
(1993) 04 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.P. No. 801/93 of 1993

Purushottam Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 7

Citation : (1993) 49 ECR 595

Hon'ble Judges : V.S. Kokje, J; R.D. Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri A.M. Mathur, learned Senior Counsel with Shri P. Mathur for the petitioner on admission.

2. This is a petition by a citizen against whom an order under COFEPOSA Act, 1974 has been passed as long back as on 18.6.1992 but has not been executed as yet. The petitioner has prayed for quashing of the order before its execution. The facts leading to the passing of the detention order are set out in brief hereafter. On 7.6.1992 at about 6.30 A.M. the officers of Customs & Central Excise Indore intercepted one truck bearing No. M.P. 09 D 9025 and a Maruti Van bearing No. M.P. 09 A 4108 at Mhow Naka, Mhow. Contraband silver was found in the vehicles. Same day a search of the petitioner's place was conducted and statements of witnesses were recorded on 7.6.1992 and 8.6.1992. On 17.6.1992 documents were sent to detaining authority recommending detention. On 18.6.1992 the detention order was passed against all the persons said to be involved. On 13.7.1992 the co-detenus were released by the order of this Court in M.P. No. 1276/92. On 16.7.1992, a show cause notice was sent under the Customs Act to the petitioner. On 18.8.1992 reply to the show cause notice was filed. Thereafter on 6.11.1992, the petitioner filed M.P. No. 1777/92 challenging the departmental action under the Customs Act. On 18.11.1992 an order for

attendance of the petitioner u/s 7(i) of the COFEPOSA Act was passed treating the petitioner to be an absconder. On 3.12.1992, information of the detention order was given to the petitioner's wife and on 5.12.1992 it was published in Daily Nai Dunia, Indore. In M.P. No. 1777/92 the petitioner obtained an order on 24.12.1992 staying further action on Annexure E to that petition until further orders. This Annexure E is nothing but a copy of an order dated 18th November, 1992 passed against the petitioner declaring him to be absconder and ordered his attendance u/s 7(i) of the COFEPOSA Act. When the respondents opposed grant of relief in that petition, this petition has been filed to challenge the detention order without surrendering to the authorities for detention.

3. We have perused the record of M.P. No. 1777/92 as well as of this case and heard Shri A.M. Mathur, learned Counsel for the petitioner in this case and Shri A.M. Mathur and Shri A.H. Khan in M.P. No. 1777/92. Relying on the decision of the Supreme Court in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, Shri Mathur submitted that has jurisdiction to entertain a petition by a citizen even before his detention. He invited our attention to observations at the end of para 19 of the aforesaid case as it is printed in Excise Law Times (there appears to be some confusion in numbering of paragraphs as printed in different law journals). The Supreme Court has there observed that the Courts have the necessary power to interfere with the detention order at the pre-execution stage when the courts are prima facie satisfied that (i) the impugned order is not passed under the Act under which it is purported to have been passed; (ii) it is sought to be executed against a wrong person; (iii) it is passed for a wrong purpose; (iv) it is passed on vague, extraneous and irrelevant grounds; and (v) the Authorities which passed it had no authority to do so. However, in this very paragraph the court has clearly observed that the jurisdiction, by its very nature, is to be used sparingly and in circumstances where no other efficacious remedy is available. Having power to interfere at the pre-detention stage does not mean that the courts should disregard all the time honoured and well decided judicial self restraints and norms and exercise their said powers in every case before the detention order is executed. It had also been observed by the Supreme Court in the very case that if in every case a detenu is permitted to challenge and seek stay of the operation of the order before it is executed the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. At the end of the paragraph the Supreme Court has observed that the refusal by the courts to use their extra-ordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said powers or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question. In para 23 of the very judgment (as printed in ELT), the Supreme Court has stated that the case before it was one in which a detenu was absconding and had been evading the service of the detention order. In the facts of that case the court held that there was no case for interference at the pre-

detention stage. Examining the facts of our case in the light of aforesaid pronouncement of the Supreme Court it will be clear that the facts are almost similar. It is unbelievable that when the other detenus who were detained on the basis of same incident on which the petitioner is sought to be detained had filed petitions and got themselves released through the court, the petitioner would not know of the detention order having been passed against him. The detention order passed against the petitioner is dated 18.6.1992. On 18th Nov. 1992 he was declared absconding and in Nai Dunia, a widely read newspaper from Indore, the order was published on 5.12.1992. The petitioner himself has filed that order as Annex. E in the other case, stating that it was received by his wife on 3.12.1992. Instead of rushing to the court immediately with a petition for stay on the execution of the order prior to his detention or surrendering to the authorities and then challenging the detention order, the petitioner moved an application on 5.12.1992 in M.P. No. 1777/92 praying for stay of operation of order dated 18.11.1992. The application clearly shows that the petitioner tried to obtain a stay order against his detention by misleading this Court to believe that a warrant of arrest has been issued and served on the wife of the petitioner by the authorities because of non-appearance of the petitioner before the respondents taking advantage of having obtained an order dated 17.11.1992 in that case to the effect that the petitioner shall not be compelled either to appear or to make a statement before the authorities concerned. A bare reading of order dated 18.11.1992 would show that it was passed in consequence of the petitioner's defying the service of main detention order dated 18.6.1992 and was not the original order of detention. By leading the court to believe that it was an order during the course of the proceedings going on before the Customs Authorities, the petitioner obtained the order dated 24.12.1992 from the Vacation Judge of this Court in M.P. No. 1777/92 to the effect that no further action shall be taken on Annex. E i.e. order dated 18.11.1992 declaring the petitioner to be an absconder. The petitioner did not point out to the court that the detention order or the order declaring the petitioner to be an absconder was not the subject matter of M.P. No. 1777/92. When the respondents in M.P. No. 1777/92 objected to the continuance of the order, this petition was filed on 2nd April, 1993. In this background we have no other option but to conclude that the petition has been filed with un-excusable delay after having tried, somewhat successfully, to get the order circumvented for quite a long time. The detention order is dated 18.6.1992. The absconding order is dated 18.11.1992. The petitioner admittedly had knowledge of the order at least on 3.12.1992 and the petition is filed on 2.4.1993. In the meanwhile the petitioner has already tried and obtained an order in M.P. No. 1777/92 which had nothing to do with the detention order under COFEPOSA Act which saved him from being detained for over 3 months. In our opinion this conduct disentitles the petitioner from any equitable relief in this Court. It is not an exceptional case falling in the types of cases in which the Supreme Court in Alka Gadia's case (supra) observed that a petition can be entertained even before the execution of the detention order.

4. Shri Mathur has also argued that on merits there is nothing against the petitioner; that there is no material to connect him with the incident; that the statements against him have been retracted and the co-detenus have been released by this Court. We are not inclined to go into all these for the reasons we have already stated above. The petitioner will have opportunity to press all these points in a petition challenging the detention order, if he so chooses to challenge it, after the execution of the detention order. THE PETITION IS DISMISSED without notice to the other side.