(1999) 08 DEL CK 0032

In the Delhi High Court

Case No : Criminal W 107 of 1994

Nalom K. Noidu APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Citation : (1999) 5 AD 411 : (1999) 81 DLT 251 : (1999) 50 DRJ 828 : (1999) 4 RCR(Criminal) 519

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Harjinder Singh Adv, for the Appellant; Ms. Nandni Ramchandran Advocate, for the Respondent

Judgement

S.K. Agarwal, J.—At the pre-detention stage, by this petition the petitioner is seeking quashing of the detention order passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the Act).

2. It is alleged that the petitioner is a citizen of India and is employed in Doha, Qatar, Dubai; on 13th June, 1988 his father was arrested consequent upon the seizure of 14 gold biscuits by the Superintendent, Central Excise from his house; as per statements of his father the petitioner was named as the person responsible for the same, which were subsequently retracted; the detention order was passed against his father u/s 3(1) of the Act which was quashed by this court; detention order u/s 3(1) of the Act was also passed against the petitioner while he was not in India, which has not been executed.

3. In the reply filed by respondent No. 1, it is stated that the petitioner had been sending smuggled gold from Qatar to India through paid carriers. The smuggled gold was sold and sale proceeds were distributed to various persons. These facts were confirmed by none other than his own father in his statements dated 13.6.1988 and 27.6.1988. Therefore, the involvement of petitioner in the case is proved beyond doubt and the detention order issued against him is fully

warranted. As he was absconding Therefore a declaration u/s 7 of the COFEPOSA Act was issued and action under Sections 82 and 83 of the Code of Criminal Procedure was also initiated.

4. Mr. Harjinder Singh, learned Counsel for the petitioner, while referring to various provisions of the Act argued that none of the provisions of the Act could enable the issuance of detention order in respect of a person residing abroad. He referred to Section 1(2) which states that the Act extends to the ''whole of India''; Section 4 which states that detention order can be executed at any ''place in India'' in the manner provided for the execution of the warrants of arrest under the Code of Criminal Procedures and Section 6, which states that though the detention orders are valid and operative even if the person sought to be detained or the place of detention is outside the territorial jurisdiction of the Government or the officer who issues the order of detention. He argued that Section 6 was intended to cover only those orders of detention passed by the State Government or the other officers in respect of the persons outside their territorial jurisdiction and it does not contemplate an order of detention being passed by any authority under the provisions of the Act as to be operative in respect of the persons residing abroad.

5. Ms. Nandi Ramchandran, learned counsel for respondent No. 1 referred to Section 3 which provides power of the concerned authorities to pass an order of detention against any person, including a foreigner, on the grounds mentioned therein; and Section 6 which envisages that the detention orders can be executed even beyond the territorial jurisdiction of the Authorities passing the same, and argued that power to pass the order of detention is quite different from the power to execute the same.

6. In order to appreciate the rival contentions of the learned counsels Sections 1, 3,4, and 6 of the Act are reproduced herein below -

"Section 1. Short titles, extent and commencement-

(1) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(2) It extends to the Whole of India.

(3) It shall come into force on such date...."

"Section 3. Powers to make orders detaining certain persons.

(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, not below the rank of a Secretary to that Government, especially empowered for the purposes of this section by that Government may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from-

(i) smuggling goods, or

(ii) abetting the smuggling of goods, or

(iii) ...."

"Section 4. Execution of detention order:-

A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973".

"Section 6. Detention orders not to be invalid or inoperative on certain grounds. -

No detention order shall be invalid or inoperative merely by reason -

(a) that the person to be detained there under is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or

(b) that the place of detention of such person is outside the said limits."

7. Perusal of Section 3 shows that the detention order can be Passed against any person including a foreigner with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from smuggling of goods or abetting the smuggling of goods etc., subject to the conditions provided under the Act. Under this section one of the grounds on which the Government or the officer concerned can validly make order of detention is with a view to preventing such person from abetting the smuggling of goods. A person is said to abet the doing of a thing if he instigates another person to do that thing; if he engages with one or more persons in conspiracy for doing of that thing or if an act or illegal omission takes place in pursuance of that conspiracy or such person intentionally aids by any act or illegal omission the doing of that thing. Therefore, it cannot be disputed that a person stationed abroad can certainly abet the smuggling goods in India.

8. Section 6 provides that such an order passed under the Act cannot be held to be invalid or inoperative if the person to be detained is outside the limits or territorial jurisdiction which means that if at the time of passing of the order a person happens to be outside the territorial jurisdiction of the Government the order can be validly made. The Supreme Court in Giani Bakshish Singh Vs. Government of India and Others, made the following observations:

"The first duty of a State is to survive. To do so it has got to deal with enemies both overt and covert whether they be inside the country or outside. The fact that the appellant if released would go to England and from there continue to indulge in activities prejudicial to the security and integrity of this country, is a relevant factor in determining whether he could be detained in this country when he is found in this country. .... we are aware that there is no law in this country providing for extradition of persons against whom this country would consider it necessary to pass an order for preventive detention. It is not to be assumed that this country will indulge in such a useless and pointless exercise. But that is quite different from saying that there cannot be a law in this country providing for such detention. But if such a person happens to come to this country we presume he can be detained."

9. Section 1(2) which says that the Act extends to the whole of India cannot be taken to mean that the power to pass detention order u/s 3 of the Act can be exercised only in respect of the persons residing in India and not in respect of the persons staying abroad. It is true that the detention orders cannot be executed outside the country but the power to pass an order u/s 3 is one thing and its effective execution is quite another. The Act is directed against the persons who are engaged in violation of the Foreign Exchange Regulations and Smuggling Activities, which is having deleterious effect on the national economy. While interpreting these sections it would be useful to refer to the following observations of the Supreme Court in Directorate of Enforcement Vs. Deepak Mahajan and another, :-

"In given circumstances, it is permissible foe Courts to have functional approach and look into the legislative intention and sometimes may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile."

10. In view of the above, we hold that Sections 3 and 6 confer power both on Central Government as well as on the State Government or its officers to pass an order in respect of a person outside the territory of India and the scope of these Sections cannot be limited only in relation to a Full Bench of High Court in in K T M S Abdul Cader & Ors. Vs. The Union of India 1997 Cri. L.J. 1708.

11. It was further argued by Mr. Harjinder Singh that there is a delay of about 10 years in the execution of the order which has nullified the purpose for which the order was passed and Therefore the same is liable to be quashed. Law with regard to the scope of pre-detention challenges to the preventive detention orders is well settled by several authoritative pronouncements. In Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, , Supreme Court observed:

"The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied: (i) that the impugned order is not passed under the Act under which it is purported to have been passed (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. ...."

12. In Mansukh Chhagan Lal Bhatt Vs. Union of India and Others, Full Bench of this court while reiterating the above principles, observed that at the pre-detention stage, order of preventive detention can be challenged only on limited grounds. It was clarified that, at this stage, a detenu cannot ask the court to refer to the grounds of another detenu for the purpose of showing that the detention order in his own case though not served on him is for some collateral purpose or based on an irrelevant, vague or extraneous grounds or urge that there was delay in issuing or execution of the detention order.

13. As the petitioner has not surrendered, he cannot be permitted to challenge the order of detention on the grounds of delay in passing the order or delay in execution of the same. All such grievances can be examined on merits only after he surrenders, as has been observed by the Supreme Court in Union of India and Others Vs. Parasmal Rampuria, .

14. In view of the above, the petition is without any merit and the same is dismissed with no order as to costs.