

(1986) 12 DEL CK 0027

In the Delhi High Court

Case No : Criminal Writ Appeal No. 279 of 1986

Purshottam Kumar

APPELLANT

Vs

M.L. Wadhawan and Others

RESPONDENT

Date of Decision : 15-12-1986

Acts Referred:

Citation : (1987) 12 DRJ 162 : (1986) 1 ILR Delhi 494

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

Bench : Single Bench

Advocate : Sunil Mehta, Nirja Mehra, R.M. Bagai and H.K. Jaggi, for the Appellant;

Judgement

Malik Sharief-ud-Din, J.

(1) By virtue of a detention order dated 29/4/1986 passed by Shri M.L. Wadhawan, Additional Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) the petitioner was detained with a view to preventing the petitioner from acting in any manner prejudicial to the augmentation of foreign exchange. There is no need forms to give details of the events that led to the passing of the order of detention.

(2) The petitioner has challenged his detention on a variety of grounds. In fact, in this petition the petitioner had made a grievance that the representations made by him were dealt with by the concerned authorities after a long time which itself vitiates the detention.

(3) I have heard the counsel for the parties. Mr. Sunil Mehta learned counsel for the petitioner raised a peculiar and important point involved in this petition. The point is peculiar to this case in the sense that this is, perhaps, the first case in which such point is arising. In para No. 11 of the petition the petitioner had specifically said that a representation was made by him to the Central Government on 26/5/1986. In para No. 13 the petitioner pleaded that another

representation was made by him to the detaining authority by him on 30/5/1986. This was followed by similar averments in grounds. The representation dated 26/5/1986 was meant for the consideration by the Central Government and the representation dated 30th May 1986 was meant for the detaining authority. This fact is not denied in the counter-affidavit filed by Shri S.K.Chaudhary, Under Secretary to the Department of Revenue, Ministry of Finance. In fact in the counter-affidavit he has specifically stated in the "Verification" column that the contents of this affidavit are based on the official records. For the purpose of this writ petition, Therefore, I assume that the representation dated 26th May 1986 was meant for the Central Government and the representation dated 30th May 1986 was meant for the detaining authority.

(4) The point raised by Mr. Mehta is that if a representation meant for a particular authority is not dealt with by that authority, it will amount to non-consideration of the representation, and if the court agrees with this view then that should invalidate the detention order. Mr. Mehta further states that this point he could not take in the petition or the grounds as it has come to the light for the first time on the basis of the affidavit submitted by the respondents, and relying on the counter-affidavit he is entitled to raise this point.

(5) Mr. Bagai, learned counsel for the respondents says that he is taken by surprise. I am surprised to hear that Mr. Bagai is taken by surprise when it is clear from the counter-affidavit that there is absolutely no denial of the fact that these two representations dated 26/5/1986 and 30/5/1986 were meant for two different authorities. In Smt. Ichhu Devi Choraria Vs. Union of India (UOI) and Others, , the Supreme Court observed :-

"It would be no argument on the part of the detaining authority to say that a particular ground is not taken up in the petition. The burden of showing that the detention is in accordance with the procedure established by law has always been placed by the Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one still be deprived of his life or personal liberty except in accordance with procedure- established by law."

(6) In order to appreciate the contention of Mr. Mehta, a reference may be given of paras 10 and 11 of the counter-affidavit filed in reply to the grounds. In both these paras respondents have tried to justify the delay caused in dealing with the representations. Mr. Bagai says that the details- given in these two paras clearly go to indicate that there has been no undue delay in considering the representations. Mr. Mehta controverts this. I am not, however, bothered to go into this aspect for a very important reason on the basis of which I feel that this petition has to be allowed. It would be clear from both these paras of the counter-affidavit that the representation dated 26/5/1986 which was meant for the consideration of the Central Government has actually been dealt with and rejected by the detaining authority whereas the other representation dated 30/5/1986, meant for the detaining authority, has been considered and rejected

by the Minister of State for Finance on 19/6/1986. This shows that the representation meant for the particular authority was never considered by the particular authority in terms indicating that these were dealt with in a mechanical manner. Mr. Bagai stresses that under the rules of business even the representation made to the Central Government could be assigned to the detaining authority for consideration and there is nothing wrong in it. I do not have the rules of business before me; only Mr. Bagai talks about it. But assuming for the sake of argument that this could be done, it is of no assistance to Mr. Bagai. It is not the case of the respondents that a particular representation meant for the Central Government was sent to the detaining authority. Even at this stage of the proceedings their case is that two representations were received which were meant for consideration by two different authorities and these were separately considered by two different authorities. The greatest impediment in the way of respondents is that the representation which was actually meant for the consideration of the detaining authority was considered by the Central Minister concerned and the representation meant for the Central Government was considered by the detaining authority. Could under these circumstances it be said by any standard that there has been an application of mind to the representations or could it be said that they have been properly considered ? If the authority considering the representation does not even know that the representation is meant for him, how can it be said that he has considered it properly. In that view of the matter, I believe that there has been a total non-consideration of the representation by those for whom these were meant. Having come to this conclusion, there is no need for me to go into the aspect of delay in consideration of the said representations. On this ground alone, this petition is allowed and the detention order is quashed. The detenu shall be released forthwith unless he is required in some other case.