

A

V.C. MOHAN
v.
UNION OF INDIA AND ORS.

MARCH 1, 2002

B

[UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

C

Customs Act, 1962/Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Sections 124, 127B, 132 and 135/Section 3(1)(i)—Preventive detention—Detenu charged under Customs Act—Detention under COFEPOSA Act after 7 months of the charge—During release on bail, detenu not involved in any illegal activities—Non-placement of relevant documents before the Detaining Authority by sponsoring authority—Held, non-placement of the relevant materials is a serious lapse. Hence, the order of detention unlawful and illegal.

D

Preventive detention—Constitutional sanction for—Held, is not without limitation—Conduct of Detaining Authority or Governmental Authority ought to be fair and reasonable—Constitution of India, 1950—Article 21.

E

Petitioner/detenu was charged for offences under Sections 132 and 135 of Customs Act, 1962 for misdeclaration of Bill of Entry. After investigation, Customs Department seized goods from the petitioner and he was arrested. Subsequently he was enlarged on bail. On completion of investigation the Department issued show cause notice under Section 124 of Customs Act.

F

Thereafter, Petitioner filed application under Section 127B of Customs Act before Settlement Commission, which by its order directed the petitioner to make payment of additional duty.

G

After 7 months from the date of charge, the detaining authority passed an order of detention under Section 3(1)(i) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. However, the application before Settlement Commission and its Order were not placed before it.

H

During the period when the detenu was on bail, he admittedly did not indulge in any illegal activities.

Petitioner/detenu filed petition under Article 32 of the Constitution challenging the detention. He contended that the detention was without authority of law and it infringed his fundamental rights since there was failure to place the application filed before the Settlement Commission and its order before the detaining authority.

Allowing the petition, the Court

HELD : 1. Non-placement of relevant materials before the detaining authority by the sponsoring authority is not only a lapse but a serious lapse on the part of the officials resulting in the order of detention to be declared unlawful and illegal and thus resultantly cannot be sustained. It has a serious effect and definite in-road to petitioner's liberty without application of mind. Non-placement of the order of payment of additional duty of the Settlement Commission has not only transgressed the rights of the petitioner but speaks volumes about the conduct of the officials rendering the proceeding before the Detaining Authority vitiated. [150-F; 149-B-C]

2. A statute has been engrafted in the Statute Book but that does not, however, mean and imply that the concerned official would be at liberty to whittle down the liberty of the citizens of the country. The constitutional sanction for preventive detention cannot be said to be without any limitation and apprehending such a conduct of the concerned officials, the founding fathers probably laid down its safeguards from the misuse of the powers as conferred. The hall mark of the concept of justice, as is available in the justice delivery system of the country is that the conduct of the Detaining Authority or as a matter of fact any governmental authority ought to be fair and reasonable. The accepted methodology of governmental working should always be in tune with the concept of fairness and not de hors the same-a person is being placed under detention without trial and there is neither any scope for overzealous for acting in a manner without due and proper application of mind-in either of the situation law courts should be able to protect the individual from the administrative *ipse dixit*. [149-D-F]

Rajindra v. Commissioner of Police, Nagpur Division and Anr., [1994] 2 Suppl. SCC 716; *Rajammal v. State of Tamil Nadu and Anr.*, [1999] 1 SCC 417 and *Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad and Ors.*, [1996] 3 SCC 195, referred to.

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 169 of 2001.

A (Under Article 32 of the Constitution of India)

Mr. K.K. Mani, for the Petitioner.

S. Balakrishnan and M.L. Verma, Revathy Raghavan, Syed Naqvi, Ms. Smita Inna and B. Krishna Prasad for the Respondents.

B

The Judgment of the Court was delivered by

C **BANERJEE, J.** While it is true that law Courts detest the very concept of detention without trial and do not favour the same, but the constitutional sanction of preventive detention cannot in any way be decried having regard to the prevalent conditions - social and economic. The scheme as envisaged by the founding fathers, however, has its rigours as well and subject to the guarantees as enshrined in Part III of the Constitution.

D Preventive detention admittedly is an 'invasion of personal liberty' and it is a duty cast on to the law Courts to satisfy itself in regard to the circumstances under which such a preventive detention has been ordered - in the event, however, the same does not conform to the requirements of the concept of justice as is available in the justice delivery system of the country, the law Courts would not shirk of its responsibility to provide relief to the person concerned. The guardian-angel of the Constitution stand poised with a responsibility to zealously act as a watchdog so that injustice does not occur : Let us not be understood to mean however that there ought to be any overzealousness since the same may lend assistance to a situation which is otherwise not compatible with social good and benefit.

F Adverting at this stage to the facts of the matter, as is evident from the present Writ Petition under Article 32 of the Constitution, challenging an order of detention dated 1st March, 2001 under Section 3(1) (i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 it appears that the petitioner is presently confined in Central Prison, Chennai, Tamil Nadu and it is this detention which the petitioner contended is without the authority of law and constitute an infringement of his guaranteed fundamental rights.

H The reason for detention has been and as recorded by the Department is that the Bill of Entry No. 235337 dated 19.7.2000 was filed in the name of M/s Goutham Enterprises for clearance of 300 numbers of ACER CD ROM drive 50X by Customs House Agents, M/s Sanjay Forwarders (P) Ltd.

According to the Department this Bill of Entry was filed in the name of M/s Goutham Enterprises but the latter expressly intimated the department stating that they did not place any order for import purposes. The department made an investigation and the goods were seized under the provisions of Customs Act on 24.7.2000. The total CIF value according to the department was Rs. 43,53,189 and Rs. 57,87,200 was the market value.

The petitioner appeared before the Customs Department on 24.7.2000 and the officers detained him and obtained the statements and was subsequently arrested on 25.7.2000 for an offence under Sections 132 and 135 of Customs Act. The principal allegation against the petitioner/detenu being misdeclaration in the Bill of Entry. The petitioner/detenu however was remanded to judicial custody on 26.7.2000.

Subsequently, the detenu was enlarged on bail by the learned Additional Chief Metropolitan Magistrate on 11.8.2000.

The Department after the completion of investigation issued a show-cause notice under Section 124 of the Customs Act, 1962 on 19.9.2000.

Significantly, though the incident noticed above took place on 24.7.2000 and other important documents have come into existence immediately thereafter, the detaining authority did not pass the detention order immediately but only after a lapse of about seven months, i.e. on 1.3.2000. During this interregnum, however, the detenu admittedly did not indulge in any illegal activities and it is on this context Mr. Mani, learned advocate appearing in support of the petition with his usual eloquence contended that the incident of 24th July, 2000 had become stale and irrelevant and it is too remote in point of time and as such question of there being any detention order on the basis thereof would not arise. Mr. Mani further contended upon reference to the fact situation as adverted herein before in this judgment that the detenu was arrested on 25.7.2000 for offences under Sections 132 and 135 of Customs Act and was remanded to judicial custody on 26.7.2000. The detenu was however enlarged on bail by the learned Additional Chief Metropolitan Magistrate (EO.III) on 11.8.2000 and the Department after completing the investigation issued the required show-cause notice on 19.9.2000.

The factual score thus lends a substantial credence to the submissions of Mr. Mani as regards the charges being too stale to be taken recourse to in the matter of issuance of the order of detention on 1st March, 2001 more so, having regard to the admitted factum of non-involvement of the detenu in

A any illegal activity and thus consequently too remote as well in point of time to be the basis of an order of detention. .

B It is in elaboration of his submissions Mr. Mani contended that once the show-cause notice has been issued, there cannot be any manner of doubt that the investigation is complete, but in the contextual facts the detaining authority has failed to apply its mind as regards the issue of unreasonable delay in passing the order of detention.

C Incidentally, applicability of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act envisages issuance of the detention order upon recording of satisfaction that in the event the detenu is allowed to remain at large, the latter will indulge in such activities and that normal criminal law of the country would not have the desired effect of effectively preventing the detenu from indulging in such activities - it is on this score Mr. Mani submitted that by reason of the factum of long lapse of time, the question of applicability of the provisions of the Act would not arise.

D We would like to record, however, another more important feature at this juncture: On an application before the Settlement Commission under Section 127-B of the Customs Act filed by the detenu on 8.2.2001 the Settlement Commission on 15.2.2001 after hearing the applicants and the Department, was pleased to admit the applications of the detenu and passed an order directing the detenu to make payment of additional duty of Rs. 11,56,803 within 30 days from the date of receipt of the order. Apart there from, the Commission further observed that the Commission shall have the exclusive jurisdiction on the case of the detenu, in terms of Section 127-F (2) of the Customs Act, 1962 to exercise the powers and perform the functions of any officer of customs, to the exclusion of all other officers of customs and it is on this score that Mr. Mani contended and if we may say so, rightly, that both the application and the order of the Settlement Commission, Southern Bench, Chennai dated 15.2.2001 ought to have been placed before the Detaining Authority - The records however depict otherwise : Neither the application nor the order passed thereon did see the light of the day before the Detaining Authority. There is no manner of doubt that the documents mentioned above are not only important but of definite impact in the matter of detention and having a bearing on to the issue. Under the circumstances, there thus stands a bounden obligation to place the same before the Detaining Authority for fair play and justice. The sponsoring authority conveniently H kept it to itself a very relevant material which could have tilted the scale

before the Detaining Authority. Needless to record that the sponsoring authority was able to place the letter from the Special Public Prosecutor regarding the condition of bail relaxation of the detenu dated 28.2.2001, but failed to place the orders of the Settlement Commission dated 8.2.2001 and 15.2.2001. Is it a lapse unintended or a deliberate failure? The learned senior advocate appearing for the respondents however hadn't had any answer to the same. The factum of non-placement of relevant documents, in our view, has had a serious effect and definite inroad to petitioner's liberty without application of mind. Non-placement of the order of payment of additional duty of Rs. 11,56,803 within 30 days from the receipt of the order of the Commission has not only transgressed the rights of the petitioner but in our view speaks a volume about the conduct of the officials rendering the proceeding before the Detaining Authority vitiated and thus turned out to be illegal.

By reason of the aforesaid, we feel it expedient not to express any opinion as regards the question of delay rendering the charges stale or being too remote. A statute has been engrafted in the Statute Book but that does not, however, mean and imply that the concerned official would be at liberty to whittle down the liberty of the citizens of the country. The constitutional sanction for preventive detention cannot be said to be without any limitation and apprehending such a conduct of the concerned officials, the founding fathers probably laid down its safeguards from the misuse of the powers as conferred. The hallmark of the concept of justice, as is available in the justice delivery system of the country is that the conduct of the Detaining Authority or as a matter of fact any governmental authority ought to be fair and reasonable. The accepted methodology of governmental working should always be in tune with the concept of fairness and not de hors the same - a person is being placed under detention without trial and there is neither any scope for overzealous nor acting in a manner without due and proper application of mind - in either of the situation law Courts should be able to protect the individual from the administrative *ipse dixit*. The draconian concept of law has had its departure quite some time back and rule of law is the order of the day. It is this rule of law which should prompt the law Courts to act in a manner fair and reasonable having due regard to the nature of the offences and vis-a-vis the liberty of the citizens. The order as passed by the Settlement Commission on 15th February, 2001 directing the detenu to make payment of the additional duty as noticed above, cannot but be termed to be a very relevant material having a direct impact on the issue and in the event of non-placement of the same before the detaining authority, question of affirmation of the detention order would not arise. The observations of this Court in

A *Rajindra v. Commissioner of Police, Nagpur Division & Anr.*, [1994] 2 Supp. SCC 716 recording the need and requirement of the Central Government officials to be alive to the situation cannot but be said to apposite in the context.

B Incidentally, the other issue pertains to delayed consideration of the representation and it is on this score, a Three-Judge Bench decision in *Rajammal v. State of Tamil Nadu and Anr.*, [1999] 1 SCC 417 unequivocally condemned the delay for even five days in the manner as below:

C “We are, therefore, of the opinion that the delay from 9.2.1998 to 14.2.1998 remains unexplained and such unexplained delay has vitiated further detention of the detenu. The corollary thereof is that further detention must necessarily be disallowed. We, therefore, allow this appeal and set aside the impugned judgment. We direct the appellant-detenu to be set at large forthwith.”

D Mr. Verma, learned senior advocate appearing for the respondent-State made a frantic bid to contend the enormity and gravity of the offence alleged against the petitioner. In our view, however, the same does not require further scrutiny by reason of the express deprecation of the same by this Court in *Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad and Ors.*, [1996] 3 SCC 195.

E On the question of representation, the records depict that the same was sent to the President of India on 10th April, 2001 and the same was sent to the Ministry of Finance on August 16, 2001 - some explanation has been put forth, but we need not, however, detain ourselves in dealing with the same since we wish to state that non-placement of relevant materials before the
F detaining authority by the sponsoring authority is not only a lapse but a serious lapse on the part of the officials resulting in the order of detention to be declared unlawful and illegal and thus resultant cannot be sustained.

G In the view as above, the writ petition succeeds. The detention order stands quashed and set aside. V.C. Mohan son of V. Velayutham be released forthwith.

K.K.T.

Petition allowed.