
(1992) 02 DEL CK 0088

In the Delhi High Court

Case No : Criminal Writ Appeal No. 276 of 1991

Syed Nasir Ali

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-1992

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Customs Act, 1962 — Section 108

Citation : (1992) 46 DLT 471 : (1992) 22 DRJ 451

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Trilok Kumar, M.D. Taneja, K.K. Manan and Kamal Nijhawan, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) This petition under Article 226 of the Constitution of India has been filed challenging the order of the Joint Secretary to the Government of India dated 6.2.91 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(2) The detenu was apprehended by the officers of Directorate of Revenue Intelligence on 21.1.91 from his residence pursuant to arrest of co-detenu Shri Hamza Nozoglu (A Turkish National) on 15.1.91, in a case of seizure of 40 foreign marking gold bars, weighing one kilogram each from a van driven by the aforesaid Turkish National. The alleged seizure of gold was allegedly effected by the officers of Dri from the said van belonging to Hamza Nozoglu which was parked outside Kailash Inn, where Shri Hamza Nozoglu was staying since 13.1.91. Shn Hamza Nozoglu was apprehended by the officers of Dri on 15.1.91 and his alleged statement u/s 108 of the Customs Act, 1962 was recorded. Shri Hamza in his statement has allegedly stated that he was to hand over the seized gold to the detenu at the instructions of one Shri Raza Ansari of Dubai. The

detenu was apprehended from the two telephone numbers given by Shri Hamza in his alleged statement.

(3) It is the admitted position that the detenu was arrested because of the statement which he made on 21.1.91. This statement was retracted by the detenu on 2nd February, 1991. The retracted statement was sent by registered A.D. to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi, which was received by the respondent. The petitioner has submitted the original receipt of the registry and the A.D. card on page 47 of the paperbook.

(4) Mr. R. Desikan, Under Secretary to the Government of India, has filed the counter-affidavit on behalf of the respondents on 15th July, 1991. In the counter-affidavit, it was denied that the detenu was asked to sign certain documents, contents of which were not read over to him. It is further mentioned that no letter dated 2.2.91 stated to have been sent to the Joint Secretary has been received in the Cofeposa Unit. It is further mentioned that the reason of sending the letter to the Joint Secretary instead of Dg, Dri is best known to the petitioner. This fact has not been denied that the said letter was sent to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi. In rejoinder, the detenu has mentioned that he specifically sent the letter dated 2.2.91 of retraction, to the Joint Secretary instead of Dg, Dri because there was an apprehension in the mind of the detenu that the sponsoring authority will send the proposal Along with the necessary documents withholding his retraction letter for retraction under the Act to him and the Joint Secretary will ultimately pass the impugned order of detention against the detenu. The detenu further submits that in order to avoid such a situation, the retraction letter was directly sent to respondent no.2. It is also submitted that the Joint Secretary to the Government of India to whom the aforesaid letter of retraction has been addressed, is, in any case a functionary of the same Department of Revenue, Ministry of Finance, New Delhi, duly empowered under the law to. pass the order of detention under the Cofeposa Act. It may be relevant to mention that the Joint Secretary has never raised the objection of receipt of the said letter of retraction and in view of the other documentary evidence to establish that the same was sent to the Joint Secretary, there is no iota of doubt that the same was sent to the Joint Secretary.

(5) The petitioner has made grievance that his retracted statement has not been considered by the detaining authority. This retracted statement was not admittedly placed before the detaining authority, resulting in misconceived statement about the voluntary nature of the detenu's statement.

(6) Mr. Kumar who argued the matter on behalf of the detenu slates that the statement which was relied upon by the detaining authority on the premises that the same is voluntary is wholly erroneous and has caused serious prejudice to the detenu in the matter of detention. It was also argued that serious prejudice has been caused inasmuch as the detaining authority has proceeded-on

erroneous premise" that the detenu's alleged statement is voluntary. The detenu had already retracted his statement and the retraction was not placed before the detaining authority.

(7) Learned counsel for the petitioner has drawn my attention to the case of *Asha Devi vs. K. Shivraj and another*, Air 1979 Sc 447. In this case, the Supreme Court held that the questions whether the confessional statements recorded earlier were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements by the detenu was in the nature of an afterthought, were primarily for the detaining authority to consider before deciding to issue the detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority one way or the other were neither placed before nor considered by the detaining authority it was held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the detention order invalid and illegal.

(8) Learned counsel for the petitioner has further drawn the attention of this court on a decision of the Supreme Court in *Ms. Tsering Dolkar vs. The Administrator, Union Territory of Delhi and others*. 1987 CRJ988 = Air 1987 S.C. 192. In this case, the Court has held that in the matters of preventive detention, the test is not one of prejudice but one of strict compliance with the provisions of the Act and when there is a failure to comply with those requirements, it becomes difficult to sustain the order. Mr. Kumar for the petitioner also brought to my notice the case of *Suresh Vs. Union of India and Others*, . In this case also, the material which was placed before the detaining authority implicating the petitioner was the statement made by the petitioner u/s 108 of the Customs Act, 1962. The statement retracting the confessions could not be brought to the notice of the detaining authority. This court in the said case quashed the impugned orders for not placing the said statement retracting the confession before the detaining authority.

(9) In 1988 (3) Crimes, 202, it was held that after material document containing the retraction of confessional statement is not placed before the detaining authority, the detention order would stand vitiated.

(10) On careful analysis of all these Judgments, the position which clearly emerges is that non-placement of retracted statement clearly vitiates the detention order particularly when there was no other material to connect the detenu with the incident except the statement which stands retracted on 2nd February, 1991.

(11) In these circumstances, I allow the writ petition, make the rule absolute and quash the detention order dated 6.2.91. The petitioner will be set at liberty forthwith unless required to be detained under any law.