

Pinky Sharma Vs. Union of India

Pinky Sharma Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/5691

Court : Delhi

Decided On : Dec-04-2014

Judge : Vipin Sanghi

Appellant : Pinky Sharma

Respondent : Union of India

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

30. 10.2014 Judgment delivered on:

04. 12.2014 % W.P.(Crl.) 2026/2014 and Crl. M.A. No.15639/2014 PINKY SHARMA Through: Petitioner Mr. Pradeep Jain, Mr A. Samad, Mr. Shubhankar Jha & Mr. Ashish Batra, Advocates. versus UNION OF INDIA Through: Respondent Mr. Sanjay Jain, ASG along with Mr. Sanjeev Narula, CGSC and Mr. Ajay Sondhi & Ms. Shreya Sinha, Advocates for respondent No.1/ UOI. Mr. S.K. Dubey & Mr. Rajmangal Kumar, Advocate for respondent No.2/ DRI. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek a writ of Certiorari- to quash the detention order bearing No.F. No.673/07/2014-CUS VIII dated 25.07.2014 (hereinafter referred to as the detention order) passed under Section 3(1) (i) & 3 (1) (iii) of the

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) against Mr. Rameshwar Sharma (detenue) - the petitioners husband, and a direction to set at liberty the detenue from detention.

2. The Joint Secretary to the Govt. of India, Shri Harmeet S. Singh, passed the detention order in respect of the detenue, therein stating that the detaining authority is satisfied that the detenue be detained with a view to preventing him from smuggling of goods and in transportation & concealment of the smuggled goods in future.

3. The Grounds of Detention (GoD), inter alia, state that an intelligence received by the officers of Directorate of Revenue Intelligence (DRI), Jaipur, that a syndicate is involved in illegal storage and then export of red sanders (which is a prohibited item under Appendix II of the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) and as per import-export policy, 2009-14, their export in any form is prohibited).

4. The respondents claim that on 28.09.2013, five containers were examined and in four of them red sanders was found, apart from marble. The four containers were placed under seizure. Searches were simultaneously conducted, inter alia, at various premises in Delhi, Mundra and Jaipur by the DRI, which resulted in recovery of, inter alia, red sanders apart from documents, etc.

5. The statement of, inter alia, the detenue was recorded on 28.09.2013 and 29.09.2013, wherein he stated that he had a proprietorship firm in the name of M/s Euro Export, which carries on exports of Marble, granite and sandstone, etc. wherein he allegedly admitted that he was lured for monetary consideration for letting his containers containing marble slabs be used for stuffing red sanders. The detenue, however, subsequently retracted from his statement on 30.09.2013.

6. On 29.09.2013, the detenue was arrested under Section 104 of the Customs Act, 1962 by the DRI, Jaipur for allegedly having committed an offence under Section 132, 135(a), 135(b) and 135(c) of the Customs Act, 1962.

7. DRI, Jaipur filed the complaint against the detainee and others on 28.11.2013, where the matter is pending prosecution before the Ld. M.M., Jaipur. On 24.03.2014, the Show Cause Notice was issued to the detainee under the Customs Act and subsequently, on 12.05.2014, the detainee was granted bail by Sessions Judge, Jaipur, after a period of more than 7 months.

8. On 25.07.2014, the detention order was passed under Section 3 (1) (i) and (iii) of COFEPOSA Act. Thereafter, on 04.08.2014, the detainee appeared before the Chief Metropolitan Magistrate (Economic Offence), Jaipur for regular trial in the same matter.

9. The Detainee informed the sponsoring authority of his illness and that he was confined to bed on 05.08.2014. The Sponsoring authority acknowledged the same and further asked the detainee to provide Medical regarding his illness. On 07.08.2014, the detainee provided the photocopy of the medical treatment. He again caused his personal appearance before the Sponsoring Authority on 14.08.2014.

10. On 20.08.2014, the detainee was informed of the Detention Order and, thereafter, arrested and ever since he has been lodged in Tihar Jail. The police officials served upon the detainee the one page detention order dated 25.07.2014 (in English language) on the same day. On 21.08.2014, the detainee was served with the GoD along with Relied upon Documents (RuD) in English. The translation of the documents i.e. GoD along with RuD were served to the detainee in Hindi on 23.08.2014.

11. The detainee also made a representation to the Special Secretary & Director General, COFEPOSA through the Jail Superintendent against his detention on 23.08.2014. Subsequently, on 08.09.2014, the detainee requested the detaining authority to supply all the documents in Hindi and pointed out the page nos. not provided in Hindi, and pages which apparently looked as incomplete, or with incorrect translations. The representation of the detainee was rejected vide memorandum dated 15.09.2014.

12. In the above circumstances, the present petition has been preferred. We have considered the submissions of the parties, in depth, in a connected petition pertaining to a similar detention order - in W.P. (Crl.) 1695/2014, (Manish Gagodia vs. Union of India). In Manish Gagodia (supra), the grounds challenging the detention order have been considered in details. For the sake of brevity, we shall not discuss at length the grounds that have been taken by the petitioner, as the same has been discussed in W.P. (Crl.) 1695/2014. In the present case, we shall discuss in brief, mainly two grounds for challenging the detention order i.e. ground of delay in passing of the detention order, and execution of the detention order.

13. In the matter at hand, after the alleged seizure of red sanders from possession and custody of the detainee on 28/29.09.2013, and conduct of investigation, the complaint was filed under Section 132 and 135 of the Customs Act on 28.11.2013. Thus, the investigation was complete by the said date. Further, the show cause notice under the Customs Act was issued to the detainee on 24.03.2014, which clearly establishes that the material evidence required for passing of the detention order was available with the Detaining Authority. However, inspite of the same, the detention order was not passed till 25.07.2014. The detention order was passed after a delay of about 8 months, which has defeated the purpose of the detention as it was to prevent the detainee from acting in a prejudicial manner by indulging in the prohibited trade. Thus, the live link had already broken by the time the detention order was passed belatedly on 25.07.2014. There is no satisfactory or convincing explanation brought on record by the respondents to explain the aforesaid delay.

14. That apart, the Detaining Authority delayed the execution of the detention order passed on 25.07.2014, which was served to the detainee on 20.08.2014 i.e. after 26 days. The detainee appeared before the learned CMM (Economic Offence), Jaipur. However, the detention order was not served on him - for no explicable reason. Pertinently, the respondents have themselves tendered in Court a time chart showing the chronological sequence of events in respect of the detainee. In this chronological chart at Sl. No.108, it is disclosed that on 01.08.2014, a letter was written by SA to DGP Rajasthan with a copy to the Ministry, informing that if the detention order has not been executed till then, the

same could be executed against the detainee on 04.08.2014 when he had to appear before the CMM, Jaipur. In this background, the failure of the respondents to serve the detainee with the detention order on 04.08.2014 is, in our view, fatal.

15. It is evident from the facts of the case that the detainee informed the sponsoring authority about his illness, and that he was confined to his bed on 05.08.2014 and, thereafter, made regular correspondence with the sponsoring authority. Again, he personally appeared before the Sponsoring Authority on 14.08.2014. The above circumstances clearly establish the availability of the detainee at his residence and on one occasion, even before the Sponsoring Authority. Despite this the detention order was not served upon the detainee. The respondents have not disclosed any attempt made to serve the detention order soon after it had been made. It is not the respondents case that the detainee was avoiding service of the detention order.

16. In view of the aforesaid discussion and the discussion in W.P. (Crl.) 1695/2014, we allow the present writ petition and quash the detention order dated 25.07.2014 passed by the respondents under Sections 3(1) of the COFEPOSA Act; the petitioner shall be set at liberty forthwith. VIPIN SANGHI, J S. RAVINDRA BHAT, J DECEMBER04 2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com