

(1989) 08 DEL CK 0061
In the Delhi High Court
Case No : Criminal Writ No. 142 of 1989

Poplawski

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 9(1)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1989) 24 ECR 643

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Judgement

R.L. Gupta, J.—This criminal writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure has been filed for quashing the order of detention dated 17th June, 1988 passed by respondent No. 2 Shri R.K. Verma, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi u/s 3(1) and the declaration dated 20th July, 1988 passed u/s 9(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA in short) against the petitioner who is a Polish national. The said detention order was allegedly passed with a view to preventing the petitioner from smuggling goods. The petitioner had arrived at Calcutta Airport on 5.5.1988.

2. Although a number of grounds have been taken in this petition for quashing the detention order the only ground pressed before me is that since the passport of the petitioner had been seized by the Customs Officer on the date of the alleged incident, it was impossible for the petitioner to travel abroad and indulge in nefarious activities and thus the detention order suffered from vice of non-application of mind which made the detention of the petitioner illegal. In the counter affidavits the plea taken in this respect is that the passport of the petitioner was never seized by the Customs Officer. In fact, it was voluntarily

handed over by the petitioner for enquiry and the same was subsequently retained as per order of the Chief Judicial Magistrate at Barasat. It was further alleged that since the petitioner had the know how of smuggling, there was every possibility of the petitioner continuing his nefarious activities.

3. I have heard learned Counsel for the parties. Learned Counsel for the petitioner drew my attention to a full bench decision of this Court in the case of Mohd. Saleem v. Union of India and Ors. 1989 (3) DL 77. That decision came on a reference by P. K. Bahri, J. in which His Lordship had formulated five questions for decision by the Full Bench. The questions No. 4 and 5 are relevant for the decision of the petition in hand and, Therefore, those two questions are quoted below:

4. Where the detaining authority had reached the subjective satisfaction keeping in view all relevant material, could the court substitute its own decisions?"

5. Whether no reasonable person could reach subjective satisfaction that the detention order should be passed on the sole ground that passport of the detenu had been seized when particularly the detenu is at large?

It may be noted that in that case also one of the contentions urged was that the detenu's passport having been seized by the Customs Authority, he had been effectively prevented from indulging in smuggling and Therefore the impugned order passed by the detaining Authority was punitive in nature and passed without application of mind. Similar plea as in this case was taken on behalf of the respondents, to the effect that it was within the realm of the subjective satisfaction of the detaining authority to detain or not to detain a person whose passport had been seized. The Full Bench came to the following conclusion:

We entirely agree with the learned Single Judge that it is well settled that the Court is not entitled to substitute its satisfaction. The learned Judge has correctly pointed out that the principle of adequacy or sufficiency is no ground for a challenge to a detention order. However, the subjective satisfaction of the detaining authority is not wholly immune from judicial reviewability.

Apart from examining whether or not the requisite satisfaction was arrived at by the detaining authority, if at all, the Court has a duty while scrutinising the validity of the subjective satisfaction to examine the basic facts and material which influenced it in arriving at its satisfaction. Whether those facts and particulars were communicated to the detenu is also open to judicial scrutiny.

4. Therefore, I am of the view that the detention order in respect of the petitioner being punitive in nature and not preventive in the circumstances of the case cannot be sustained. The same is Therefore quashed. The detenu be set at liberty forthwith if he is not required in any other case or not detained under any other valid order of detention.