, we have held that both the grounds set out in support of detention order cannot support the order of detention. We, therefore, allow this petition, quash the impugned order and direct that the detenu be set at liberty forthwith. Rule made absolute.