

(1984) 06 MAD CK 0031
In the Madras High Court
Case No : Writ Petition No. 879 of 1984

R. Chandran

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-06-1984

Acts Referred:

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

Citation : (1984) 3 ECC 317

Hon'ble Judges : V. Ramaswami, J;K.M. Natarajan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Ramaswami, J.—One R. Sivanandam, brother of the petitioner, was detained u/s 3(1)(i) and (iii) of the Conservation of Foreign

Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to for the brevity sake as COFEPOSA), by an order dated 30th

September, 1983. On 14th February, 1983, the officers of the Central Excise, Preventive, Madras, seized one lorry with 20 bundles of Indian

beedi leaves and four catamarans with three bundles each of the beedi leaves attempted to be smuggled out to Sri Lanka and a standard van with

23 bundles of foreign nylon zip fasteners and polyester suitings smuggled into India at Perianeelankarai Kuppam shores. The value of the goods

seized is stated to be Rs. 5,54,400. During the course of investigation, one T. Aran, who had number of alias, was examined as also a number of

other persons. This Arun originally gave a statement in which he traced his connivance in the illegal smuggling of contraband articles inside and out

of India and from Sri Lanka right from 1978 and also his involvement in the

particular transaction on 14th February, 1983. However, he had not implicated the detenu in his statement in his activities of smuggling. The other persons, who were examined during the investigation, implicated the detenu also in smuggling activity and particularly with reference to the transaction which is the subject-matter of seizure on 14th February, 1983.

After following the formalities and after a consideration of the materials available before him, the detaining authority hold that the detenu was

actually engaged in smuggling and transport of smuggled goods of foreign origin and smuggled beedi leaves of Indian origin to Sri Lanka and

accordingly, in order to effectively prevent him from indulging in such activities further, the State Government, who is the competent authority,

directed to detain the said Sivanandam u/s 3(1)(i) and (iii) of the COFEPOSA. His further representation before the Government as also the

Advisory Board having been rejected, the present writ petition has been filed.

2. The only point that is raised in this writ petition is that the said T. Arun who had given originally a statement before the Superintendent of Central

Excise, Headquarters Preventive, Madras, and whose statement was fully referred to and relied on by the detaining authority had gone back from

his original statement and denied the knowledge of the transaction completely. This resiling from this original statement and denying complicity or

knowledge of this transaction, though was given to the officers of the Central Excise, Preventive Unit, long before 30th September, 1983, when the

impugned order was made, that was not forwarded to the detaining authority and the detaining authority had no occasion to consider this material

fact and that, therefore, the entire order is vitiated. The fact that the said Arun resiled from his original statement and denied his complicity in the

matter or his knowledge of the transaction, is not disputed. Nor is it disputed that such resilement was long prior to the detention order and that it

was not communicated to the detaining authority. It is true that even if this statement resiling from his original statement was available before the

detaining authority, it could have been open to the detaining authority not to rely on the same but to rely on the original statement. But on that

ground, it is not possible to contend that such a statement resiling from the original statement is neither material nor need it be referred to the

detaining authority. It may be that if such a statement was made available before

the detaining authority, he would have either tried to verify the reason for such resiling from the original statement or the truth or correctness of the original statement itself.

3. The learned Public Prosecutor contended that the statements recorded from others themselves are enough to sustain the detention. But it is not

open to sustain the order of detention on the other grounds alone because the detention order is one of subjective satisfaction and we could not,

with any certainty, consider which statement, and to what extent operated on the mind of the detaining authority. In the circumstances, therefore,

when material evidence such as a statement resiling from the original statement is not placed before the detaining authority, the order itself could not

be sustained. In fact, in one of the judgments reported in Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and Others, the Supreme Court

had held that the failure of the State Government to place a relevant and important piece of material before the detaining authority vitiates the order

of detention itself. It may also be mentioned that when material fact was not placed before the detaining authority, it could not be said that the order

of detention was made after applying the mind to all the relevant facts. In the circumstances, though we are of the view that there are lot of

materials to show the complicity of the petitioner in the smuggling activities, yet, we could not sustain the order of detention. The writ petition is

accordingly allowed. The order of detention is set aside and the respondent is directed to set at liberty the detenue forthwith.