
(1979) 06 KAR CK 0033
In the Karnataka High Court

R. Prakash

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-06-1979

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
(COFEPOSA) — Section 3 (1), 3 (1) (iii)
Customs Act, 1962 — Section 132

Citation : (1980) CriLJ 165

Hon'ble Judges : M.S. Patil, J;K. Jagannatha Shetty, J

Bench : Division Bench

Judgement

K. Jagannatha Shetty, J.—This is a petition for a writ of habeas corpus under Article 226(1)(a) of the Constitution challenging the validity of the order of detention of the brother of the petitioner R. Sathyadass passed by the State Government under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (called shortly as "the Act").

2. The case involves the personal liberty of a citizen which is one of the cherished fundamental rights guaranteed by the Constitution which the Courts of this country have always jealously protected against the arbitrary invasion,

3. The facts are these:

The State Government by order dated 15th May, 1979 made an order as follows:

Whereas the Government of Karnataka are satisfied with respect to the person known as Shri R. Satya Das, s/o late V. Rama Nair, No. 649, Jain Street, Mandya that with a view to preventing him from keeping smuggled goods, it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Government of Karnataka direct that the said Shri R. Satya Das, be

detained and kept in custody in the Central Prison, Bangalore.

By order and in the name of the Governor of Karnataka. Sd./- V. Venugopal Naidu, Commr. for Home Affairs and Secretary to- Government, Home Dept.

The grounds of detention are:

(1) You are doing business in the business premises in the name and style of M/s. Prakash & Brothers, Jain Street, Mandya. The Inspector of Central Excise, Preventive, IDO Mysore, searched the premises of the said shop on 13-1-1977 and seized smuggled goods, viz., wrist watches, photographic film rolls, cassette tapes, cosmetics, etc. collectively valued at Rs. 830/-. Watches and cosmetics are notified u/s 11-B of the Customs Act, 1962 and also specified u/s 123 of the Customs Act, 1962. In your statement given before the Customs Officers, dated 13-1-1977 you stated inter alia that the shop belonged to your brother Prakash and since Prakash had been out of station for 2 1/2 months, you were responsible for all the transactions in the said shop; that these goods were purchased long back and the bills were not available with you, that the watches, cassette tapes were for personal use and remaining goods were kept for sale. The case was adjudicated by the Supdt. of Central Excise (Technical) IDO, Mysore, vide Order No. VIII/10-2-77-Customs dated 28-2-1977. All the smuggled goods seized were absolutely confiscated and a penalty of Rs. 100/- was imposed on you. The same has been paid by you.

(2) In 21-7-1977 the Inspector of Central Excise, Preventive, IDO, Mysore, searched the premises of M/s. Prakash & Brothers, Jain Street, Mandya. At the time of search you were present in the shop premises. Search resulted in the seizure of smuggled goods namely, wrist watches, blades, cigarettes, cassettes, etc. totally valued at Rs. 1,535/-. Watches, cigarettes, adjustable safety razors with blades, cosmetics, cigarettes, cigarette lighters, fountain pens, cassette tapes are notified u/s 11-B of the Customs Act, 1962, and watches, cosmetics, lighters, safety razors blades, cigarettes are specified u/s 123 of the Customs Act, 1962. You in your statement dated 21-7-1977 given before the Inspector of Central Excise, Mysore, inter alia, stated that you and your brother Shri Prakash were looking after the business of M/s. Prakash & Brothers, that you did not possess any documents or bills for sale and you got little profit out of the sale; that the said goods were purchased from some Keralites; that you knew that it was an offence to deal in smuggled goods; that you had been involved earlier in a case and had paid the penalty imposed on you. The case was adjudicated on 21-10-1977 by the Supdt. of Central Excise (Technical) IDO, Mysore vide Order No. C. No. VIII/10/21/77-Cus. All the smuggled goods seized were absolutely confiscated and a penalty of Rs. 100/- was imposed on M/s. Prakash & Brothers which has been paid.

(3) On 22-1-1979, your residential premises situated at Railway Station Road, First Cross, 21, Mandya, were searched by the Inspector of Central Excise, Preventive, IDO, Mysore. At the time of the search, you were present in the

house. On search of the house, smuggled goods such as blades, soap, razors, cosmetics, etc. valued at Rs. 2,969/ were found in a Horlics Card Board Carton in the front room of the house. Cosmetics, adjustable safety razors and blades, playing cards, fountain pens, fabrics made wholly or mainly of synthetic yarn, cassette tapes are notified u/s 11-B of the Customs Act, 1962 and cosmetics, blades, playing cards, fabrics made wholly or mainly of synthetic yarn are specified u/s 123 of the Customs Act, 1962. These goods were seized under the Customs Act, 1962 for further action. You in your statement dated 22-1-1979 given before the Supdt. of Central Excise and Customs, Mandya, stated inter alia that you were residing in the said house along with your brother Shri R. Prakash; that you had purchased the said goods from vendors of Kerala and Tamil Nadu; that you did not know the names of the vendors; that you were also not aware whether any customs duty on the said goods were obtained for purposes of sale in your shop. With reference to the letterhead seized from the house on which details of the foreign goods and values were written, you stated in your statement dated 22-1-1979 that this letterhead was kept for your information to know the value for the purpose of sale. You also admitted in your said statement that on 2 occasions earlier, smuggled goods were seized and you were penalised and you have paid the penalties.

4. In view of the urgency of the matter, the petition was taken up for hearing on top priority. Learned Advocate-General who appeared on behalf of the State to avoid any delay in the disposal of the matter preferred to argue on the basis of the connected records produced before us.

5. Mr. Jeshtmal, learned Counsel for the petitioner, urged the following grounds:

(1) that the grounds for detention are stale and not proximate in time to provide rational nexus between the incidents relied on and the satisfaction arrived at.

(2) The materials under ground No. 3 furnished to the detenu have no bearing or rational nexus for the purpose for which the order of detention was passed;

(3) The order of detention was not in conformity with the provisions of the Act and beyond the scope thereof.

AND

(4) The vital and material facts were not placed before the Detaining Authority nor were considered by it.

6. Before we consider these grounds in the light of the arguments presented before us, we may say a few words about the extent to which the Court could examine the validity of a detention order. The law on this point has been stated over and over again by the Supreme Court, We may briefly recall the principles, Hidayatullah, J. in Rameshwar Lal Patwari Vs. State of Bihar, , observed as follows:

The formation of the opinion about detention rests with the Government or the

officer authorised. Their satisfaction is all that the law speaks of and the Courts are not constituted an appellate authority. Thus the sufficiency of the grounds cannot be agitated before the Court. However, the detention of a person with a trial, merely on the subjective satisfaction of an authority however high, is a serious matter. It must require the closest scrutiny of the material on which the decision is formed, leaving no room for errors or at least avoidable errors. The very reason that the Courts do not consider the reasonableness of the opinion formed or the sufficiency of the material on which it is based, indicates the need for the greatest circumspection on the part of those who wield this power over others.

Again in *Khudiram Das Vs. The State of West Bengal and Others*, , Bhagwati, J., speaking for the Constitution Bench of the Supreme Court said:

The Courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the Courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

The learned Judge continued:

Where the liberty of the subject is involved, it is the bounden duty of the Court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and the subject is not deprived of his personal liberty otherwise than in accordance with law.

7. With these principles in mind, we now proceed to examine the contentions. Learned Counsel urged that grounds Nos. 1 and 2 are so remote that they have no nexus with the purpose for which the detention has been ordered. It seems to us that the contention is well founded. Both the grounds refer to the incidents of the year 1977. Adjudicatory proceedings connected with those search and seizure were also concluded in 1977 itself. These two grounds, therefore, cannot furnish nexus for the purpose for which the detention has been ordered.

8. Yet there is the third ground, and u/s 5-A of the Act, the detention could be sustained on the third ground alone notwithstanding the fact that other two grounds are stale. The contention on this part of the case urged for the petitioner runs as follows : Having regard to the purpose for which the seized articles were kept by the detenu, it could properly be said that the detenu was dealing in those goods and not just keeping them and, therefore, the detention order made with a view to prevent him from keeping the goods was illegal,

9. It is no doubt true that the detenu made the statement before the Supdt. of Central Excise to the effect that he had purchased the said goods from the

vendors from Kerala and Tamil Nadu and the said goods were obtained for the purpose of sale in his shop. Under Clause (iii) of Sub-section (1) of Section 3, a detention order could be made with a view to prevent a person from engaging in transporting or concealing or keeping smuggled goods. Under Clause (iv) of Sub-section (1) of Section 3, the detention order could be made only to prevent a person from "dealing" in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. Clauses (iii) and (iv), therefore, are independent of each other and cover two distinct activities of a person dealing in smuggled goods. The scope of the word "dealing" came up for consideration before a Bench of this Court in *K. Hemraj Jain v. State of Karnataka* W.P. No. 1219 of 1975, disposed of on 2-5-1975. It was held therein that the word "deal" or "dealing" occurring in Clause (iv) must involve in retailing or distributing business. That view has been reiterated again by this Court in *Dungermal v. Commr. for Home Affairs and Secy. to the Govt. of Karnataka*, W. P. No. 2353 of 1979, disposed of on 9-3-1979.

10. Learned Advocate-General contended that if a person is found in custody of the smuggled goods it would attract Clause (iii) and the purpose for which the goods were kept is not material. According to him, mere physical custody of the smuggled goods is sufficient to attract Clause (iii). He relied upon the Dictionary meaning of the word "keeping" as "custody or charge".

It seems to us that the sweep of the word "keeping" should not unreasonably be curtailed and there is also no warrant for restricting its ordinary meaning in the set up in which it is found. The Court must make such construction as will suppress the mischief, and advance the remedy. It has been said : *

To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.

This manner of construction has two aspects. One is that the Courts, mindful of the mischief rule, will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net.

In *Kanwar Singh Vs. Delhi Administration*, , the Supreme Court observed:

It is the duty of the Court in construing a statute to give effect to the intention of the Legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute would defeat the object of the legislature, which is to suppress a mischief the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will "advance the remedy and suppress the mischief.

11. In the instant case, we need not go thus far. It may be sufficient to restrict the said word to its literal meaning. The object of the Act is to conserve and augment foreign exchange and to prevent smuggling activities. The preamble of the Act states that there are activities or violations organised and carried on in

certain areas which are highly vulnerable to smuggling and smuggling activities of considerable magnitude are clandestinely organised and carried on. For the effective prevention of such activities and violations, the Act was found necessary by the Parliament. Any construction that we propose, therefore, must advance the purpose and suppress the mischief which the Legislature had in mind. We should not narrow the literal meaning of the word "keeping". Mere custody of the smuggled goods, in our opinion, is sufficient to attract Clause (iii), but to attract Clause (iv) something more than the physical custody of the smuggled goods is necessary. We therefore reject the second contention urged for the petitioner.

12. This takes us to the third contention urged for the petitioner that the order of detention was not in conformity with Clause (iii) of Sub-section (1). The order just provides that "with a view to preventing him from keeping smuggled goods". It was urged that the Detaining Authority has not stated that the detention was necessary with a view to prevent the detenu from engaging in keeping smuggled goods. It seems to us that there is a good deal of substance in this contention. Clause (iii) could be invoked only to prevent a person from engaging in transporting or concealing or keeping smuggled goods. The Detaining Authority must be satisfied that it is necessary to prevent a person from engaging in such objectionable activities. The meaning of the word "engage" as found in the Concise Oxford Dictionary is "hold fast (attention), employ busily," There is thus a lot of difference between the activities of just "keeping" and "engage in keeping" and the Detaining Authority obviously has not applied its mind. In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, the Supreme Court observed that where a man can be deprived of his liberty under a rule by the simple process of the making of a detention order, he could only be so deprived of if the order is in terms of the rules and strict compliance with the letter of the rule is the essence of the matter, and if there is any doubt regarding the observance of the rules, that doubt must be resolved in favour of the detenu. The order of detention which has the effect of depriving the liberty of a citizen without any trial must be construed very strictly and the requirement of the law has to be scrupulously observed. In *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, the Supreme Court observed:

...We are clear that public order, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

We must therefore be guided by the language of the order and not by the intendment of the Detaining Authority. We may also observe that if the detention order could be made to prevent a person from keeping the smuggled goods then, nobody would be safe. Every person having one or the other foreign made goods

without the proof of its valid acquisition from an authorised source could be detained under Clause (iii) and we do not think that such was the intention of the Legislature. The learned Counsel was therefore justified in his contention that the detention order was not in accordance with Clause (iii).

13. The last ground urged for the petitioner also must succeed. It was urged that vital and material facts were not placed before the Detaining Authority. Learned Counsel for the petitioner in elaborating this submission, produced before us the show cause notice dated 13th February, 1979 issued to the detenu by the Assistant Collector of Central Excise, Mysore, proposing confiscation of goods and imposition of penalty. He also produced a copy of the reply given by the detenu on 7th March 1979 along with the order of adjudication in respect of the goods seized. It is undisputed that these proceedings were connected with the search and seizure made on 22nd January 1979 which are referred to in ground No. 3 furnished to the detenu. The particulars furnished to the detenu do not refer to the said proceedings nor the records produced by the learned Advocate General reveal that those materials were placed before the Detaining Authority for consideration. Those materials appear to be vital and material. One does not know what would have been the satisfaction of the Detaining Authority if those materials had been considered. It may be relevant to state that the particulars furnished under ground No. 3 indicate that the detenu admitted in his statement before the Superintendent of Central Excise that he had purchased the said goods from the vendors of Kerala and Tamil Nadu. But, in his reply to the show cause notice dated 13-2-1979 the detenu has stated that the seized goods had been purchased by his brother from some vendors in his absence. He has thus retracted from his earlier statement. Apart from that, the detention order was made to prevent the detenu from keeping the smuggled goods whereas in the show cause notice issued by the Assistant Collector of Central Excise, the detenu was not called upon to show cause as to why he should not be proceeded for keeping smuggled goods. It appears that the adjudicatory proceedings were not initiated for keeping the smuggled goods. Those proceedings were terminated with an imposition of penalty of Rs. 200/-. That order was made on 21st March, 1979 whereas the detention order was passed by the Government on 15th May 1979. If all these materials had been placed before the Detaining Authority it would have influenced the mind of the Detaining Authority one way or the other.

14. A case almost similar to one before us came up before the Supreme Court in *Ashadevi v. K. Shivaraj* AIR 1979 SC 447. In that case, the detention order was made with a view to prevent a person from engaging in transporting smuggled goods. The Detaining Authority based its decision on the detenu's confessional statement made before the Customs Officers, but that confessional statement was subsequently retracted by the the detenu at the first available opportunity and that retracted confessional statement was not placed before the Detaining Authority, although it was available with the Customs officials, The Court on that count observed:

...It cannot be disputed that the fact of retraction would have its own impact one way or the other on the detaining authority before making up its mind whether or not to issue the impugned order of detention. Questions whether the confessional statements recorded on December 13, 14, 1977 were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements by the detenu on December 22, 1977 was in the nature of an afterthought, were primarily for the detaining authority to consider before deciding to issue the impugned detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority one way or the other were neither placed before nor considered by the detaining authority it must be held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the impugned detention order invalid and illegal.

15. In the result and for the reasons stated, the rule is made absolute. The order of detention is quashed, with a direction that the detenu R. Sathyadass be released forthwith.

*Maxwell on Interpretation of Statutes, 12th Edition, page 137.