

(1992) 10 DEL CK 0032

In the Delhi High Court

Case No : Criminal Writ Appeal No. 193 of 1992

Nagin Chand Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 26

Citation : (1993) CriLJ 2626 : (1992) 49 DLT 560 : (1993) 1 RCR(Criminal) 496

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : Harjinder Singh and Subhash Bansal, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) This petition has been moved by one Nagin Chand Jain for issue of a writ of habeas corpus under Article 226/227 of the Constitution of India for issue of a direction for release of the petitioner and for quashment of the detention order dated 2.1.1992 passed against him u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to as Cofeposa for the sake of brevity).

(2) Brief facts which gave rise to the present petition are as under: that on receipt of an intelligence that a huge quantity of contraband silver was being transported to Delhi by Mahindra Jeep bearing registration No .MP-09A-9007. the Officers of Directorate of Revenue Intelligence, Delhi Zone intercepted the said vehicle on Delhi Mathura Road, Sarai khwaja Police Check Post at about 16.00 hrs. on 16.12.1991 Along with its two occupants namely Shri Subhash Chandra Bhandari and Shri Dinesh Sharma. On search of the said vehicle it resulted in the recovery of silver weighing 431.652 kgs. valued at Rs. 33,12,929.00. On the basis of the said seizure the house of the petitioner was also searched and the petitioner was taken away from his residence i.e. 1-50, Ashok Vihar, Phase-1,

New Delhi. The officers recorded the statement of the petitioner u/Section 108 of the Customs Act (herein-after referred to as Act for the sake of convenience) under force, duress and torture. The petitioner was arrested Along with Shri Subhash Chander Bhandari on 17.12.1991. The petitioner was produced before Acmm, New Delhi where he retracted from his earlier statement made by him u/ Section 108 of the Customs Act. The petitioner was thereafter remanded to judicial custody .The petitioner moved an application for release on bail on 21.12.1991. The same was rejected. An application for bail was also moved before the Additional Sessions Judge, New Delhi on 26/12/1991. However, while the said application was pending an order of detention dated 2.1.1992 was passed. The same was served on the petitioner on 3.1.1992. The petitioner thereupon wrote a letter on 9.1.19 92 to the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, New Delhi for supply of documents and other material information for making an effective and purposeful representation. The Central Government rejected the said request vide order dated 23.1.1992. A representation was again made to the Central Government on 21.2.1992, however, the same was rejected vide memo dated 24.2.1992. The petitioner filed yet another representation on 17.2.1992 before the Central Government where through he raised additional grounds .The Central Government confirmed the detention of the petitioner for a period of one year from 3.1.1992 onwards vide order dated 31.3.1992. The said detention order is absolutely illegal, invalid and is thus liable to be set aside inasmuch as the detaining authority took into consideration quite a good number of documents which were not relevant and material for the purposes of detention of the petitioner. It thus vitiated the subjective satisfaction of the detaining authority. It also goes along to show that the detaining authority did not apply its mind to the grounds of the detention of the petitioner properly at the time of the passing of the impugned order dated 2.1.1992. Hence arose the necessity for the presentation of the present writ petition.

(3) The respondent in their counter affidavit did not controvert the above facts. However, it has been urged for and on behalf of the respondent that the impugned detention order dated 2.1.1992 is perfectly legal and valid. It was passed after a due consideration and after taking into consideration all the relevant material with a view to preventing petitioner from abetting the smuggling of goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing smuggled goods in future.

(4) The only ground on which the learned Counsel for the petitioner has assailed the legality and the validity of the impugned detention order dated Jan. 2, 1992 is that the detaining authority while passing the impugned detention order took into consideration not only the documents connected with the alleged smuggling activities of the petitioner but besides the said documents also took into consideration several documents which are quite irrelevant and immaterial and have got absolutely no link or any sort of nexus with the alleged smuggling activities attributed to the petitioner.

(5) Learned Counsel for the respondent Mr. Bansal has on the other hand urged to the contrary.

(6) I have heard the learned Counsel for both the parties at sufficient length and have very carefully examined their rival contentions and have given my anxious thought thereto.

(7) Since we are concerned in the instant case with the only proposition of law as to what sort of material is required to be considered by the detaining authority at the time of the passing of the impugned order, it would be in the fitness of things to examine the law on this point as laid down by this Court as well as by the Supreme Court.

(8) A matter very much akin to the matter in hand i.e. what sort of material is to be considered by the detaining authority at the time of the passing of the impugned detention order came up for interpretation before their Lordships of the Supreme Court as reported in 1980 Cr. L.J. 1487, Smt. Shalini Soni v. Union of India. Their Lordships of the Supreme Court were of the view "It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

(9) Their Lordships further way back in the year 1975 laid down certain guidelines for the detaining authority to formulate an opinion as to whether to pass an order of detention or not to do so, as reported in Sadhu Roy v. The State of West Bengal, Air 1975 Sc 919 "The satisfaction, though attenuated by "subjectivity, must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases."

(10) A Single Judge of this Court while placing reliance on the authority alluded to above, observed as under, in Diwan Singh Verma v Union of India & Ors.. 1988 (2) Delhi Law 197 "In the present case, both in the grounds of detention as also in the return the detaining authority insist that it has relied on this set of documents also in arriving at subjective satisfaction. The documents are the same as are appearing at pages 63 to 72 of the writ petition and I have already indicated that there is nothing in these documents which would show any link of the detenu or his accomplice with the alleged prejudicial activity. If the detaining authority had really applied its mind and if the subjective satisfaction was really based on proper application of mind the detaining authority would not have said that it has also relied on this set of documents. There was nothing to prevent the detaining authority from stating that these documents were also placed before it but they were not relied upon. However, that type of statement could only be made if the detaining authority had really applied its mind. This clearly goes to show that the application of mind in the present case is totally casual and mechanical and it is not the type of the application of mind which the

law insists upon. If the detaining authority says that it has also relied on a set of documents which provided no evidence against the detenu, it naturally follows that he has not cared to go into the material."

(11) It is crystal clear from the authoritative pronouncements adverted to above, that while passing a detention order the detaining authority should place reliance only on those discerning few documents which are very much relevant and material and which have got a proximity, nexus and link with the prejudicial activity of the detenu. In case the detaining authority also takes into consideration documents which are in no way connected and have got absolutely to nexus of any kind, whatsoever, with the prejudicial activity of the detenu it will go to show that the detaining authority did not apply its mind and the subjective satisfaction of the detaining authority in those few cases would be not of that type and kind which the law insists upon. In that eventuality it will vitiate the subjective satisfaction of the detaining authority.

(12) With the above background let us come to the case in hand. Learned Counsel for the petitioner Mr. Harjinder Singh while anim-adverting on the documents which are alleged to have been relied upon by the detaining authority at the time of the passing of the impugned order has shown me quite a good number of documents which are absolutely in no way connected and have got no nexus, whatsoever, with the alleged prejudicial activity of the petitioner. He has in this connection referred to a statement mentioned at Sr. No. 6 of the list of the documents relied upon, made by Dinesh Sharma dated 18/ 16/12/1991. A close scrutiny of the said statement reveals that it has got absolutely nothing to do with the alleged prejudicial activity of the petitioner. Then, there is an application dated 17/12/1991 for appropriate orders mentioned at Serial No. 12 of the list of documents relied upon. The said application has also got absolutely no bearing, whatsoever, with the alleged smuggling activities of the petitioner, hence was consideration to arrive at the subjective satisfaction of the detaining authority. The learned Counsel has then led me through an application dated 18/12/1991 for the release of jama talashi moved by the petitioner. It finds a mention at Serial No. 14 of the list of documents relied upon. Obviously, an application for the return of the personal search of a detenu has got nothing to do with the alleged smuggling activities of the detenu. Then, there is an application dated 18/12/1991, mentioned at Serial No. 15 of the list of documents relied upon, for the grant of "B. Class" Jail. There is no gain-saying the fact that the consideration of the said document was in no way relevant and material for the purposes of detention of the petitioner. Last. but not the least, is the bail application dated 21/12/1991. mentioned at Serial No. 16 of the list of documents relied upon, moved by the petitioner. The said application. I feel, is absolutely of no consequence as far as the detention of the petitioner is concerned.

(13) It has been stated for and on behalf of the petitioner at page 22, Ground Xiv, of the petition, that the detaining authority while passing the impugned order

took not only into consideration the documents adverted to above ,but also the Income Tax record of the petitioner. The respondent in their reply at page 14 (vide Para XIV) have nowhere denied the consideration of the above-said documents. Rather, they have stated that besides the documents referred to above, all other relevant documents were also considered by the detaining authority. It can thus be safely concluded from above that this is not the case of the respondent that certain irrelevant and immaterial documents found a mention in the list of the documents relied upon by the detaining authority at the time of the passing of the impugned order of detention, but the same were not considered. Rather, the sheet anchor of their defense version is that besides the said irrelevant and immaterial documents, relevant and material documents, too, were also taken into consideration while passing the impugned order for the detention of the petitioner. While disposing of Criminal Writ Petition No. 247/92 and Criminal Writ Petition No. 256/92, Shri Trilochan Singh v. Union of India & Others, an effort was made by this Court to define a "relevant and material" document for the purposes of the detention of a detenu. This Court observed "A document can be said to be relevant and material in a given situation when it is likely to sway the opinion of detaining authority one way or the other."

(14) If we take into consideration in the light of the above observations and definition of a material document then we come to the conclusion that by no stretch of imagination it can be said that an application for grant of "B. Class" jail. Income Tax record, an application for the return of personal search ,statement of Dinesh Sharma and an application for passing appropriate orders are in any way connected with or have any nexus to the prejudicial activities of the petitioner or they could have in any way affected the subjective satisfaction of the detaining authority. The consideration of the said documents by the detaining authority at the time of the passing of the impugned order dated 2/01/1992 goes to show and a long way to prove that the detaining authority did not apply its mind properly while arriving at the subjective satisfaction. No effort was made by the detaining authority to exclude the irrelevant and immaterial documents from the relevant and the material documents i.e. to say to separate the grain from the chaff.

(15) In view of the above I am of the view that there was no application of the mind which the law. insists upon, at the time of the passing of the impugned detention order. It thus vitiated the subjective satisfaction of the detaining authority. This Court is thus of the view that the impugned order was passed in a casual, mechanical and perfunctory manner. It is thus liable to be set aside and quashed. The petitioner is thus entitled to succeed .The petition is allowed. The detention order dated 2/01/1992 is hereby quashed. The petitioner be set at liberty at once in case he is not required to be detained in any other case.