
(1988) 11 DEL CK 0007

In the Delhi High Court

Case No : Criminal Appeal No. 313 of 1988

P.P. Koyakutty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-11-1988

Acts Referred:

Citation : (1989) 37 DLT 142

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Rohit Kochhar, Sat Pal, G. Prakash and T.T. Kunhikannan, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) The petitioner has challenged his detention which has taken place on 2nd of May 1988 pursuant to a detention order passed on 10th of December 1987 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short Cofeposa Act) by the Government of Kerala with a view to preventing the detenu from abetting the smuggling of gold, engaging in transporting or concealing or keeping smuggled gold, and dealing in smuggled gold otherwise than by engaging in transporting or concealing or keeping smuggled gold.

(2) This followed an incident dated 27th of May 1987 when one T.K. Andru who came to the customs for clearing a steel trunk which was said to be carrying household article was found to contain 165 gold biscuits, two gold bangles and one gold bracelet. Mr. Tk Andru made a statement wherein he revealed that this gold belonged to one Hussain which was to be delivered to the detenu whom he also knows as Hussain. The petitioner was supposed to have documents in respect of this consignment which he was supposed to deliver to TK. Andru who after clearing the steel trunk from customs people was to hand over the same to the detenu. On 31st May 1988 a declaration u/s 9(1) of the Cofeposa Act was

also issued in this case.

(3) Now, the primary contention of Mr. Kochhar is that he made a representation to the detaining authority as also to the Central Government on 17th May 1988 and asked for 15 documents which were referred to in the grounds of detention. But the detaining authority failed to supply these documents to him and instead sent a communication to him in jail on 6th of June 1988 informing him that his representation was considered and was rejected. It would appear that the Central Government communicated the rejection of the representation to the detenu on 13th of June 1988 in which he was told that the documents will be supplied to him by the Collector of Customs, Cochin. The communication addressed to the detenu by the detaining authority rejecting his representation states nothing about the demand of the detenu. It is, Therefore, doubtful whether the detaining authority had at all gone through the representation. In all probability, it seems to have been casually rejected without caring to know what it contains.

(4) In any case, Mr. Kochhar has urged that the detaining authority under law is bound to supply him documents relied upon pari-passu with the grounds of detention. His further contention is that the documents to which there is a reference in the grounds of detention, though not relied upon, have to be supplied to him if he so demands and the failure on the part of the detaining authority to supply the same would vitiate the order of detention. Mr. Kochhar in this regard has relied upon Vinod Kumar Arora @ Vinod Kumar Vs. Administrator, Union Territory of Delhi and Others, and P. Moidu Haji and another v. Union of India and others 1985 Cri. L.J. 1430, both Division Bench judgments of this court. After taking into consideration the law laid down in this regard and also after taking into consideration Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, referred to by Mr. G. Prakash, learned counsel for the State of Kerala, I am of the view that the entire case law in this regard was surveyed by the Bombay High Court in Mohd. Hussain v. Secretary, Government of Maharashtra 1982 L.J. 1848. The law laid down by the Supreme Court in this regard is :

(A) The copies of all documents which are relied upon in or which form the basis of the grounds of detention must be supplied to the detenu along with the grounds of detention.

(B) The documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu.

(C) However, even such documents if the detenu requests for the same have to be supplied to him for whether they are relevant for his defense or not is for the detenu to decide and not for the detaining authority to judge.

(5) In my view, there is no scope for disputing this settled position of law. In the present case, the detenu in his representation to the detaining authority, apart

from some other information has clearly asked for 15 documents to which there is a reference in the grounds of detention. A specific plea in this regard has been raised by the detenu, reply to which is given in para 10 by the detaining authority. The reply is as under :

"COPIES of all the relevant material documents relied upon by the detaining authority have been supplied to the petitioner. The averment that the 15 documents mentioned in the petition are relevant in this case is hereby denied. Copies of documents mentioned in the petition are relevant in this case is hereby denied, Copies of documents at Serial Nos.7, 8 and 13 which were relevant and relied upon were supplied to the petitioner."

(6) The reply to the averment raised by the detenu is rather evasive and it would appear that the detaining authority has taken up to himself to judge that these documents were not relevant for the defense of the detenu. Assuming that documents at Serial No. 7, 8 and 13 of the petition were supplied to the detenu, since there is a reference to all these 15 documents in the grounds of detention, the detaining authority was bound to supply the same to the detenu on demand. Having failed to do so, the order of detention would stand vitiated. The stand that the documents at Serial Nos. 7, 8 and 13 of the representation of the detenu were supplied to him has been taken rather late in the day as even while communicating the rejection of the representation of the detenu this was not the stand taken by the detaining authority. The Central Government while considering the representation of the detenu, it seems has taken notice of the legal requirement and informed the detenu that customs people have been directed to supply him these documents. The stands of the Central Government and that of the State of Kerala in this regard seem to be divergent as the State of Kerala is categorical that the documents even though referred to in the grounds of detention need not be supplied to the detenu. On this ground, Therefore, the order of detention is vitiated. The petition is allowed and the rule is made absolute and the continued detention of the detenu is quashed. It is directed that the detenu shall be released forthwith unless otherwise required. Petition allowed/Rule made absolute.