Narinder Kumar Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-06-1988

Reported in : 36(1988)DLT340

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Sections 3(1); Customs Act, 1962 - Sections 108

Appeal No. : Criminal Writ Appeal No. 233 of 1988

Appellant : Narinder Kumar

Respondent : Union of India and ors.

Advocate for Pet/Ap. : R.M. Bagai,; Rajender Dutt and; S. Kohli, Advs

Judgement :

Charanjit Talwar, J.

(1) The petitioner Narinder Kumar was detained by an order of the 5th March, 1988 under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Cofeposa Act) with a view to preventing him from dealing smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. The impugned order was passed by the Joint Secretary to the Government of India, specially

empowered under the Act. The grounds of detention also dated the 5th March, 1988 served on the petitioner while he was in judicial custody in Central Jail, Amritsar show that the detaining authority has relied on the petitioner's statement dated the 4th February, 1988, recorded under Section 108 of the Customs Act, 1962.

(2) The petitioner alleges that vide letter of the 10th February, 1988 addressed to the Chairman, Customs and Central Excise, Government of India, Ministry of Finance, New Delhi and copies endorsed to the Secretary Ministry of Finance, Government of India, New Delhi and to the Collector of Customs and Central Excise, Chandigarh, he had retracted that statement. This averment is contained in paragraph 6 of the petition. The letter dated the 10th February. 1988 has been annexed with the petition as Annexure P. VII. The plea based on this averment of fact is raised in Ground 'B' of the petition. It reads :

'B.Because of the retraction made by the petitioner vide his detailed complaint-cum-representation dated 10.2.88 sent to the sponsoring authority, respondent No. 1 and the Chairman, Customs and Central Excise was also withheld from the detaining authority. The withholding of this retraction also vitiates the detention order.'

Mr. Bagai, learned counsel for the petitioner submits that it was incumbent on the sponsoring authority, i.e., the Collector of Customs and Central Excise, Chandigarh to have placed the petitioner's representation dated the 10th February, 1988. whereby he had retracted the earlier statement made under Section 108 of the Customs Act, before the detaining authority. Mr, Bagai has taken us through the grounds of detention and also the list of documents relied upon by the detaining authority. In the grounds there is no mention of the letter dated the 10th February, 1988. In the list of documents (Annexure P. Iii to the grounds of detention) only seven documents are referred to. The document of the 10th February, 1988 is not mentioned therein also.

(3) The respondents have filed the affidavit of Shri K.L. Verma, Joint Secretary, Department of Revenue, Ministry of Finance in opposition. In paragraph 6 of the reply on merits, the avernment that the petitioner did send the letter dated the 10th

February, 1988, which according to him was received by the authorities concerned, is not being disputed. What is rebutted is that 'the allegations made in the complaint are wrong.' In reply to the Ground B it is averred 'B. In reply to Ground B, it is submitted that the allegations made in the complaint cum-representation are wrong and is not based on facts.'

(4) Thus the averments of the petitioner that (1) he had retracted the statement made on 4th February, 1988, (2) that the letter was received by the authorities and (3) that the said letter was not placed before the detaining authority are not being denied.

(5) As the letter retracting the earlier statement was not placed before the detaining authority for its consideration, the impugned order dated the 5th March, 1988 is liable to be quased. We may note that it is not the contention of Mr. Dutt that such a letter or the representation containing retraction of an earlier statement is not to be placed before the detaining authority. There is a catena of authorities wherein it has been held over and over again that non-placing of such a representation violates the fundamental right of the detenu. Recently in Andrew Simon King v. Union of India (Cr. Writ Petition No. 93 of 1988), decided on 5th July, 1988, we had held that it was the duty of the Directorate of Revenue Intelligence (the sponsoring authority in the said case) to have placed the 'retraction' before the detaining authority as that representation was likely to effect his mind either way.

(6) We allow the petition and make the rule absolute. The petitioner if not required in any other case be released forthwith.