

Ravi Sharma Vs. Union of India

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Court : Delhi

Decided On : May-31-1985

Reported in : 28(1985)DLT171

Judge : N.N. Goswamy and; Cilaranjit Talwar, JJ.

Acts : [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) -
Sections 3(1)

Appeal No. : Criminal Writ Appeal No. 76 of 1985

Appellant : Ravi Sharma

Respondent : Union of India

Advocate for Def. : Mr. M. Chandrasekhar

Advocate for Pet/Ap. : Harjinder Singh,; B.P. Singh,; M.C. Sekharan and;

Judgement :

ORDER

Whereas an order F. No. 673.00 85-Cus. Viii dated 14-1-1985, has been passed by the Additional Secretary to the Government of India u/s 3(1) of the Conservation of [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#), for the detention of Shri. Ravi Sharma ; whereas a declaration u/s 9(1) -ibid has been made against him by the Additional Secretary to the Government of

India ;

And whereas the case of Shri Ravi Sharma was placed before the Advisory Board who are of the opinion that there is sufficient cause for his detention;

Now, in exercise of the powers conferred by Section 8(f) read with Section 9(2) of the aforesaid Act, the Central Government hereby confirms the aforesaid detention order and further directs that u/s 10 of the said Act, the said Shri Ravi Sharma be detained for a period of two years from the date of his detention, i.e., from 14-1-1985'.

(8) The argument is that the Additional Secretary to the Government of India was either not informed by the detaining authority that the detenu has been in detention since 17th November, 1984, in Tihar Jail or if informed the said specially empowered official did not apply his mind to the said fact as he has directed that the detenu be detained for a period of two years from 14th January, 1985. We may note here that Mr. M. Chandrasekhar, learned counsel for the respondents, agreed that in all those cases in which the first detention order had been revoked, and another order of detention was passed, the Government have conceded before the various courts that the period of detention is to be counted from the date the detenu was defamed under the first order of detention. He, therefore, submitted that in the present case also keeping in view the consent made in other cases, he was not contending that the period of two years of detention would run from the date of the passing of the second detention order which had been passed on the same grounds of detention as the earlier order.

The law is well-settled that making of a subsequent order of detention in respect of the same acts for which an earlier order of detention was made would run counter to the entire scheme of The preventive detention laws, in *Chorka Hembram v. State of West Bengal and others*, : 1974 CriLJ449 , their Lordships of the Supreme Court while deciding a case under the Maintenance of Internal Security Act held in paragraph 8 of the judgment as follows :-

'8.The matter can also be looked at from another angle. Section 13 of the Act provides that the maximum period for which any person may be detained in

pursuance of any detention order, which has been confirmed under Section 12. shall be 12 months from the date of detention. It is, thereforee plain that the maximum period for which a person can be detained on account of specified acts should not exceed 12 months. If for the same acts repeated orders of detention can be made, the affect would be that for the same acts a detenu would be liable to be detained for a period of more than 12 months. The making of a subsequent order of detention in respect of the same acts, for which an earlier order of detention was made would run counter to the entire scheme of the Act. It would also set at naught the restriction which is imposed by section 13 of the Act relating to the maximum period for which a person can be detained in pursuance of a detention order'.

(9) In this case counsel for the petitioner is not seeking the quashing of the impugned detention order on the ground that it has been passed on similar or same grounds of detention as the earlier order. He submitted so, in so many words. He was emphatic that he was challenging it as it had been passed mechanically and without application of mind. He has cited the above authority in support of that contention only. We, thereforee, are proceeding on the basis that a second detention order passed on the same acts or grounds on which the earlier order was passed is competent. We have only to see whether by the second order the detaining and/or the confirming authority can direct detention of two years from the date of detention under the letter order.

(10) We cote that the record which has been produced by the respondents to meet this aspect of the case shows that a note dated 29th March, 1985, prepared by Shri A. K. Agnihotri, Under Secretary to the Government of India, recommending that the detention order in respect of the four detenus including the petitioner herein be confirmed, shows the date of detention of the present detenu as 14th January, 1985. In the said note there is no mention of the earlier order of detention or that the petitioner had been detained under that order with effect from 17th November, 1984. It was recommended that the Central Government may, thereforee, confirm the detention order passed against them and also direct that under section 10 of the Act the determine of the three persons, namely, Shri Baligur Rehman, Shyam Krishan Sharma and Ravi Sharma, may continue or the

period of two years and for Shri Sumer Chand for a period of one year from the dates of their detention, i.e., 14th January, 1985. The order dated 8th April, 1985, was admittedly passed on this recommendation of Shri Agnihotri, Mr. Chandrasekhar submitted that along with this note the whole file relating to the earlier detention order had been put up to the confirming authority and therefore it be deemed that the confirming authority had gone through the record.

(11) Be that as it may, in the recommendation made to the confirming authority and in the order of confirmation it has been directed that the detenu be detained for a period of two years from the date of his detention, i.e., from 14th January, 1985. As held in Chorka Hembram's case (*supra*) the period for which a person can be detained on the basis of specified grounds cannot exceed the maximum period provided for detention. In the said case it was 12 months. In the present case it is two years. The confirming authority while confirming the second order of detention, which is made in respect of the same acts for which the earlier order of detention was made, cannot ignore two facts (1) that the detenu was under detention and (2) the period for which he has been detained. The detenu thus cannot be made liable to be detained as in the present case for a period of more than two years from the date of his detention, i.e., 17th November, 1984. The principle enunciated in the above cited case regarding the maximum period of detention is squarely applicable to the facts of the present case. therefore, the direction that the detenu be detained for a period of two years with effect from 14th January, 1985, is patently illegal.

(12) Mr. Chandrasekhar's submission that the order of confirmation dated 8th April, 1985, is capable of severance, is misplaced. His plea that the order be read as if the date of detention is 17th November, 1984 and not 14th January, 1985, is untenable. The principle of severance cannot be applied to an order like the present order dated 8th April, 1985. This order is, therefore, to be held to have been passed without application of mind. It is bad in law and is, therefore, quashed. The result is that in law and order of detention has not been confirmed.

(13) The detention order as well as the declaration under section 9(1) of the Act are also liable to be set aside. We accordingly quash the same. The rule is made

absolute and the petition is allowed. We direct that the petitioner Shri Ravi Sharma, be set at liberty forthwith unless required to be detained under any other valid order passed by a Court or an authority.

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