
(1991) 02 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 68 of 1991 and Criminal Miscellaneous No. 2 of 1991

Ved Pal Anand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-02-1991

Acts Referred:

Citation : (1991) 2 AICLR 802 : (1991) 3 RCR(Criminal) 418

Hon'ble Judges : G.S.Chahal, J

Advocate : Sh. A. Mohunta, Sh. Sewa Singh, Advocates for appearing Parties

Judgement

G.S. Chahal, J.

1. This order will dispose of two connected petitions Cr. W.P. No. 68 of 1991 and Cr. W. P. No 69 of 1991. Both these petitions are under Articles 226/227 of the Constitution of India for quashing of the detent on order dated 1331989, Annexure P3.

2. I will draw the facts from Cr. W. No. 68 of 1991. Ved Pal Anand petitioner has urged that the respondent, Union of India, purporting to exercise powers under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (the 'Act' in brief) ordered the detention of the petitioner by passing an order dated 3091988 in pursuance of which, he was detained on 6101988. Copy of the detention order is Annexure P1. On 2111988, the Additional Secretary to Government of India. Ministry of Finance, Department of Revenue made declaration No. 308/88 under Section 9(1) of the Act that he was satisfied with regard to the fact that the petitioner was likely to abet the smuggling of the goods into Bombay. Copy of this declaration is Annexure P2 After making of the declaration, the under Secretary of Revenue, exercising powers under Section 8(f), read with Section 9(2) of the Act. confirmed the detention order of the petitioner Annexure P1 and further directed that under Section 10 of the Act, the petitioner be detained for a period of 2 years from the date of his detention, i.e. from 6101988. Copy of the order is Annexure P3. The

grounds for detention relate to the import of Polyester Filament Yarn and Polyester Fibre in the name of M/s Jasmine and M/s Expo international, under the duty exemption entitlement certificate scheme. It had been alleged that the said two concerns obtained five actual user's advance licence each in the financial years 1994-95 from the Joint Chief Controller of Export and Imports, New Delhi for import of said goods free from custom duty subject to the condition that they would manufacture (a) readymade garments out of the imported yarn, (b) polyester spun yarn out of imported polyester fibre and export the resultant products abroad within a period of six months from the date of first clearance of imported consignment. It is alleged that both the said concerns had imported the said material, but did not export the resultant products. The petitioner states that he had no connection whatsoever with the two concerns. That the order of detention had been passed with a mala fide intention, with the sole purpose of harassing and humiliating the petitioner and his family members by assuming that the petitioner and his son Ashok Anand were actually controlling these firms and had taken active part in the import and sale of filament yarn and polyester fibre. The firm M/s. Jasmine is stated to be a partnership firm between Naresh Chadha and Krishan Lal Chawla. The respondents had passed the detention order of Naresh Chadha and Krishan Lal Chawla on the same grounds, as alleged qua the partner, but these detention orders were revoked by the Advisory Board. The petitioner had challenged the detention order and declaration order, through C.W. No. 545/88 & 576/88 but the same had been dismissed on 17/3/1989. The petitioner had thus suffered, the entire period of detention and had come out on 5/10/1990. The declaration Annexure P2 and the detention order Annexure P3 are being challenged on fresh grounds which were not taken in the earlier petition.

3. The petitioner now pleads that the declaration Annexure P2 violated the rights of the petitioner under Articles, 22(5) of the Constitution of India. It was the duty of the concerned respondent to inform the petitioner that he had got a right to make a representation against his detention to a particular authority, but he was not made aware of it. The name of the authority to which such a representation was to be made had neither been mentioned in the detention order (Annexure P 3), nor was it intimated to the petitioner. Therefore, the petitioner was handicapped in making representation against the detention order at the earliest available opportunity. So the Constitutional right of the petitioner to make representation against the detention order and declaration is violative of the Article 22(5) of the Constitution of India.

4. In spite of the opportunity allowed, no return was filed by the respondent and as such, it may be assumed that the facts stated in the writ petition are correct.

5. The sole ground of attack on the detention order is that it did not mention the fact that the petitioner had the right to make a representation against the detention order, nor was it described to which other authority such a representation was to be made. In support of this legal proposition, reliance has been placed on a Division Bench judgment of the Delhi High Court in Cr. W. P. No.

4 of 1990, Madan Lal Anand v. Union of India, 1990(2) Recent Criminal Reports 395. Their Lordships, relying on the observations of the Supreme Court in Jagprit Singh v. Union of India and ors., 1990(3) RCR(Cri.) 331 : Criminal Appeal No. 29 of 1990 decided on 28/3/1990, held the declaration to be illegal and the detention of the petitioner beyond the original period of one year to be unjustified. I am in respectful agreement with the observations of the Judges of the Division Bench. I hereby allow both the criminal writ petitions and declare that the declaration order Annexure P2 and the detention order Annexure P3 are illegal.