

Manoj Garg Vs. Union of India and Anr

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Court : Delhi

Decided On : Dec-09-2014

Judge : Mukta Gupta

Appellant : Manoj Garg

Respondent : Union of India and Anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of decision: December 09, 2014 W.P. (CRL) 2055/2014, Crl.M.B. 11097/2014 & Crl.M.A.15826/2014 MANOJ GARG Represented by: Petitioner Mr.Vikram Chaudhri, Sr.Adv. instructed by Mr.Raktim Gogoi, Mr.Harshit Shiti, Mr.Shartaj Gill, Mr.Wattan Sharma, Mr.Akshay Chandra, Adv.s. versus UNION OF INDIA & ANR Represented by: Respondent Mr.Anurag Ahluwalia, CGSC for UOI/R-1. Mr.Pavan Narang, Mr.Shivam Takiar, Adv. for R-2. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Pursuant to a detention order dated June 02, 2010 based on the grounds of detention of the even date the petitioner has been detained on August 31, 2014. The prayer in the writ petition is for issuance of a writ of habeas corpus by quashing and setting aside the detention order dated June 02, 2010 bearing No.673/07/2010/CUS-VIII passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short the

COFEPOSA Act).

2. A brief exposition of facts leading to passing of detention order is that an information was received by the Delhi Zonal Office of the Directorate of Enforcement of involvement of a syndicate headed by Naresh Kumar Jain in illegal foreign exchange transaction in lieu of payment and receipt of Indian currency unauthorizedly through a wide hawala network. Naresh Kumar Jain a resident outside India stayed in Dubai from 1995 till May 2009 where after he came to India without any valid document. In Dubai he was carrying on the arrangement and transfer of foreign exchange to various exporters/ persons in India and vice-versa from Dubai and other countries. The financial transactions, hawala receipt, payment in India was controlled through a number of companies and his relatives based in Dubai and other countries. In these transactions the export invoices were manipulated under a plan and design for constant mixing of licit and illicit financial transactions in India to give a genuine basis to the unauthorized transfer of foreign exchange through banking channels. Naresh Kumar Jain continued to engage in this business even on return to India along with Manoj Garg, Puran Chand Sharma, Vimal Jain and Satpal Jain who were the other members of syndicate actively associated with Naresh Kumar Jain, who assisted him in carrying out his illegal activities in/ from India.

3. Searches were carried out under Section 37 of the FEMA 1999 read with Section 132 of the Income Tax Act 1961 at various places and as a result thereof Indian currency/ foreign currency, certain documents and articles were recovered and seized as per panchnamas dated 03.09.09 (4 panchnamas), 24.09.09 (8 panchnamas) and 17.11.09 (1 panchnama). These searches, documents and currencies recovered resulted in the preparation of grounds of detention and the order on detention. Pursuant to the passing of the detention order the father of the petitioner approached this Court by way of W.P.(CRL) No.1435/2010, inter alia, challenging the vires of the COFEPOSA Act in cases of activities relating conservation or augmentation of foreign exchange in view of change in regime from FERA to FEMA. No interim stay having been granted in the writ petition the petitioner approached the Honble Supreme Court by SLP (CRL) No.8750/2010 wherein vide order dated November 12, 2010 execution of the detention order was

stayed. Finally SLP (CRL) No.8750/2010 was dismissed on October 01, 2013 and on August 29, 2014 the petitioner sent a communication to the detaining authority as well as the sponsoring authority communicating them as under:

Accordingly, you are informed, intimated as well as requested to ensure due execution of the order of detention passed against my client Shri Manoj Garg on 31.8.2014 itself along with the Grounds of Detention as well as all and entire referred to/relied upon/ considered documents without any delay or lapse of time.

4. The petitioner was detained on August 31, 2014 when he arrived at the IGI Airport, New Delhi. The petitioner sent another representation dated September 03, 2014 communicating that the detention order has not been executed at the first available opportunity, thus stands lapsed and may be revoked and that the detenu was available in CBI custody. On September 16, 2014 the order of detention and the grounds of detention along with documents pages 1 to 927 were served on the petitioner.

5. The main ground of challenge of the petitioner in the present writ petition is that the documents relied upon by the detaining authority for passing the detention order have not been supplied *pari passu* the grounds of detention and not even on a representation being made. The contention of learned counsel for the petitioner is that Paras 50 and 52 of the grounds of detention speak about the documents seized from various premises during the searches conducted on different dates and that the panchnamas and the statements recorded reveal the nexus of Naresh Jain with Manoj Garg and other members of the syndicate and it is in this backdrop that the supply of documents must be considered. Further the orders of detention of all the other 4 co-detenues i.e. Naresh Jain, Satpal Jain, Vimal kumar Jain and Puran Chand Sharma have been quashed by this Court on the ground of nonsupply of relied upon documents and case of Manoj Garg the petitioner herein is identical to that of Puran Chand Sharma. Thus the detention order qua the petitioner be also quashed.

6. Learned counsel for the respondent Mr. Pawan Narang countering the grounds of challenge submit that all the relied upon documents have been supplied to the petitioner. The petitioner had sought certain irrelevant documents in his

representation which were never considered by the detaining authority while passing the order of detention and thus they were not required to be supplied to the detainee, and thus the continued detention of the petitioner is not bad in law and the petition be dismissed.

7. The grounds of detention in Para 50 note that the documents seized from various premises during the searches on September 03, 2009, September 24, 2009, October 08, 2009 and November 17, 2009 as per the panchnamas and statements recorded from the aforesaid persons reveal the nexus of Naresh Jain with Manoj Garg and other members of the syndicate viz. Puran Chand Sharma, Vimal Kumar Jain and Satpal Jain. Further reference is made to the statements of the witnesses who are stated to have seen the documents recovered and seized. The petitioner has listed number of documents which have not been provided however, to show the same illustratedly in ground O it is mentioned that documents recovered from Flat No.307, Pocket-B, Mayur Vihar, Phase-I, Delhi of Mahesh Kumar as mentioned at Serial No.12 of the list of relied upon documents have not been supplied. Further number of documents were seized from the premises of N.K.Rajgarhia D-52, Defence Colony, New Delhi whereby Panchnama at Serial No.20 of the list and only 10 documents have been communicated. The documents mentioned in the said panchnama at Serial No.1 to 8 thereof, have not been communicated.

8. The reply in the counter affidavit to the ground O is:

Documents recovered from Flat No.307, Pocket-B, Mayur Vihar, Phase-I, Delhi of Mahesh Kumar as mentioned in the Panchnama at Serial No.12 of the list Relied Upon Documents, were not relied upon while arriving on the subjective satisfaction to pass the impugned detention order and accordingly these were not supplied. Out of many documents that were seized from the premises of N.K.Rajgarhia D-52, Defence Colony, vide Panchnama mentioned at Sr. No.13 of the List, only 11 pages have been relied upon while remaining pages were not relied upon while arriving at the subjective satisfaction to pass the impugned detention order and accordingly these were supplied to the detainee, running from pages 2582 to 2592.

9. The grounds of detention in para 10 notes as under:

Residential premises occupied by the parents of Shri Mahesh Kumar at 307-B, Pocket II, Phase-I, Mayur Vihar, Delhi was also searched on 24.09.2009 and Indian currency amounting to Rs.10,96,500/- and file containing papers numbered from 1 to 48 and 4 loose sheets was seized from there. Smt.Sunder Bala, aged 68, wife of Shri Kishan Goel and mother of Shri Mahesh Kumar confirmed the seizure of Indian currencies and documents and had signed the Panchnama in token of confirmation of the same. However, she could not explain the source of seized money and also about documents.

10. It is thus evident that the documents seized from the residential premises occupied by parents of Mahesh Kumar at 307, Pocket-B, Mayur Vihar, Phase-I, Delhi and Panchnama prepared in this regard at Serial No.12 was relied upon by the Detaining Authority however, the same have not been admittedly supplied to the petitioner. Thus without going further into the non-supply of the other documents we are of the view that the petition filed by the petitioner requires to be meet the same fate as that of the codetenus.

11. It is trite law that all the material relied upon by the Detaining Authority in making the detention order must be supplied to the detenue to enable him to make an effective representation against the detention order in compliance of Article 22 (5) of the Constitution of India. Documents which are merely referred to by the detaining authority or used as a mere narrative need not be supplied to the detenue and the non-supply thereof would not be fatal to the continued detention unless the detenue is able to demonstrate prejudice having been caused on account of the non-supply. However, documents which have been relied upon for passing the grounds of detention have to be supplied pari-passu the grounds of detention since the same have entered the mind of the detaining authority and shared his subjective satisfaction in passing the detention order against the petitioner. See 1990 (2) SCC1M. Ahamedkutty vs.Union of India (UOI) & Anr. and 2008 (17) SCC348Union of India (UOI) vs.Ranu Bhandari.

12. Since relied upon documents have not supplied to the petitioner, the petitioners right to make an effective representation is seriously impaired and is thus fatal to the detention order. His continued detention is vitiated. The petitioner

has been in continuous custody since August 31, 2014. Thus while setting aside the impugned order of detention we direct release of the petitioner forthwith if not required in another case.

13. W.P. (CRL) 2055/2014 and accompanying applications are disposed of.
(MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER09
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