

Jasjit Singh Vs. Union of India and ors.

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Court : Delhi

Decided On : Nov-24-1988

Reported in : 37(1989)DLT30

Judge : P.K. Bahri, J.

Acts : [Activities Act, 1974](#) - Sections 3(1); [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(l); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11

Appeal No. : Criminal Writ Petition No. 226 of 1988

Appellant : Jasjit Singh

Respondent : Union of India and ors.

Advocate for Pet/Ap. : R.M. Bagai,; U.L. Watwani and; R.P. Lao, Advs

Judgement :

(1) In this criminal writ petition brought under Article 226 of the [Constitution of India](#) read with Section 482 of the Code of Criminal ocedure, the petitioner has prayed for quashing of the detention order dated February 5, 1988, passed by respondent No. 2 under Conservation of Foreign Exchange and Prevention! of Smuggling [Activities Act, 1974](#) (for short 'COFEPOSA Act') it is not necessary to refer to all the grounds pleaded in this writ petition because this petition is liable to

be allowed on a very short question.

(2) In the grounds challenging the detention order, particularly grounds H & I, it was pleaded by the petitioner that his representations dated February 24, 1988, sent to respondents No. 1 & 2 were not promptly dealt with inasmuch as the representation, which was addressed to the Central Government, was not even placed before the detaining authority with any promptitude and the consideration of the said representation was delayed and on that score alone the detention order is liable to be quashed. In 'ground 'J' it was pleaded that representation dated April 22, 1988, made by the petitioner against declaration made under 9(1) of the Cofeposa Act was also not dealt with and considered expeditiously by respondent No. 2.

(3) It is not disputed now before me that the representation, which was made against the detention order to respondent No. 1, was promptly considered and was rejected. The only contention raised before me by the learned counsel for the petitioner is that the representation, which was made to the Central Government, was not placed before the concerned competent authority with promptitude and was also not considered expeditiously.

(4) In opposing this writ petition, an affidavit of Shri C. Rajan, Under Secretary, Ministry of Finance, on behalf of respondent No. 1 has been filed. In reply to paras 11 & 12, it has been averred that the representation dated February 24, 1988, was received from the detenu on February 25, 1988, but as certain submissions made in (he representation required further information which was not available in the Ministry, thus a copy of the representation was forwarded to the sponsoring authority i.e. Collector of Customs, Delhi, for comments but the comments on the representation were received only on March 7, 1988 and the representation with the comments was put up to the Joint Secretary on March 8, 1988, who forwarded the same to Additional Secretary on the same day and the Additional Secretary with his comments forwarded the same to the Hon'ble Finance Minister on March,9, 1988 and he rejected the representation on March 10, 1988 and thereafter the file was received back in the office on March 14, 1988 and a memorandum rejecting the representation was sent to the petitioner on the same

day. The said memorandum of rejection was received by the petitioner on March 16, 1988. It is evident from the perusal of the contents of the affidavit mentioned above that the representation was not put up immediately before the Hon'ble Minister which was the competent authority to consider and take a decision on the said representation. The same came to be put up before him only on March 9, 1988. It is not the case of respondent No. 2 that the Hon'ble Minister had given any directions for calling any comments on the said representation from the Collector of Customs. It is also not explained in the affidavit as to how the representation was dealt with in the office of Collector of Customs in between February 26, 1988 to March 7, 1988. No Explanationn has been given whatsoever for the delay caused in the office of the Collector of Customs in formulating the comments on the representation.

(5) Counsel for the petitioner has vehemently argued that the representation of the detenu having been not put up with all promptitude before the competent authority by itself shows that there has been negligence in considering the representation of the detenu and it is settled law that if unexplained delay is caused in considering the representation of the detenu the order of detention is liable to be quashed on that score alone. Counsel for the petitioner has cited *Piara Singh v. State of Punjab*, : 1988 CriLJ164 . In this judgment it was held that where there is no Explanationn given in the counter-affidavit as to why the representation could not have been dealt with and disposed of with all promptitude earlier, the order of detention would stand vitiated by reason of delay in dealing with the representation. He has also referred to *Mohinuddin v. District Magistrate, Bead & Others* : [1987]3SCR668 , in which the very principle has been laid down that an order of detention is bound to be quashed if unexplained delay is caused in considering the representation by the competent authority. In the cited case an Explanationn was offered that the Chief Minister, who was to consider the representation, was busy with the other political affairs at the relevant time. The Supreme Court held that such an Explanationn is not reasonable.

(6) It has been contended on behalf of the respondents that unless and until it is shown that some prejudice is caused to the detenu due to some delay occurring in considering the representation the order of detention should not be quashed. I find

no force in this contention. It is settled law that the procedural safeguards provided in Article 22(5) of the [Constitution of India](#) have to be strictly adhered to by the authorities concerned and one of the safeguards is that a representation of the detenu against the order of detention which seeks a hearing in the nature of audi alteram partem post facto should be considered with all promptitude by the detaining authority and rightly so because the detention order is always passed on the basis of material which is not brought to the notice of the detenu before passing of the detention order and the detenu has only to show to the detaining authority that he was not liable to be detained only by making a representation after he had been served with the detention order pari passu the grounds of detention and that is why it is incumbent upon the authorities concerned to consider such a representation of a detenu with all promptitude so that if detenu's representation has some merit in it, the detention order may be revoked and the detenu should not suffer undue detention for any period. The liberty of the citizen is of paramount importance. It is to be taken away only on valid grounds enshrined in our Constitution and laws. There is no question of detenu showing any other prejudice being caused to him by the delayed consideration of his representation except that with such delayed consideration of his representation his detention period is lengthened and the legal steps which he could take for challenging the detention order are also delayed because unless and until his representation is considered and decided by the competent authority the detenu would not be able to challenge the detention order in court of law. So, it cannot be argued that delayed consideration of the representation of the detenu does not result in any prejudice to the detenu.

(7) Counsel for the petitioner has made reference to Mrs. Tsering Dolkar v. The Administrator, Union Territory of Delhi others : 1987 CriLJ988 . In the cited case the detenu was not furnished the grounds of detention in a language which was known to the detenu. A plea was taken before the highest court that as no prejudice has been caused to the detenu, the detention order should not be quashed on that score inasmuch as the detenu's wife, who was pursuing the matter on behalf of the detenu, was well-conversant with the language in which the documents were couched. Rejecting this contention, it was held that in the matter of preventive detention, the test is not one of prejudice but one of strict compliance

with the provisions of the Cofeposa Act and where there is a failure to comply with those requirements it becomes difficult to sustain the order of detention.

(8) Counsel for the respondents has cited Smt. Asha Keshavrao Bhosale v. Union of India & Another : 1986 CriLJ177 , in support of his contention that unless prejudice is shown to be caused to the detenu by the delayed consideration of the representation the order of detention is not liable to be quashed. I have gone through the judgment and I find that it does not support the said proposition enunciated by counsel for the respondents. In the cited case, a detailed representation was made on behalf of the detenu which was considered with all promptitude and was disposed of. However, on the same facts another representation was made later on and there occurred some delay in disposing of the second representation and the Supreme Court came to hold that if there occurs any delay in disposing of second representation then it cannot be said that any prejudice has been caused to the detenu's case. Obviously, once a representation has been duly considered with all promptitude and rejected, the requirement of law is to be considered to be met. The consideration of any second representation on the same facts is not required in law and if any delay occurs in considering the second representation that would not be fatal to the detention order.

(9) Counsel for the petitioner, in support of his argument, contended that the representation ought to have been promptly placed before the competent authority and it was the competent authority which should have, if necessary, passed any order for calling the comments and if the delay has occurred in placing the representation before the competent authority the same is fatal to the detention order. Counsel for the petitioner has rallied upon a judgment of this Court in Criminal Writ No. 326/86, U. P. Aboobacker v. Union of India & Others, decided on March 27, 1987, by a Division Bench of this Court. I have gone through the judgment and hold that it clearly applies to the facts of the present case. In the said case also the representation was not placed before the competent authority with promptitude and the officials at the lower level on their own had sent the representation to the sponsoring authority for collecting the comments and only after the comments were received that the representation was placed before the

competent authority. It was held that undue delay has been caused in considering the representation and the representation was liable to be placed with promptitude before the particular authority concerned and it was for that authority to decide whether any comments are required to be obtained on the said representation or not and on that ground alone the detention order in that case was quashed. In that case a representation was made on May 28, 1986 but it was placed for the first time before the authority concerned only on July 9, 1986, and it was observed that the same is a gross and vital delay which vitiates the detention. In the present case besides the fact that the representation was placed before the competent authority belatedly, there is no Explanation whatsoever given in the counter as to how and in what manner the seven days were spent by the Collector of Customs in giving the comments on the representation. So, the delay of seven days remains unexplained in considering the said representation.

(10) A preliminary objection has been raised on behalf of respondent No. 2 that as earlier writ petition challenging the detention order was dismissed in limine, the second writ petition being an abuse of process of court is not maintainable and it should be also held to be barred by the principle of *res judicata*. Counsel for the petitioner, on the other hand, has pointed out that in the previous writ petition the aforesaid grounds were not pleaded and thus dismissal of previous writ petition in limine does not debar the petitioner from challenging the detention order on the aforesaid new grounds. He has also argued that in the previous writ petition it was not known how the respondents had dealt with the representation of the petitioner and thus, there was no occasion for the petitioner to challenge the detention order on the ground of his representation being not dealt with due promptitude by the competent authority. It is settled law that writ petitions one after the other challenging the same order cannot be brought on the same grounds as it would amount to an abuse of the process of the court. However, it is also settled that the principle of constructive *res judicata* does not apply in such criminal writ petitions of habeas corpus. (See *Lallubhai Jogibhai Patel v. U.O.I. & Others* : 1981 CriLJ288 and *Y Kumar v. U.O.I. & Others* : 26(1984)DLT182). In *Smt. Poonam Lata v. M.L. Wadhawan* : 1987(14)ECC17 , it has been held that if a point has been pleaded and not urged in a previous writ petition the same cannot be re-agitated by filing fresh writ petition. It is not disputed before me by counsel for the

respondents that the grounds now being urged, as enumerated above, were not pleaded in the previous writ petition. It is admitted that in the previous writ petition it was not pleaded by the petitioner that his representation had not been put up before the competent authority with due dispatch. So, it cannot be held that the present writ petition is barred on account of any principle of abuse of the process of court or rest judicata. It is not necessary to deal with any other ground taken up by the petitioner in challenging the detention order as the petitioner is liable to succeed on the aforesaid ground of unexplained delay having occurred in considering the representation of the petitioner.

(11) I allow the writ, make the rule absolute and quash the detention order in question and direct that the petitioner be set at liberty if he is not required to be detained under any other law. There is no order as to costs.

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