

(1989) 06 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition (HC) No. 14 of 1989

Shivaji Dondoji Padaki

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 26-06-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
(COFEPOSA) — Section 3 (1), 3 (1) (iii)
Constitution of India, 1950 — Article 22 (5)
Customs Act, 1962 — Section 108

Citation : (1989) ILR (Kar) 2361

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : Kumar and Kiran S. Javali, for the Appellant; Shylendra kumar, Central Govt. Standing Counsel for R-1 and C. Shivappa, Advocate General for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—The petitioner, who is a detenu in Central prison, Bangalore, has challenged his detention. He is detained, as per an Order dated 7-11-1988 made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act"), since 17-11-1988.

2. The grounds of detention furnished to the petitioner refer to Section 3(1)(iii) of the Act, as the one under which the impugned order was made. The impugned order stated that the Detaining Authority was satisfied that the petitioner was to be detained with a view to "preventing him from engaging in transporting, concealing and keeping smuggled goods".

3. The facts in brief are that on 6-10-1988, Officers of the Department of Revenue Intelligence who had credible information, chased the car driven by the petitioner and stopped it; the car was coming towards Bangalore, from Tumkur

side. One Dilip Vimalchand was also found in the car.

4. The occupants of the car were searched and thereafter they along with the car were brought to the office of the Department. The search of the car revealed two packets concealed in the door panel board of the front side right door in which, on examination, 50 gold biscuits bearing foreign markings were found. These gold biscuits, valued at Rs. 19 lakhs, on an examination by an expert gold dealer, were opined to be of foreign origin and consequently they were seized under a mahazar.

5. The statements of the petitioner and Dilip Vimalchand were recorded u/s 108 of the Customs Act. The statement of two persons, - Vasantharaj and Prithviraj (whose names were furnished by the petitioner and Dilip Vimalchand) - were also recorded on the same day. Thereafter, other proceedings continued. On the basis of the materials collected, the first respondent made the impugned order.

6. Since the petitioner has no knowledge of English language, all the relevant papers (such as the order of detention, grounds of detention and other documents) were translated into Kannada (language known to the petitioner) and were furnished to him.

7. Mr. Kumar, the learned Counsel for the petitioner, advanced six contentions in support of the petition:

I. The petitioner was not given adequate opportunity to make his representation against the order of detention because (a) the Kannada version of the order of detention furnished to him does not convey the same meaning as the English version, in as much as, the word "keeping" found in the English version, is not found in the Kannada version; (b) one of the documents relied upon by the Detaining Authority, is a summons issued to the petitioner, translated copy of which has not been furnished to the petitioner at all.

II. In making the order of detention, reliance is placed on the statements of Vasantharaj and Prithviraj; however, their retractions were not placed before the Detaining Authority and considered by it.

III. Retraction letter of the detenu was not forwarded to the Concerned Authority and therefore the procedure followed was unfair.

IV. The assistance of the lawyer sought by the detenu to prepare his representation was denied to him.

V. Grounds of detention say that "retractions" were considered, copies of which were not furnished to the detenu.

VI. Representations of the detenu were not considered by the Competent Authority, but by the Detaining Authority who had no such power to consider them.

RE. CONTENTION NO. I

8. It is contended that the petitioner was furnished with the translated copies of the order of detention, and the grounds in support of the said order, etc., in Kannada. The order of detention passed in English states that the order was made u/s 3(1) of the Act "with a view to preventing him from engaging in transporting, "concealing and Keeping smuggled goods" (underlining is ours). But the Kannada translation of the order states that the order was made with a view to prevent him from engaging in "transporting, concealing and transporting smuggled goods." (underlining is by us). The "keeping of smuggled goods" attributed to the petitioner in the English version, is not attributed to him in the Kannada version.

9. In para-14 of the Writ Petition, it is averred as follows:-

"The petitioner submits that the order of detention in English reads that the petitioner is required to be detained with a view to preventing him from engaging in transporting concealing and keeping smuggled goods. Whereas the order of detention furnished to the petitioner in Kannada reads that he be prevented from engaging in transporting, concealing and carrying smuggled goods. The order of detention is therefore rendered bad at law since the order has created confusion in the mind of the detenu and is not in accordance with Section 3(1)(iii) of the Act and therefore affecting the right to make a meaningful representation. The order is rendered bad at law. The English translation of the order is produced for perusal of this Hon"ble Court."

10. In para-23, the petitioner asserts that "admittedly the petitioner does not know English language ...," This assertion is not denied in the counter-affidavit (vide paras 4, 17 and 26 of the affidavit filed on behalf of the first respondent). Therefore, it is contended that there was no proper communication of the order of detention, resulting in the deprivation of the petitioner's right to make an effective representation against the order of detention, thus contravening the provisions of Article 22(5) of the Constitution.

11. It was also argued that one of the documents referred in the grounds of detention is a "summons" in English, Kannada translation of which was also not furnished; to the petitioner. The plea is found at para-23 of the Writ Petition, which is traversed at para-26 of the "Affidavit in opposition". As the detenu had appeared in response to the said summons earlier, it is asserted by the first respondent, that, the petitioner was aware of the contents of the summons and hence failure to furnish its translation would not vitiate the order of detention.

12. The "summons" was part of a file supplied to the petitioner. It was not specifically referred in the grounds of detention. It can at the most, be referred as a trivial document. Hence, the contention of the petitioner that the failure to supply the translated copy of the document would vitiate the detention order, cannot be accepted.

13. The substantial attack is against the Kannada version of the order of detention. The learned Counsel for the Central Government urged that the order

of detention should be read with the grounds of detention and the Kannada version of the grounds of detention gives an accurate translation of the English version and therefore, the petitioner cannot plead that the order served on him did not convey the Intention of the Detaining Authority, and the purport of the order, made against the petitioner. Alternatively, the learned Counsel argued, that, even without the word "keeping", the other two facets of the offence which are independent of each other have been correctly stated in the Kannada version and hence the detention order is sustainable.

State of Gujarat Vs. Chamanlal Manjibhai Soni, was cited in support of the alternative contention. The relevant passage reads:

".....It is manifest that whenever the allegations of smuggling are made against a person who is sought to be detained by way of preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any other ground for detention, except the one which relates to smuggling. In our opinion, this is neither the object of the Act nor can such an object be spelt out from the language in which Section 5A is couched. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Section 5A was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicated to what extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Section 5A in order to make it clear that even if one of the grounds irrelevant but the other grounds are clear and specific that by itself would not vitiate the order of detention."

14. To the same effect is the principle stated in PUSHPADEVI M. JATIA v. M.L. WADHAVAN, ADDL. SECRETARY, GOVERNMENT OF INDIA AND ORS .

15. In Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, the principle was stated - "therefore, it must follow as an imperative that the grounds must be communicated in a language understood by the person concerned so as that he can make effective representation". Further, at page 697, it was clarified that, --

"To a person who was not conversant with the English language, in order to satisfy the requirement of the Constitution the detenu must be given grounds in a language which he can understand and in a script which he can read, if he is a literate person, in that case it was held that mere oral translation at the time of

the service was not enough."

(Underlining is ours)

16. It has to be noticed here that, for the purpose of Article 22(5) the opportunity to be given to the detenu, is to meet the "grounds" on which the order of detention rests. Though the representation is against the detention order, the representation has to be with reference to the grounds in support of it, as is clear from Article 22(5) of the Constitution, which reads:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order".

(Underlining is by us)

17. Sri Shylendra kumar also cited Devji Vallabhbbhai Tandel Ors. Vs. Administrator of Goa, Daman and Diu and Another, which, according to us, has a direct bearing on the facts of this case.

18. In Devji Vallabhai Tandel's case, the order of detention was in English and its Gujarathi translation was not served on the detenu. The detenu was furnished with English versions of the order and "the grounds of detention", as also the Gujarathi version of the grounds of detention. The contention of the detenu was that failure to supply the Gujarathi version of the order contravened Article 22(5) of the Constitution. This contention was negatived by the Supreme Court and at page 1035, Supreme Court observed, --

"So far as the non-supply of the Gujarathi version of the ORDER as per Annexure "A" was a mere formal recital of Section 3(1) of the COFEPOSA showing the provision of law under which the order of detention has been made.

Although, the Section of the COFEPOSA has not been mentioned in the last but two paragraphs of the "grounds", it has been stated that the detenu engaged himself "in smuggling goods and that there is sufficient cause to pass detention order against you with a view to preventing you from smuggling goods", which was in Gujarathi. It cannot, therefore, be said that the detenu was in any way handicapped in submitting his representation, or there has been any violation of Article 22(5) of the Constitution."

Again, after referring to Nainmal Partap Mal Shah Vs. Union of India (UOI) and Others, Supreme Court proceeded to say:

"The decision cited has not held that the order expressed in terms of Section 3(1) of the COFEPOSA must also be in the language understood by the detenu. Section 3(1) as stated above merely gives power of detention to the Detaining Authority."

(emphasis supplied here)

19. Admittedly, the provision of law has been correctly referred in the opening para of the Kannada version of the grounds supplied to the petitioner; no grievance is made against any of the narration of facts and the comments or inferences stated in the Kannada version of the grounds. Thereafter in para-10 of the grounds, the Detaining Authority expressed his satisfaction thus:

"Therefore, without prejudice to the action that may be taken against you under the Customs Act, 1962 and the Gold Control Act 1968 in the course of adjudication and prosecution proceeding by the Customs Authorities, I am satisfied that it is necessary to detain you under the COFEPOSA Act, 1974 (as amended) with a view to preventing you from engaging in transporting, concealing and keeping smuggled goods".

The Kannada translation of this statement also correctly conveys the meaning and the word "keeping" is also found in the Kannada version accurately translated. Therefore, it is clear that the grounds of detention were "communicated" to the detenu in the manner contemplated by Article 22(5) of the Constitution, read with the principles enunciated by the Supreme Court.

20. The ratio of the decision of the Supreme Court in Devji Vallabhai's case⁴ shows that when the grounds of detention are properly communicated to the detenu, in the language known to him, failure to furnish" the detention order in the language known to the detenu will not render the detention illegal.

21. The learned Counsel for the petitioner, however, contended that when the order of detention is communicated to the detenu in the language known to him, but the said order differs from the conclusion arrived at in the "grounds of detention" as communicated to the detenu, there will be confusion in the mind of the detenu. The "grounds of detention" here according to the learned Counsel, travels beyond the order of detention and since they do not tally with each other, It was not possible for the detenu to make an effective representation. Learned Counsel for the petitioner draws a distinction between a case where the order of detention is served in English with the grounds of detention only being translated in the language known to the detention (as in Devji Vallabhai's case) and the case where both the "orders" and the "grounds" are translated and supplied to the detenu. In the former case detenu may infer the English version of the order, from what is stated in the grounds; but in the second situation, detenu will find material discrepancies between the "order" and the satisfaction expressed in the grounds; hence, It is contended that there is every likelihood of confusion in the mind of the detenu falling under the latter situation.

22. Facts and situations differ from cases and cases. Here is a detenu residing in Hubli, paying a monthly rent of Rs. 1,500/-. He is a man of substantial means; he owns a car which, he runs for hire engaging a driver. He has the facility of a telephone in his house; he is also building a new house; he is also employed in a concern, in which his wife has invested a large capital. He was indulging in the

activities of disposing off smuggled gold, even on earlier occasions according to his statement recorded u/s 108 of the Customs Act. He may be Ignorant of the English language and understood only the Kannada version of the order served on him, which conveyed the Idea that, he was to be prevented from engaging in "transporting", concealing and "transporting" smuggled goods; word "transporting" got repeated in the Kannada version of the order. However, para-10 of the Kannada version of grounds of detention, after narrating all the facts of the case, says that it was to prevent him from engaging in "transporting, concealing and keeping" the smuggled goods. The narration of the facts, the summary of the materials referred by the Detaining Authority and the satisfaction arrived at by him at para-10 of the grounds conclusively show that there cannot be any confusion in the mind of the petitioner in respect of which he has to make the representation. The grounds are clear and specific and the requirement is to supply a proper translation of the grounds.

Consequently, we reject this contention of Sri Kumar, the learned Counsel for the petitioner.

RE. CONTENTION NO. II TO VI - Paras 23 to 31 Same as in Order Reported Supra Pages 2357 to 2360

32. In view of our above conclusions and for the reasons stated above, this petition fails and is dismissed.