

Kamla Devi Vs. Superintendent, Central Jail, Delhi and ors.

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Court : Delhi

Decided On : Feb-12-1985

Reported in : 1985(2)Crimes893; 1985(9)DRJ105

Judge : Prakash Narain, C.J.

Acts : [Constitution of India](#) - Article 22(5)

Appeal No. : Criminal Writ Appeal No. 10 of 1985

Appellant : Kamla Devi

Respondent : Superintendent, Central Jail, Delhi and ors.

Advocate for Pet/Ap. : P.N. Lekhi,; M.K. Garg,; R.M. Bagai and;

Judgement :

Prakash Narain, C.J.

(1) Sunder Singh has been detained by virtue of an order passed by the Administrator of the Union Territory of Delhi under Section 3(1) read with Section 2(f) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him from engaging in transporting, concealing and keeping smuggled goods and also preventing him from abetting the smuggling of goods, viz..wrist watches (foreign origin) into India. The formal order authenticated in the name of the Administrator is dated October li, 1984. In

execution of the said order the petitioner was arrested and is at present lodged in Central Jail, Tihar. The Administrator had, in fact, approving the proposal sent by the Customs Department to preventively detain Sunder Singh passed the order qua his detention on October 1, 1984. Smt. Kamla Devi, the wife of the aforesaid detenu, has approached this court for issue of a writ of habeas corpus or any other order, writ or direction, as may be appropriate for quashing the detention and ordering that Sunder Singh be set at liberty.

(2) The detention of Sunder Singh is challenged on various grounds. It is contended that there has been undue delay in resorting to preventive detention when the incident, which led to the impugned order being passed, allegedly was of March 18, 1984. The contention is that Sunder Singh, who was arrested on October 18, 1984, could not be preventively detained under the aforesaid Act for the alleged activity a long time back allegedly, having taken place in March, 1984. The second contention was that there has been denial of both the statutory right and the fundamental right of Sunder Singh inasmuch as reference to the Advisory Board was not made within the stipulated period of five weeks. To meet the contention on behalf of the respondents that a declaration had been made in respect of Sunder Singh under Section 9 of the aforesaid Act, as it is in force now, it was urged that the section was not retroactive, it could not affect persons allegedly having engaged in the act of smuggling etc. at a time when the Delhi Airport was not a vulnerable area, as defined in the aforesaid Act and that the ordinance which preceded the amending Act made it clear that the retrospectivity in the present case had to have relation with the alleged incident and not arrest under the impugned order. It was further urged that the right under Article 22(4) of the Constitution was a vested right and could not be taken away by any subsequent amendment. Argument was also raised regarding the classification of vulnerable area, as made by the amending Act, contending that it had no nexus or reasonable nexus with the object that was sought to be achieved.

(3) The third contention raised was that the reasonableness of the detention order has to be examined as, according to the petitioner, no reasonable person could on the facts disclosed, even in the grounds of detention, come to the conclusion that the detenu was a person who was required to be preventively detained under the

aforesaid Act.

(4) Lastly, it was contended that retractions made by the detenu visa-vis his alleged statements recorded by the Customs Authorities under Section 108 of the Customs Act were not placed before the detaining authority. According to the petitioner the retractions were relevant documents to enable the detaining authority to arrive at a conclusion, even subjectively, one way or the other. Since a material document was not placed before the detaining authority, the satisfaction stands vitiated. In particular, reference was to a communication dated April 14, 1984 addressed by the detenu to the D.I.G., Delhi Police, with copy to various other police officers,

(5) A passing reference was also made by learned counsel for the petitioner to the reasonableness of the procedure adopted in preventive detention under the aforesaid Act. At this stage the matter was adjourned to the next day for being mentioned as learned counsel wanted to show some authorities besides the ones that had already been cited earlier. The matter came up before us the next day when Shri P.N. Lekhi, learned counsel for the petitioner, sought our leave, which was granted, to place before us the carbon copy of the document already mentioned in paragraph 8 of the petition, viz. the reply of the detenu to the show cause notice issued to him by the Customs Department in the adjudication proceedings. A cyclostyled copy of this document is already on the record having been referred to in paragraph 8 of the writ petition. When we say this document, it appeared to us that the original thereof had been delivered to the customs authorities on September 24, 1984. A reading of this document, in particular paragraph 6 thereof, shows that it was a complete and absolute retraction of the statements allegedly made by the detenu under Section 108 of the Customs Act. We gave opportunity to learned counsel for the respondents to examine the position and explain why this document, if received by the Customs Department, which was the sponsoring department for preventive detention of the detenu, was not rushed to the Administrator before he could pass an order under Section 3(1) of the aforesaid Act. Mr. R.M. Bagai has very fairly placed the entire record of the Delhi Administration as well as the Customs Department before us. A very strange state of affairs becomes apparent. The reply to the show cause was received in

the Customs Department at Gurgaon Road on September 24, 1984, presumably by a Receipt Clerk. The Superintendent did not deal with this document till 28th September, 1984. On that date by his initials he authorised the dairying of the document for being sent to the P & I Section. It was received in the P & I Section on September 29, 1984 and immediately sent to Central Diary Section. September 30, 1984 was a Sunday. The document was sent to the Legal Cell on October 10, 1984. That office then rushed it to the Delhi Administration which received it on October 12, 1984. In the meanwhile, however, the Administrator had already passed the order of detention on October 1, 1984 and the formal order had also been drawn up authenticated and issued on October 11, 1984.

(6) The fact of the activity or inactivity in dealing with the reply to the show cause has resulted in a material document not being made available by the sponsoring authority to the Administrator. Unaware of the existence of this document, the Administrator has passed an order under Section 3(1) of the Act resulting in Sunder Singh being deprived of his liberty. The Administrator cannot be blamed. The sponsoring department, however, cannot be absolved of the blame that must attach to its inaction and inactivity resulting in a citizen losing his liberty. This document, if placed before the Administrator, could have persuaded the Administrator one way or the other. Even if remotely there is a chance of a person not being deprived of his liberty on the basis of a document, the non-submission of that document is a serious infraction.

(7) Mr. Bagai, by reference to the peon book handed up to him by the departmental officers instructing him in Court, states that the Superintendent sent this document to the P & T Section on September 29, 1984. The P & I Section returned it on the same day to the central diary section. After that it was sent to the Legal Cell on October 10, 1984 which cell being conscious of the importance of the document caused it to be rushed to the Delhi Administration, which received it on October 12, 1984. To us it is obvious that from September 24, 1984 to October 10, 1984 there was complete and utter inactivity which politely put may be described as casualness on the part of State functionaries. Even if this document was relevant according to the Superintendent only for adjudication proceedings, he being unaware of the preventive detention proceedings, we fail to understand

why for the purpose of adjudication proceedings at least immediate action was not taken on the document by forwarding it to the Legal Cell. Time and again we have had to comment upon the casual manner in which various departments function. This case is a striking example of that. There is no excuse which the Department can give as this inactivity or casualness has resulted in a material document not being placed before the Administrator which could have affected his subjective satisfaction one way or the other. Sunder Singh has been deprived of his liberty and in such matters no excuse is good enough.

(8) The result is that we hold that the subjective satisfaction of the Administrator stands vitiated inasmuch as the sponsoring department did not place before him a material document which could have affected the taking of the subjective decision one way or the other. We, therefore, quash the impugned order of detention in respect of Sunder Singh and direct that he be set at liberty forthwith unless required to be detained under any other valid order of an authority or a court.

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