
(1989) 02 DEL CK 0060

In the Delhi High Court

Case No : Criminal Writ Appeal No. 404 of 1988

Nafisuddin

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-02-1989

Acts Referred:

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

Citation : (1989) 2 Crimes 313 : (1989) 37 DLT 27 : (1989) 1 ILR Delhi 417

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Rohit Kochhar, S.K. Mishra, S.K. Dubey and Vimla Pinto, for the Appellant;

Judgement

Bahri, J.

(1) This is a petition filed under Article 226 of the Constitution of India read with Section 482, Criminal Procedure Code . seeking quashing of the detention order dated July 11, 1988 passed by Respondent No. 2 and u/s 3(1) of the Cofeposa Act and the declaration dated August 2, 1988 issued u/s 9 of the Act by Respondent No. 3. Various grounds have been raised in challenging the impugned orders but it is not necessary to deal with all such grounds because this petition is liable to succeed on a very short ground.

(2) The learned counsel for the petitioner has urged that the representation made by the detenu dated September 7, 1988 to the appropriate authority i.e. the Central Government in the present case had not been considered expeditiously which has the effect of vitiating the impugned orders. In the affidavit of Shri S. K. Chaudhry Under Secretary to the Government of India, Ministry of Finance dated January 18, 1989, it has been mentioned that the said representation was received on September 8, 1988 and the same was sent to the sponsoring authority turn getting the English translations made of the representation and also for comments but the comments were received from the

sponsoring authority on November 11, 1988 after a reminder was sent to the sponsoring authority dated November 2, 1988. No Explanation has been given as to why the sponsoring authority had taken the period in between September 8, 1988 and November 11, 1988 for submitting the English translations and the comments. It has been held by me in Criminal Writ No. 434 of 1988; Mohd. Shahid versus Union of India & Ors.- 1988 (2) DL 364(1) decided on November 28, 1989 that if any delay occurs at the level of sponsoring authority in furnishing the comments, that delay ought to be explained and if such delay remains unexplained, the same would have effect of vitiating the order of detention.

(3) The learned counsel for the respondent has, however, argued that this particular representation to the Central Government was a second representation and even if a delay had occurred in considering the said representation the same is not material and would not vitiate the detention order. There is no merit in this contention because admittedly the first representation was made by the detenu to the detaining authority and was discussed of by the detaining authority and it was never placed before the Central Government. So, in fact the representation dated September 7, 1988 is the first representation to the Central Government. The learned counsel for the respondent also urged that the detaining authority who is the Joint Secretary of Govt. of India had been delegated the power of Central Government for disposing of the representation u/s 11 of the Act and thus once the Joint Secretary concerned i.e. the detaining authority had considered and rejected the first representation the delay if any made in considering the second representation is not material. There is no merit in this contention because it has been held recently by a Division Bench in Cri. Writ No. 284/88-Subhash Chander versus Union of India decided on January 31, 1989 (2) that Section 11 of the Act confers supervisory power and the authority which has to consider a representation made u/s 11 of the Act must be superior to the authority which passes the detention order. So, in any event the representation which has been made to the Central Government could not have been disposed of by the detaining authority on its own level. In the present case there had occurred unexplained delay in considering the representation made to the Central Government which has the effect of vitiating the impugned order.

(4) I allow the writ petition, make the rule absolute, quash the impugned orders and direct that the petitioner be set at liberty forthwith, if not required to be detained in any other case.