Subhash Chander Gupta Vs. Union of India (Uoi) and ors.

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Court : Punjab and Haryana

Decided On : Nov-26-1996

Reported in : 1997(57)ECC206

Judge : S.C. Malte, J.

Appeal No. : Criminal Writ Petition No. 568 of 1996

Appellant : Subhash Chander Gupta

Respondent : Union of India (Uoi) and ors.

Disposition : Petition allowed

Judgement :

S.C. Malte, J.

1. The petitioner challenges order of this detention passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (COFEPOSA). The circumstances giving rise to this writ petition can be briefly summarised as follows:--

2. On 6.3.1995 on information, a car was intercepted at about 7.00 to 7.30 p.m. on that day. Then, allegedly, the petitioner was found in possession of certain currency notes of various countries and some other incriminating documents pertaining to the dealing of foreign currency. The petitioner was duly arrested and

was being prosecuted under the provisions of Foreign Exchange (Regulation) Act. The petitioner was produced before the Magistrate on 8.3.1995. It appears that he was remanded to judicial custody from time to time. Later on, the Magistrate released the petitioner on bail on 20.4,1995.

3. The impugned detention order passed by the authorities was dated 12.5.1995. That order, however, could not be executed against the petitioner though efforts were made to execute it, as claimed in the reply filed by the Union of India. At a later stage I will refer that aspect in detail. The main plank on which the order [is] challenged is that there was inordinate and unexplained delay in-- (i) passing the detention order, and (ii) there was no sincere effort to execute the detention order, and even the execution was unjustifiably delayed.

4. Insofar as it pertains to the delay in passing the detention order, certain dates as given in the reply may be noted. In the reply it is sated that the investigating machinery required some time till the investigation was completed and the documents relied upon had to be translated into the language known to the petitioner. I may say that to that extent some period can be justifiably granted. The subsequent delay, however, requires certain clarifications. The reply indicates that after completion of investigation and documents as stated above, the Enforcement Directorate, Jalandhar, sent the proposal for detention, by its communication dated 16.3.1995 to its Headquarters at New Delhi. If that be the position, there seems no clarification to extend the delay till 12.5.1995 on which date the detention order was passed. There is thus delay of about two months between these two events. The reply filed by Mr. K.L. Verma, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, does not indicate the reason why there was time gap of about two months between the submission of the proposal for detention till the detention order was passed. The counsel for the petitioner brought my attention to the case of T.A. Abdul Rehman v. State of Kerala 1989 CAR 317 (SC). In that case Their Lordships of the Supreme Court observed that whenever there is undue and long delay between prejudical activities and passing the detention, the court has to scrutinize whether the detaining authorities has satisfactorily explained the delay. In the reply, reference had been made to a case of Hem Lata v. State of Maharashtra : 1982 CriLJ150 .

In that case also Their Lordships of the Supreme Court in para 7 of the judgment observed that the delay between the date of arrest and the date of detention, though need not be explained to the detenu, authorities passing the detention order are under obligation to satisfy the Court as to the cause of the delay to show that there was no infraction of the constitutional provisions laid down under Article 22(5) of the Constitution. Clause (5) of Article 22 makes it obligatory on the authority passing the order of detention, as soon as may be possible, to communicate [to] such person the ground on which the order has been made and shall afford him the earliest opportunity of making the representation against the order. In this case, it may be noted that the petitioner was in the judicial custody under remand order till 20.4.1995 was passed. Therefore, if the detention order had been expeditiously passed, it would have afforded the petitioner an opportunity to make representation against it. In the context of this, I may also make a reference to a decision of Balvinder Singh v. State of Punjab 1995 (3) RCR 355 in which single Bench of this Court observed that a gap of nine months between the order of detention and the prejudicial activity of the petitioner, having remained unexplained properly, was enough to vitiate the detention order. The sum total of the catena of authorities, indicates that though Section 3 of the COFEPOSA does not by itself indicate that delay in passing detention order should be explained, in view of the constitutional provisions of Article 22(5), it is the duty cast on the authorities concerned to pass the detention order with such expeditious despatch which would show reasonable nexus between the prejudicial act and the detention order and would also afford an opportunity to such person to make representation at the earliest. The laxity on the part of the detaining authority in passing the detention order, or unexplained delay in passing the detention order casts a serious doubt as to the subjective and objective satisfaction of the authorities that such detention order was being passed with a view to preventing him from acting in any manner prejudicial to conservation or augumentation of the foreign exchange or with a view to prevent him from indulging in smuggling activity as indicated in that section. In this case even if some allowance can be made for the time spent till 16.3.1995, there is absolutely no explanation why the detention order was not passed till 12.5.1995. Under these circumstances, I hold that the detention order was bad in law.

4. The next question raised before me pertains to the expeditious execution of the detention order. The reply filed by the respondents indicates that the execution was initially sought on 25.5.1995. The order could not be executed because the petitioner was not found. Thereafter efforts were made on the following dates:--

8.6.1995, 14.7.1995, 17.8.1995, 23.8.1995, 29.8.1995, 7.9.1995, 6.10.1995, 31.10.1995, 6.11.1995, 22.11.1995, 5.12.1995 and 13.12.1995.

It is further stated that the police have also raided on 16.7.1995, 14.9.1995, 17.9.1995, 13.10.1995, 15.10.1995, 29.11.1995 and 19.12.1995. It does not clarify what happened between 12.5.1995 to 25.5.1995. The execution of the order had not been undertaken for a span of three weeks, or say, on some of the occasions mentioned above. The counsel for the petitioner submitted the case of Shafiq Ahmad v. District Magistrate 1990 CAR 1. In that case the Supreme Court was considering delay in execution of a detention order passed under the National Security Act. These provisions are pari materia similar to COFEPOSA. In that case Their Lordships observed that the delay in execution of the order is required to be explained properly, and if not explained, it vitiates the order. In that case the delay in execution was of about 27 days at the first instance, and only three days in the other instance. That delay had remained unexplained. The counsel has brought my attention to a case of P.U. Iqbal v. Union of India 1992 CAR 52. In that case the Supreme Court has also observed that unexplained delay between passing of detention order and the date of arrest is sufficient to set aside the order. In this case the time gap between the date of execution of order on various occasions has not been clarified. The time gap is to the extent of about one month on some of the occasions as mentioned above.

5. I, therefore, allow this writ petition and quash the detention order, dated 12.5.1995 passed by Mr. K.L. Verma, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi. The petitioner be set at liberty, if not required in connection with any other case.