
(1990) 01 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Petition No. 2589 of 1985

Ravinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 226

Citation : (1990) 30 ECR 190

Hon'ble Judges : M.K. Chawla, J; M. Sharief-ud-din, J

Bench : Division Bench

Judgement

Malik Sharief-Ud-Din, J.—We may at the outset notice that this petition has a chequered career inasmuch as it first went to a learned single Judge of this Court who by an order dated 11th of December, 1985 following the judgment of the Supreme Court directed that the petitioner shall not be arrested pursuant to the impugned detention order u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA Act) subject to certain conditions. But when the writ petition came up for final hearing before another learned single Judge of this Court, he noticed two Division Bench judgments of this Court conflicting on the point whether a writ petition under Article 226 of the Constitution of India is maintainable or not before the detention order is actually served upon the detenu and executed. The learned single Judge by his order dated 14th of August, 1987 Therefore was of the view that to resolve the conflicts between the two Division Bench judgments of this Court, the matter should be heard by a larger bench. Subsequently, another Division Bench of this Court by its order dated 23rd of November, 1987 passed an order that the writ of mandamus was prima facie maintainable. Mr. Herjinder Singh has today invited our attention to the case S.M. Kiran Pasha v. The Government of Andhra Pradesh and Ors., a decision of the Supreme Court dated 9th of November, 1989 appearing in Judgments Today 1989 (4) S.C. 366. This

judgment is to the effect that a post-detention writ petition under Article 226 is only for the restoration of the personal liberty while a writ petition under Article 226 for a threatened detention is also maintainable. That, in our view, settled the matter and there is no need for us to make a reference to a larger bench as the law laid down by the Supreme Court is binding on all Courts.

2. Now the legal grievance of the petitioner is that he is sought to be detained pursuant to an order dated 5th August, 1985 passed by the Administration, Union Territory of Delhi, u/s 3(1) of the COFEPOSA Act. In fact, detention orders were passed against Gurcharan Singh, Kuldip Singh, Narinder Singh and Mohinder Singh as well and all of whom had filed writ petitions which were allowed by this Court and the detention orders in respect of those persons were quashed on the ground that the grounds of detention were stale inasmuch as the detention order was passed 16 months after the incident and there was no satisfactory Explanation forthcoming for the belated passing of the order. Mr. Herjinder Singh has filed before us the judgments in Criminal Writ Petition No. 276 of 1985 Shri Kuldip Singh v. Union of India and Ors. decided on 5th February, 1986, Criminal Writ No. 297 of 1984 Shri Mohinder Singh v. Union of India and Ors. decided on 4th of December, 1985. All these detentions in the aforementioned writ petitions were based on the same incident in respect of which the petitioner is sought to be detained by virtue of the aforesaid detention order dated 5th of August, 1985.

3. To begin with, we may make a brief reference to some of the facts. The present petition arises out of an incident dated 21st of March, 1984 regarding the import of goods from Hong Kong and the consignment contained articles valued at Rs. 15,07,600/- which were allegedly smuggled into this country by the petitioner and his other accomplices, reference to whom has been made above.

4. The principal and primary contention of Mr. Herjinder Singh is that there has been an undue and not satisfactorily explained delay in passing the order of detention and, Therefore, the ground on which the detention is made is stale and the fact that it has been passed after such a long period of 16 months would render it punitive and not preventive. We have noticed that in the case of co-detenus, a reference to the writ petitions made above, this Court has held on the basis of the same set of facts and in respect of the detention orders of even date that these detention orders stand vitiated because of belated passing of these. The stand taken by the respondents in the present writ petition surely cannot be different than the one taken on this aspect of the matter by them in their return in the cases of the co-detenus as that would have made the case worse against the respondents. We find that the stand taken is almost similar and the delay of 16 months even in the case of the present petitioner has not been satisfactorily explained.

5. In Criminal Writ No. 244 of 1985 Shivdev Singh v. Delhi Administration, decided on 6th of December 1985, a Division Bench of this Court has held that the Court has to follow the decision in the cases of the co-detenus on the

principle of stare decisis meaning thereby that if on a particular point arising in all petitions the Court has held in favor of the detenu as in the present case in respect of delay, the Court cannot go into that point once again. We are in respectful agreement with the views expressed in the said judgment and since, in our view, the delay in passing the detention order in the present case has not been satisfactorily explained the detention order passed on 5th of August, 1985 against the petitioner stands vitiated.

6. We allow the petition and quash the detention order. We do this also for the reason that the detention order has been passed in the year 1985 and we are now in 1990 and it would be absurd to allow the detention order to remain in existence any more. The detention order is quashed and we direct that it shall not be executed.