

Manjit Kumar @ Mintee Vs. Union of India and Two ors.

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Court : Delhi

Decided On : Jan-10-1989

Reported in : ILR1989Delhi191

Judge : Santosh Duggal, J.

Acts : [Smuggling Activities Act, 1974](#) - Sections 3

Appeal No. : Criminal Writ Appeal No. 418 of 1988

Appellant : Manjit Kumar @ Mintee

Respondent : Union of India and Two ors.

Advocate for Def. : Mr. Rajinder Dutt

Advocate for Pet/Ap. : Trilok Kumar,; S. Kohli and; Rajender Dutt, Advs

Judgement :

Santosh Duggal, J.

(1) This writ petition, under Articles 226 and 227 of the Constitution, read with section 482 of the Code of Criminal Procedure, has been filed on behalf of the detenu Manjit Kumar @ Mintee, through his uncle Yash Pal, challenging his detention, vide order of detention dated 5th March, 1988, passed by Shri K. I. Verma Joint Secretary to the Government of India, Ministry of Finance,

Department of Revenue (COFEPOSA Unit), North Block, New Delhi, (respondent No. 2 herein), in exercise of the powers vested in him under section 3(1) of the Conservation of Foreign Exchange and Prevention of [Smuggling Activities Act, 1974](#) (COFEPOSA Act for short). The detention has been ordered with a view to preventing the petitioner from acting in any manner prejudicial to the augmentation of foreign exchange. The detention order was served on petitioner on 16th March, 1988, and he made a representation to the detaining authority on 22nd April, 1988, seeking revocation of the order of detention on the grounds set out therein.

(2) The petitioner controverts the correctness of the allegations made in the grounds of detention and pleads that his detention order, as well as continued detention, was illegal for various reasons as detailed in the grounds taken up in this writ petition.

(3) After service of the notice on the respondents, a reply affidavit has been filed on their behalf which affidavit has been sworn by the detaining authority himself.

(4) At the time of hearing, Shri Trilok Kumar, arguing for the petitioner, urged only one of the grounds as contained in paragraph 14 of the writ petition and reiterated as ground no. 5 of the grounds thereof. The plea, in short, is that the representation made to the detaining authority on 22nd April, 1988 was considered very belatedly, and even intimation of the rejection was conveyed to the petitioner as late as on 15th June, 1988, and thus petitioner's right of representation against order of detention has been practically denied to him, and that the delay in consideration of the representation, as well as rejection thereof, has seriously prejudiced him, rendering his further detention as unsustainable.

(5) It was argued that apart from the fact that the reply affidavit does not offer any Explanation for the delay, and in any case there is no answer to the assertion that this rejection was conveyed to the petitioner on 15th June, 1988; otherwise also, the matter does not require further consideration inasmuch as the writ petition of the co-accused Joginder Singh has been allowed on identical grounds, and that the petitioner was entitled to benefit of the same treatment. Shri Trilok Kumar drew attention to the fact that it has been specially alleged in the writ petition vide paragraph 14 that intimation of rejection was served on the detenu

only on 15th June, 1988, and that in the return, this fact remains uncontroverted. and that this has thus to be taken as admitted. He also referred to copy of the rejection memo filed by him on record as Annexure 'F' bearing the date 16th May, 1988 on which the petitioner had put the data while acknowledging receipt of the communication, as 15-6-1988, and also to a copy of the representation dated 22nd April, 1988, filed on record as Annexure 'C'.

(6) Shri Trilok Kumar then read from the judgment recorded by a learned Single Judge of this court in the case of co-detent: Joginder Singh in Criminal Writ No. 216188 decided on September 28, 1988, where the date of Communication of rejection memo was the same, namely, 15th June, 1988; though the representation on merits was on a later date; than in the present case inasmuch as in the case, the representation was dated 28th April, 1988 whereas in the

'Instant case it is of 22nd April, 1988. Even then, it was observed that all this unexplained, and inordinate delay, reveals total unconcern to the representation of the detenu and that the detaining authority as well as other functionaries of the State are not shown to have dealt with the representation with due dispatch, and with the sense of urgency required in the matter. He further contended that infact the reply betrays total lack of Explanation because all that is stated in the counter affidavit is that: as the officials were busy in other official work and the time was taken in official routine and as such there was no undue delay in disposal of the representation.

(7) The time chart shown is that representation dated 22nd April 1988 was received in the Ministry on 27th April, 1988 on which date it was sent to the Enforcement Directorate for comments and that the same was received back only on 12th May, 1988 and that the representation was put up to the detaining authority together with the comments and other papers on 13th May, 1988 and rejected on the same date and that letter to that effect was issued on 16th May, 1988 as 14th and 15th May, 1988 happened to be holidays. As already noticed, the case of the petitioner is that it was received by him on 15th June, 1988, which assertion has not been repudiated.

(8) A reading of the reply affidavit gives an unmistakable impression that the detaining authority was not responsive to the exigency of the situation and was not even conscious of the fact that representations from detenus are to be dealt with expeditiously, and with utmost promptitude. It goes without saying that communication of the result or decision taken on such a representation without delay constitutes a part of the requirement because the object is that not only the detenu should be able to make a representation well in time, but the same should be considered also without any unnecessary loss of time, and the fate of the same should be communicated to the detenu also within reasonable time so as to enable him to take such further steps, as may be permitted by law.

(9) In this case, no attempt even to explain the time taken has been made, and it is found to be a case where no sensitivity is exhibited because I have no hesitation in saying that the justification offered; namely, the time required to be taken in official routine' or 'the concerned officers were busy in other official work' is a plea which is wholly infeasible. It has been stressed time and again that where the citizens are detained by invoking the provisions of law, relating to preventive detention, then all these constitutional safeguards should be adequately and superciliously observed. The reply in his case on affidavit of the detaining authority betrays complete lack of awareness on the part of the concerned authorities to this obligation on their part.

(10) Apart from this, there is the added factor that in the case of co-detent Joginder Singh, the order has been quashed on identical grounds of delay, and there is no reason as to why the petitioner should not be accorded the same treatment.

(11) This Court has already held in Criminal Writ No. 348 of 1988- Om Prakash Mahindru v. Union of India & others, decided on December 16, 1988,⁽¹⁾ that benefit given to a co-detent on a similar point of law or identical question of fact, has to be extended to the petitioner similarly placed.

(12) Mrs. S. Kohli, arguing on behalf of Mr. Rajinder Dutt. counsel for the respondents, could not point out any materials from the counter reply, justifying the time taken in taking up for consideration, as well as disposal, the representation of

the petitioner and conveying the decision to the petitioner well in time. All that she could say was that the dispatch register, as received by her, indicated that the rejection memo had been dispatched on 17th May, 1988. Be that so, the fact remains that it was received by the petitioner on 15th June, 1988, as this plea remains uncontroverted. It has been held in a case reported as Air 1981 S.C. 3, (Saleh Mohammed v. Union of India and others), (2) that the responsibility for expeditious disposal of representation of a detenu was not, only on the detaining authority, but on all functionaries of the State, who got associated with the matter or who have to discharge some functions in course of their official duties, in connection thereto. In this view of the matter, the time taken in transmission or communication of the rejection memo i.e. from 17th May, 1988 to 15th June, 1988 had to be reasonably explained by filing appropriate affidavit of the Superintendent jail or other concerned authorities, detailing the reasons, as to in what circumstances the rejection order dated 16th May, 1988 dispatched on 17th May, 1988 was not conveyed to the petitioner up to 15th June, 1988.

(13) In view of the foregoing, it is a case where detention of the petitioner deserves to be revoked. The writ petition is accordingly allowed and it is directed that the petitioner be released forthwith in case he is not required in any other matter or proceedings.