

Ashok Narain

Vs

Union of India and Others

Writ Petition (Criminal) No. 61 of 1982

(D. A. Desai, O. Chinnappa, Reddy JJ)

05.05.1982

JUDGMENT

CHINNAPPA REDDY, J. -

1. The Enforcement Directorate of the Ministry of Finance received information that one Santosh Kumar Jain was engaged in illegal foreign exchange operations under the guidance of his father Manak Chand Jain and his brother Suresh Kumar Jain. On February 23, 1982, he was apprehended and his person was searched. Some items of foreign currency were seized. On the information given by him, Room No. 12-A, Regal Hotel, Chandni Chowk, Delhi was searched. More items of foreign currency were recovered, as also some articles like electronic watches, cameras, tapes, etc. Some documents, notebooks and diaries were also recovered. Among the documents seized, was an application for 'cable transfer' of the American Express International Banking Corporation, Hong Kong mentioning Ashok Narain as the person who had purchased dollars of the nominal value of 5000 dollars from the Bank for effecting a transfer of the amount to one Subhash Sehgal of New York. Thereupon the officers of the Enforcement Directorate raided the premises of Ashok Narain and recovered there-from three notebooks. If one of them, detailed particulars of transactions in foreign exchange indulged in by Ashok Narain on behalf of Suresh Kumar Jain, brother of Santosh Kumar Jain, were found written in Ashok Narain's handwriting. In the other two notebooks also were found accounts of several other foreign exchange transactions in which Ashok Narain had apparently engaged himself. Ashok Narain was interrogated and a statement was recorded from him. He was arrested under Section 35 of the Foreign Exchange Regulation Act. Initially he was remanded to the custody of the Enforcement Directorate and later to judicial custody. Finally, on April 24, 1981, he was released on bail. On October 14, 1981, an order of detention under the COFEPOSA was made by Shri B.B. Gujaral, Additional Secretary to the Government of India, who was specially empowered to make such orders under the COFEPOSA. The detenu has filed an application for the issue of a writ of habeas corpus under Article 32 of the Constitution. The only worthwhile submission made on behalf of the detenu by his learned counsel, Shri S.N. Kacker was that though the detenu was apprehended in connection with a breach of the foreign exchange regulation as far back as February 25, 1981, no prosecution had yet been launched against him and that the order of detention was made as late as in October 1981, thereby indicating that there was no apprehension that the detenu was likely to engage himself in any activity prejudicial to the 'augmentation of foreign exchange'. We are able to agree with Shri Kacker. Shri Kacker was fair enough to concede that the question whether or not a prosecution was launched on the basis of the available material was really irrelevant in considering the question of the validity of the order of detention. He however urged that the failure to launch the prosecution, taken along with the circumstance, that a long time was allowed to lapse before the order of detention was made, was sufficient to expose the hollowness of the claim that the order was made with a view to prevent the

detenu from acting in any manner prejudicial to the augmentation of foreign exchange. In order to satisfy ourselves that there was no undue or unnecessary delay in making the order of detention, we sent for the original files and we have perused them. We are satisfied that the matter was examined thoroughly at various levels and the detaining authority applied his mind fully and satisfactorily to the question whether the petitioner should be detained under the COFEPOSA. The passage of time from the date of initial apprehension of the detenu and the making of the order of detention was not occasioned by the laxity on the part of the agencies concerned, but was the result of a full and detailed consideration of the facts and circumstances of the case by the various departments involved. We find from the file that the very question whether the passage of time had made it unnecessary to order the detention of the detenu was also considered by the detaining authority. We are unable to hold in the circumstances of this case that there was any tardiness on the part of any one or that the detention is in any manner illegal. The petition is rejected.

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