
(1974) 11 KAR CK 0001
In the Karnataka High Court

Smt. S. Krishnaveni

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-11-1974

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3 (1) (c), 3 (2)

Citation : (1975) CriLJ 1363

Hon'ble Judges : V.S Malimath, J;M.S. Nesargi, J

Bench : Division Bench

Judgement

V.S. Malimath, J.—Smt. S. Krishnaveni has challenged the detention of her husband T. Sreenivsa Setty, S/o J. G. Thimmaiah Setty, No. 27, Chowdeshwari Temple Street, Bangalore-53. made by the Commissioner of Police, Bangalore City, by his order dated 27th September, 1974, marked as Exhibit-A, in exercise of the powers conferred by Sub-section (2) of Section 3 read with Section 3 (1) (c) of the Maintenance of Internal Security Act, 1971 (Central Act 26 of 1971) as amended by the Maintenance of Internal Security (Amendment) Ordinance, 1974 (hereinafter referred to as the Act). The order states that the detenu has been detained with a view to prevent him "from acting in any manner prejudicial to the conservation of foreign exchange or with a view to preventing him from smuggling goods or abetting other persons to smuggle goods or dealing in smuggled goods". In accordance with the said order, the detenu has been detained in the Central Jail at Bangalore. The grounds of detention which have been furnished to the detenu, a copy of which has been produced along with the statement of objections of respondents 1 and 3 read as follows:

In pursuance of Sub-section (2) of Section 3 R/W Section 3 (1) (c) of the Maintenance of Internal Security Act, 1971 (Central Act 26 of 1971) (Amendment) Ordinance. 1974, you are hereby informed that the grounds on which the Detention Order in pursuance of which you have been detained has been made are as follows:

(1) That on 19/10/1968 the Head-Quarters Preventive Staff of Central Excise has

seized 11 pallets of gold with foreign markings and cash of Rs. 1,795/- from the possession of one Harinatha Gupta who was working as a Clerk under you. He has stated that the Cash of Rs. 1,795/- were the sale proceeds of gold and the rest of the gold was handed over by you. In this connection a case was taken up by the Central Excise Authorities.

(2) That during the month of March 1974 the staff of the Cochin Collectorate Central Excise have seized silver worth of Rs. 30,00,000/- from Hajee Abdul Khader Kalatra at the time of illicit removal near Kasargod. Investigation disclosed that you were an a better and acted in collection of silver for Sri Hajee Abdul Khader Kalatra. A case is pending with the Cochin Collectorate.

(3) This your conduct as revealed in every one of the aforementioned instances that you were acting prejudicial to the conservation of Foreign Exchange, smuggling foreign goods and abetting other persons to smuggle goods and dealing in smuggled goods.

This order of detention is therefore made.

If you desire to make any representation against the said order of detention, you may address it to the Commissioner for Home Affairs and Secretary to the Government of Karnataka, Home Department, Vidhanasoudha, Bangalore-1, through the Supdt. of Central Jail, Bangalore.

You are further informed that you have right to claim a personal hearing before the Advisory Board and if you desire to be heard you should communicate your intention in writing to Commissioner for Home Affairs and Secretary to Government of Karnataka, Home Department, Vidhanasoudha, Bangalore-1, as soon as possible.

sd/- (M.L. CHANDRASEKHAR) Commissioner of Police, BANGALORE CITY.

It is not disputed that the action taken by the Commissioner of Police, Bangalore City, has been approved by the State Government.

2. The principal contention of Sri M. K. Nambiar, learned Counsel appearing on behalf of the petitioner, is that the order of detention is illegal and invalid, inasmuch as, the detaining authority, namely, the Commissioner of Police, Bangalore City; has passed the impugned order without applying his mind. The argument of Sri Nambiar is that though the statutory provision under which the impugned order has been made contemplates detention being made on several independent grounds, the order does not disclose that the detaining authority was satisfied about the grounds stated in the order of detention. It may be mentioned at this stage that though at one stage it was sought to be contended that Respondent No. 3 - the detaining authority has no competence to pass the impugned order of detention, during the course of the argument, Sri M. K. Nambiar fairly submitted that respondent No. 3. has the necessary competence to pass the impugned order. The relevant portion of Section 3 (1) (c) of the Act reads as follows:

3. Power to make orders detaining certain persons - (11 The Central Government or the State Government may - (c) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to the conservation of foreign exchange or with a view to preventing him from-

- (i) smuggling goods, or
- (ii) abetting other persons to smuggle goods, or
- (iii) dealing in smuggled goods.

3. If we analyse Section 3 (1) (c) of the Act. it will be clear that it contemplates four grounds for detention namely, (1) to prevent the detenu from acting in any manner prejudicial to the conservation of foreign exchange; (2) to prevent the detenu from smuggling goods; (3) to prevent the detenu from abetting other persons to smuggle goods; and (4) to prevent dealing in smuggled goods. Having regard to the fact that the Legislature has employed the disjunctive word "or", the grounds specified in Clause (c) of Section 3 (1) of the Act must be construed as separate grounds. The nature of the activities contemplated by the said provision also lead to the same inference. The learned Advocate-General appearing for respondents 1 and 3, however, contended that what Section 3 (1) (c) of the Act contemplates is not four separate grounds of detention, but only one ground of detention i.e., prevention of activities prejudicial to the conservation of foreign exchange. It was contended that smuggling goods, abetting other persons to smuggle goods and dealing in smuggled goods are really the sub-heads falling under the main ground, namely, "conservation of foreign exchange". It is necessary to bear in mind that the expression "conservation of foreign exchange" has not been expressly defined in the Act to include within its ambit smuggling of goods, abetting other persons to smuggle goods and dealing in smuggled goods. On the contrary the scheme of the Act makes it clear that the Legislature has treated all the four items as separate and independent grounds. This will be clear if we examine Section 16-A of the Act. Sub-section (1) of the said provisions, which is relevant for our purpose, is as hereunder:

Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention has been made under this Act may be detained without obtaining the opinion of the Advisory Board for a period longer than three months but not exceeding one year from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting other persons to smuggle goods and the Central Government has reason to believe that such person:

- (i) smuggles or is likely to smuggle goods, or
- (ii) abets Or is likely to abet other persons to smuggle goods, into, out of or

through any specified area as defined in Clause (c) of Section 11-H of the Customs Act, 1962 (52 of 1962).

This is an enabling provision entitling the authorities to detain a detenu for a period longer than 3 months, but not exceeding one year from the date of detention, if the conditions specified in Section 16-A are satisfied, without obtaining the opinion of the Advisory Board. But this right is confined only to cases of smuggling of goods or the abetment of the smuggling of goods. If Section 3 (1) (c) of the Act contemplated only one ground under the heading "conservation of foreign exchange", the distinction contemplated by Section 16-A of the Act would not have been made. u/s 16-A of the Act, detention cannot be made without seeking the opinion of the Advisory Board beyond a period of three months in cases of conservation of foreign exchange and in cases pertaining to dealing in smuggled goods. As these two items covered by Section 3 (1) (c) have not been included in Section 16-A of the Act, it becomes clear that the Legislature treated the four items, specified in Section 3 (1) (c) of the Act as separate and independent grounds.

4. In *Kishori Mohan Bera Vs. The State of West Bengal*, the Supreme Court was required to construe another part of the same section of the Act, namely Section 3 (1) (a) (ii). The provision which the Supreme Court was required to construe is as follows:

the maintenance of public order or security of the State.

As the disjunctive word "or" has been used, the question for consideration was as to whether Section 3 (1) (a) (ii) contemplates two independent grounds or not? Having regard to the use of the disjunctive word "or", the Supreme Court ruled that the security of the State and the maintenance of public order are separate and independent grounds of detention. In view of the said decision of the Supreme Court and for the reasons we have already stated we have no hesitation in rejecting the contention of the learned Advocate-General that Section 3 (1) (c) of the Act contemplates only one ground under the heading "conservation of foreign exchange" and that the other items, namely, smuggling of goods, abetting other persons to smuggle goods and dealing in smuggled goods are not separate and independent grounds,

5. Having regard to the scope of Section 3 (1) (c) of the Act, we have now to examine the contention of the petitioner in regard to the validity of the impugned order of detention. The contention of the learned Counsel for the petitioner is that the detaining authority has not applied its mind and that it was not really satisfied about the existence of the grounds for detention. In the impugned order, which we have already extracted above, the disjunctive word "or" has been used after each ground. We find from the impugned order that all the four grounds contemplated by Section 3 (1) (c) of the Act are stated. The detaining authority does not state that it was satisfied about any one of the four grounds. The order also does not disclose that the detaining authority was satisfied that all

the four grounds exist inasmuch as, the conjunctive word "and" has not been used after each ground. A bare reading of the order makes it clear that it is only a mechanical reproduction of the language of Section 3 (1) (c) of the Act. What gives jurisdiction to the detaining authority to make an order of detention u/s 3 (1) (c) of the Act is its satisfaction about the existence of one Or the other grounds mentioned in Section 3 (1) (c) of the Act The order of detention, which has the effect of depriving the liberty of a citizen without any trial, has to be construed very strictly as it makes serious infringement on the fundamental rights of the citizen. As laid down by the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the Officer making the order of what he meant, or what was in his mind or what he intended to do and that public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. We must therefore be guided by the language used in the impugned order and not by what is subsequently stated as to what the detaining authority meant by the order which he had already issued. As Section 3 (1) (c) of the Act mentions four different grounds for detention, the order of detention should specify definitely the ground of detention. It would not, in our opinion, be permissible for the detaining authority to state that the detenu has been ordered to be detained on ground (a) or ground (b) or ground (c) or ground (d), as has been done in the instant case. The use of the word "or" in the present order clearly indicates that the order has been made by the detaining authority in a very casual manner without applying its mind. A similar order made u/s 3 (1) (a) (ii) of the Act, where the disjunctive word "or" was used, came up for consideration in the case of Kishori Mohan Bera Vs. The State of West Bengal, Having regard to the use of the disjunctive word "or" the Supreme Court came to the conclusion that there was no application of the mind of the detaining authority and that therefore the order of detention was illegal and invalid. The learned Advocate-General, however, placed reliance on another decision of the Supreme Court between Ananta Mukhi alias Ananta Hari Vs. The State of West Bengal, In that case, the Supreme Court was required to construe an order made u/s 3 (2) Of the West Bengal (Prevention of Violent Activities) Act (19 of 1970). wherein the ground for detention was "acting in any manner prejudicial to the security of the State or the maintenance of public order". The order made in that case with the disjunctive word "or" was upheld by the Supreme Court. But, it is necessary to point out that in the West Bengal (Prevention of Violent Activities) Act (19 Of 1970) the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" was expressly defined making it clear that it constituted one single ground of detention. But so far as the present case is concerned, there is no such definition from which an inference could be drawn that what Section 3 (1) (c) of the Act contemplates is only one ground of detention, which aspect we have already discussed earlier. Hence, no assistance

can be derived from the decision of the Supreme Court in Ananta Mukhi's case.

6. Our inference that the impugned order has been made without the application of the mind by the detaining authority is further strengthened by the grounds of detention supplied to the detenu and the statement of the detaining authority contained in the statement objections. After narrating two independent grounds, this is what is stated in the grounds of detention furnished to the detenu:

This your conduct as revealed in every one of the aforementioned instances that you were acting prejudicial to the conservation of Foreign Exchange, smuggling foreign goods and abetting other persons to smuggle goods and dealing in smuggled goods.

In the ground the conjunctive word "and" has been employed to convey the idea that the detaining authority was satisfied that all the four grounds specified in Section 3 (1) (c) exist in the present case. But in the affidavit filed by the detaining authority this is what is stated in paragraph 3 of the affidavit:

The order is passed by me on a careful and objective examination of the material placed before me which justify the conclusion reached by me viz., that the detention of the detenu Sri Srinivasa Shetty was necessary in order to prevent him from acting in any manner prejudicial to the conservation of Foreign Exchange and with a view to preventing him from smuggling goods or abetting other persons to smuggle goods or dealing in smuggled goods.

The detaining authority has used the conjunctive word "and" after the expression "Conservation of foreign exchange" and has used the disjunctive word "or" in regard to other grounds. It is, therefore, clear that there is no consistency in the manner of expressing satisfaction by the detaining authority. One thing is stated in the order, another in the grounds and third in the affidavit filed in the writ petition. This inconsistency further strengthens our inference that the impugned order has been made by the detaining authority without the application of mind, in a mechanical manner reproducing the language employed in Section 3 (1) (c) of the Act. We have, therefore, no hesitation in questioning the impugned order of detention.

7. As we are allowing this writ petition on the first ground urged by Sri M. K. Nambiar, we consider it unnecessary to deal with the other contentions urged by him. It is further necessary to deal with one aspect of the matter in regard to the impleading of respondent No. 2 - the Collector of Central Excise, Bangalore. The Collector of Central Excise is only an authority which took the initiative in moving the detaining authority to pass the impugned order by placing necessary material before it. Such an authority is neither a necessary nor a proper party. Impleading of unnecessary parties in habeas corpus petitions would lead to unnecessary protraction of the hearing of the case, which must be avoided.

For the reasons stated above, we allow the writ petition, quash the impugned order of detention made by the Commissioner of Police, Bangalore City, bearing

No. SB/514/Misc/74 dated 27-9-1974 and direct respondents 1 and 3 to set at liberty the detenu Srinivasa Shetty forthwith. No costs.