
(2009) 04 MAD CK 0043
In the Madras High Court
Case No : H.C.P. No. 1091 of 2008

T. Ananthi

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Customs Act, 1962 — Section 104, 112, 125, 132, 135

Citation : (2009) 04 MAD CK 0043

Hon'ble Judges : Elipe Dharma Rao, J;C.T. Selvam, J

Bench : Division Bench

Advocate : B. Kumar for A.K.S. Thahir, for the Appellant; N.R. Elango, Addl. P.P. for R.1 and R.3 and M. Gopikrishnan, SCGSC R.2, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Heard the learned Senior Counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

2. It is contended by the learned senior counsel appearing for the petitioner that the impugned order of detention was passed on the basis of a

single and solitary incident of an alleged act of smuggling of goods, which can never be a justifiable ground for invoking the harsh provisions of

preventive detention law under COFEPOSA. It was further contended that it was not an organised act or manifestation of an organised activity.

According to the learned senior counsel, the test in such cases is to see whether the act is such that it gives rise to an inference that the person

would continue to indulge in similar prejudicial activity. The tortured, dictated, extorted and retracted statements of the accused/detenu, will never

be a sufficient ground for detention under a dark law.

3. To analyse the above said ground, the learned senior counsel appearing for the petitioner has taken us through the grounds of detention to show

under what circumstances the impugned order of detention was passed.

On 29.1.2008, the detenu, who is holder of an Indian passport No. B1894254 dated 11.5.2000, arrived at Chennai from Kuala Lumpur by Jet

Airways. He was intercepted by the Customs Officer in Anna International Airport, Chennai, while he was crossing through "Green" Chennai, on a

reasonable suspicion that he might be carrying some dutiable item like gold by way of concealment; when questioned, the detenu declared that he

was not carrying any such item. Not satisfied with his declaration, the Officer took the detenu along with his two checked-in-baggage to the Air

Intelligence Unit Room situated at the Arrival Hall of the Anna International Airport for a detailed examination. Before examination, the detenu was

asked again for the declaration of goods and money, if any carried by him, in the presence of two independent witnesses, to which, he reiterated

that he was not carrying any dutiable item, like gold, etc. On examination, he was found in possession of 500 Malaysian Ringits and on opening

one of the checked-in-baggage, a grey and black colour "Campro" stroller suitcase, a white paper packet covered by a cellophane tape was

found concealed among his personal effects and on cutting open the white paper, it was found that new gold jewellery was packed in a plastic

pouch and covered with carbon paper, weighing 904 grams; thereafter, the blue colour "Polo" Zipper bag was opened a similar packet was found,

and on cutting open the same, old gold jewellery weighing 270 grams were found. A personal search of the detenu was conducted in the presence

of the witnesses and nothing incriminating was recovered. When the detenu was asked about the concealment of the gold jewellery, the detenu

admitted the offence. Therefore, the detenu was arrested on 29.1.2008 u/s 104 of the Customs Act 1962 as there were reasons to believe that he

is guilty of an offence punishable under Sections 132 and 135 of the Customs Act 1962 for having attempted to smuggle the gold jewellery valuing

Rs. 12,34,182/= by way of mis-declaration and concealment. Thereafter, he was produced before the learned Additional Chief Metropolitan

Magistrate, E.O.II, Egmore, Chennai, who remanded him to judicial custody upto 11.2.2008. Thereafter, the order of detention was passed on

12.3.2008.

4. Learned senior counsel pointed out that the detenu has given a voluntary statement before the Customs Official on 29.1.2008 explaining the sequence of events that the gold jewellery weighing 1174 grams was given to him by his father-in-law to be delivered to the detenu's niece Sangami at Madurai, for the purpose of her marriage; and that the detenu's father-in-law gave him 500 Malaysia Ringits for his expenses. The detenu also requested that he may be pardoned since it is his first offence. Except this, there is no other material available before the authority to establish that the detenu is a habitual offender so as to detain him under the COFEPOSA Act, and therefore, the impugned order of detention is liable to be set aside.

5. The learned senior counsel further submitted that in similar circumstance, the Apex Court in Pooja Batra v. Union of India and Ors. reported in 2009 (2) CTC 341, in paragraph No. 12 of the judgment, has held as follows:

12. As already discussed, even based on one incident the Detaining Authority is free to take appropriate action including detaining him under COFEPOSA Act. The Detaining Authority has referred to the violation in respect of importable goods covered under Bill of Entry No. 589144 dated 25.4.2007. In an appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activities, however, for that purpose antecedents and nature of the activities already carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling that that with a view to prevent, it was necessary to detain him. If there is no adequate material for arriving at such a conclusion based on solitary incident the Court is required and is bound to protect him in view of the personal liberty which is guaranteed under the Constitution of India. Further subject satisfaction of the authority under the law is not absolute and should not be unreasonable. In the matter of preventive detention, what is required to be seen is that it could reasonably be said to indicate any organized act or manifestation of organized activity or give room for an inference that the detenu would continue to indulge in similar prejudicial activity warranting or necessitating the detention of the person to ensure that he does not repeat this activity in future.

In other words, while a single act of smuggling can also constitute the basis for issuing an order of detention under the COFEPOSA Act, highest

standards of proof are required to exist. In the absence of any specific and authenticated material to indicate that he had the propensity and

potentiality to continue to indulge in such activities in future, the mere fact that on one occasion person smuggled goods into the country would not

constitute a legitimate basis for detaining him under the COFEPOSA Act.

6. The learned senior counsel submitted that the above said observation was made by the Supreme court following the judgment reported in

Attorney General for India and Others Vs. Amratlal Prajivandas and Others, . Therefore, except the voluntary statement given by the detenu, there

are no materials available to establish that the detenu has indulged in an organized act or that his act is the manifestation of an organized activity or

that it gives room for an inference that the detenu would continue to indulge in similar prejudicial activity warranting or necessitating his detention to

ensure that he does not repeat this activity in future, no other material is gathered by the authorities to satisfy the above qualifications. Therefore,

the detaining authority has failed to establish that the detenu is involved in an organized act or his act is the manifestation of an organized activity to

indulge in similar prejudicial activity in future.

7. The learned senior counsel has brought to the notice of the Court an order of a Division Bench of this Court (wherein EDRJ is a party) passed in

H.C.P. No. 1005 of 2008 dated 17.3.2009 (Sulthan Ibrahim v. State of Tamil Nadu), wherein it has been held that the detention order was

passed only on the ground of concealment and mis-declaration of the goods transported by him valued at Rs. 25,000/- and that the detenu had

paid the deficit duty on the goods transported by him as determined by the Customs Department and that the detenu was in jail from 28.3.2008

i.e., from the date of passing of the order of detention till the disposal of the Habeas Corpus Petition.

8. The learned senior counsel has submitted that in the case on hand also, the same principle is adopted viz., the Additional Commissioner of

Customs, Airport, in his proceedings dated 27.2.2009, has held:

However, I am inclined to accept the argument put forth by the counsel that this is not a case of ingenious concealment as the impugned gold was

recovered from among the personal effects of the passenger and not from any secret cavity or false bottom. As there is no ingenious concealment

and the seized articles are jewellery, I am also inclined to accede to the plea of the passenger for redemption of the seized goods in view of the

recent judgments of the Hon''ble CESTAT, which has ordered the release of gold on payment of redemption fine and penalty.

The above observation goes to the root of the matter. The above said order passed by the Additional Commissioner of Customs, Airport, further

gave an option to redeem the aforesaid gold jewellery u/s 125 of the Customs Act, 1962 on payment of a fine of Rs. 6,00,000/- and a penalty of

Rs. 1,25,000/- u/s 112 of the Customs Act, 1962. In these circumstances, the learned senior counsel would submit that the detenu may be set at

liberty considering these factors.

9. On the other hand, the learned Additional Public Prosecutor submitted that it cannot be argued at this stage that the detenu has involved himself

only in a single solitary incident. The object of preventive detention is only to prevent the future indulgence of the particular individual in similar

activities. He has strongly contended that the petitioner, with a mala fide intention, had concealed the above mentioned gold jewellery in two plastic

pouches covered with carbon paper in a white paper packet covered with cellophane tapes, which were found concealed among his personal

effects and had not declared them to the officials who enquired him and the said act itself is a ground for coming to the conclusion that he is

indulging in smuggling of the above said gold and currencies amounting to 500 Malaysian Ringits. Therefore, the impugned order of detention has

been passed only to prevent him from indulging in future activities of this nature, which is sustainable in law. The learned Additional Public

Prosecutor has also relied upon the judgment in Pooja Batra v. Union of India and Ors. reported in 2009 (2) CTC 341 in support of his

contentions.

10. However, with regard to the clarifications on an organized act or manifestation of organized activity, we are unable to appreciate the

contentions raised by the learned Additional Public Prosecutor. When the confession statement was given by the detenu voluntarily, the Officer,

who passed the order sponsoring the case of the detenu to prevent him from

indulging in future activities, had failed to collect any other material to confirm whether the detenu has a father-in-law by name P.S. Loganathan and has a niece by name Sangami at Madurai, for whose marriage the above said jewellery were sent. Therefore, in the absence of any other material placed on record to refute the statement of the detenu, especially in view of the fact when the authorities have failed to produce any direct evidence or material, we cannot come to a conclusion that the detenu's indulgence in a solitary incidence amounts to an organized act or manifestation of organized activity, or that it gives room for an inference that the detenu would continue to indulge in similar prejudicial activity warranting or necessitating his detention so as to ensure that he does not repeat this activity in future.

11. Therefore, considering the above said facts and circumstances of the case and the subsequent development of a redemption order having been passed by the Additional Commissioner of Customs, Airport, on 27.2.2009 and by virtue of the statement that the penalty amount having been paid by the detenu, we consider that there is no necessity to continue the detention order against the detenu and accordingly, the impugned order of detention is set aside.

In the result, the habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case or cause.