
(1980) 01 DEL CK 0028

In the Delhi High Court

Case No : Criminal Writ Appeal No. 71 of 1979

Sunita Sharma

APPELLANT

Vs

The Administrator, Delhi Administration and Another

RESPONDENT

Date of Decision : 09-01-1980

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1980) 17 DLT 525

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Harjinder Singh and K.K. Sud, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) By our order dated 9th January, 1980 we had accepted the habeas corpus petition filed by the wife of the detenu Shri Shyam Kishan Sharma and ordered his release from custody. In the said order we had indicated that the reasons For our decision would be given subsequently. The reasons for allowing the writ petition and ordering release of the detenu are given hereinafter.

(2) According to the petitioner the premises of the detenu were raided on 5th August, 19 79 by the Customs Officer. This raid was organized after a large number of watches had been seized at the Palam Airport on 4th August, 1979 nothing incriminating was recovered except that some trade goods like cosmetics, whisky, camera, fabrics etc. of foreign origin valued at Rs. 8,500.00 were recovered and seized. At about 12 noon on 5-8-79 the detenu was taken into custody. An application for bail was filed on 6-8-79 and the detenu was ordered to be released on bail 31-8-79. On 23rd September, 1979 the detenu was served with an order of detention dated 22nd September, 1979. The detenu was taken into custody and sent to Central Jail, Tihar, New Delhi. This order of detention was passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the said

Act"). On 28th September, 1979 the detenu was given grounds for detention. It is the contention of the petitioner that a number of documents, all the documents were not given to him. On 22nd October, 1979 the Advisory Board met but on a representation being made by the detenu for the supply of the rest of the documents, (before the) Advisory Board took any decision, the meeting was adjourned on 29th October, 1979. On 27th October, 1979, according to the petitioner, some more documents were given for inspection. Ultimately on 6th November, 1979 the representation was rejected.

(3) The petitioner filed the present writ petition and prayed for a writ of habeas corpus to be issued for the release of her husband. The return to the petition had been filed by Shri D.R. Kohli, the Administrator and also by Shri W. C. Khambra, Under Secretary (Home-P), Delhi Administration, Delhi.

(4) At the time of the hearing of the case Shri K K. Sud, the learned counsel for respondents, made available to the court the original file in which the order of the Administrator had been passed. The perusal of the file shows that the Customs Department had made a proposal for the detention of the detenu on the ground that he was indulging in smuggling activities. The proposal was placed before the Screening Committee who gave its report recommending the detention of Shri Shyam Kishan Sharma as well as four other persons. The immediate cause for the said proposal being made was the recovery of large number of wrist watches on 4th August, 1979 at the Palam Airport. It was alleged that different types of wrist watches valued at about Rs. 2,08,000.00 were recovered from 22 small packets wrapped in Khaki paper from the toilet of the British Airways aircraft which landed at Palam Airport on 4th August, 1979. The allegation appears to be that Shri Sharma was involved in the smuggling Along with S/Shri Chander Singh, Net Ram, Babu Lal and Prem who were also the employees of the British Airways as loaders. The report of the Collector of Excise and other material on record was put up before the Administrator who passed the following order on 20th September, 1979:

"I have perused the report of the Collector of Central Excise and other material provided therewith as also the examination of the case by the Screening Committee. It is clear that Shri S.K. Sharma is an habitual smuggler and Shri Chander, Shri Net Ram, Shri Babu Lal and Shri Prem have been his collaborators in more than one case. In the circumstances, I accept the view of the screening committee that it is necessary to detain them to restrain them from carrying their illegal activities in the nature of smuggling of watches and approve of detention of the five accordingly."

(5) Subsequently the detention orders of the aforesaid five persons including Shri S.K.. Sharma were prepared and were signed and authenticated by Shri W.C. Khambra. The detention order as well as the ground of detention which were served on the detenu were never placed before the Administrator before they were issued. The order of detention was dated 22nd September, 1979 and the operative portion of the same read as follows :

"1. Whereas, the Administrator of the Union Territory of Delhi is satisfied with respect to the person known as Shri Syam Narain r/o B-11, Green Park Extension, New Delhi that with a view to preventing him from smuggling goods, viz. watches and dealing in smuggled goods viz. watches) it is necessary to make the following order. 2. Now Therefore, in exercise of the powers conferred by S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 the Administrator of the Union Territory of Delhi hereby directs that the said Shri Shyam Krishana Sharma be detained and kept in custody in Central Jail, Tihar, New Delhi."

It will be seen from the above whereas the Administrator had passed an order that the persons should be detained in order to restrain them from smuggling watches the impugned order states that the order had been passed with a view to preventing the detenu from smuggling goods viz. watches and dealing in smuggled goods. In other words whereas the order of detention passed by the Administrator was passed only on one ground, namely, smuggling of watches, the impugned order mentions two distinct grounds i.e. smuggling watches, which would be covered by Section 3(1), and dealing in smuggled goods, which

(6) The grounds which were served on the detenu were also issued under the signature of Shri W.G. Khambra. In the said grounds it is, inter alia, stated that the information which was received was that Shri S.K. Sharma was receiving smuggled goods (watches) with the active connivance of some cleaners of the seizure of the watches on 4-8-79. In the grounds it is also stated that the four cleaners made statements to the effect that the packets containing the watches were removed from the toilet of the aircraft at the instance of Shri S.K. Sharma. After referring to the raid at the detenu's house on 5th August 1979 the said grounds refer to a statement dated 6-8-79 alleged to have been made by the detenu. The contents of the alleged statement, as set out in the grounds, inter alia are that one Shri Rajan, an employee of the British Airways had informed Shri S. K. Sharma that the contraband watches were coming to Delhi from Hong Kong; that the arrangement for the dispatch had been made by Rajan through one Shri S.K. Mohan and Shri Santosh; that the detenu was to receive from the British Airways aircraft and delivered to Rajan; that on information being given by the detenu one Shri Chander Singh arranged for the removal of the contraband goods from the aircraft; that 12 packets containing the smuggled goods were delivered to the detenu on 5th August 1979 and on the same day the detenu delivered these watches to Rajan and received Rs. 7000.00 being 25% of the share of the profit.

(7) The aforesaid statement was retracted by the detenu in his application for bail filed on 6-8-79. It was alleged that the said statement has been recorded under torture, duress and promise. At the time of the arguments Shri Harjinder Singh on behalf of the petitioner had raised a number of contentions. It is not necessary to deal with all of them as on the face of it the impugned order had to be quashed. Under Article 22(5) a detenu has a valuable right of making a

representation against the order of detention. It is true that Article 22(5) does not in terms require the furnishing of a copy of the order of detention to the detenu. The said sub-article expressly requires the communication of the grounds of detention to the detenu. But by affording a detenu an opportunity of filing a representation against the order of detention it is evident that a copy of the order of detention also has to be served on the detenu. Without the order it is impossible for a detenu to make representation against it. It is for this reason that the order dated 22nd September, 1979 was served on the detenu. We, however, find that what purports to be order of detentions as communicated in the order under the signatures of Shri W.C. Khambra dated 22nd September, 1979 is in fact not the order of detention passed by the Competent Authority. The order of the Competent Authority, viz. of the Administrator, dated 20th September, 1979 was passed only on one ground, namely that Shri S.K. Sharma was carrying on the illegal activity of smuggling of watches. Despite all the material having been placed before the Administrator he did not choose to pass an order on the ground that Shri S.K. Sharma was dealing in smuggled watches. It is evident that the order dated 22nd September, 1979 served on the detenu which sets out two grounds of detention was not the order passed by the Lt. Governor. The author of the order of 22nd September, 1979 was Shri W.C. Khambra himself and not the Competent Authority. The actual order of detention of 20th September, 1979 not having been served within the prescribed period, the detention of the detenu as clearly illegal.

(8) It will further be seen that the grounds which have been supplied to the detenu do not reveal any smuggling activity, being carried out on the part of Shri S.K. Sharma. The grounds any make out a case for dealing in smuggled goods, or abetting in smuggling goods or engaging in transporting of smuggled goods. The grounds clearly do not even allege that the detenu was responsible for the illegal importation of the goods into India. In our view there appears to be non-application of the mind on the part of the Competent Authority who ordered the detention on the serious charge of smuggling of watches without the ground disclosing any material on record justifying such a suspicion. As per the grounds supplied to the detenu it was only M/s Rajan, S.K. Malhan and Santosh who could be regarded as smuggling the watches. The only part which S.K. Sharma was required to play to get the watches removed from the aircraft after it had reached the Palam Airport. S.K. Sharma was not concerned with the dispatch of the contraband watches from Hong Kong and nor was he the carrier of the said contraband watches. It was not alleged that the detenu was a member of any gang of smugglers. Taking the grounds as served of any gang of smugglers. Taking the grounds as served on the detenu we are of the opinion that no reasonable person could have come to the conclusion or have a suspicion that Shri Shyam Kishan Sharma was smuggling watches.

(9) It is for the aforesaid reasons that we allowed the writ petition and ordered the detenu to be realised forthwith unless he was required in some other criminal case or could be detained under any other valid order.