
(1989) 07 CAL CK 0017
In the Calcutta High Court
Case No : Civil Order No. 17731 (W) of 1988

Shashi Kant R. Chadha

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226(2)

Citation : (1990) 49 ELT 56

Hon'ble Judges : Mohitosh Majumdar, J

Bench : Single Bench

Advocate : F.M. Razack, for the Appellant;

Judgement

Mohitosh Majumdar, J.—The facts of the case giving rise to the filing of the writ application against the threatened orders of detention under the provisions of Conservation of the Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA hereafter) do not constitute any warrant for interference of this Court under Article 226(2) of the Constitution of India.

2. The basic facts are that the petitioner is a permanent resident of Bombay having residential Flat situated at Jailji Mansion, First Floor, 41, Mery Weather Road, Bombay - 39. The petitioner carries on business in Bombay. The petitioner's wife and children are the residents of Bombay. On July 6, 1987 the Officer attached to Directorate of Revenue Intelligence conducted a search of the petitioner's flat at Bombay in presence of the petitioner. Panchnama was prepared by the Officer and handed over to the petitioner. The petitioner along with his brother Ravi Kant Chadha was taken by the Officers of the Directorate of Revenue Intelligence to their office under arrest. The petitioner was informed by the Officers concerned attached to Directorate of Revenue Intelligence, Bombay that on July 2, 1987 the said Officers seized Dark Brown substance purported to be hashish which was concealed in 194 plastic drums of mango chutni for exportation thereof to London from India.

3. Seizure of the said brown substance was made by the Officers under the provisions of the Customs Act, 1962 and Narcotic Drugs and Psychotropic Substance Act, 1988.

4. On July 9, 1987 the petitioner along with two other persons namely, Pranlal Bhaichand Timbodia and Dayaram Khata Thakkar @ Shiba were produced before the Additional Chief Metropolitan Magistrate, Esplanade, Bombay along with a Remand Application being No. 329 of 1987. The petitioner filed an application before the Court on July 9, 1987 stating therein that the illegal detention of the petitioner for the period July 6, 1987 and July 9, 1987. The learned Magistrate directed the Jailor to get the petitioner examined by a Doctor and July 10, 1987 the petitioner made further application before the Additional Chief Metropolitan Magistrate for lodging further complaint relating to the illegal confinement at the hands of the officer concerned and the extortion of his statement. The petitioner was examined by Chief Medical Officer, Bombay Central Prison Hospital. On July 31, 1987 an application was filed by the petitioner before the learned Court in terms whereof once again the petitioner brought to the notice of the learned Court the manner in which the petitioner has been assaulted by Mr. Ahmadabad and Mr. Patel, officers of the Directorate of Revenue Intelligence.

5. On July 31, 1987 the prayer for bail made on behalf of the petitioner was considered and the petitioner was enlarged on bail on certain conditions which are quoted below :-

"I order that accused persons be released on bail. Each accused be released on P.R. & S.B of Rs. 10 lakhs. The order of bail to take effect from tomorrow at 1 P.M. On their release, accused persons should attend D.R.L Office every day until further orders. Accused persons will surrender their passports before release on bail if those are not taken charge of by the Department."

6. On December 30, 1987 a show cause notice was served on the petitioner under the provisions of the Customs Act, 1962. The petitioner came to know from his wife that an order of detention under the provisions of COFEPOSA issued by the Secretary (II) to the Government of Maharashtra, Home Department (Special) Mantralaya, Bombay.

7. The trail of incidents and the occurrences, as stated above, would show that the entire cause of action has arisen outside the jurisdiction of this Court.

8. On a careful analysis of the pros and cons of the matter, I am of the view that after relying on the decision in case of Kalyan Kumar Thavarchand Shah this Court has no jurisdiction to entertain this application under Article 226(2) of the Constitution of India and accordingly, the writ application is dismissed. All interim orders if they granted by this Court, are dissolved.

9. Mr. P.M. Razack, the learned Counsel appearing for the petitioner prays for stay of the operation of the order till July 21, 1989.

10. Considering the gravity of the entire matter as also the objection of the

learned Counsel appearing for the respondents to such grant of stay of operation of the order, I allow the stay of operation of the order only upto July 18, 1989. Respondents shall, thereafter, be at liberty to take steps in accordance with law.