

Kapil Dutt Bali Vs. the Uoi and anr

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Court : Delhi

Decided On : Jan-30-2013

Judge : Sanjiv Khanna

Appellant : Kapil Dutt Bali

Respondent : The Uoi and anr

Judgement :

\$~43. * IN THE HIGH COURT OF DELHI AT NEW DELHI + WRIT PETITION(CRL) 150/2013 Date of decision:

30. h January, 2013 % KAPIL DUTT BALI Petitioner Through Mr. Sibbo Sankar Mishra, Advocate. versus THE UOI & ANR Respondents Through Mr. Jatan Singh, CGSC with Mr. Tushar Singh, Advocate. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL SANJIV KHANNA, J.

(ORAL): CRL.M.A. No. 1089/2013 Exemption application is allowed, subject to all just exceptions. CRL.M.A. No. 1091/2013 Delay in re-filing is condoned. W.P.(CRL) 150/2013 The petitioner-Kapil Dutt Bali impugns detention order dated 6th May, 1994 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 in the present writ petition which was filed on 15th January, 2013. It is apparent that the writ petition is highly belated and is bad for laches and delay. We may state here that the petitioner had remained under detention under the said order from 25th May, 1994

to 24th May, 1995 for one year.

2. The petitioner, it is apparent, had unsuccessfully challenged the detention order probably before this High Court. The petitioner has not furnished full details or copy of the said order. However, the petitioner has enclosed copy of the order dated 3 rd May, 1995 passed by the Supreme Court of India in Criminal Appeal No. 686/1995. By the said order, leave was granted and after hearing, the criminal appeal was dismissed on merits and the order of the High Court was confirmed. (See Annexure P-2 at pages 135-136).

3. The effect thereof was that the detention order was upheld and sustained by both the High Court and the Supreme Court.

4. In the meanwhile, proceedings under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 were initiated and the competent authority by order dated 31 st August, 1999 passed an order forfeiting certain properties of the petitioner. Assail by way of appeal was dismissed by the appellate authority on 19th April, 2002. These orders were made subject matter of challenge in Writ Petition (Criminal) No. 561/2002 before the High Court of Delhi and a stay order was also passed in favour of the petitioner but with the condition that the petitioner would not sell, alienate or transfer or part with possession of the properties. This writ petition ultimately got dismissed for want of territorial jurisdiction with liberty to the petitioner to approach the appropriate court.

5. The writ petitioner thereafter approached Punjab and Haryana High Court by way of Criminal Writ Petition No. 883/2012. The said writ petition stands dismissed vide order dated 7th May, 2012. Before the Punjab and Haryana High Court, it is apparent that the petitioner wanted to challenge the detention order dated 6th May, 1994 on merits. However, the challenge was not accepted recording as under: The senior counsel for the petitioners has not been able to satisfy this court if he had raised any challenge to the detention order before the Delhi High Court on the grounds as he has raised now. Apparently, the petitioners had only challenged the order passed by the Authority under the SAFEMA, which was upheld by the Appellate Authority. The petitioners have again come up to challenge the detention order after expiry of almost 19 years. Whether they can do

so, thus, would be a first question. No doubt, a person can challenge a detention order on any fresh ground if available to him, which he has not raised in his earlier writ petition, but that he has to do within a reasonable time. The order, which has acquired finality as far as back in 1995, is sought to be challenged again after expiry of nearly 20 years without any explanation. The petitioners have even not averred in their petition that they had raised any challenge to this detention order on the grounds now raised in the present petition in their writ petition filed before the High Court of Delhi. It appears that petitioners had only challenged the order passed under SAFEMA in the writ petition before the High Court of Delhi and after withdrawing the same, they have now decided to challenge the detention order on the grounds which are available to them ever since the year 1995. This time, petitioners have challenged the detention order on the ground that on the same facts the detention orders of their co-accused have been set aside and that the same relief could not be granted to the petitioners as their petition was decided earlier. As already noticed, this fresh cause to challenge the detention order really is the order passed against the petitioners under SAFEMA, which has been upheld on the ground that detention order passed in respect of petitioner No. 1 has been upheld upto the Honble Supreme Court. The second ground raised to challenge the detention order is that the proceedings initiated against him under FERA were dropped. The petitioner, thus, not only pleads that his detention order can be so challenged by him, but also that no proceedings under SAFEMA could be initiated against him once he was not found to have violated the provisions of FERA. Once the detention order passed against petitioner No. 1 has been upheld by the Honble Supreme Court long ago, propriety would demand that this court should not venture to reconsider the challenge raised by petitioner No. 1 to the same detention order, which has already been so upheld. No doubt, it may be open for the petitioner to challenge the detention order on fresh grounds, if available to him, but these grounds became available to the petitioner No. 1 long ago, but still he did not take any proceedings to challenge the detention order on these grounds. Incidentally, his challenge to detention order was never dismissed or declined by the High Court of Delhi on the ground of jurisdiction. In fact, petitioner No. 1 had unsuccessfully challenged his detention order before the Delhi High Court and the order, so passed by the High Court, was even upheld by the Honble Supreme

Court. In this background, the action of the petitioners to change track at this stage and to file the present petition before this court would not be free from suspicion. The petitioners at least could maintain their challenge to the detention order before the High Court of Delhi. Even the orders passed under SAFEMA were challenged in the writ petition before the High Court of Delhi, which has remained pending since the year 2002 for ten years till 19.3.2012.....

6. Against the said decision of the Punjab and Haryana High Court the petitioner had preferred a Special Leave to Appeal (SLP CrI. No. 5092/2012), which was dismissed as withdrawn as recorded in the order dated 31st August, 2012.

7. In view of the aforesaid factual position, we do not think the petitioner, at this belated stage, can be allowed and permitted to raise fresh grounds to challenge the detention order. The delay in approaching and questioning the said detention order is writlarge, and is substantial. It forms the cornerstone and basis of the order passed by the Punjab and Haryana High Court dated 7th May, 2012 whereby the petitioners attempt to raise fresh/new grounds to challenge the detention order, while challenging the order passed by the appellate tribunal under SAFEMA was rejected. The fresh challenge to the detention order was not entertained due to delay and laches.

8. Accordingly, to maintain consistency and uniformity and for other reasons indicated above, we dismiss the present writ petition. SANJIV KHANNA, J.

SIDDHARTH MRIDUL, J.

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