

Moideen Abbas Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-13-1989

Reported in : 1990(1)Crimes505; 39(1989)DLT306

Judge : P.K. Bahri, J.

Acts : [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1); [Constitution of India](#) - Article 226

Appeal No. : Criminal Writ Appeal No. 180 of 1989

Appellant : Moideen Abbas

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Rohit Kochhar,; Sat Pal,; Rekha Agarwal and;

Judgement :

P.K. Babri, J.

(1) This petition has been brought under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure, seeking quashment of order of detention dated April 26, 1988, passed by respondent No. 2 under Section 3(1) of the Conservation of [Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) (for short Cofeposa Act') with a view to preventing the petitioner from smuggling goods and the declaration dated May 26, 1988, issued by respondent

NO. 4 under Section 9(1) of the Cofeposa Act.

(2) In ground No. Vii appearing at page 21, it has been pleaded that the petitioner had made a representation dated December 20, 1988, addressed to the detaining authority but the same has not been considered by the appropriate authority as the same has been rejected by the specially empowered officer and not by the Central Government.

(3) In the counter-affidavit filed by Shri K.L. Verma. who was working as Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, this fact is not controverted that this representation was not placed before the Central Government and rather it has been disposed of by the specially empowered officer, who had passed the detention order.

(4) The law on the subject has been now settled by the Full Bench in Mohd. Saleem v. Union of India & Others 1989 (3) DL 77, wherein it has been authoritatively laid down that even though a representation is addressed to the specially empowered officer who had issued the detention order, still it is incumbent upon the authorities to get the said representation decided expeditiously at the level of the Central Government and rather it has been held in this judgment that there is no right given to the detenu to, make any representation to the specially empowered officer who had passed the detention order.

(5) In view of the law laid down by the Full Bench, it is evident that the representation made by the detenu, which was addressed to the detaining authority, has not been considered at all by the Central Government and it would be deemed that it remains undisposed even till today. Hence, I hold that the continued detention of the petitioner has become bad.