
(1989) 08 DEL CK 0002

In the Delhi High Court

Case No : Criminal Writ Appeal No. 428 of 1988

S. Balwinder Singh @ Chhinda

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 3(1), 3(3), 9(1)
Constitution of India, 1950 — Article 22(5), 226

Citation : (1989) 39 DLT 436 : (1990) 2 ILR Delhi 184

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : Trilok Kumar and Sat Pal, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The detenu, in this writ petition, filed under Article 226 of the Constitution, was detained by virtue of an order of detention passed on 9th March, 1988 by Shri K. L. Verma, Joint secretary to the Government of India, in exercise of the powers conferred by Section 3(1) of the Conservation of foreign Exchange and prevention of Smuggling Activities Act, 1974 (in short Cofeposa ACT").

(2) In the writ petition, filed through an Uncle, diverse grounds were taken, and some of them argued also, but the plea which has been pressed utmost during arguments, rather exclusively, is to the effect that the detention of the petitioner stands vitiated for the reason that a representation made by him on 11th April, 1988 was considered, and rejected by the officer, namely, the Joint Secretary above-named, who had passed the detention order, at his own level being an officer empowered u/s 3 of the Act. This plea is taken specifically in ground No. Xxi, of the additional affidavit filed on 4th April, 1989. No counter has been filed to this additional ground taken in spite of copy thereof having been delivered in the office of the Standing Counsel, at the time of hearing, however, Shri Sat Pal, learned counsel for Union of India did not dispute the fact that the representation

dated 11th April, 1988 (Annexure-E) which was addressed to the Joint Secretary (COFEPOSA), Government of India, Department of Revenue. Ministry of Finance, New Delhi, sent by the detenu from jail was disposed of by Shri K. L. Verma, Joint Secretary, under whose signatures the detention order was issued at his own level, and without having been put up to the competent authority, viz. the Central Government. This " fact is also borne out from the memorandum of rejection dated 27th April, 1988 (Annexure-F).

(3) In face these uncontroverted facts Shri Trilok Kumar, learned counsel for the petitioner, finally confined his arguments to this plea, placing reliance on the Full Bench judgment of this Court, in the case of Mohd. Saleem, v Union of India reported as 1989(3) DL 77(1) and contended that it was incumbent upon the specially empowered officer (Shri K. L. Verma) to place the representation before the appropriate government, which was the Central Government in this case so much so that even if the representation was addressed to him, even then it was his duty to put it up to the appropriate Government.

(4) The learned counsel submitted that the Full Bench has held categorically, setting all doubts in this regard at rest that in the event of a detention order having been passed by the Central Government, even though through a specially empowered officer, then there is only one right of representation and that representation must be considered and disposed of by the Central Government, and that in case it was not so put up before the Central Government, as in the present case, then the detention stands vitiated.

(5) In face of the Full Bench judgment Shri Sat Pal has no comments to make insofar as this proposition is concerned and also conceded, on the basis of the records received by him, that in this case the representation dated 11th April.. 1988, which was, according to him dated 15th April, 1988, was disposed of by Shri K. L. Verma, Joint Secretary, as a specially empowered officer on behalf of the Central Government, and had not been put up further to the Competent Authority. Shri Sat Pal also fairly conceded that the subsequent representation which the detenu made to the President of India, after the issuance of the declaration u/s 9(1), on 17th August, 1988 (Annexure-H) was in respect to the said declaration, though a prayer for revocation of the detention order was also added.

(6) Shri Trilok Kumar, placing reliance on the Division Bench judgment of this Court, reported as Vijaya Kumar Gujral Vs. Union of India and others, argued that a detenu has a separate, and independent right u/s 11 of the Act to make representation to the Central Government in respect of the declaration issued u/s 9(1) of the Act, and that the right guaranteed by Article 22(5) of the Constitution read with Section 3(3) of the Act to make a representation against the order of detention, passed u/s 3(1) of the Act; is an independent right, because whereas one is directed against the order of detention, the court is in respect to the declaration and the two rights are separate and independent of each other, and thus the fact that the second representation made on 17th August, 1988, after

the issuance of declaration u/s 9(1) of the Act on 5th April, 1988, was considered by the Central Government, as indicated by memorandum of rejection dated 1st September, 1988, after having been put up to the Minister who disposed to the same on 31st August, 1988 would not make any difference because of the fact that the right to make representation against the detention order u/s 3(1) of the Act was "an independent right as against the right of a representation against the declaration, as contemplated by Section 11 of the Act. This proposition has been enunciated, in another judgment of this Court reported as 1988 (2) Crime 543 Vinod Kumar Vohra v. Union of India & others (3), where it was held in categorical terms that a detenu has first right to make representation to the Competent Authority for revocation of the detention order passed u/s 3(1) of the Act, and a second and independent right to make a representation against the declaration issued subsequently in exercise of powers u/s 9(1) of the Act. Shri Sat Pal did not dispute this proposition also. It is also conceded on the basis of the records that although first representation was dated 11th April, 1988, whereas the declaration bears the date 5th April, 1988. but it had not been communicated to the petitioner at the time when he sent first representation on 11th April, 1988 and thus his earlier representation was directed exclusively and solely against the order of detention passed u/s 3(1) of the Act. This was admittedly not put up to the Central Government, but disposed of by specially empowered officer at his own level. The principle laid-down by the Full Bench in the case of Mohd. Saleem (supra) thus squarely applies, making it be a case, where the representation made by the detenu against the order of detention passed u/s 3(1) of the Act, has not been considered by the Competent Authority. The petitioner was thus deprived of his constitutional right of having his representation considered by the appropriate government. The continued detention of the petitioner is Therefore, liable to be revoked.

(7) The writ petition is, accordingly, allowed and rule is confirmed with the directions that the petitioner be set at liberty forthwith, if not required to be detained in any other case or proceedings. No order as to costs.