
(1985) 07 DEL CK 0011

In the Delhi High Court

Case No : Criminal Writ Appeal No. 84 of 1985

Vishwanath Vohra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-07-1985

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11(1)

Citation : (1985) 28 DLT 496 : (1985) 9 DRJ 200 : (1985) 2 RCR(Criminal)
599 : (1986) RLR 33

Hon'ble Judges : Prakash Narain, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : Harjinder Singh and N.S. Mehta, for the Appellant;

Judgement

N.N. Goswamy, J.

(1) This judgment will dispose of Criminal writs Nos. 47, 84, 103, 104 and Iii of 1985 as in all these petitions detentions have been challenged on a common ground relating to the interpretation of Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (here-in-after called "the Act"). In Fact, arguments were addressed only in Criminal Writ No. 84 of 1985 and the legal submission made were adopted in all other petitions. In the circumstances, it will be sufficient to narrate briefly the facts in criminal writ No. 84 of 1985.

(2) The petitioner, Vishwa Nath Vohra, was detained by virtue of an order passed on 16th November, 1984 by the administration of Union Territory of Delhi u/s 3(1) read with Section 2(f) of the Act with a view to preventing him from acting in any manner prejudicial to the conservation and augmentation of foreign exchange and also preventing him from abetting the smuggling of foreign currency out of India. The formal order authenticated in the name of the Administrator was served on the detenu on the same day and the grounds of detention were also supplied to him on the same day. As a consequence of the

said order the detenu was arrested and is at present lodged in Central Jail, Tihar. The detenu made various representations to the administration for the supply of documents and revoking the order of detention. Though certain documents were supplied but as regards the revocation, the representation was rejected. The petitioner challenged the detention by way of writ petition No. 35 of 1985 filed in this Court on 18th February 1985. Rul "e nisi was issued by this Court and the petition was pending During the pendency of e petition. the detention order made on 16th November 1984 was revoked by the Detaining Authority on the ground that a report had not been made to the Central Government within the stipulated time as held by this Court in another writ petition. The revocation was stated to be u/s 11(1) of the Act. However, on the same date i.e. on the 14th of March, 1985 a fresh detention order u/s 3(1) of the Act was passed by the Detaining Authority. The order along with the grounds of detention was served on the petitioner along with the list of documents in the jail itself. A declaration u/s 9 of the Act was made by the Additional Secretary to the Government of India on 29th March, 1985.

(3) In view of the subsequent developments, the petitioner withdrew his earlier petition and filed the present petition on 20th April, 1985. The detention has been challenged in the petition on diverse grounds. The petitioner has also challenged the validity of Section 11(2) of the Act. However during the course of arguments the question of validity was given up and the arguments were confined to a single point. It was contended that no further order of detention could be made on the same grounds u/s 11(2) of the Act unless the earlier detention order has been revoked u/s 11(1) of the Act by an authority superior to the Detaining Authority. In order to appreciate this contention, it is necessary to reproduce an analysis of Section 11 of the Act. Section 11 of the Act reads, as under :-

"11 Revocation of detention orders-(1) without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time be revoked or modified: (a) Notwithstanding that the order has been made by an officer of a State Government by that State Government or by the Central Government; (b) Notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government; (2) The revocation of a detention order shall not bar the making of another order u/s 3 against the same person."

(4) A bare reading of the Section clearly shows that it empowers the State Government to revoke an order of detention made by an officer of the State Government and the Central Government to revoke an order made by the State Government, an Officer of the State Government or an officer of the Central Government. While expressly preserving the powers of the detaining Authority to revoke the order u/s 21 of the General Clauses Act, sub-section (1) authorises the revocation by two authorities namely (a) if the order has been made by an officer of the State Government. State Government or the Central Government

may revoke the order and (b) if the order has been made by an officer of the Central Government or by the State Government, revocation is permissible by the Central Government. The power u/s 11(1) can be exercised by the named authorities without prejudice to the powers of the detaining authority u/s 21 of the General Clauses Act. While interpreting Section 11(1) the Supreme Court in *Smt. Kavita v. State of Maharashtra and others*, AIR 1981 S. C 1461 held that the power of the State Government and the Central Government u/s 11 of the COFEPOSA to revoke orders of detention is in addition to the power u/s 21 of the General Clauses Act to revoke their own orders. Again in *Sal Pal v. State of Punjab and others*, 1981 S. C 2230 it was held that the power of revocation conferred on the Central Government u/s 11 of the Act is a supervisory power and is intended to be an additional check or safeguard against the improper exercise of power of detention by the detaining Authority or the State Government. Same view was expressed in *Sabir Ahmed Vs. Union of India (UOI)*, wherein again it was held that the power u/s 11 is a supervisory power and it is intended to be an additional check or safeguard against the improper exercise of its powers of detention by the detaining Authority or the State Government. The cases of *Sabir Ahmed* and *Sat Pal* (*supra*) were cited with approval for the same proposition in *State of Uttar Pradesh Vs. Zavad Zama Khan*, .

(5) In *Ibrahim Bachu Bafan v. State of Gujarat* and *Mithu Bawa Pan chiya v. State of Gujarat*, 1985 Supreme Court 697, the question before the lordships of the Supreme Court was whether a fresh order of detention could be made u/s 11(2) of the Act when the previous order of detention had been quashed by the Court. Their lordships after discussing the legislative scheme of the Act and in particular of Section 11, came to the conclusion that the power of making a fresh order u/s 11(2) is not available to be exercised unless the previous order is revoked u/s 11(1) of the Act. It was further clarified that the order could be revoked u/s 11(1) of the Act by the named authorities in clauses (a) and (b) of Section 11(1) of the Act i.e. either by the State Government when the order had been passed by an officer of the State Government or by the Central Government when the order had been made by the State Government or by an officer of the Central Government. According to their lordships Section 11(1) of the Act gives expression to the legislative intention that without affecting that right which the Authority making the order enjoys u/s 21 of the General Clauses Act, an order of detention is also available to be revoked or modified by authorities named in clauses (a) and (b) of section 11(1) of the Act. Power conferred under clauses (a) and (b) of section 11(1) of the Act could not be exercised by the named authorities u/s 21 of the General Clauses Act as these authorities on whom such power has been conferred under the Act are different from those who made the orders. In these circumstances, it has to be held that revocation of the original order of detention could not be u/s 11 of the Act as the detaining Authority made the order u/s 21 of the General Clauses Act. The order has necessarily to be considered as having been made u/s 21 of the General Clauses Act. In the circumstances, no further order of detention could be made u/s 11(2) of the Act.

The impugned order having been made u/s 11(2) of the Act is, Therefore without the authority of law and has to be quashed.

(6) For the reasons received above, the rule in all the five petitions, mentioned above, is made absolute and the detenus Vishwa Nath Vohra in Criminal Writ No. 84 of 1985, Krishan Lal Gaba in Crl. Writ petition No. 47 of 1985, Chand Kishan in Crl. Writ petition No. 104 of 1985, Mohar Singh in Crl. Writ petition No. 103 of 1985 and Kirpal Singh in Crl. writ petition No. 111 of 1985 are directed to be set at liberty forthwith unless required to be detained by any other valid order of an competent court or authority.