

(1989) 01 DEL CK 0013

In the Delhi High Court

Case No : Criminal Writ Appeal No. 517 of 1988

Rajinder Anand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-01-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1989) ILR Delhi 202

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Ashok Arora, Rajender Dutt and Jayant Bhushan, for the Appellant;

Judgement

P.K. Bahri, J.

(1) In this writ petition brought under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner has sought quashing of detention order dated September 7, 1988, issued u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA Act") and the declaration issued u/s 9(1) of Cofeposa Act.

(2) The facts, in brief, are that on August 14, 1988, the Delhi Police had apprehended Mohideen and K. Mohd. Kunhi, who were riding a two-wheeler scooter and from the tool box "of the scooter four semi-spherical pieces of gold, twelve rods of. gold collectively weighing 886 gms. and Rs. 7,020 in cash were recovered and as they failed to furnish any satisfactory Explanation regarding their legal possession of the gold, they came to be handed over to the officer of the Directorate of Revenue Intelligence and both of them were interrogated on that day as well as on the following day and on the basis of the statement made by K. Mohd. Kunhi, their residential premises were searched from where 142 pieces of white coloured wire, which on examination were found to be made of gold and four car speakers, twenty two cooking gas lighters, fourteen Umbrellas,

two entry tickets for I G I Airport, oae paper slip bearing telephone numbers of Koli and the petitioner were recovered and seized under the Customs Act. The gold was found to be of 24 carat purity. In their statements, it was revealed that one Ahmed Ali of Dubai had been instrumental hi sending the contra band gold and on. his instructions these two persons used to get is touch with the-passengers arriving by flights from Dubai and used to receive the baggage is which the gold used to come (July concealed and be smuggled gold used to be handed over to Mohideen by Mohd. Kunhi for being disposed of and the proceeds of the gold used to be Sent to Ahmed Ali through hawala thansactions. The modus operandi disclosed in the statements used to be that on receipt of information from Dubai on telephone regarding the arrival of the particular passenger, Mohd. Kunhi used to receive the passenger and take over the baggage items and after taking over the concealed gold used to self the same to M/s. Kumar Jewellers with the help of the petitioner. The petitioner also was arrested on August 25, 1988 and made the statement to the Customs Officers admitting that he had been engaged by Ahmed Ali of Dubai for disposing, of the smuggled gold and he was to act Ra. 20 per 10 gms. of gold after selling the gold. The sale proceeds were to be handed over to one Kamal and the gold in question, which was recovered from the scooter, was stated to have been taken from one passenger named Gopi who had arrived from Dubai and was to be handed over to the petitioner for being sold but as Mohad. Kunhi and Mohideen had been arrested the transaction could not go through. On the basis of these facts, the impugned orders have been made against the petitioner.

(3) Counsel for the petitioner has submitted at first that the impugned orders suffer from the vice of non-application of mind in as much as in the grounds of detention in the first paragraph. the following words appear which are totally factually incorrect.

"You Along with Mohideen were summoned to the office of D.R.I. on 14-8-88."

I have gone through the grounds of detention in detail and it is evident from bare perusal of the grounds of detention that the word "you" has been wrongly used because the narration of fact given in chronological order in the grounds of detention male it evident that Mohideen and K. Mohd. Kunhi were apprehended on August 14. 1988, and they were brought to the office of D.R.I. where they were interrogated. The name of the petitioner came to be disclosed when the search of their houses was made and his name appeared on a paper slip which also contained. his telephone number. The petitioner came to be apprehended latter on and his statement was recorded only on August 25, 1988. The question which arises for consideration is whether the impugned orders can be said to suffer from non application of mind on the mere ground that there appeared a clerical mistake in the use of the word "you" in the first para of the grounds of detention

(4) Counsel for the petitioner has cited Criminal Writ No. 230186. Smt. Veena Kapoor v. M. L. Wadhawan & Others. decided on November Ii, 1986(1), by a

Division Bench c-f this Court in support of his contention that the impugned orders have been made without proper application of mind. I have gone through the judgment and find that in the said case the grounds of detention did not make it at all clear as to whether they pertained to the detenu in that case or not. It was observed by the Division Bench that a perusal of the grounds of detention served on the detenu would reveal that they do not tell him the specific part/parts attributed to him in the act of smuggling. On that score it was held that the detention orders seem to have been made in a mechanical manner. Such is not the case here. A perusal of the facts mentioned in the grounds of detention makes it quite evident the role being assigned to the petitioner in the aforesaid transactions. Counsel for the petitioner has then made reference to *Mohd. Meera Sahib v. M. L. Wadhawan & Others* 1987(1) Crimes 872(2). In the cited case the grounds of detention bristled with mis-statements and material mistakes and then the court came to hold that the detention order had been issued in a most casual and cavalier manner without proper application of mind. It depends upon the facts of each case whether there has been proper application of mind by the detaining authority or declaring authority before issuing the detention order or the declaration. There cannot be laid down any omnibus principle of law that if there appears any inadvertent mistake clerical or typographical in the grounds of detention, the order of detention is liable to be quashed.

(5) Counsel for the petitioner also cited *Dataram Shantaram. Bagkar v. Dr. Gopal Singh & Others* 19 Crimes 750(3). In the cited case, in the grounds of detention it was mentioned that the detaining authority had taken into consideration the anticipatory bail application and the court's orders made thereon but it came out in facts that no such anticipatory bail application had been moved by the detenu or on his behalf and no order had been made by any court. So, on these peculiar facts, the court came to the conclusion that there has been no proper application of mind by the detaining authority before issuing the detention order. No such glaring mistake appears in "the present case so as to vitiate the detention order. In *Smt. Sushila Bhoormal Jain v. State of Maharashtra & Others* 1984 Cri. L.J. 1526 f 4). a Division Bench of Bombay High Court had observed that there cannot be any-generalisation in a particular set of circumstances the non-application of mind should be presumed. Everything will depend upon the nature of allegations made and it cannot be said that the law does not ignore a mistake here or a mistake there, and thus, a mere mistake would not be a proof of non-application of mind. I respectfully agree with the aforesaid observations which squarely apply to the facts of the present case. In *Pushpa Devi v. M. L. Wadhawan* Air 1987 Sc 1746(5), also it has been laid down that mere mistakes or infirmities which are not material would not vitiate the order of detention. Hence, I hold that the impugned orders do not suffer from any non-application of mind on the part of the authorities concerned on account of mere fact that there has occurred an inadvertent clerical mistake in the grounds of detention.

(6) Counsel for the petitioner has then urged that the order of detention made u/s 3(1) of Cofeposa Act shows that it has been issued with a view to prevent the

petitioner from abetting the smuggling of gold and dealing in smuggled gold otherwise than by engaging in transporting or concealing or keeping smuggled gold, whereas the order of declaration had been issued only on the ground that the petitioner is likely to abet the smuggling of goods. He has argued that the grounds of detention do not show that the petitioner was indulging in. abetting the smuggling of the goods and thus, both the orders stand vitiated for non-application of mind by the authorities concerned. He has cited *Somnath Kundu v. Union of India* is: others 1987(3) Crimes 577(6), wherein the facts were that the order of detention was issued for preventing the detenu from engaging in transporting smuggled goods but the "rounds of detention did not show that the detenu was ever engaged in such activity. The only allegation against him. was that he was receiving the smuggled goods. The order of detention was held to be bad.

(7) However, I have gone through the grounds of detention and also the statement made by the petitioner to the Customs authorities, copy of which was supplied to me by counsel for the petitioner and find that the activity of the petitioner was not of dealing in smuggled gold but was also of abetment in smuggling the goods. His statement shows that he had entered into some transaction with the person in Dubai that the smuggled gold could be disposed of by him and the sale proceeds be handed over to a man of the person sending the gold from Dubai .So. the petitioner was not merely engaged in dealing with smuggled gold but was also facilitating the act. of smuggling by entering into a transaction with the person in Dubai before the smuggled gold was sent to India. The words "abetment of a thing" as defined in Section 107 of the Indian Penal Code lays down that :

"A person abets the doing of a thing, who-First- instigates any person to do that thing or, secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing; or Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing."

The activity of the petitioner, as revealed by him in his own statement made u/s 108 of the Customs Act, reveals his entering into agreement for the smuggling of the gold. So, he had abetted the smuggling of the gold. Hence, it cannot be held that the order of detention and the declaration contain any factual error showing any non-application of mind.

(8) Counsel for the petitioner also made reference to *M. Mohammed Kutty v. Shri Tarun Roy*, Joint Secretary 1988(1) Crimes 881(7). I have gone through this judgment and find that the same is also distinguishable on facts. In the cited case, the detaining authority had only considered the proposal put up for detention and had not looked into the documents and thus, it was held that there has been no proper application of mind by the detaining authority in passing the detention order. Such is not the present case.

(9) Counsel for the petitioner has then urged that the manifest of the flight in Which Gopi passenger had allegedly come has not been referred to in the grounds of detention and no copy .of the same has been supplied to the detenu which thus, the detenu was prevented from making any purposeful" and effective representation against the detention order. Meeting this ground in the affidavit filed by Sri K.L. Verma. Director of Enforcement. it has been pleaded that the manifest was not relied upon and as a matter of fact, it did not contain the name of any Gopi passenger and thus, was. not a relevant document. The authorities have not relied-upon the manifest turn passing the impugned orders and thus, there was cast no duty on the authorities to supply copy of manifest pari passu the grounds of detention to the detenu. Moreover, the manifest is not shown to be such a material document which could away the mind of the authorities in either way while considering to pass or not to pass the impugned orders. So, I find no merit in this contention as well.

(10) Lastely, the learned counsel for the petitioner has urged that the petitioner had asked the authorities to supply to him the copies of the grounds of detention issued in respect of other coetaneous to enable the petitioner to make an effective representation but till date no such copies of the grounds of detention have been supplied, and thus, the petitioner has been deprived from making an effective representation. Counsel for the respondent has vehemently argued that the grounds of detention of other co-detenus were not at all relied upon or referred to in the grounds of detention by the authorities concerned and so the question of supplying copies of the said relevant documents to the petitioner did not arise. Counsel for the respondent has placed reliance on Ramchandra A. Kamat Vs. Union of India (UOI) and Others, , in support of his contention and unless and until the documents are at least referred to in the grounds of detention even though casually, the question of supplying such documents even on demand by the detenu does not arise. It has been laid down by the Supreme Court as follows :

"The right to make a representation is a fundamental right .The representation thus made should be considered expeditiously by the Government, In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention arc served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such document, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him when copies of such documents are asked for by the detenu the detaining authority should be in apposition to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case".

(11) In view of the law laid own by the Supreme Court, I have no option but to

hold that there was no duty cast on the authorities to supply copies of the said grounds of detention of other co-detenu even if the demand has been made by the detenu for supply of such copies because such grounds of detention are neither relied upon nor referred to in any manner in the grounds of detention of the petitioner. Counsel for the petitioner has, however, contended that there was no difficulty in the way of the authorities to supply copies of such documents which are in their power and possession and if the authorities have callously not cared to supply such copies or documents which the detenu thought would help him in making an effective representation, the court must return a finding that the detention order is vitiated as the detenu has been prevented from making an effective representation against the impugned orders. I am afraid that such a broad proposition of law cannot be laid down that whenever any demand is made by the detenu regarding supply of copies of documents the demand must be met. The detention order is based on certain grounds of detention including the documents re- upon and then, there could be some reference to the documents casually in the grounds of detention. Only where the documents are casually referred to in the grounds of detention that the duty is cast on the authorities to supply copies of those documents, even though those documents are not relied upon, if demanded by the detenu. The documents which are the basis for passing the detention order and which have been relied upon have to be supplied by the authorities *pan passu* along with the grounds of detention. The documents mentioned by the petitioner do not fall in any of the said categories. Hence, it cannot be said that the petitioner has been prevented from making any effective representation on the ground that the authorities did not comply with the request of the petitioner for supply of copies of grounds of detention pertaining to other co-detenu. So, I negate this contention of the learned counsel for the petitioner.

(12) No other point has been urged before me by the learned counsel for the petitioner. Hence, I find no merit in this writ petition which I, hereby, dismiss and I discharge the Rule but leave the parties to bear their own costs.