

(1988) 10 DEL CK 0030

In the Delhi High Court

Case No : Criminal Appeal No. 259 of 1988

T.M. Mammoo Haji

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:

Citation : (1989) 1 Crimes 282 : (1989) 37 DLT 11 : (1989) 16 DRJ 49

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : Rohit Kochhar, S.K. Mishra, G. Prakash and T.T.K. Kannan, for the Appellant;

Judgement

Malik Sharief-ud-din, J.

(1) The petitioner has challenged the validity of the detention order dated 20th of August, 1987 passed by the Government of Kerala u/s 3(1)(iii) and 3(1)(iv) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The order was passed with a view to preventing the petitioner in dealing with the smuggled gold otherwise than by engaging in transporting or concealing or keeping smuggled gold.

(2) The brief facts are that on 7th of November, 1986, the customs people made a recovery of Rs, 91,000.00 from the residence of one K. Sasidharan. Thereafter on 8th of November, 1986 residential premises of one M. Appukkuttan was searched and 100 gold biscuits were recovered from a china clay hidden underneath the earth in the Kitchen. Another 100 gold biscuits of foreign made similarly hidden in china clay were recovered after digging earth of the back-side of his house. On 14th of November, 1986 a tin containing 72 gold biscuits of foreign made was also seized after digging out the earth of the premises of the aforesaid person. On 24th of November, 1986 one foreign made gold biscuit was dug out. M Appukkuttan then gave a statement that these gold biscuits were delivered to him by his friend Sasidharan and that these belong to the detenu-petitioner. On

9th of November, 1986 Sasidharan in his statement also implicated the petitioner as being the owner of the smuggled gold. The detenu who was examined on 19th of February, 1987 disowned the gold biscuits and stated that he has nothing to do with these biscuits. He was, however, arrested on the same day. The petitioner-detenu thereafter moved an application for bail on 27th of February, 1987 before the Additional Chief Judicial Magistrate (Economic Offences) Ernakulam. He was granted bail on 6th of March, 1988 and 7 conditions were attached to it.

(3) One of the conditions of the bail is that he shall stay in his house at Kasargoda and shall not change his place of residence without the permission of the Superintendent, Special Customs Preventive unit, Kasargoda. Together with this he was also directed not to leave the limits of Kasargoda municipality without the permission of the above-mentioned Superintendent except for the purpose of attending the court. I am making a mention of these facts as, in my view, they assume importance in the light of the point on which this petition is to be allowed.

(4) The contention of Mr. Kochhar is that there has been a long and unexplained delay in the execution of the detention order and thereby snapping the tie between the need to detain and the objective to be achieved. The respondents in their affidavit based on record have stated that the detention order could not be executed as the detenu was absconding. Subsequently, the respondents filed additional affidavit reproducing the details as to how the detention order was dealt with after it was passed. It is stated that the detention order dated 20th of August, 1987 was sent to the Superintendent of Police Kasargoda without any delay for execution who acknowledged the receipt of the order by his letter dated 26th of August, 1987. Thereafter a teleprinter message was sent to the Superintendent of Police on 7th of October, 1987 for the immediate execution of the warrant which was followed by teleprinter messages dated 24-10-1987, 16-11-1987, 7-1-1988 and 11-1-1988 and that on 28th of December, 1987 the Collector of Customs furnished details of the immovable property owned by the detenu to initiate action u/s 7(1) of the Cofeposa Act. These details were not spelt out when the first affidavit was filed. Mr. G. Prakash, learned counsel for the State of Kerala, has taken me through the record and has shown me copies of the teleprinter messages which were sent to the Superintendent of Police. Assuming that all this is true, the question still remains as to what the Superintendent of Police was doing with the detention warrant from 26-8-1987 to 11-1-1988 despite repeated teleprinter messages. There is no detail available as to who was the person to whom the warrant was assigned for execution. There are no details available as to when and where the person who was assigned the warrant for execution had gone to search the detenu. There is a bald and general statement based on the message of the Superintendent of Police that the detenu could not be arrested as he was absconding.

(5) It was in these circumstances that I have made a reference to the two

conditions of the bail order out of seven. These conditions made it obligatory for the petitioner to remain at his place and he could only leave his house and the municipal area at the peril of cancellation of bail. That apart, I am told that even a complaint was produced against the petitioner- detenu before the court on 19th of February, 1988. It is nowhere suggested that the petitioner failed to appear in the court also. It is in these circumstances that I am not inclined to believe the general statement that the petitioner could not be arrested as he was absconding. In fact, excepting a wireless message from the Superintendent of Police that the petitioner was absconding there is no record of the fact that he was searched by any body with a view to serve the detention warrant on him. Obviously, after passing the order of detention the functionaries of the State have shown total unconcern to its execution. If the detention order is passed with a view to achieve an objective it is necessary that it must be executed with utmost expedition and promptitude unless there are circumstances to indicate that for the reason of the detenu having absconded it could not be executed. I am surprised that even though the detention order was passed in August 1987 no move was made at any stage to proceed against the detenu u/s 7 of the Cofeposa Act. The court is only told that it was somewhere on 28th of December, 1987 that the Collector of Customs furnished details about the properties of the detenu with a view to initiate proceedings against him u/s 7(1) of the Cofeposa Act. There is no need for me to refer to the several judgments of the courts whereby the detention orders have been invalidated on the ground of delay in execution of the detention orders. On the facts and circumstances of this case, I am of the view that there has been inordinate and unexplained delay in the execution of the detention order and the same stands vitiated. The petition is allowed, the rule is made absolute and the impugned order of detention is quashed. It is directed that the petitioner shall be released forthwith unless otherwise required.