

**Shamsher Singh and ors. Vs. State of Rajasthan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/756608](http://sooperkanoon.com/756608)

**Court :** Rajasthan

**Decided On :** Jul-15-1975

**Reported in :** 1975(8)WLN400

**Judge :** Kan Singh and; P.D. Kudal, JJ.

**Appeal No. :** D.B. Habeas Corpus Petitions 24, 92 and 93 of 1975

**Appellant :** Shamsher Singh and ors.

**Respondent :** State of Rajasthan and ors.

**Judgement :**

ORDER

Whereas I, Ram Singh, Secretary to the Government of Rajasthan, Home Department, am satisfied with respect to the person known as Shamsher Singh s/o Shri Heeraial Jain, residing at Kundigaroon-Ka-Rasta, Jaipu, that with a view to preventing him from engaging in keeping smuggled goods, and dealing in smuggled goods otherwise than by engaging in transporting or keeping smuggled goods, it is necessary to make the following order;

Now, the refore, in exercise of the powers conferred by Section 3(1) of the Conservation of Fereign Exchange and Prevention of Smuggling Activities Act, 1974 (Act 62 of 1974), 1, Ram Singh, Secretary to the Government of Rajasthan, Home Department, direct that the Said Shri Shamsber Singh s/o Shri Heeraial Jain be detained.

sd/- Ram Singh

(Ram Singh)

Secretary to the Government.

Place Jaipur

Date 19th Dec, 1974.

To

Shri Shamsheer Singh,

s/o Shri Heeraial Jain,

residing at Kundigaron Ka Rasta,

Jaipur.

It was issued by Shri Ram Singh, Secretary to the Government in the Home Department On 23.12.74 the grounds for detention were communicated to petitioner by the detaining authority. As considerable arguments have centered round the ground in one form or the other, we may read document No. 2 on record which embodies the grounds in full:

GOVERNMENT OF RAJASTHAN

HOME (GR. V ) DEPARTMENT

NO, F. 8 (307), H. Gr. V/74

Jaipur dated the

December 23, 1974.

(Through the Officer-in-charge of the Central Jail, Jaipur)

Grounds on which detention Order No. 8(299) H Gr. v/74 dated 19th December, 1974 has been made against Shri Shamsheer Singh s/o Shri Heeralal Jaim, under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

1. The business premises of the Firm M/s Saudagar Shamsheer Singh, of which you are the sole proprietor, were searched by the officers of the Customs Department on 30.6.73 and 24 pieces of textiles of foreign origin, and other goods of foreign origin, namely, seven nail cutters valued at Rs. 25/ and two packs of face powder valued at Rs. 25/- illegally imported into India were recovered. In your statement dated 30.6.73, made before the Superintendent of Customs and Central Excise, Jaipur, you stated that you had purchased sixty pieces of Art Silk Fabrics, 12 Nail cutters and packs of face powder, all of foreign origin, from Bombay and that 29 pieces of Art Silk Fabrics and 5 nail cutters had been disposed of by you by sale while 7 pieces of Art Silk Fabrics had been gifted by you to your relatives and friends. The case was adjudicated by the Assistant Collector, Customs and Central Excise, Jaipur and a penalty of Rs. 260/- was imposed on you besides absolute confiscation of the recovered goods, vide his order dated 17.7.74. The copies of the Panchnama dated 30-6-73, statement dated 30.6.73 and adjudication Order dated 17.7.74 are enclosed and marked as Annexure 'A' 'B' and 'C' respectively.

2. Your business premises as well as residential premises were again searched on 11-4-74 by the officers of the Customs Department and as a result thereof textiles of foreign origin legally imported into India valued at Rs. 630/- and Rs. 1050/- were recovered from the business and residential premises respectively. In your statement dated 11-4-74 made before the Inspector of Customs and Central Excise, Jaipur immediately after the seizure you stated that though you had been dealing in miscellaneous goods, like cosmetics, Hosiery and general goods, you had purchased the seized foreign made textiles from an unknown person who came from Bombay. A show cause notice dated 30-5-74 in this case had been issued to you by the Assistant Collector (Prev) Customs and Central Excise, Jaipur. Copies of Panchnama dated 11-4-74, statement dated 11-4-74 and show cause notice dated 30-5-74 are attached and marked as Annexure 'D', 'E' and 'F'.

respectively.

3. Your business premises were again searched on 6-7-1974 by the officers of the Customs Department and textiles of foreign origin illegally imported into India valued at Rs. 37,460/- were recovered from your business premises. For these goods you had no supporting vouchers to indicate their lawful import or acquisition. This is clear from your statement dated 7-7-74 made before the Superintendent of Customs (Prev) Jaipur Under Section 108 of the Customs Act, 1962. Copies of the Panchnama dated 7.7.74 and statement dated 7.7.74 are annexed as Annexure 'G' and 'H' respectively.

The above grounds are communicated to you in pursuance of Clause 5 Article 22 of the Constitution of India.

If you wish to make any representation against the order of detention, you may do so and address it to the Secretary to the Government of Rajasthan, Home Department, Secretariat, Jaipur and forward it through the Officer-in-Charge of the Central Jail, Jaipur.

Sd/ Ram Singh

23-12-74

(Ram Singh)

Secretary to the Government of Rajasthan

Home Department.

3. The petitioner challenges this order on a number of grounds. They now be broadly divided under-two major bead grounds bearing on the form of the order, its execution and it omitting certain material particulars like place of detention. We will be dealing with these grounds in the later part of our judgment. These ground are contained in Para-6 of the petition. The other major ground of challenge is regarding the validity of the detention self on account of there being no satisfaction of the detaining authority regarding the necessity of detention, the grounds being wholly insufficient or incomplete in several respects and not being related to the

object of detention. These grounds are set out extensively in paras 2 to 4 of the petition. We will be dealing with these grounds to hereinafter.

4. At the very outset, however, the learned Public Prosecutor confronted us with the Presidential order suspending the fundamental rights of the citizens within the framework of the proclamation of emergency under Article 359(1) of the Constitution. He raised a preliminary objection that the right to move any court with respect to the orders of detention which had already been made under the Anti Smuggling Act and other Acts of similar nature for the enforcement of rights conferred by Articles 14, 21 and 22 of the Constitution being suspended, the petitioner has no right to invoke the jurisdiction of the Court for examining the validity of his order of detention and all that we can do is to postpone the hearing as long as the Presidential Proclamation regarding suspension of fundamental rights remains in force. We may deal with this question first with a view to examining the area within which a citizen can invoke the jurisdiction of this Court in the framework of the Proclamation of emergency and the Presidential Order suspending the fundamental rights, Article 359 reads:

Article 359 Suspension of the enforcement of the rights conferred by Part III during emergencies. - (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any Court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any Court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

The Presidential order of emergency reads:

#### PROCLAMATION OF EMERGENCY

In exercise of the powers conferred by Clause (1) of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbance.

New Delhi

The 25th June, 1975.

F.A. Ahmed,

President.

We may then read the Presidential order suspending the fundamental rights:

MINISTRY OF HOME AFFAIRS

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