

Mrs Saraswathi Seshagiri

Vs

State of Kerala and Another

Criminal Writ Petition No. 8926 of 1981

(O. Chinnappa Reddy, R. B. Misra JJ)

26.03.1982

JUDGMENT

MISRA, J. -

1. Shri T.R. Seshagiri Iyer has been in the Recruiting and Travel Agency business for over a decade. He has an office at New Delhi, namely 'Viswak Agencies' which is mainly acting as a Recruiting Agent for some of the middle east countries in procuring skilled labourers from India for employment purposes in the gulf countries on a commission basis.

2. In connection with his business he attempted to export illegally Indian currency to the tune of Rs 2,88,900 which was recovered from his possession while he was bound for Abu Dhabi by an Air India flight on July 19, 1981 and for that offence he is liable for punishment under Sections 132 and 135 of the Customs Act, 1962. He was arrested by the Inspector of Central Excise, Air Customs, Trivandrum and later on released on conditional bail.

3. The Collector of Customs and Central Excise (Central Excise Wing), Cochin, made a report dated August 13, 1981, to the State Government that T.R. Seshagiri Iyer had made a genuine attempt to export Indian currency of the value of Rs 2,88,900 without permission of the authorities and in violation of the Foreign Exchange Regulation Act, 1973 and the Customs Act, 1962. He also appended the copies of Mahazar dated July 19, 1981, relating to the seizure from the detenu, admission made by the detenu on July 19 before the Superintendent of Central Excise and Customs and the arrest Mahazar, dated 19th July. From the report and other materials placed before the Government by the customs authorities, the Government was satisfied that the detenu had tried to export large amount of Indian currency in a very planned and premeditated manner by cleverly concealing the same in several parts of his baggage.

4. The Special Secretary (Home), Kerala, in exercise of the powers conferred upon him under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, passed an order dated September 22, 1981, directing that Shri T.R. Seshagiri Iyer be detained as it was necessary to do so to preventing him from smuggling goods. Pursuant to the order of detention he was arrested on September 28, 1981. Immediately after his arrest he was supplied the ground on which the order of detention was made.

5. The ground supplied discloses that on July 19, 1981 T.R. Seshagiri Iyer with a passport issued at Abu Dhabi was a passenger bound for Abu Dhabi by Air India flight No. AI 935. He presented his luggage consisting of two brief cases and one suit case for examination and clearance by customs authorities at Customs Export Examination Hall of the International Block of Trivandrum Airport.

He had already undergone immigration formalities and was bound to board the Aircraft after customs clearance. Before commencing the customs examination, the Customs Officers required him to give a true and complete declaration of the contents of the baggages for which customs clearance was sought, with specific reference to silver, gold, gold ornaments and foreign and Indian currency. He declared that the baggages contained clothes, personal files, vegetables and fruits and he categorically denied having any Indian or foreign currency inside the said baggages. But in examination the Customs Officer recovered Indian currency to the tune of Rs 2,88,900 in bundles of 50 rupees and 100 rupees from the leather folder kept in brief case, the plastic bag, shoes and under the vegetables in the cardboard carton. He had no valid documents of permits in respect of the currency attempted to be exported. As he attempted to export out of India Indian currency illegally and by concealment, violating the provisions of the Foreign Exchange Regulation Act, 1973 and the provisions of the Customs Act, 1962, the customs authorities seized the aforesaid currency under a Mahazar for further action. In his voluntary statement giving in his own handwriting before the Superintendent of the Central Excise and Customs, Trivandrum he admitted the recovery of Rs 2,88,900 from his possession while he was attempting to export the same out of India. He has signed the Mahazar drawn for the seizure of the Indian currency stating that all the details mentioned in this Mahazar are true and correct. He also admitted that he did not have any valid document or permit for export of India currency.

6. The detenu made a representation dated October 16, 1981, which was received by the Government on October 17, 1981. Immediately after the receipt of the representation, the Government called for the comments from the Collector of Customs and Central Excise to the Government of India at Cochin on October 19, 1981 and received the comments from the Customs Department on October 23, 1981. The Government rejected the representation by its order dated October 28, 1981. The Government had also referred the representation of the detenu to the Advisory Board by communication dated October 28, 1981. The Advisory Board by their order dated November 21, 1981, opined that there was sufficient cause for the detention of the detenu. Thereafter the Government confirmed the detention of the detenu and fixed the period of detention for one year with effect from October 28, 1981.

7. The wife of the detenu has filed the present petition under Article 32 of the Constitution to challenge the order of detention. It was contended for the detenu that a single solitary instance of attempt to export Indian currency to foreign countries is hardly sufficient to warrant an inference that the detenu will repeat his activity in future also and that his detention was necessary to prevent him from so doing in future.

8. In support of the contention reliance was placed on *Debu Mahato v. State of W.B.* (AIR 1974 SC 816 : (1974) 4 SCC 135 : 1974 SCC (Cri) 274). The sole ground for detention in that case was that on August 11, 1972, the petitioner with his associates was found removing three bales of empty jute bags after breaking a railway wagon in Naihati railway yard and when challenged by the local Railway Protection Force the petitioner and his associates fled away leaving the booty. A similar contention was raised in that case also as is being raised in the case in hand. This Court accepted the contention on the facts and circumstances of that case but made the following observation : (SCC p. 138, para 2 : SCC (Cri) p. 277)

... We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in

a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention.....

9. From the aforesaid observation it is evident that an inference in each case will depend on the nature of the act and the attendant circumstances. In the present case the detenu tried to export India currency to the tune of Rs 2,88,900 to a foreign country in a planned and premeditated manner by clever concealment of it in several parts of his baggage. This fully justified the detaining authority in coming to the conclusion that he might repeat his illegal act in future also and that his detention was necessary to preventing him from repeating the same in future. His past act in the circumstances might be an index of his future conduct.

10. It was next contended for the detenu that detenu could be prosecuted under the Customs Act and as such his preventive detention was uncalled for. The counsel for the detenu in support of his argument strongly relied upon Smt. Hemlata Kantilal Shah v. State of Maharashtra (AIR 1982 SC 8 : (1981) 4 SCC 647 : 1982 SCC (Cri) 16). That case instead of supporting the detenu goes against him. This Court dealing with the point held : (SCC pp. 656-58, paras 21 & 24 : SCC (Cri) pp. 24-26)

Possibility of a prosecution or the absence of it is not an absolute bar to an order of preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. What is required is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. In some cases of prosecution it may not be possible to bring the culprit to book as in case of a professional bully, a murderer or a dacoit, witnesses do not come forward to depose against him out of fear, or in case of international smuggling, it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt.

* *##

The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of supplies and services essential to the community or his act of violation of foreign exchange regulations and his smuggling activities are likely to have deleterious effect on the national economy.

11. When the legislature has made only the subjective satisfaction of the authority making the order of detention; it is not for the court to question whether the grounds given in the order are sufficient or not for the subjective satisfaction of the authority.

12. We find ourselves unable to accede to either of the two contentions and the writ petition must fail. The writ petition is accordingly dismissed.

</html