
(1993) 02 DEL CK 0068

In the Delhi High Court

Case No : Criminal Writ Appeal No. 190 of 1992

Ravi Kapoor

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-1993

Acts Referred:

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

Citation : (1993) 50 DLT 191 : (1993) 25 DRJ 352

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Rohit Kochhar, Sabarjit Sharma and B.S. Saini, for the Appellant;

Judgement

Sat Pal, J.

(1) In this case the petitioner has been detained pursuant to an order dated 6 the June, 1991 passed by the Joint Secretary to (he Government of India in exercise of the powers conferred by section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA"). It may be relevant to point out here that before the order was served on the petitioner, the petitioner approached Calcutta High Court by filing a writ petition bearing No.4202/91 and in the said writ petition the respondent Government of India was restrained from serving on the petitioner any order of detention under the provision of Cofeposa or on any other ground on which a criminal case had been started against the petitioner. The aforesaid restrained order was, however, vacated by the Calcutta High Court on 12th April. 1991 and it was thereafter that the impugned detention order was passed on 6.6.1991 as slated hereinabove. Pursuant to the order of detention the petitioner was detained on 17th December, 1991 i.e. after the lapse of a period of more than six months. A declaration u/s 9(1) of Cofeposa was issued against the petitioner on 8th January, 1992.

(2) The learned counsel for the petitioner has urged the following contentions.

1) THAT there is a long and unreasonable delay in executing the impugned detention order against the petitioner as the said order which is dated 6th June, 1991 was served on him only on 17th December, 1991 i.e. after a period of more than six months.

2) THAT page 64 of the relied upon documents, is a document in Bengali language which admittedly is a language which the petitioner can neither read, write or understand.

3) THAT there is long delay in passing of the detention order against the petitioner as the date of the alleged incident is 11th April, 1990 and the order of detention was passed against him only on 6th June, 1991 i.e. after a period of 14 months from the date of the alleged incident.

(3) Since I am allowing the writ petition on the basis of the "first contention, I consider it unnecessary to examine the other contentions urged by the learned counsel for the petitioner.

(4) In support of the first contention the learned counsel for the petitioner referred to ground No.11 of the petition wherein it has been stated, "that there is a long and unreasonable delay in executing the detention order dated 6.6.1991 upon the petitioner. That the said detention order was served upon the petitioner only on 17.12.1991 i.e. after a period of more than six months from the date of passing of the said detention order. That this long and unreasonable delay in execution of the detention order shows that the satisfaction of the detaining authority was not genuine but was sham. The petitioner's detention is thus illegal." The submission of the learned counsel for the petitioner was that the aforesaid delay of more than six months in execution of the order has not been properly explained even in the counter-affidavit filed on behalf of the respondents. In support of his contention the learned counsel referred to two Supreme Court judgments in *Shafiq Ahmad vs District Magistrate, Meerut* and others, and *Man Mohan Singh vs Union of India* and others. .

(5) A counter-affidavit on behalf of the respondents has been filed and in reply to ground No.11 of the petition it has been stated, "it is submitted that the detention order, passed by the Ministry on 6.6.91. The said order could not be served on the detenu by the proper officer as the detenu was not available at Calcutta, and also failed to appear before the Ld. Chief Judicial Magistrate, Barsal, till 17.12.91 when he was apprehended outside the Court when he came out of the Court after giving his appearance before the Ld. Magistrate on the same day, when he was served with the detention order and was lodged in Dum Dum Central Jail, Dum Dum, Calcutta."

(6) Mr. Sarabjit Sharma, the learned counsel for the respondents reiterated the submissions made in the counter-affidavit in reply to ground No.11 as reproduced hereinabove. In support of his submissions learned counsel for the respondents placed reliance on two Supreme Court decisions in *Abdul Salam alias Thiyyan Vs. Union of India* and others, and *M. Mohammed Sultan vs The*

Joint Secretary to Government of India, Finance Department and others.

(7) As slated hereinabove the submissions made on behalf of the respondents is that the impugned order could not be served on the petitioner as he was not available at Calcutta and also failed to appear before the learned Chief Judicial Magistrate, Barsat till 17th February, 1991 when he was apprehended outside the Court. Except this bald statement the respondents have failed to show any attempt made by them to serve the detention order on the petitioner during this long period of more than six months. As regards the judgment in the case of M. Mohammed Sultan (supra) relied upon by the learned counsel turn the respondent there was delay of only one month in execution of the detention order and the order of detention dated 12th December 1992 was handed over to Tamil Nadu Government for execution through the police authorities and" the detention order was sent to Thanjavur East District Police authorities through Deputy Inspector General (Intelligence) Madras. Thus, the delay of one month was properly explained. The ratio of this judgment is, Therefore, not applicable to the facts of the present case.

(8) As regards the case of Abdul Salam (supra) relied upon by the learned counsel for the respondents, again there was a delay of two and a half months only and that delay was properly explained as is evident from para 15 of the said judgment. The ratio of this judgment is also not applicable to the facts of the present case.

(9) The facts of the present case are almost similar to the facts of Supreme Court's decision in the case of Shafiq Ahmad (supra). In this case the Supreme Court quashed the detention order as the delay of about three months out of the total delay of about six months in execution of the detention order was found as unexplained and not justified.

(10) In view of the reasons given hereinabove, the writ petition is allowed and the impugned detention order dated 6th June, 1991 is quashed. Accordingly, I direct that the petitioner be set at liberty forthwith unless he is not required in any other case under any other Act.