

A

STATE OF GUJARAT

v.

CHAMANLAL MANJIBHAI SONI

January 8, 1981

B

[S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ.]

Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, section 5A, interpretation of.

C

Maintaining the order of the High Court quashing the detention, the Court

D

HELD : (1) The detention under section 3 of the COFEPOSA is only for the purpose of preventing smuggling and all the grounds, whether there are one or more, would be relatable only to various activities of smuggling and no other separate ground which could deal with matters other than smuggling could be conceived of because the Act of smuggling covers several activities each forming a separate ground of detention and the Act deals with no other act except smuggling. Indeed, if the interpretation, namely, that Section 5A contemplates that there should be only one ground which relates to the violation of section 3 of the Act and if that ground is irrelevant while the other grounds which relate to the same subject matter are clear and specific the detention order will not stand vitiated, is accepted, then section 5A will become *otiose*. [501 H, 502 A-C]

E

(2) Whenever allegations of smuggling are made against a person who is sought to be detained for preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any other ground for detention, except the one which relates to smuggling. This is neither the object of the Act nor can such an object be spelt out from the language in which section 5A is couched. What section 5(A) of the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention on the other grounds.

[502 H, 503 A]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 91 of 1980.

Appeal by Special Leave from the Judgment and Order dated 22-12-1978 of the Gujarat High Court in Criminal Application No. 245/78.

H

M. N. Phadke and M. N. Shroff for the Appellant.

J. G. Shah, Vineet Kumar and Ashok Kaul for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This appeal by special leave is directed against the judgment of the Gujarat High Court dated December 22, 1978 in a Criminal Habeas Corpus Writ for quashing the order of detention passed against the detenu. The detenu was arrested on October 20, 1978 and grounds of detention were served on him that very day. The High Court allowed the Writ Petition mainly on the ground that, as one of the grounds, namely, ground No. 7 was irrelevant, the entire order of detention is vitiated. In coming to this finding, the High Court, has put, in our opinion, a wrong interpretation on Sec. 5(A) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act). Section 5A reads thus :

"5A. *Grounds of detention severable.*—Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

- (i) vague,
 - (ii) non-existent,
 - (iii) not relevant,
 - (iv) not connected or not proximately connected with such person, or
 - (v) invalid for any other reason whatsoever,
- and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of detention,

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

The High Court seems to think that Sec. 5(A) contemplates that there should be only one ground which relates to the violation of

- A Sec. 3 of the Act and if that ground is irrelevant and the other grounds which relate to some other subject matter are clear and specific, the detention will not stand vitiated. In our opinion, the argument of the High Court with due respect amounts to begging the question because the detention under Sec. 3 of the Act is only for the purpose of preventing smuggling and all the grounds whether there are one or more,
- B would be relatable only to various activities of smuggling and we cannot conceive of any other separate ground which could deal with matters other than smuggling because the act of smuggling covers several activities each forming a separate ground of detention and the Act deals with no other act except smuggling. Indeed, if the interpretation of the High Court in respect of Sec. 5(A) is accepted, then
- C Sec. 5A will become *otiose*. While construing section 5(A) the High Court observed thus :—

- D “But in the present case the subjective satisfaction is based on one ground, that is, for preventing the present petitioner from smuggling goods and in support of that ground various statements have been relied upon and the totality of consideration of all these statements has resulted in the subjective satisfaction of the detaining authority when it passed the impugned order of detention. Now for these totality of circumstances considered by the detaining authority, if one irrelevant or unsustainable element has entered in the process
- E of subjective satisfaction, the process of arriving at subjective satisfaction being comprehensive, the said element would disturb the entire process of subjective satisfaction and consequently, even if one statement which could not have been relied upon appeared before the mind’s eye of the detaining authority, it could easily be seen that its subjective satisfaction would be vitiated and its final decision would rest upon
- F a part of the material which is irrelevant.”

- The process of reasoning adopted by the High Court is absolutely unintelligible to us. It is manifest that whenever the allegations of smuggling are made against a person who is sought to be detained by
- G way of preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any other ground for detention, except the one which relates to smuggling. In our opinion, this is neither the
- H object of the Act nor can such an object be spelt out from the language in which Sec. 5A is couched. What the Act provides is that where there are a number of grounds of detention covering various

activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Sec. 5(A) was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicted to what extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Sec. 5(A) in order to make it clear that even if one of the grounds is irrelevant but the other grounds are clear and specific that by itself would not vitiate the order of detention. Mr. G. A. Shah appearing for the detenu frankly conceded that he is not in a position to support the view taken by the Gujarat High Court on the interpretation of Sec. 5(A). He also stated that he does not want to challenge the vires of Sec. 5(A) of the Act. Mr. Phadke has frankly stated that he only wants the law to be settled in the peculiar circumstances of this case and the order of the High Court quashing the detention need not be disturbed. We, therefore, hold that the view taken by the High Court on interpretation of Sec. 5(A) is legally erroneous and is hereby overruled. With these observations the appeal is disposed of without disturbing the order of the High Court quashing the order of detention.

S.R.

Appeal dismissed.