

Ashok Kumar Vs. Administrator, Union Territory of Delhi

Ashok Kumar Vs. Administrator, Union Territory of Delhi

SooperKanoon Citation : sooperkanoon.com/695579

Court : Delhi

Decided On : Apr-27-1987

Reported in : 33(1987)DLT29

Judge : M.K. Chawla, J.

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

Appeal No. : Criminal Writ Appeal No. 114 of 1987

Appellant : Ashok Kumar

Respondent : Administrator, Union Territory of Delhi

Advocate for Pet/Ap. : O.P. Soni,; K. Datta,; R.M. Bagai,;

Judgement :

M.K. Chawla, J.

(1) Shri Ashok Kumar Verma is the petitioner. He has challenged the order of his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA Act), dated 11.2.1987.

(2) In order to appreciate the contentions of the petitioner, it is relevant to keep in mind the few salient features leading to his arrest and the order of detention. The

Directorate of Revenue Intelligence Officers has a secret information that the petitioner is dealing in smuggled goods. They maintained a surveillance at his residential as well as business premises in Pragati Market Ashok Vihar, Delhi. On the morning of 7.11.1986, the officers spotted a red Maruti car parked near his residence. Later on this very car was again seen parked near the business premises of the petitioner. In the afternoon, of the same day, this car was intercepted near Alpana cinema. One Shri Ram Kishore Gupta was driving the car. In the presence of the independent witnesses, the car was searched and Indian currency amounting to Rs. 1,80,000.00 was recovered from the left side front seat. The currency was seized under the Customs Act 1982. Later on, this car was thoroughly examined which resulted in the recovery of a polythene bag concealed underneath the left side front seat Along with the currency amounting to Rs. 10,000.00 The polythene bag was found to contain five small packets wrapped with adhesive papers and each of the five packets was found to contain ten foreign marking gold biscuits of 10 tolas each. The value of the said 50 gold biscuits of 24 carats was assessed at Rs. 13,88,135.00 . On demand Shri Ram Kishore Gupta could not produce documentary evidence for its lawful possession. The said gold biscuits were seized on reasonable belief that the same had been smuggled into India in contravention of the provisions of the Customs Act, 1962.

(3) In his statement recorded under Section 108 of, the Customs Act on 7.11.1986 and 8.11.1986, Shri Ram Kishore Gupta family involved and named Shri Ashok Kumar Verma, the present petitioner and his brother Anoop Kumar Verma, dealing in smuggled gold; that he has been engaged by the petitioner and his brother Anoop Kumar since February, 1982 to sell the smuggled goods and collect the sale proceeds on their behalf and that he was paid Rs.4000.00 per mensem; that on 7.11. 86, he was called by the petitioner and was told to collect the sale proceeds from one Vinod Chaudhary near Alpana cinema. He was proceeding to Alpana cinema when his car was intercepted and the recovery of the articles effected.

(4) On the basis of the statement of Ram Kishore Gupta, the residential premises of the petitioner were searched on. the same day, but unfortunately nothing incriminating was recovered. Thereafter, the searches of the business as well as

residential premises of other persons disclosed by Shri Ram Kishore Gupta were carried out. On the basis of the foregoing material, the Administrator, Union Territory of Delhi came to the conclusion that the petitioner has been smuggling, transporting, concealing and keeping smuggled goods and also dealing in smuggled goods viz. gold of foreign markings. He was further of the opinion that the petitioner should be detained under the Cofeposa Act, 1974 with a view to prevent him from repeating the above said act in future. The detention order, as stated earlier, was passed on 11.2.1987 and served on the petitioner the same day.

(5) The petitioner's challenge is confined only to the ground that very vital and relevant facts which have a material bearing on the detention of the petitioner have been suppressed from the detaining authority. The detaining authority was not apprised of the bail application, the order of the A.C.M.M. Delhi, dated 8.11.86, application for treating the confessional statement as nullity and the medico-legal report of Medical Officer, Central Jail, Tihar, all concerning accused Ram Kishore Gupta. The respondents have denied the averments. Their stand is that the copies of the documents referred to above were neither supplied to the Prosecutor nor to the representation of the sponsoring authority. All the relevant and material documents in power and possession of the sponsoring authority were duly placed before the detaining authority.

(6) In order to settle this controversy, the admitted facts cannot be ignored. In spite of thorough search of the petitioner's residential and business premises, no incriminating documents having material bearing on the case has been unearthed. He has never been arrested. His name is not shown as coconspirator in the complaint against Ram Kishore Gupta. So far no criminal proceedings have been initiated against him. The so-called confession of Ram Kishore Gupta is the only evidence against the present petitioner. Could the detaining authority rely upon such a confession in making up its mind for his detention, is the only question requires determination. The contention of the learned counsel is that, had the respondents placed the material documents concerning this aspect before the detaining authority there was every possibility of arriving at a different conclusion. The first such document is an application by one of the relations of Ram Kishore

Gupta before Shri Bharat Bhushan, A.C.M.M. New Delhi. In this application it is averred that the officials of the Customs Department have lifted the accused from his house at about 4.30. P.M. on 7.11. 1986 and since then he has been confined in the Drum Shape Building. Nobody is allowed to see him. It was requested that the orders be issued, directing the respondents either to produce the petitioner before the Court within 24 hours of his arrest or order of his release on bail be passed. On this application, the learned A.C.M.M. in the presence of the Special Public Prosecutor and the counsel for the applicant passed the order, directing the complainant that in case the accused had been arrested, he should be produced before the Magistrate within the statutory period and in case he has not been arrested, then he be released forthwith. The officers of the D.I.R. were directed to submit a detailed report on 10.11.1986. It appears that on coming to know of this development, the complainant produced Ram Kishore Gupta before Shri Bharat Bhushan, A.C.M.M. at his residence late at night on 8.11.86 itself. The learned A.C.M.M. directed the D.R.I, officers to produce the accused on 10.11.86 as 9.11.86 was Sunday.

(7) In compliance with the said directions, the accused was produced before the Court and on the same day, he moved an application for treating the alleged confessional statement dated 7.11.86 and 8.11.86 as nullity. In the said application, he averred that the D.R.I, officers recorded his statement under duress and by putting him in fear of injury and death. Before that he was severely beaten. He submitted that his so-called confession may not be treated as his statement under Section 108 of the Customs Act.

(8) This application was ordered to be placed on the file. On the same day, the accused moved another application that he be medically examined by any doctor before he is sent to Jail. This application was moved with a view to show that he was given severe beating by the D.R.I. Officers, before recording his statement u/s 108 of the Customs Act. The learned A.C.M.M. directed the Jail doctor to examine the applicant and report. In compliance with the directions, the Medical Officer of Jail no. I, Central Jail, Tihar, sent his report to the Court. The report indicates that accused Ram Kishore Gupta was medically examined at 9.50 A.M. on 11.11.86. The doctor found as many as 8 contusions on the various parts of his body. 'All the

injuries were opined to be simple caused by blunt object.

(9) The only document which was considered by the detaining authority is the application dated 8.11.86 filed on behalf of Ram Kishore Gupta. It is shown as Item no. D-27. This application is the first in the series which was moved by the relations of the accused seeking the assistance of the Court for the production of the accused within 24 hours of his arrest. Unfortunately, the order of the A.C.M.M. on the same application, and the application dated 10.11.87, for treating the alleged confessional statement as nullity which forms part of the record has been withheld. In support of the averments that the accused Ram Kishore Gupta was severely beaten before his statement was recorded, the report of the Medical Officer showing eight injuries on the various parts of his body was intentionally withheld by the respondents for consideration of the detaining authority. Had the attention of the detaining authority been drawn to these material documents, there was every possibility of the detaining authority coming to the conclusion that the confession of Ram Kishore Gupta was not voluntary and should not have been acted upon. As observed earlier, except the confessional statement of Ram Kishore Gupta, there is no other evidence to connect the petitioner with the activities of smuggling as sought to be made out in the grounds of detention. If the alleged confessional statement goes, then the order of detention automatically falls to the ground. In similar circumstances, the Supreme Court in a Judgment reported as *Ashadevi v. ShivraJ* and am. A.I.R. 1979 Sc 447, held as under:-

'It is well settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. In the instant case by a detention order the detenu was detained with a view to preventing him from engaging in transporting smuggled goods. In passing the detention order the detaining authority based its decision on the detenu's confessional statement made earlier before the Customs Officers. The said confessional statements were subsequently retracted by the detenu at the first available opportunity while he was in judicial custody. Held that

the questions whether the confessional statements recorded earlier were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements by the detenu was in the nature of an afterthought, were primarily for the detaining authority to consider before deciding to issue the detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority one way or the other were neither placed before nor considered by the detaining authority it was held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering the detention order invalid and illegal.'

To the same effect is the judgment of our own High Court (Pudukkudi Abdu vs. Union of India and others, 1987 D.L.T. 44. The ratio of the Supreme Court judgment fairly and squarely applies to the facts 'of the present case and on that score alone, I have no hesitation to quash the order of detention.

(10) The contention of the learned counsel for the respondent that they were not aware of the filing of the application for treating the confessional statement as a nullity and the injury report of the Medical Officer, Central Jail Tihar, is neither here nor there. The first application was placed on the file by the order of learned A.C.M.M. on the same day. On that very day, the accused was admittedly produced before the Court by the officers of the D.R.I, and their counsel. The application could not have been moved after the conclusion of the hearing of the case. Similarly, the medical officer could not have sent his report, except on the orders of the learned A.C.M.M. dated 10.11.86. This direction reached the medical Officer on 11.11.86 and on that very day, he examined the accused and found eight injuries on his body. Prima facie the orders calling for the medical report must have been passed in the presence of the complainant and their counsel. It appears that the respondent intentionally withheld these material documents, which have a far-reaching consequences on the matter in issue. Thus there was non-application of mind to the most material and vital facts, vitiating the requisite satisfaction of the detaining authority, thereby rendering the detention order invalid and illegal.

(11) This court is left with no other option but to accept the petition and quash the impugned order of .detention. The petitioner be released immediately if required to be detained in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com