

Jaya Kumar Vs. State of Kerala

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Court : Delhi

Decided On : Jul-13-1989

Reported in : 1989RLR343

Judge : M.K.Chawla, J.

Acts : [Constitution of India](#) - Article 22; Conservation of Foreign Exchange and Prevention of Smuggling Activities Act - Sections 3

Appeal No. : Criminal Writ Appeal No. 136 of 1989

Appellant : Jaya Kumar

Respondent : State of Kerala

Advocate for Pet/Ap. : K.K. Mani and; G. Prakash, Advs

Judgement :

M.K. Chawla, J.

(1) The petitioner Jayakumar @ Moorthy is seeking the setting aside of the detention order passed on 28.12.87 by the Govt. of Kerala u/s 3(1)(ii), (iii) & (iv) of the Conservation of Foreign Exchange and Prevention of smuggling Activities Act, 1974 (as amended), for short, the Cofeposa Act. The order was made against the petitioner with a view to preventing him from abetting the smuggling of gold, engaging in transporting or concealing or keeping smuggled goods and dealing in

smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

(2) Along with the impugned order, the ground of detention also dt. 28.12.87 were served on the detenu while he was in judicial custody. On 3.2.88 declaration u/s 9(1) of the Cofeposa Act (as amended) was issued by Shri B.V. Kumar. Additional Secy. to the Govt. of India. The Cofeposa Advisory Board in its report opined that there was sufficient cause for the detention and the continued detention of the petitioner. Accordingly, u/s 8(f) of the Cofeposa Act, the State of Kerala confirmed, that the detention of the petitioner shall continue for a period of 2 years from 2.1.88.

(3) In the order of detention, the petitioner was informed that if he so desired, he could make any representation against the order of his detention to the detaining authority and/ or the Central Govt. and/or to the Chairman, Cofeposa Advisory Board, High Court of Kerala, Ernakulam, through the Supdt. Central Prison, Trivendrum.

(4) The petitioner made a representation on 15.2.89 to the State Govt. through his counsel which was received by the Deptt. on 16.2.89. A copy of the said representation is Annexure-M to the petition. The contention is that this representation has not, so far been disposed of. There has thus been unreasonable and inexplicable delay in disposing of the representation making the order of detention illegal and violative of Article 22(5) of the [Constitution of India](#).

(5) The stand of the respondents on this aspect, as disclosed in the affidavit of Shri R. Nair, Additional Secy. to the Govt. of Kerala (Home Deptt.) is:

'The representation dated 15.2.89 Was received by the State Govt. on 16.2.89 and it was considered and rejected on 13.4.89. The question as to whether the Advocate was entitled to represent on behalf of the detenu had to be examined in consultation with the Law Department. Hence some delay occurred.'

(6) Can this Explanation be considered as cogent enough to justify the expeditious disposal of the representation as enjoined u/Art. 22(5) of the

Constitution. The only answer to this query can be in the negative.

(7) The respondents have defaulted on two counts. Firstly there is no worthwhile Explanationn if it can be called so, in disposing of the representation on 13.4.89 which was admittedly received in the Deptt. on 16.2.89 and secondly, the delay in not communicating the decision to the detenu till 16.4.89. On both these counts, the case stands fully covered by Harish Pahwa vs . State : 1981 CriLJ750 . In the said case, the Supreme Court has clearly stated that there are two facets to the consideration of the representation of the detenu. One of them being that the representation of the detenu must be considered at the earliest possible opportunity and must be continuously considered until a final decision is taken thereon and the other facet is that the result thereof must be immediately communicated to the detenu. It has further been laid down that no authority concerned with the disposal of representation of the detenu can show any indifference towards the representation. This is so said because the liberty of a person is at stake and he is preventively being detained without a trial. The detention of the petitioner was held to be unconstitutional on the short ground that the State Govt. had not decided the representation of the petitioner within a reasonable time. While expressing their concern for the inaction of the authorities in disposing of such like representation of the detenus, the Court observed as under :

'THErepresentation made by a detenu has to be considered without any delay. The Supreme Court does not look with equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously, (unless it is absolutely necessary to wait for some assistance in connection with it) till a final decision is taken and communicated to the detenu. Where this is not done, the detention has to be declared unconstitutional.'

(8) In the present case, what exactly has happened is, that right from 16.2.89 till 13.4.89, the representation addressed to the State Govt. by the detenu was practically withheld by the detaining authority for no rhyme or reason. No action whatsoever was taken on it. That also goes to show that there is absolutely no Explanationn, what to talk of reasonable one, by the State Govt. as to how this representation was dealt with and handled by various departments during this period. The non communication of its result to the detenu is also fatal. Detention quashed.

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