

(1985) 04 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No's. 12711 and 12712 of 1984

P. Mahaveer Chand and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-04-1985

Acts Referred:

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

Constitution of India, 1950 — Article 22

Customs Act, 1962 — Section 100, 101, 103, 104, 106

Citation : (1986) 7 ECC 80

Hon'ble Judges : V. Ramaswami, J;K.M. Natarajan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—These two petitions have been filed for the issue of a writ of habeas corpus for releasing the detenus who are detained

u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter called the COFEPOSA. The

detention orders in respect of these two petitioners are dated 24th November, 1984.

2. Four points were raised in these writ petitions. Firstly it was contended that the mahazar for the seizure had not been prepared in accordance

with the Code of Criminal Procedure and it had not been shown to be a legal one and that the detaining authority presuming it to be in accordance

with law, vitiates the entire order. This ground which is factual seems to be incorrect. The learned Counsel for the petitioners argued that the

seizure was not effected in accordance with law mainly on the ground that the Intelligence Officer of the Directorate of Revenue Intelligence,

Madras, who searched and seized the gold articles was not shown to be the proper Officer empowered for such purposes u/s 106 of the Customs

Act, 1962. This point was not specifically raised in the affidavits and therefore there was no opportunity for the respondents to meet that factual

question. However the respondents have now produced a notification dated 8th February, 1963 which shows that all the officers of the

Directorate of Revenue Intelligence except those mentioned therein are empowered to exercise all the powers specified in Sections 100, 101, 103,

104, 106, 107 and 110 of the Customs Act, 1962. There is no dispute that the Intelligence Officer who has drawn the mahazar is an officer of the

Directorate of Revenue Intelligence empowered to exercise such powers. In the circumstances, factually there is no basis for the contention that the

mahazar was not prepared in accordance with law by an officer authorised in this behalf. Even otherwise we are unable to agree with the learned

Counsel for the petitioners that we can presume that the seizure or the preparation of the mahazar was not in accordance with law, because acts by

authorities can be presumed to be legal unless they are shown to be contrary to any law. In the circumstances this contention has no substance.

3. It is then contended by the learned Counsel for the petitioners that though under Article 22(6) of the Constitution, a detaining authority can

withhold disclosure of any document or fact when such authority considers that such disclosure will be against public interest, the detaining

authority cannot withhold the disclosure mechanically stating that such disclosure would be against public interest and it has to specifically give

reasons for holding that it would be against public interest. What is contended by the learned Counsel for the petitioners is that since the orders of

detention state that on information that one of the detenus in the case would receive smuggled gold biscuits and would be transporting, the whole

proceedings are vitiated. The learned Counsel would further say that when the detenus asked for the source of information, it had not been

furnished and the non-furnishing of that source of information had deprived them of the valuable right of effective opportunity to make their

representation against the orders of detention. In this connection, the learned Counsel relied on a decision of Gujarat High Court in Bai Amina v.

State of Gujarat and Ors. 1982 CrL J 1531. In that case the learned Judges held that the mere fact that the relevant particulars and materials are

furnished to the detaining authority in confidence by some person is not by itself a sufficient ground for withholding the disclosure of such particulars

and materials, if those materials and particulars have been relied upon against the detenu and the disclosure of such materials and particulars would

assist the detenu in making an effective representation against his detention. We may mention that in this case the source of information has not

been furnished to the detenus and the gist of the information forms part of the orders of detention themselves.

4. The Supreme Court has considered this question in a number of decisions, the latest of which is *State of Punjab and Others Vs. Jagdev Singh*

Talwandi, . After considering the case law on this question, the Supreme Court observed therein:

These cases show that the detenu is not entitled to be informed of the source of information received against him or the evidence which may have

been collected against him as, for example, the evidence corroborating that the report of the C.I.D. is true and correct.

5. In *Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others*, the Supreme Court has held that the detaining authority was not bound

to disclose the intelligence reports to the detenu. In the circumstances, therefore, this contention of the learned Counsel for the petitioners cannot

also be accepted.

6. It is then contended by the learned Counsel for the petitioners that in W.P. No. 12711 of 1984 the counter-affidavit has been sworn to by the

Under Secretary and not by the detaining authority himself and that the counter-affidavit does not even state that the Under Secretary was aware

of it or he was made known of the facts and it simply states that he is swearing to it on the authority conferred on him. It is not clear how the Under

Secretary came to file this counter. The learned Counsel for the respondents states that he is now prepared to get the counter-affidavit sworn to by

the detaining authority, if this Court feels that there is any difficulty in accepting the counter-affidavit of the Under Secretary. However, we think

that it is unnecessary to direct the respondents to file a counter-affidavit sworn to by the detaining authority, in view of certain observations of the

Supreme Court in this regard. A similar question was considered by the Supreme Court in *State of Punjab and Others Vs. Jagdev Singh Talwandi*,

, where also the counter-affidavit was not sworn to by the detaining authority. After referring to certain judgments the Supreme Court observed.

After reviewing certain other decisions, the court held that the failure to furnish the counter-affidavit of the District Magistrate who had passed the

order of detention, was an impropriety though in most of the cases it may not be of much consequence, especially if there was no allegation of mala

fides against the detaining authority. In the result, the absence of the affidavit of the District Magistrate was held not to vitiate the order of detention.

It may be mentioned that the writ petition, W.P. No. 12711/1984 is connected with another writ petition, W.P. No. 12712/1984 which also dealt

with the same incident, but relating to a different person. The counter-affidavit in W.P. No. 12712/84 has been filed by the detaining authority

himself. That counter-affidavit is almost identical with the counter-affidavit in W.P. No. 12711 of 1984. In the circumstances, we hold that the filing

of the counter-affidavit by the Under Secretary could not be said to have vitiated the order of detention itself.

7. The learned Counsel for the petitioners then contended that though the orders of detention referred to the retraction of the original statements

given by the detenus, it was not clearly stated as to whether the detaining authority had accepted the retraction or rejected the retraction and there

is only a factual statement that the detenus had retracted their statements and stated that they were obtained under duress. It is true that the

detaining authority has not stated as to whether the retraction was valid or not valid or whether it was bona fide or not bona fide. But the detaining

authority is supposed to be briefed in respect of all the facts relevant to the case by the sponsoring authority. Once the fact of making a statement

and later the withdrawing of that statement on the ground that it has been obtained under duress are placed before the detaining authority and the

detaining authority is aware of it, it is not necessary for the detaining authority to expressly state whether he accepts the retraction Or not. If, in

spite of the retraction, the detaining authority considers that action under preventive detention provisions is called for, he takes action; otherwise

proceedings would not be taken. No finding is called for as in the case of a Us in civil proceedings or criminal cases. The non-mention of

acceptance or rejection of the retraction does not therefore vitiate the order of detention itself.

8. The learned Counsel for the petitioners lastly contended that the evidence against the detenu Srimanth Kumar, petitioner in W.P. No. 12712 of 1984, is next to nothing and that therefore the detaining authority could not be said to have come to an honest or fair conclusion that he should be detained under the preventive detention provisions. The evidence available against him is three-fold. In the first place, the detenu in the other case who was transporting the goods has stated that he was asked to transport the goods by Srimanth Kumar. The second is, that in a search effected in the house of the detenu Srimanth Kumar, a sum of Rs. 1,44,500 was found wrapped in a brown paper and kept in one of the chests of drawers and that was recovered. The third is, the scooter which was used by the detenu in W.P. No. 12711 of 1984 is one which belonged to Srimanth Kumar. Each one of these pieces of evidence considered separately may not be sufficient but we cannot say that they cannot form material at all for coming to a conclusion that it is necessary to take action under preventive detention provisions. We have to keep in mind that sufficiency of material cannot be the subject-matter of a writ petition, because it is the subjective satisfaction of the authorities concerned and we cannot apply our objective tests and see whether the materials are sufficient to warrant the detention. In the circumstances, therefore, we cannot accept this contention also.

9. For the foregoing reasons, both the writ petitions fail and they are dismissed.