

Suresh Bhojraj Chelani

Vs

State of Maharashtra

And

Narain T. Mirchandani

Vs

State of Maharashtra

Writ Petitions (Criminal) Nos. 1210 And 1242 of 1982,

(Baharul Islam J. )

17.12.1982

JUDGMENT

BAHARUL ISLAM J. –

1. The facts of these two writ petitions are common and interconnected. The contentions raised before us by Mr. Jethmalani, counsel for the petitioner, Suresh Bhojraj Chelani, in Writ Petition (Cri.) No. 1210 of 1982 have been endorsed by Dr. Chitale, counsel appearing for the petitioner, Narain Tarachand Mirchandani (hereinafter 'Mirchandani') who has additionally filed some written arguments.
2. The petitioners have been detained under sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter 'the COFEPOSA Act') by two separate orders, both dated April 16, 1982. The allegations against them are these :
3. The petitioners arrived at the Bombay Airport on December 30, 1981 from Singapore by Singapore Airlines Flight No. SQ. 022. The unaccompanied baggage of the petitioners was weighed together. The luggage consisted of two bags and one zipper bag with claim tags bearing Nos. 10-17-95, 10-17-96 and 10-17-97. The outer part of the said tags were pinned to the ticket of Mirchandani. On arrival at the Bombay Airport, the said three bags were brought from the conveyor belt to the customs clearance barrier. Both the petitioners initially stood at the same checking customs counter. Subsequently, at the request of the Customs Officer, Mirchandani was sent to a different counter. Chelani got the bag bearing tag No. 96 as his bag cleared after paying customs duty of Rs. 930 in respect of goods found in the said bag. Mirchandani got the bag bearing No. 97 claimed by him as his bag, cleared it on payment of Rs. 1550 as customs duty. The third bag, namely, the zipper bag, bearing No. 95 whose outer part was pinned to Mirchandani's ticket was disclaimed by both the petitioners. The said bag was opened and inspected by the Customs Officer in the presence of Mirchandani. The zipper bag was found to contain foreign goods such as ladies wrist watches, mini stereo cassette players, watch pens, casio calculators, recorded tapes and ladies wearing apparels, whose c.i.f. value was found to be Rs. 43,390 with corresponding market value assessed at Rs.

1,13,920. The said goods were seized under a panchnama. Thereafter, the statements of the petitioners were recorded.

4. In his statement, Mirchandani said that on October 22, 1981, he along with his friend, Chelani, had left for Bangkok. The tickets held by them were routed as Bombay-Bangkok-Singapore-Bombay. He had taken five hundred US dollars to Singapore which he had purchased from a person at Crawford Market with Rs. 5050 at the rate of Rs. 10.10 per dollar. At Singapore, he had purchased the goods with this money. He did not know how much money Chelani carried. On December 20, 1981, Chelani was away for two to three hours and on his return, he (Mirchandani) had noticed one grey coloured zipper handbag and on being asked, Chelani told him that he had purchased some car and motor cycle parts. They checked out of the hotel on December 29, 1981. He had one V. I. P. handbag and one brown suitcase. Chelani had one suitcase, one brief-case and one zipper bag. At Singapore Airport, Chelani got the baggage and all of them weighed together and when he noticed that there were three tags attached to his ticket, he asked Chelani, why three tags were stapled to his ticket, and was told by Chelani that he had checked their baggage together. On arrival at Bombay Airport, Chelani had asked him to take the grey zipper bag from the conveyor belt to the customs counter as it was heavy. He took the baggage to the customs counter and stood in the same queue behind Chelani. When one of the Customs Officers asked him to go to the next counter, he did so and checked his luggage consisting of one suitcase, one V. I. P. bag and one plastic bag containing whisky and cigarettes and he paid as duty Rs. 1550 which he received from his brother, Narayan, who had come to the airport to receive him. By that time, Chelani had cleared and left the exit gate. As he was preparing to take his luggage to the exit gate, he saw Chelani, who was standing at the gate giving hints to him that he should push the grey zipper bag which had not been cleared by Chelani. Customs Officer saw the hint and asked him to show the ticket and interrogated him about the contents of the grey zipper bag. He replied that it belonged to Chelani. He had also stated that to the best of his knowledge, it contained some car parts and that Chelani had told him to carry the same from the conveyor belt to the customs counter. The zipper bag was accordingly examined and goods like tape recorders, watch pens, calculators, wrist watches, cassette tapes etc. were recovered. He had paid duty for his goods and obtained a receipt dated December 13, 1981. His goods were valued at Rs. 2012 c. i. f. and Rs. 6036 M. V. were taken over. He had accompanied Chelani as he made a programme to go to Singapore and make some purchases there. On his earlier visit to Singapore, he had officially carried US dollars under FTS. He had lost his earlier passport.

5. In his statement, Chelani stated that he had travelled to Singapore four times with his earlier passport issued on January 13, 1981, which was said to have been lost. During his visit on November 22, 1981, he had taken six hundred US dollars which he had purchased at Crawford Market, Bombay. On two earlier occasions, he had travelled to Singapore with Mirchandani and both of them stayed there at Magestic Hotel in the same room. On December 23, 1981, they had made purchases of readymade garments, textiles, cosmetics worth two hundred US dollars and with the remaining four hundred US dollars, Chelani had purchased 10 walkmans and 20 calculators. Mirchandani also made similar purchases. On December 29, both had left the hotel and went to Singapore Airport. Chelani had a suitcase and one handbag and Mirchandani had one suitcase, one zipper bag and one handbag. At the airport, they were checked, and no production of their tickets, the Air Lines staff cleared all the claim tags on the tickets and handed them over to them. On arrival at Bombay, Chelani had picked up his suitcase and Mirchandani had taken his along with the zipper bag.

6. Shri Jethmalani raised the following contentions before us :

(i) That the order of confirmation passed by the Government mentions no period of detention and as such the order of confirmation of detention has been vitiated;

(ii) That there was violation of Article 14 of the Constitution by the Advisory Board as it allowed the Government to be represented by the Customs Officer, and the petitioners by none; and

(iii) In the counter-affidavit filed by the respondents, it has not been stated as to who passed the order of confirmation and who considered the representation submitted by the petitioner.

Point (i)

7. The question is whether the order of confirmation of detention passed by the Government has been vitiated inasmuch as the order of detention finally confirmed did not contain any period of detention. Section 10 of the COFEPOSA Act provides that :

The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 do not apply and which has been confirmed under clause (f) of Section 8 shall be one year from the date of detention and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Section 9 apply and which has been confirmed under clause (f) of Section 8 read with sub-section (2) of Section 9 shall be two years from the date of detention :

Provided that nothing contained in this section shall affect the power of the appropriate Government in either case to revoke or modify the detention order at any earlier time.

8. Admittedly, in this case, Section 9 does not apply. Therefore, as contemplated by section 10, the maximum period shall be one year, but the Government, if it so thinks fit, may revoke the order of detention earlier under the proviso. It had nowhere been mentioned that the period of one year or the period lesser than one year shall have to be mentioned in the order of confirmation. The submission of the petitioner on this point has no substance. The maximum period (in this case) is one year. When no period is mentioned in an order, the implication is that the detention is for the maximum period of one year (or two years as the case may be). Detention beyond the maximum period will be illegal.

9. In support of his contention, Mr. Jethmalani cited a decision of this Court in Smt. Kavita v. State of Maharashtra in which one of us (Baharul Islam, J.) was a party, and relied upon one observation appearing in para 4 of the judgment (at AIR page 1644 : SCC pp. 562-63) which seems to support him. In our view, the observation is a casual one and not the ratio of the case. In fact, the point argued in that case was that the period must be specified at the time of making the original order of detention under Section 3 (1) and the same was negated and the contention now urged before us was never raised there. The language of Section 8 (f) merely states that on receiving the Advisory Board's opinion as regards sufficiency of cause for the detention, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and does not support the contention of the counsel.

Point (ii)

10. Section 8 of the COFEPOSA Act provides for an Advisory Board and its procedure for the purpose of reviewing the detention cases. Clause (c) of Section 8 provides that the Board can call for such information as is necessary from the appropriate Government or from any person called for the purpose through the appropriate Government. What was done in this case, as it appears from the counter-affidavit filed by the respondent, was that Customs Officers were present before the Advisory Board with the files and documents as directed by the Board under clause (c) of Section 8. It is not the case of the petitioner that the Customs Officer either pleaded or argued the case on behalf of the Government before the Advisory Board.

11. In support of the contention, learned counsel cited the decision of this Court in *Nand Lal Bajaj v. State of Punjab*, to which one of us (Baharul Islam. J.) was a party. In that case, the Advisory Board disallowed the detenu's request for legal assistance while it allowed the detaining authority to be represented by counsel. The Court, therefore, rightly held that there was a violation of Article 14 of the Constitution in that case. But the question of violation of Article 14 does not arise in the instant case.

Point (iii)

12. In the instant case, the order of detention was passed by the Secretary and the Minister of State for Home of the Government of Maharashtra confirmed the order of detention. The question is whether he had the power to do so. This very point was raised in the case of *Smt. Kavita v. State of Maharashtra*. It was held in that case : [AIR headnote (B)]

The Minister of State, Home Affairs, Government of Maharashtra can validly deal with the representation made by a detenu under Rules of Business. It could not be suggested that it would have been more appropriate if the representation had been considered by the very individual who had exercised his mind at the initial stage of making the order of detention, namely the Secretary to the Government. The order of detention was not made by him as an officer of the State Government specially empowered in that behalf but by the State Government itself acting through the instrumentality of a Secretary to Government authorised to so act for the Government under the Rules of Business. Governmental business can never get through if the same individual has to act for the Government at every stage of a proceeding or transaction, however, advantageous it may be to do so. Nor can it be said that it would be to the advantage of the detenu to have the matter dealt with by the same individual at all stages. It may perhaps be to the advantage of the detenu if fresh minds are brought to bear upon the question at different stages.

13. On the top of it, learned State counsel has produced a notification before us and we are satisfied that the Minister of State for Home, Dr. S. R. Jickhar, was duly authorised by the Chief Minister, Shri B. A. Bhosale, under Notification No. SPL-3 (A) /PSA. 1182 dated February 20, 1982, to pass the requisite order of confirmation which does not fall within any of the exceptions mentioned in the notification.

14. Mr. Jethmalani also made two 'peripheral' submissions. Firstly, he submitted that there was delay in considering the representation submitted by the petitioner and the delay has not been considered. The delay has been explained in the affidavit dated October 25, 1982 and filed in Court on November 28, 1982 by Shri O. P. Gulla, Deputy Secretary to the Government of India, Ministry of Finance (Department of Revenue), COFEPOSA Unit. It has been stated that the representation dated May 4, 1982, sent by the detenu, Chelani, was received in the Ministry of Finance, Government of India, New Delhi, on May 14, 1982, through the Superintendent, Central Prison, Bombay. The

representation was placed before the Central Government that considered and rejected the same on May 20, 1982. The decision was communicated to the detenu the same day, namely, May 20, 1982. The delay cannot be said to be unreasonable.

15. Secondly, he submitted that the Government did not consider the second letter of Mirchandani. Mr. Chougule, the Secretary at the relevant time to the Government of Maharashtra, Home Department, has stated that the entire record was placed before him and he had considered all materials including the said letter. He says, 'when the said letter was placed before me, I considered the case of the detenu'. There is no substance in these 'peripheral' submissions.

16. Dr. Chitale, in his written submissions, has raised other points, but as they find no place in the writ petition of his client, Mirchandani, we cannot entertain them at the time of argument, as they are based on questions of facts. His other necessary submissions stand answered above.

17. The petitions have no merit and are rejected.

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