

(1993) 09 KL CK 0052
In the High Court Of Kerala
Case No : O.P. No. 6602 of 1993

P. K. Kunjumol

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 30-09-1993

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 10, 3(1), 9(1)

Citation : (1993) 2 KLJ 852

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : M. N. Sukumaran Nayar, B. Raman Pillai and George Jacob, for the Appellant; Cyriac Joseph, A.A.G., Lal George Govt. Pleader and K.P.G. Menon (Addl. C. G. S. C.), for the Respondent

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—This Habeas Corpus Petition is filed by the mother of the detenu who has been detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called the COFEPOSA Act"). The brief facts of the case are as follows. The detenu was arrested by the Superintendent (Intelligence). Air Customs, Calicut on 24-8-1992 on the discovery of 24.76 Kgs of undeclared gold valued at more than one crore rupees. He had only declared 42 biscuits of gold, and had paid customs duty. But so far as this 24.76 Kgs. of gold is concerned, he did not give any declaration about the same. He was detained under the Customs Act, but he was released on bail on 17-9-1992 Thereafter Ext. P1 order of detention was issued u/s 3(1) of the COFEPOSA Act on 28-12-1992 by the State Government. Of course, it could only be served on the detenu on 10-2-1993. It may be noted that the detenu had in the meantime surrendered before the Court of Addl. Chief Judicial Magistrate, Economic Offences, Ernakulam, on 2-2-1993 itself, But even so, the detention order was served on the detenu only on 10-2-1993. The grounds of detention were Served on the detenu 11.2-1993. The case of the detenu was

referred to the Advisory Board on 9-2-1993. On 15-3-1993, Ext. P6 declaration was issued by the Union of India u/s 9 (1) of the COFEPOSA Act stating that the detention would be for one year. The detenu submitted Ext. P3 representation on 23-3-1993 both to the State Government as well as to the Union of India. The State Advisory Board gave its report on 6-4-1993 and an order of confirmation was passed as per Ext. P7 on 23-4-1993 by the State Government u/s 10 of the COFEPOSA Act. In the meantime, on 15-4-1993 itself the State Government passed Ext. P4 order rejecting the representation of the detenu, Ext. P3. The Central Government passed orders on 27-4-1993 Ext. P5 rejecting Ext. P3 representation. The Writ Petition was filed by the mother of the detenu on 17-5-1993. In this Petition, learned Senior Counsel for the petitioner, Sri. M. N. Sukumaran Nair, has pressed only two points for our consideration. The first one is that Ext. P3 representation dated 23-3-1993 made to the Central Government and State Government was disposed of by the Central Government on 27-4-1993, and that there is no satisfactory explanation for this delay. The second point is that even after the detenu surrendered himself before the Addl. CJM on 2-2-1993, the detention order was executed only on 10-2-1993, and that there is unreasonable delay in execution of the detention order.

2. Coming to the first point, we are unable to agree that there is unreasonable delay in passing the order by the Central Government rejecting the detenu's representation. The Central Government has filed a counter affidavit, and has mentioned in paragraph 3 therein as follows;

3. As regards para 22, grounds D & E of the petition, it is submitted that the detenu's representation dated 27-3-1993 forwarded by Superintendent, Central Prison, Thiruvananthapuram, was received in the Cofeposa Unit of the Ministry on 30-3-1993 and on the same day the representation was placed before the considering authority, who directed to call for the comments of the sponsoring authority. Comments were called on 31-3-1993 which the sponsoring authority furnished vide their letter dated 7-4-1993 received in the Cofeposa Unit on 16-4-1993. The case was processed and submitted on 19-4-1993 (17th, & 18th April were closed holidays) to the Joint Secretary (Cofeposa), Ministry of Finance, Department of Revenue. The Joint Secretary (Cofeposa) Submitted the file on 20-4-93 to Secretary (Revenue) who further submitted the file to Minister of State (Revenue & Expenditure) on 20-4-93. Minister of State submitted the file to Finance Minister on 22-4-1993. Finance Minister considered and rejected detenu's representation on 23-4-1993. 24th, and 25th April 1993 were closed holidays. The file reached S. S. (N) and DG (E1B) on 26-4-1993 who passed the same to Joint Secretary (Cofeposa) on 26-4-1993, The file was received by Joint Secretary (Cofeposa) on 27-4-1993 and a memo intimating the detenu about the rejection of his representation by the Central Government was also issued on 27-4-1993 itself. Thus the detenu's representation was processed most expeditiously and there was no undue and unexplained delay in the consideration of detenu's representation by the Central Government.

It will be noticed on a reading of the above said paragraph 3 of the counter affidavit of the Central Government, that they have adequately explained the delay that had occurred in the disposal of the representation of the detenu. We accept the said explanation and therefore hold that there is no unreasonable delay on the part of the Central Government in the disposal of the detenu's representation. Coming to the second point relating to alleged unreasonable delay in the execution of the detention order, we find that the detention order was issued on 28-12-1992, and the detenu was detained on 10-2-1993. The point that is made is that the detenu had surrendered himself before the court of Addl. Chief Judicial Magistrate, Economic Offences Ernakulam, on 2-2-1993, which court had earlier granted him bail in connection with the case registered against him in that court. Having regard to the short delay in the execution of the detention order, we are of the view that there is no unreasonable delay in the execution of the detention order. We find that there is in some cases, certain amount of lack of coordination between the customs authorities on the one hand, and the State police authorities on the other. Such a thing was noticed by the Supreme Court in *M. Ahamedkutty Vs. Union of India (UOI) and Another*, . In that case the Supreme Court while adverting to the similar contentions observed as follows.

We may pause here to point out that the circumstances in the present case seem to indicate a certain degree of lack of co-ordination between the detaining authorities and those entrusted with the execution of the detention order....

Following the aforesaid decision and having noticed of the facts of the present case, we find that there is no unreasonable delay in the execution of the detention order passed under the COFEPOSA Act. For the aforesaid reasons, the Writ Petition fails, and is dismissed.