

(1989) 12 DEL CK 0035

In the Delhi High Court

Case No : Criminal Writ Petition No. 537 of 1989

Vijay Kumar Dharna

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 22(5), 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1990) 27 ECR 274 : (1989) ILR Delhi 470 : (1990) 1 RCR(Criminal) 309

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

Bench : Single Bench

Advocate : Harjinder Singh, Naveen Malhotra, Rajender Dutt and S. Kohli, for the Appellant;

Judgement

P.K. Bahri, J.—In pursuance of the detention order dated July 13, 1989, passed by respondent No. 2 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act"), the petitioner has been detained with a view to preventing him from abetting the smuggling of goods. In this writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner has challenged the said detention order.

2. The learned counsel for the petitioner has pleaded that the petitioner, who knows only Punjabi language in Gurmukhi script, has been supplied copies of the detention order and the grounds of detention in that language which are at variance with the detention order and the grounds of detention supplied to the detenu in English language and thus, the "safeguard provided under Article 22(5) of the Constitution of India stands violated.

3. The order of detention has been made, as mentioned above, with a view to

preventing the detenu from abetting the smuggling of goods. The ground of detention give out all the necessary facts pertaining to the prejudicial activity of the petitioner and the prejudicial activities of his co-detenus. In the grounds of detention framed in English language and the order of detention issued in English language, there is nothing wrong. If the facts mentioned in "the grounds of detention in the Punjabi language are kept in view, again there is no variance between the facts recorded therein from what has been recorded in the grounds of detention in English language. There is only variation between the two with regard to the inference drawn by the detaining authority while in the English language grounds of detention the inference drawn is that the petitioner has been indulging in abetting the smuggling of goods whereas in the Punjabi translation it has been incorporated that besides abetting the smuggling of goods, the detenu has been indulging in concealment, transportation of the smuggled goods as well. Similarly in the Punjabi translation of the order of detention, besides mentioning the abetting the smuggling of goods it is also communicated that the petitioner was indulging in smuggling of goods

4. So, the short question which arises for consideration is whether such variations have the effect of violating the first facet of the safeguard provided under Article 22(5) of the Constitution of India. What is required to be communicated to the detenu as the first facet of the safeguard is the material facts and documents which are the basis of passing of the detention order. It cannot be, indeed, disputed that the material facts and the documents which are the basis of passing the detention order stand clearly communicated to the detenu. After all the facts in detail have been communicated to the detenu, so also the copies of the documents which do show the particular prejudicial activities indulged in by the petitioner and his co-detenus which necessitated the passing of the detention order. If there has occurred a mistake in free translation of the grounds of detention in the Punjabi language with regard to the inferences drawn from those facts, it cannot be said that the petitioner has been not communicated the grounds of detention, i.e. the material facts and the documents relied upon for passing the detention order. It cannot also be said that there has been any non-application of mind by the detaining authority in passing the order of detention or the subjective satisfaction reached by the detaining authority from the facts and the material relied upon by him is in any manner vitiated.

5. The learned counsel for the petitioner has made reference to *Chhiba Vallabhabhai Tandel v. Union of India and others*. 1984 (2) Crimes 904. The facts of the cited case are completely different. A perusal of the judgment shows that the material facts which stood incorporated in English language which constituted the material for naming the detention order were distorted completely in the Gujarati translation and thus a Division Bench of this Court rightly held that no proper communication of the grounds of detention stood made which clearly violate the first facet of the Article 22(5) of the Constitution of India. In the present case, there has been no distortion of the material facts at all from what

has been incorporated in the English grounds of detention with the grounds of detention translated in the Gurumukhi language. So, this judgment is of no help to the detenu in the present case.

6. Counsel for the respondents has drawn my attention to A. Alangarasamy Vs. State of Tamil Nadu and Another, . In the cited case, there was a variation between Tamil and English versions of the grounds of detention served on the detenu. In the English version it was mentioned that the detention order has, been passed to preventing the detenu from indulging in smuggling activities while in the Tamil version it was mentioned that the order has been passed with a view to preventing the detenu from transporting contraband goods. The contention was raised that there has been no proper communication of the grounds of detention to the detenu. The Hon''ble Supreme Court held that the alleged difference between the two versions is not consequential as the order of detention and the grounds accompanied clearly spelt out why the detenu was being detained. This ratio laid down by the Supreme Court clearly applies to the facts of the present case. Here also, as discussed above, the grounds of detention which contain the detailed facts and the material on the basis of which the detention order has been passed, there is no distortion between the English and the Punjabi translations and so, it cannot be said that the petitioner ha not been communicated the grounds of detention in a proper manner. I find no merit in this ground which I, hereby, negative.

7. A contention has been raised that there has taken place undue delay in considering the representation dated August 4, 1989, against the order of detention. The affidavit filed in response to this writ petition was not quite dear as no details have been given as to how the representation was dealt with. However, the original record has been shown to me during the course of arguments and it has come oat that the said representation was received by Cofeposa Unit on August 8, 1989 while earlier two days were holidays and then it was sent to the sponsoring authority for giving comments and the same was received in that office on the following day and the official concerned dealt with the some on August 18, 1989 while August 12, 13, 15 and 17, 1989 were holidays and the comments dated August 21, 1989, were prepared and were received in the Ministry on August 25, 198''9 while August 19, 20 and 24, 1989 were holidays. Again August 26 and 27, 1989, were holidays and the proposal was put up on August 29, 1989 and was put up before the Minister of State (Revenue) on August 31, 1989 and the same was put up before the Hon''ble Finance Minister on September 4, 1989, when he rejected the representation while September 2 and 3, 1989, were holidays. So, there was no unexplained delay made in dealing with the representation.

8. Similarly, representation dated August 25, 1989, was received by Cofeposa Unit on August 29, 1989, while earlier two days were holidays, and then the same was sent to the sponsoring authority who received it on September 4, 1989 whereas earlier two days were holidays and the comments were prepared on

September 6, 1989 while September 9 and 10, 1989 were holidays and the same Were sent to the Ministry of Finance on September 14, 1989 while September 16 and 17, 1989, were holidays. The proposal was prepared on September 19, 1989 and put up before the Minister of State (Revenue) on September 20, 1989 and also on the same day before the Hon"ble Finance Minister who rejected the representation and the memo was issued on September 21, 1989, which was served on the detenu on September 23, 1989. So there is no unexplained delay made in dealing with this representation as well. I do not find any merit in this ground as well.

9. It has been then pleaded that a clarification was sought by the detenu in his representation with regard to aforesaid discrepancies appearing in English translations but the respondents did not make any clarifications and thus, the detenu has been left in confusion as to on what grounds he ha been detained. There is no merit in this contention because as already held by me above, the facts and the material which have been relied upon for passing the detention order stand duly communicated to the detenu and the detenu could make any useful or effective representation based on the said facts. The mere fact that inferences with regard to the particular provision of law drawn from the facts are somewhat mentioned in addition in the Punjabi translation, in my opinion, does not have the effect of confusing the detenu in any manner so that he could have been disabled from making effective and purposeful representation.

10. The learned counsel for the petitioner has made reference to the case law which is on a totally different point. It is true that where the subjective satisfaction is reached by the detaining authority stands vitiated due to their being no material pertaining to particular ground of detention in the grounds of detention, then the order of detention should be deemed to be void but the facts of the present case are totally different. So, it is not necessary to refer to those judgments which deal with different points.

11. No other point has been urged before me.

12. I, hence, find no merit in this writ petition which I, dismiss and discharge the rule.