

Raverdy Marc Germain Jules

Vs

State of Maharashtra and Others

Special Leave Petition (Criminal) No. 1242 of 1982 and Criminal Writ Petition No. 618 of 1982

(D. A. Desai, V. D. Eradi JJ)

17.09.1982

JUDGMENT

DESAI, J. -

1. Detenu Reverdy Marc Germain Jules, a French national, at the relevant time was employed as Airport Manager by Air India at Geneva. By an Air India flight, on September 20, 1981 he arrived at Sahar International Airport, Bombay and passed through green channel indicating he had no dutiable goods to declare to the Customs authorities. When he was at Exit Gate No. 1, the Intelligence Officer questioned him about the contents of two suit cases and other packages carried by him. The reply led to the inspection of the baggages which led to the recovery of watch parts weighing 4 1/2 kgs. in eight packages. This led to a further enquiry, and evaluation of the watch parts led to the conclusion that the value was Rs 3,91,200 c.i.f. Ultimately, the Government of Maharashtra, on December 16, 1981, made an order of detention with a view to preventing the detenu from smuggling goods, in exercise of the power conferred by sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. On the same day, he was furnished grounds of detention which inter alia referred to the smuggling of the watch parts and two wrist-watches.

2. Detenu filed a petition for a writ of habeas corpus under Article 22 (sic 226) of the Constitution in the High Court of Judicature at Bombay. Before the High Court, three contentions were advanced on behalf of the detenu. They were :

(1) It was a case of solitary incident, and prosecution was pending;

(2) The detention order was mala fide having been served to prevent the Magistrate from passing an order on the application for leaving India;

(3) All material documents relevant for subjective satisfaction were not considered and the order has been passed mechanically.

3. The Division Bench of the High Court which heard the petition held on Ground (1) that even though this is the first time the detenu was found indulging in smuggling activities and a prosecution might have been launched yet taking into account all the relevant materials, satisfaction on likelihood of repetition of smuggling activities in future seem to be real. In respect of Ground (2), the Court was of the opinion that even though the detention order was made on December 16, 1981, the day fixed for pronouncing order on the application of the detenu seeking permission to leave India, yet the file shows that the screening committee had taken the decision of recommending

the detention of the detenu as well as those other persons connected with the different incidents so far back as on November 19, 1981 and the actual proposal recommending detention by Customs authority was forwarded on November 25, 1981. The counter-affidavit before the High Court disclosed that the detaining authority did not know that an application for permission to leave India was filed by the detenu and the decision of the Chief Judicial Magistrate was likely to be pronounced on December 16, 1981, the day on which the detention order was made. After taking note of this fact, the High Court rejected the contention. On the third contention, the court was of the opinion that there is nothing to show that there was no consideration of material documents and rejected the same. Ultimately, the High Court rejected the petition of the detenu.

4. The detenu filed a petition for special leave against the judgment of the High Court as also a writ petition under Article 32 of the Constitution for a writ of habeas corpus. It appears that the writ petition was filed with a view to urging some additional grounds which were not raised before the High Court and, frankly speaking, Mr Jethmalani, learned counsel for the detenu, did not press any of the contentions which were canvassed before the High Court, but urged three other contentions which the High Court was not invited to examine.

5. On behalf of the detenu, the learned counsel questioned the validity and legality of the detention order on the following three grounds :

(A) The detaining authority viz. Secretary to the Government of Maharashtra, Bombay Home Department (Law and Order) did not consider the representation and thereby violated constitutional guarantee under Article 22(5) of the Constitution.

(B) Even if detenu is alleged to have made a confessional statement, the same was retracted before the detention order was made and yet there is nothing to show that the detaining authority took into consideration the fact that the confession was retracted and it is quite likely that the confessional statement itself may have influenced his mind and, therefore, the detention order is vitiated. Alternatively, it was contended that in any view of the matter, the fact that as the confessional statement was retracted by the detenu, the retraction ought to have been sent to the Advisory Board.

(C) It appears that by the continued detention, the detenu has suffered mental disorder as revealed by the report of Senior Psychiatrist, Dr. P.N. Vyavhare, Senior Psychiatrist of Central Mental Hospital, Yervada and in view of this report, continued detention of the detenu is likely to inflict irreparable harm and, therefore, also the detention on the ground of humanitarian consideration requires to be terminated.

6. We shall examine these grounds seriatim.

7. The first contention is that the representation made by the detenu was not considered by the detaining authority though it is obligatory under Article 22(5) for the detaining authority to consider the representation of detenu. Frankly speaking, this contention in the form in which it is canvassed before us has not been taken even in the writ petition filed in this Court. However, it becomes crystal clear that the order of detention was made by Secretary to the Government of Maharashtra, Home Department (Law and Order) pursuant to Standing Order No. SD. 3(A) PSA 1181 dated October 13, 1981, directing that the cases under sub-section (1) of Section 3 of the COFEPOSA be disposed of by the Home Secretary. The validity of this Order is not questioned. In exercise of this

power impugned order was made by the detaining authority. The representation was rejected by the Home Minister. Under the rules of business, Home Minister was competent to examine the representation and if it is rejected by him it is futile to contend that the representation was not considered by the detaining authority. This Court in *Smt. Kavita v. State of Maharashtra* ((1981) 3 SCC 558 : 1981 SCC (Cri) 743) and *Smt. Masuma v. State of Maharashtra* ((1981) 3 SCC 566 : 1981 SCC (Cri) 750) held after referring to the rules of business of the Government of Maharashtra that both the Home Secretary and the Home Minister could act on behalf of the State Government and, therefore, it is immaterial whether the detaining authority or the Home Minister disposed of the representation. The present case is governed by the same rules of business and, therefore, the contention would stand negative by the decisions in the aforementioned two cases.

8. It was next contended that even though the detenu retracted his confessional statement the same was not considered by the detaining authority and in any event the same was not forwarded to the Advisory Board and, therefore, the detention order is vitiated. In para 11 of the writ petition it is alleged that the detenu retracted his confessional statement by his letter dated December 16/19, 1981 forwarded through the Jail authorities addressed to the Assistant Collector of Customs, Bombay. In the counter-affidavit it is stated that the letter retracting the confessional statement was not before the detaining authority when the order of detention was issued and the facts of the case it could not be there because the order of detention is dated December 16, 1981, and the letter appears not to have reached the Customs authorities before December 19, 1981. The detaining authority could not have received it on or before December 16, 1981, when the order of detention was issued. The Assistant Collector of Customs, Bombay to whom the letter retracting the confessional statement was forwarded has sent his reply to the detenu, which was annexed to the counter-affidavit. Therefore, it is futile to urge that the letter retracting the confessional statement was not considered by the detaining authority because it was humanly not possible to do so.

9. The second limb of the submission was that in any event that retraction letter ought to have been forwarded to the Advisory Board. In para 12 of the petition it is alleged that the letter retracting the confessional statement was not considered by the Advisory Board. One Shri C.V. Karnik, Assistant Secretary, Government of Maharashtra, Home Department (Special) in his counter-affidavit (para 6) has stated that all the documents which were before the detaining authority were also placed before the Advisory Board. It is further averred that the Advisory Board examines the question of subjective satisfaction of the detaining authority on the material the detaining authority had before it and as the retraction was not before the detaining authority it is immaterial that the Advisory Board did not take the same into consideration. This stand may not be very satisfactory and may necessitate our deeper examination but for the fact that the detenu himself was before the Advisory Board. He is a highly qualified, highly placed person and it is unthinkable that he would not have informed the Advisory Board that he had retracted his confessional statement. Therefore, nothing turns on the letter retracting the confessional statement being not placed before the Advisory Board and the contention must be negated.

10. The last contention is that by the continued detention the detenu has suffered mental disorder as revealed by the report of the Senior Psychiatrist Dr. P.N. Vyavhare of the Central Mental Hospital, Yervada, Pune. Report of Dr. Vyavhare is annexed to the additional affidavit filed on behalf of the detenu. This report did give us some anxious moments. Therefore, when we heard this petition on August 20/21, 1982, an order was made by us directing the Jail authorities to produce the detenu before the Head of the Psychiatric Department, Armed Forces Medical College, Pune, for examination and report. This place was selected after discussion in the open court with Shri Ram Jethmalani, learned counsel for the detenu. A wireless message has been received by the Registry of

the Supreme Court on September 14, 1982, from Yervada Central Prison, Pune, intimating that the detenu has been certified by Psychiatric Department of the Armed Forces Medical College, Pune, that he is not suffering from any unsoundness of mind. We hope to receive the original report forwarded to us by post before we pronounce the order. In fact, awaiting the report we postponed pronouncement of this order because if in fact a satisfactory report by a competent Psychiatrist of the detenu suffering mental disorder on account of continued detention was brought to our notice it would have considerably weighed with us on the question whether we may terminate continued detention of the detenu on humanitarian grounds. The report being to the contrary that aspect need not detain us anymore.

11. These were all the contentions urged in this petition and as we find no merit in any of them, both the petition and the special leave petition are dismissed.

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