

(1989) 09 DEL CK 0029

In the Delhi High Court

Case No : Criminal Writ Appeal No. 217 of 1989

Thamki Vanilal Jagjivan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1990) ILR Delhi 395

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : J.K. Srivastava and H.K. Saxena, for the Appellant;

Judgement

P.K. Bahri, J.

(1) By virtue of this petition brought under Article 226" of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner has sought quashment of deletion order dated October 13, 1988, made u/s 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities, Act, 1974 (for short Cofeposa Act") by Shri K. L.Verma, Joint Secretary to the Government of India, Ministry of Finance, with a view, to Preventing the petitioner from smuggling goods.

(2) The facts, in brief, are that on June 21,1988, the petitioner, who is an Indian citizen having Indian passport, arrived at Igi Airport from Dubai and on being apprehended, he was found to be in possession of contraband gold in the shape of buckles affixed on the children garments which had been electroplated with white metal. There were 381 pieces of such buckles which collectively weighed 2275 gms of gold of the value of Rs. 7,28,000. The petitioner could not produce any evidence; documentary or otherwise, for the lawful importation of the said gold.

(3) Various grounds have been taken in the petition challenging the impugned order but it is not necessary to refer to all those grounds because this petition is liable to succeed on a very short point.

(4) In ground No. Iv, the petitioner has pleaded that his detention is punitive inasmuch as the petitioner's passport was seized vide Panchnama dated June 21, 1988, and has not been returned to him and thus, the petitioner stood effectively incapacitated from indulging in any alleged prejudicial activity of smuggling goods and the grounds of detention do not show that the defaming authority had any other material to come to its subjective satisfaction for passing the impugned order in order to pervert the petitioner from indulging in the said activity of smuggling goods.

(5) In the corresponding para Xv in the counter-affidavit filed by Mr. C. Rajan, Under Secretary in the Ministry of Finance, it has been averred that the mere fact that the passport of the petitioner stood seized by the Customs authorities would not mean that the petitioner cannot indulge in smuggling of goods in view of the definition of "smuggling" given in Section 2 of the Customs Act, 1962. It is pleaded that the petitioner could indulge in smuggling "activities without going abroad or by visiting places where the passport is not needed. However, I have gone through the grounds of detention and find that the detaining authority has not referred to any other facets or circumstances which could lead to its subjective satisfaction that even though the passport of the petitioner, stood seized still there was possibility of the petitioner indulging in activity of smuggling goods. It is pertinent to mention that the only material referred to in the grounds of detention is the factum of petitioner having smuggled the said gold from Dubai on that particular occasion. There was no material placed before the detaining authority indicating that the petitioner had earlier indulged in any other sort of smuggling. So, the contention raised by the learned counsel for the respondents that, even though the passport of the petitioner stood seized did not mean that the petitioner could not indulge in any other prejudicial activity of smuggling which did not involve petitioner going abroad on the basis of the passport or visiting some other countries where passport is not needed like Nepal, is not tenable. The point arising in this case stands duly answered by Full Bench of this Court in Mohd. Saleem v. Union of India & Others 1989 DL 77. It has been held in this judgment that the court is empowered to scrutinise to a limited extent the subjective satisfaction of the detaining authority in order to see whether the detenu, whose passport had been seized, is likely to travel abroad clandestinely for the purpose of smuggling is reflected in the grounds of detention and communicated to the detenu. This ratio laid down by the Full Bench clearly applies to the facts of the present case. The grounds of detention in the present case do not show any such reflection that the detenu in the present case could indulge in smuggling despite the fact that his passport had been seized.

(6) A half-hearted contention was raised by the learned counsel for the

respondents that the factum of seizure of passport has not been considered by the detaining authority at all and thus, there was no need for the detaining authority to indicate in the grounds of detention on any material that the petitioner could indulge in smuggling despite the fact that his passport stood seized. This contention must be repelled because if the material fact of seizure of passport which could obviously sway the mind of the detaining authority in considering whether the detention order should or should not be made has not been placed before the detaining authority, the detention order would stand vitiated due to the fact that the detaining authority had not applied its mind to a very material relevant fact. The determine authority has placed reliance on Panchnama and the documents referred to in Panchnama for passing the detention order. So, the passport which had been seized by virtue of Panchnama was definitely considered and relied upon by the detaining authority for passing the detention order. However, the detaining authority in the grounds of detention did not at all make any reference to any material showing that even though the passport had been seized the petitioner could still indulge in smuggling of goods. Hence, I hold that the detention order stands vitiated on this score.

(7) I allow the writ petition, make the rule absolute and quash the impugned order and direct that the petitioner be released from Jail if not required to be detained in any other case.