
(1984) 09 BOM CK 0023

In the Bombay High Court

Case No : Criminal Writ Petition No. 226 of 1984

Pradeepkumar Vanravandas Gosalia

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 14-09-1984

Acts Referred:

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

Citation : (1985) 2 BomCR 58

Hon'ble Judges : S.P. Kurdukar, J; M.M. Qazi, J

Bench : Division Bench

Judgement

Qazi, J.—The Petitioner is the brother-in-law of the detenu Haresh Champaklal Harde, hereinafter referred to as "the detenu". By this petitioner, the detenu has challenged the order dt. February 20, 1984, passed by the respondent 1 with a view to preventing him from smuggling goods, under sub-section (1) of S. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The order was served on the same day and the grounds of detention were also simultaneously formulated and supplied on the same day. The report under S. 3(2) was sent to the Central Government of February 24, 1984. The respondent No. 1 referred the case to the Advisory Board on March 23, 1984. The detenu made representation on April 16, 1984, which came to be rejected on April 26, 1984. The impugned order was confirmed on April 27, 1984 and the same was communicated on April 30, 1984. The incident which gave rise to the impugned order is dt. 20th December, 1983 when the Customs Officers of AIR Intelligence Unit, Sahar Airport, Bombay, on suspicion, intercepted in the Departure Hall, one passenger by name Rashmikanth Narottamdas Ghaghda, who was holding Indian Passport No. N-059056 issued at Ahmedabad on July 4, 1978 and was in possession of one return Quantas airways ticket No. 0814202871701 issued in his name showing routing Bombay-Singapore-Bombay and bearing one checked-in-baggage tag No. SIN-197811. When Ghaghda was questioned by the Customs Officers whether he was having anything like gold, jewelry, diamond,

currency or drugs either in his baggage or on his person, he replied in the negative. Thereafter, his baggage was searched in the presence of panchas and in all 42 travellers cheques of U.S. dollars 100 each, amounting to U.S. dollars 4200 and equivalent to Indian Rs. 43,470/-, were recovered and the same were seized by the Customs Officers under a panchanama dt. December 20, 1983, in the reasonable belief that they were being smuggled out of India and hence liable for confiscation under the provisions of the Customs Act.

2. The statement of Rashmikanth Narottamdas Ghaghda was recorded under S. 108 of the Customs Act on December 20, 1983 wherein he, inter alia, stated that film rolls, from which travellers cheques were recovered were given to him by the detenu Haresh Champaklal Harde, residing at 37, Abdul Rehman Street, Bombay. In pursuance of these statements, the residential premises of the detenu were searched on December 20, 1983. During the course of search of the said premises, the Customs Officers recovered 4 travellers cheques of U.S. dollars 500 each, 4 travellers cheques of U.S. dollars 100 each issued by the CITI Corp., New York, United States of America and 3 Singapore currency notes of 100 Singapore dollars and 3 notes of 50 Singapore dollars. In all the Customs Officers recovered blank 8 travellers cheques worth U.S. dollars 2400 and Singapore currency notes worth 450 Singapore dollars. All the above travellers cheques and Singapore dollars were seized by the Customs Officers under a panchanama dt. December 20, 1983 under the reasonable belief that they were smuggled into India and hence liable for confiscation under the provisions of the Customs Act.

3. Though several grounds have been raised and pressed by Mr. Karmali and some of them do raise substantial question of law, we do not think it necessary to discuss them since, in our view, the petition can be disposed of on the challenge raised by him in grounds Nos. (i) and (iv) of para 6 of the petition, which read thus :

"(i) The Petitioner says and submits that in the English version of the order of detention, it is stated that it has been issued with a view to preventing the detenu from smuggling goods whereas in the Gujarati version of the said order of detention, it is stated that the same has been issued with a view to preventing the detenu from smuggling goods and thereafter a word "Lavta" has been used in the bracket, meaning thereby "bringing in" or "importing". For "exporting", the appropriate word in Gujarati would be "Lai Jata". The Petitioner says and submits that no such word "Lavta" is used in the English version of the said order of detention. Hereto annexed and marked Annexure "F" is the order of detention in Gujarati which was served on the detenu. Thus, the Gujarati version of the said order where in the word "Lavta" has been introduced, is a distorted version of the English version of the said order of detention. This distortion is fatal to the impugned order of detention, which displays casual and cavalier exercise of the statutory power and as a result the impugned order of detention is rendered mala fide, null and void.

"(iv) The petitioner says and submits that in the Gujarati version of the grounds

of detention, a distorted version of the aforesaid conclusion which is set out in para 2 of the grounds of detention is given, which reads as under :

"2. Tamoe Rashmikan Narottamdas Ghaghda marfat japt karel U.S. dollars travellers choko ane Singapore dollars gher kaydesar hetuo saru vaparva Bharat bahar dan chorithi lai jawani koshish kari hati. Sarkar tethi COFEPOSA Adiniyam, 1974 hethal tamari atkayat karvi jaroori samjhe che jethi bhavishyama ava prakar ni badh avnari pravatiyo karta tamne atkavi shakaye."

Hereto annexed and marked Annexure "G" is the relevant portion of the ground, in Gujarati language and in Gujarati script.

The petitioner says and submits that the aforesaid Gujarati version of the said conclusion set out in Para II of the grounds of detention in no way coincides with its counterpart in English version. The two versions are thus poles apart. According to the Gujarati version, it is alleged that the detenu had attempted to smuggle out through Rashmikan Ghaghda the seized U.S. Dollars travellers cheques and Singapore dollars for illegal user outside India.

The Petitioner says and submits that it is pertinent to note that Singapore dollars were not recovered and seized from the said Rashmikan Ghaghda at all and as such there was no question of any attempt to smuggle out Singapore dollars by any one at all. Further, it is alleged in the English version of the grounds, that the U.S. dollars travellers cheques and the Singapore dollars travellers cheques (which were allegedly seized from the residence of the detenu) were "stored" with a motive to use them for "illegal purpose", whereas in the Gujarati version of the grounds, it is stated that the seized U.S. dollars travellers cheques and Singapore dollars were attempted to be smuggled out for "illegal user outside India". Thus, the two versions of the said conclusion, which conclusion has been made the foundation for clamping down preventive detention on the detenu, are absolutely divergent, poles apart and at tangent with each other. The Gujarati version is, thus, absolutely distorted and this vice has vitiated the impugned order of detention and has rendered it mala fide, null and void".

4. Respondent No. 1 the State of Maharashtra has filed an affidavit sworn in by Mr. B. K. Chougule, Special Secretary to the Government of Maharashtra. In reply to grounds Nos. (i) and (ii) of para 6 of the petition, Mr. Chougule has stated that the detenu can read, understand and write in English, although he does not have enough practice to write. The affidavit further recites that the detenu has stated that he could understand and speak Hindi. It further recites that the detenu admitted in his statement recorded under S. 108 of the Customs Act, 1962 that he can understand and speak Hindi. A reference has also been made to the endorsement made by the detenu in English below the said statement. The endorsement reads thus :

"I have read the above statement. It is correctly recorded as stated by me. This is my voluntary and true statement and is given without any threat, use of force or promise."

Below the said endorsement, the detenu has signed in English. The affidavit further recites that the word "lavta" mentioned in the Gujarati translation of the order of detention is not necessary. According to the affidavit, even assuming that there is a mistake in the Gujarati translation of the detention order, the said mistake is a minor mistake.

5. With reference to ground No. (iv) of para 6 of the petition, the affidavit recites that a minor mistake has crept in the Gujarati translation of the grounds of detention. It is asserted in the affidavit that if the entire ground is read as a whole, it will be seen that the ground is effectively communicated in Gujarati to the detenu.

6. The detenu has stated in para 5 of the petition that copies of the order of detention and the grounds of detention were served on him in Gujarati, with which language alone he is familiar and conversant, so as to enable him to exercise his right under Art. 22(5) of the Constitution. He has also placed on record a certificate annexed at Ex. "E" from the Head Master, Babu Panalal P. Jain High School, Tamba Kanta, Pydhonie, Bombay, which shows that the detenu has studied all his subjects through Gujarati medium till S.S.C. In the affidavit, sworn in by Mr. B. K. Chougule, Special Secretary to the Government of Maharashtra, Home Department (Law and Order), Mantralaya, Bombay, in answer to para 5 of the petition, he has stated that he has no comments to offer. Thus, there is no dispute that Gujarati is the mother tongue of the detenu and that he is familiar and conversant in that language.

7. In order to appreciate the submission of Mr. Karmali that the English version of the order is almost diametrically opposite to the Gujarati version, it is necessary to reproduce the exact wording. The relevant portion of the impugned order (English version) reads thus :

"Whereas the Government of Maharashtra is satisfied with respect to the person known as Shri Haresh Champaklal Harde, residing at Room No. 30, New Vora's building, 3rd Floor, 37, Abdul Rehman Street, Bombay-400 003, that with a view to preventing him from smuggling goods, it is necessary to detain him under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)."

8. The relevant portion of the official English translation of the impugned order in Gujarati reads thus :

"Whereas the Government of Maharashtra is satisfied that in order to prevent the person by name Shri Harish Champaklal Harde, residing at Room No. 30, New Vorani Building, 3rd Floor, 37, Abdul Rehman Street, Bombay 400 003 from preventing him (bringing) smuggling goods, it is necessary to detain him under the Conservation of Foreign Exchange and Prevention of smuggling Activities Act, 1974 (52 of 1974)."

9. From the facts and circumstances of their case, there is no doubt that the

detenu was apprehended for exporting goods outside the country and the impugned order (English version) has to be understood in that light alone and yet the Gujarati version leaves no doubt that the detenu was detained with a view to preventing him from bringing in smuggled goods. This is bound to create confusion in the mind of the detenu as to what case he has to meet. He must know whether he has to meet the case of "smuggling" in the sense of exporting the goods or "smuggling" in the sense of importing the goods. Mr. Karmali in his terse arguments has submitted that the detenu whose mother tongue is Gujarati and who has studied through that medium was bound to rely on the Gujarati version for making the representation. He has submitted that wrong and misleading translation has prejudiced his valuable right under Art. 22(5) of the Constitution. We have already pointed out above that even in the affidavit which has been filed on behalf of respondent No. 1, it has been admitted that it is a mistake, though it has been tried to explain it by calling it a minor mistake. We do not think that it is a minor mistake. On the other hand, in our view, the mistake pointed out above goes to the very root of the case. There can be no dispute or debate that bringing in goods inside the country and exporting them outside the country are two independent and distinct acts involving serious implications. Mr. Kotwal, the learned Public Prosecutor, has vehemently argued that the detenu is an English-knowing man. He has placed reliance on the endorsement made by the detenu himself at the end of his statement under S. 108 of the Customs Act, 1962. Relaying on this circumstances, Mr. Kotwal has submitted that this is not a case where a detenu did not know English. Even Mr. Karmali does not dispute the position that the detenu knew English. The moot point for consideration is whether the detenu, whose mother tongue is Gujarati and who has studied throughout through the Gujarati medium, would be justified in relying on the Gujarati version supplied to him by the authorities for making a representation under Art. 22(5) of the Constitution. We have no doubt that in a case like this, the detenu would be perfectly justified in relying on the version supplied to him in his mother tongue and if that happens to be wrong or misleading, then the logical consequences will follow. In our view, it is bound to prejudice his valuable right of making an effective representation.

10. Now, coming to the challenge raised by the detenu in ground No. (iv) of para 6 of the petition, Mr. Karmali has argued that there is a serious disparity in the English version and the Gujarati version of the conclusion drawn in the ground which, according to him, vitiates the order of detention. In order to appreciate this contention, it is necessary to reproduce the two version, which read thus :

(English version)

"You attempted to smuggle, out of India, the seized U.S. dollars Travellers cheques through Rashmikant Narottamdas Ghaghda and stored the seized U.S. Dollars, travellers cheques and Singapore Dollars with a motive to use them for illegal purposes. Government therefore, considers it necessary to detain you under Conservation of Foreign Exchange and Prevention of Smuggling Activities

Act, 1974, with a view to preventing you from indulging in such type to prejudicial activities in future."

(Gujarati version).

"You had tried to smuggle out of India the U.S. Dollars, travellers" cheques and Singapore Dollars seized through (? from) Rashmikanth Narottamdas Ghaghda, for being used for illegal purposes. The Government, therefore, deems it necessary to detain you under the COFEPOSA ACT, 1974 so that in future you may be prevented from carrying on such prejudicial activities."

11. Mr. Karmali, while commenting on the Gujarati version, has submitted that the conclusion drawn is not even factually correct, besides being contrary to the conclusion drawn in the English version of the grounds of detention. The Gujarati version shows that the detenu tried to smuggle out of India the U.S. dollars, travellers" cheques and Singapore dollars seized through Rashmikanth Narottamdas Ghaghda. It is not even the case of the detaining authority that Singapore dollars were seized through Rashmikanth Narottamdas Ghaghda. Singapore dollars were seized from the detenu only in pursuance of the search of his residential premises. The reading of the Gujarati version of the grounds of detention gives an impression that the detenu tried to smuggle out of India not only the U.S. dollars, travellers" cheques but also Singapore dollars. According to Mr. Karmali, the wrong and misleading translation of the Gujarati version has prejudiced the valuable right of the detenu to make an effective representation as required under Art. 22(5) of the Constitution. Respondent No. 1 in paragraph 10 of the affidavit has admitted that it is a minor mistake that has crept in the Gujarati version of the grounds of detention. According to Mr. Kotwal, this mistake could not have affected the right of the detenu to make a representation. We are afraid, the mistake referred to supra cannot be termed as minor in the light of the various authorities which have been referred to at the Bar. It appears to be the consistent view of this Court that whenever there are two different versions in two different languages and if the translation shows a casual and cavalier attitude on the part of the authority, this Court has always struck down the orders of detention. We may here refer to the decision of this Court in Criminal Writ Petition No. 513 of 1982, decided on September 23, 1982 Usha Manohar Waradkar Vs. Commissioner of Police, Greater Bombay and Others, by Dharmadhikari and Joshi, JJ. In that case, this Court was dealing with the detenu who could write and understand a little of the English language but who mainly relied upon the Marathi translations of the grounds of detention and documents supplied to him. Marathi translation of the grounds of detention furnished to the detenu used the words "law and order" (Kayda and Suvyavastha) whereas the English version of the grounds of detention showed that he was being detained with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order". In para 7 of the judgment in that case, this Court observed :

"7. Further non-application of mind on the part of the detaining authority is

evidenced by the fact that recitals in the English grounds of detention a copy of which was furnished to the detenu showed that he was being detained with a view preventing him from acting in any manner prejudicial to the maintenance of "public order", and yet the words used in the Marathi translation of the grounds of detention supplied to the detenu mentioned that the activities of the detenu were considered prejudicial to "law and order" (i.e. and not to "public order"). This again is indicative of a cavalier and casual approach in making the detention order. This again was violative of the right of the detenu under Art. 22(5) of the Constitution, since he did not get a correct picture of the grounds on which the respondent No. 1 had reached his subjective satisfaction before making the detention order."

We may also refer to the decision of this Court in Criminal Writ Petn. No. 830 of 1982, decided by Jahagirdar and Khatri, JJ. on March 31, 1983. In that case, the ground of detention was that the Government was of the view that the detenu was engaged in transporting and keeping and dealing in smuggled goods. The Government, therefore, considered it necessary to detain the detenu under the COFEPOSA Act, 1974 in order to prevent the detenu from indulging in such prejudicial activities in future. This Court has observed :

"It is impossible to provide an intelligent answer to these questions unless a person is well-versed in the law of preventive detention and in particular with the provisions of the COFEPOSA Act."

The Court has further observed :

"When a person is told that it is necessary to prevent him from engaging in transporting and keeping smuggled goods, dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, it is impossible that he would know what case exactly he has to meet and what representation he has to make to the concerned authorities."

12. Mr. Karmali has invited our attention to yet another instance of the casual and cavalier way in which the detaining authority has acted. According to the English version, the detenu "stored" the seized U.S. dollars, travellers' cheques and Singapore dollars with a motive to use them for illegal purposes, whereas according to the Gujarati version, the detenu tried to smuggle out of India the U.S. dollars, travellers' cheques and Singapore dollars seized through Rashmikant Narottamdas Ghaghda for being used for illegal purposes. Thus, the mistakes in the Gujarati version of the impugned order and the grounds, which we have pointed out above, are quite serious and misleading. It is impossible that the detenu would know what case exactly he has to meet and what representation he has to make to the authorities concerned. We are fully satisfied that the detenu's right to make an effective representation was affected and consequently, it has resulted in the violation of Art. 22(5) of the Constitution. Thus, on this short ground alone, we think, the order dt. February 20, 1984 passed by respondent 1 is liable to be quashed.

13. We, accordingly, quash and set aside the impugned order and direct that the detenu be released forthwith unless he is required in any other case. The Rule is made absolute.

14. Petition allowed.