

State of Gujarat and Others

Vs

Jat Harun Dada

Criminal Appeal No. 438 of 1981

(A.P. Sen, Baharul Islam JJ)

06.11.1981

JUDGMENT

ISLAM, J. –

1. This appeal by special leave by the State of Gujarat (hereinafter the 'appellant') is directed against the judgment of the High Court of Gujarat dated June 18, 1980, quashing the order of detention passed by the appellant under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Only one point urged before us on behalf of the appellant is that the finding of the High Court that the respondent was not furnished with the documents and statements is not correct. Learned counsel draws our attention to the following portion of the document containing the grounds of detention :

The statements and documents which form the basis for the allegations made hereinabove, copies of which are enclosed, are as under :

- (1) Report dated October 8, 1979 from the Sector Commander, BSF Camp, Khavda.
- (2) Panchanama dated October 8, 1979 drawn by the Customs Officers of Khavda.
- (3) Your statement dated October 9, 1979 recorded by the Customs Officers.
- (4) Statement dated October 9, 1979 of Yakub Sumar Jat.

On going through all the relevant materials and documents produced by the Sponsoring Authority, the State Government has decided to detain you.

The submission is that the documents enumerated above being part of the "grounds" were furnished to the detenu, who acknowledged the receipt of the grounds.

3. Whether the statements and documents were furnished to the detenu or not is a question of fact. It appears from what has been quoted above that the copies of the statements and documents which formed the basis of the allegations purported to have been made enclosures.

4. The High Court has examined this very contention raised before it. It has examined the affidavit filed by Mr. P.M. Shah, Deputy Secretary to the Government of Gujarat on the point, the endorsement made by the detenu by way of acknowledgment of the grounds of detention, and finds

as follows :

Therefore, what has been stated in paragraph 8 of the affidavit of Mr. P.M. Shah, solemnly affirmed on April 30, 1980 when it is read in light of what the Circle Police Inspector has stated in his endorsement militates against the acceptance of the general statement made by Mr. P.M. Shah in the other part of that affidavit that the documents upon which the grounds of detention were founded were served upon the detenu were (1) the grounds of detention, (2) the detention order and (3) the committal order and nothing more. Since, in our opinion, the documents upon which the grounds of detention were founded were not served upon the detenu, he did not have an effective opportunity to make a representation to the State Government against his detention.

Although the first sentence of the quotation is not clear, the second sentence is clear. The purport of the finding of the High Court is that although the grounds as such, of detention, were supplied to the detenu, the documents enumerated in the document containing the "grounds" and which were purported to be enclosed were not supplied to the detenu. This being a pure finding of fact, cannot be interfered with in an appeal by special leave under Article 136 of the Constitution of India.

5. This appeal has no force and is dismissed.

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