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Devi Dass Vs. Union of India and Others

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Court : Delhi

Decided On : May-03-1985

Reported in : ILR1985Delhi607

Judge : H.C. Goel, J.

Acts : COFEPOSA - Sections 2(f) and 3(1); Indian Penal Code (IPC), 1860 - Sections 107

Appeal No. : Cr.W. No. 42 of 1985

Appellant : Devi Dass

Respondent : Union of India and Others

Advocate for Def. : Mr. Bagai

Advocate for Pet/Ap. : Shri. Harjinder Singh, Mr. Harjinder Singh

Judgement :
ORDER

1. The petitioner Devi Dass was detained by an order dt. June 30, 1984 passed by the Administrator, Union Territory of Delhi, under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA). Pursuant to the order of detention the petitioner was arrested on January 14, 1985. The petitioner was supplied with the grounds of detention dt.

June 30, 1984 on January 18, 1985 along with documents as per the two lists of documents, Annexures B and C to the writ petition. The order of detention states that the Administrator of the Union Territory of Delhi is satisfied with regard to the petitioner Devi Dass that with a view to preventing him from abetting the smuggling of goods, namely, wrist watches, it is necessary to make the following order :-

'Now, thereforee, in exercise of the powers conferred by S. 3(i) and (ii) read with S. 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Administrator of the Union Territory of Delhi is pleased to direct that the said Shri Devi Dass be detained in custody in Central Jail, Tihar, New Delhi.'

It is the common case of the parties that although the grounds of detention run into 25 pages, comprising 31 paras, the real ground of detention is only one and the entire other narration in the grounds of detention gives the facts and circumstances leading to that particular ground, as also reference to the evidence and the material as gathered against the petitioner in that regard. It is stated that one Suresh Chaudhary prior to September 3, 1982 approached the petitioner Devi Dass at his shop No. 34, Gaffar Market, New Delhi, to help him to transfer Rs. 30,000/- to Hong Kong. Suresh Chaudhary paid Rs. 30,000/- in Indian currency to the petitioner and the petitioner gave him a chit on which some thing was written in code words. The petitioner told Suresh Chaudhary to show that chit to M/s. Lal Sons, 1st Floor, Chung King Mansion, Hong Kong who were not known to Suresh Chaudhary prior to that. The petitioner also told Suresh Chaudhary that on the showing of that chit M/s. Lal Sons would give him (Suresh Chaudhary) Hong Kong dollars 15,000. Suresh Chaudhary then went to Hong Kong on August 3, 1983 from Delhi. He handed over the said chit to M/s. Lal Sons at Hong Kong who gave 15,000 Hong Kong dollars to Suresh Chaudhary in lieu thereof. Rs. 30,000/- as obtained by the petitioner from Suresh Chaudhary included his commission of the transaction. Suresh Chaudhary stayed in Hong Kong from August 3, 1983 to August 25, 1983 from where he then came to Singapore on August 25, 1983. Suresh Chaudhary flew to Madras from Singapore on September 2, 1983 and from Madras he finally arrived at Delhi Airport on September 2, 1983 at 10.00

hours. On search of the five pieces of hand bags of Suresh Chaudhary quartz wrist watches worth Rs. 44,400/-, two lady Citizen Quartz writ watches valued at Rs. 600/- and 4000 button cells valued at Rs. 8,000/-, thus of the total value of Rs. 53,000/-, were seized under S. 110 of the Customs Act, 1962. Suresh Chaudhary in his statement recorded on September 2, 1983 by the Customs Officer under S. 108 of the Customs Act, 1962 had stated that the petitioner had given him the said chit on being paid Rs. 30,000/- in the Indian currency by Suresh Chaudhary. It is alleged that the petitioner by giving the chit with the code words thereon on the basis of which Suresh Chaudhary obtained 15,000 Hong Kong dollars from M/s. Lal Sons of Hong Kong had abetted the smuggling of goods, namely, wrist watches by Suresh Chaudhary in India.

2. The detention has been challenged by the petitioner in his writ petition on a number of grounds. The respondents in their counter-affidavit had traversed the various grounds as raised by the petitioner, the first ground of challenge to the order of detention as canvassed before me is that the order of detention is at variance with the grounds for detention as stated by the detaining authority and there was complete non-application of mind on behalf of the detaining authority in passing the order of detention. Shri Harjinder Singh, learned counsel for the petitioner, submitted that all that is stated against the petitioner in the lengthy grounds of detention is that Suresh Chaudhary had approached the petitioner at his shop No. 34, Gaffar Market, New Delhi, to help him to transfer Rs. 30,000/- to Hong Kong. Suresh Chaudhary paid Rs. 30,000/- to the petitioner in India on which the petitioner gave a chit to Suresh Chaudhary with some words in code language written thereon. The petitioner had told Suresh Chaudhary that he would get 15,000 Hong Kong dollars from M/s. Lal Sons of Hong Kong on the presentation of that chit to them and that Suresh Chaudhary accordingly got 15,000 dollars on presenting the chit to M/s Lal Sons at Hong Kong. It was contended that this did not constitute an act of abetment of smuggling of goods, namely, wrist watches which was done allegedly by Suresh Chaudhary. I may say at the very outset that there is merit in this contention. S. 3(1) of the COFEPOSA under which the order of detention was passed consists of two parts. According to the first part an order of detention may be passed with a view to preventing a person from acting in any manner prejudicial to the conservation or augmentation

of foreign exchange. Under the later or the second part an order of detention may be passed with a view to preventing a person from any of the five different kinds of activities as mentioned in clauses (i) to (v) of Sub-s. (1) of S. 3. In the present case the order of detention was passed with a view to preventing the petitioner from abetting the smuggling of goods which is a ground stated in clause (ii) of later part of S. 3(1) of the COFEPOSA. It is obvious that the purpose and the basis for passing the order of detention under the said two parts of S. 3(1) are different. In a case in which the grounds of detention disclose a case other than the one which is made the basis for the passing of the order of detention that would certainly and obviously be a case of clear non-application of mind of the detaining authority in passing the order of detention. In the present case there was no material whatsoever before the detaining authority nor any reference is made to any such material in the grounds of detention which could go to show that the petitioner had indulged in the abetment of smuggling or it could be said on the basis of the material as placed before the detaining authority that it was necessary to detain the petitioner with a view to preventing him from abetting the smuggling of goods, namely, wrist watches. The material as placed before the detaining authority only showed that the petitioner may have placed the sum of Rs. 30,000/- to the credit of a person resident outside India viz. M/s Lal Sons of Hong Kong by means of the coded writing as passed on to M/s Lal Sons through Suresh Chaudhary. This act of the petitioner may amount to contravention of S. 9(1)(d) and/or (e) of the Foreign Exchange Regulation Act, 1973 as punishable under S. 56 of that Act. I am, However, of the opinion that on the material as referred to in the grounds of detention no reasonable person could have come to the conclusion or have the suspicion that the petitioner had abetted or was abetting smuggling of watches or of any goods whatsoever. There is nothing in the grounds of detention to show that Suresh Chaudhary had told the petitioner the purpose for which he required 15,000 Hong Kong dollars in Hong Kong. Nothing is alleged that Suresh Chaudhary had told the petitioner that he would like to purchase wrist watches with that money at Hong Kong or at Singapore or for that matter he would at all purchase any contraband goods and would then import them in India illegally. In absence of any material having been referred to in the grounds of detention showing that the petitioner knew that Suresh Chaudhary required 15,000 Hong

Kong dollars for the purchase of wrist watches at Hong Kong and they were to be smuggled by him in India, there could be no basis for so presuming against the petitioner. According the S. 107 of the Indian Penal Code a person abets the doing of a thing, among others, who intentionally aids, by any act or illegal omission, the doing of that thing. Explanationn 2 to S. 107, reliance on which was placed by Mr. Bagai, reads as below :-

'Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.'

On a reading of clause thirdly of S. 107 IPC and Explanationn 2 thereto it is clear that in order to constitute abetment of the doing of a thing the abettor must be shown to have intentionally aided the doing of that illegal act. It is thus obvious that unless a person knew that the doer of the wrong thing was going to commit the illegal act there could be no question of the alleged a better intending to aid the commission of the illegal act by the doer thereof. A person may be said to do anything in order to facilitate the commission of the illegal act by the other and thereby aid the doing of that act only if the alleged abettor does the thing knowingly and intentionally and in order to facilitate the commission of that wrong act. It is not enough that an act on the part of an alleged a better happens to facilitate the commission of the crime that may constitute the offence of abetment on his part. The decision of the Supreme Court in the case Shri Ram v. State of U.P. : [1975]2SCR622 is very instructive on the point. The Supreme Court held as below :-

'In order to constitute abetment, the a better must be shown to have 'intentionally' aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of S. 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged a better happens to

facilitate the commission of the crime. Intentional aiding and thereforee active complicity is the gist of the offence of abetment.'

Thus in the absence of any material as stated above having been referred to by the detaining authority in the grounds of detention, the order of detention stating that the detention of the petitioner Devi Dass was being ordered with a view to preventing the petitioner from abetting the smuggling of goods, namely, wrist watches was passed by the detaining authority clearly without the application of mind and has to be quashed. This appears to be the settled position of law. Same view was taken by a Division Bench of this Court in the case Smt. Sunita Sharma v. Administrator, Delhi Administration : 17(1980)DLT525 . In that case the order of detention was passed by the Administrator on September 20, 1979 only on one ground, namely, that Shri S. K. Sharma was carrying on the illegal activity of smuggling of watches. The order did not state that Shri S. K. Sharma was dealing in smuggled watches. In the grounds of detention it was, inter alia, stated that the information which was received was that Shri S. K. Sharma was receiving smuggled goods (watches) with the active connivance of the cleaners of the seizure of the watches on 4-8-1979 (Sic). It was also stated that the four cleaners made statements to the effect that the packets containing the watches were removed from the toilet of the aircraft at the instance of Shri S. K. Sharma. After referring to the raid conducted at the detenu's house on 5-8-1979 the grounds referred to his statement dt. 6-8-1979 which was later retraced by the detenu. The contents of the detenu's statement as set out in the grounds, inter alia, were that one Shri Rajan, an employee of the British Airways had informed Shri S. K. Sharma that the contraband watches were coming to Delhi from Hong Kong; that the arrangement for the dispatch had been made by Shri Rajan through one Shri S. K. Mohan and Shri Santosh; that the detenu was to receive from the British Airways aircraft and deliver them to Rajan; that on information being given by the detenu one Shri Chander Singh arranged for the removal of the contraband goods from the aircraft; that 12 packets containing the smuggled goods were delivered to the detenu on 5-8-79 and on the same day the detenu delivered these watches to Rajan and received Rs. 7,000/- being 25% of the share of the profits. It was observed that the grounds which have been supplied to the detenu did not reveal any smuggling activity being carried out on the part of Shri S. K. Sharma. The

grounds may make out a case for dealing in smuggled goods or abetting in smuggling of goods or engaging in transporting of smuggled goods. The grounds clearly did not even allege that the detenu was responsible for the illegal importation of the goods into India. On these observations it was held that there was no application of the mind on the part of the competent authority to order the detention on the serious charge of smuggling of watches without the grounds disclosing any material on the record justifying such a suspicion. It was also observed that taking the grounds as served on the detenu no reasonable person could have come to the conclusion or have a suspicion that Shri S. K. Sharma was smuggling watches and the order of detention was quashed. The present case is much worse for the respondents. Mr. Bagai, learned counsel for respondent 1, was unable to refer me to any material in the grounds of detention which could go to show that the detenu knew the purpose for which Suresh Chaudhary obtained 15,000 Hong Kong dollars in which the detenu was instrumental or as to how in the absence of that the petitioner could be said to have intentionally aided the smuggling of watches by Suresh Chaudhary by the mere fact that he was instrumental in providing Suresh Chaudhary 15,000 Hong Kong dollars in Hong Kong. Mr. Bagai submitted that the fact that Suresh Chaudhary obtained 15,000 Hong Kong dollars from M/s Lal Sons in Hong Kong on the basis of the coded chit as given to him by the petitioner and smuggling watches in India go to show that Suresh Chaudhary must have purchased those watches with the very money and that thus the petitioner had aided Suresh Chaudhary in the purchase and smuggling of wrist watches. There is absolutely no merit in this submission. In the absence of any material there could be no basis for drawing presumptions as suggested by Mr. Bagai, in any case, about the knowledge of the petitioner about the purpose for which or the manner in which 15,000 Hong Kong dollars were to be utilised by Suresh Chaudhary.

3. Mr. Harjinder Singh, learned counsel for the petitioner, also raised two more contentions firstly that the Administrator in the concluding para 28 of the grounds of detention stated that the petitioner had strong tendencies in the matter of indulging in activities which amounted to abetment of smuggling of goods, namely, wrist watches, and watch cells, and further stated that with a view to preventing the petitioner from abetting the smuggling of goods into India, namely, wrist

watches and watch cells, his order of detention was required to be made. It was pointed out that as against that the order of detention was passed by the detaining authority with a view to preventing the petitioner from smuggling of only one category of goods, namely, wrist watches, and the order of detention does not make a mention of the watch cells. It was submitted that this variation in the order of detention and in the conclusion as recorded in the grounds of detention also vitiated the order of detention. The second ground of attack as canvassed by Mr. Harjinder Singh was that the sponsoring authority did not inform the detaining authority that adjudication proceedings regarding the incident in question were separately pending against the petitioner nor a copy of the show cause notice served on the petitioner and his reply thereto were placed by the sponsoring authority before the detaining authority. It was contended that these are vital facts which had a bearing on the question of the detention of the petitioner. The detaining authority might have taken a view that in view of the fact that adjudication proceedings were pending before the customs authorities against the petitioner regarding the incident in question, it was not advisable not to pass an order of detention against the petitioner. It was contended that the order of detention was bad on that account as well. In view of my aforesaid conclusion that the order of detention is bad and is liable to be quashed on the first ground I need not go into these grounds.

4. For the foregoing reasons I allow the writ petition and order that the detent petitioner be released forthwith unless he is required in some other criminal case or the petitioner could be detained under any other valid order.

5. Petition allowed.

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