

Sita Ram Somani

Vs

State of Rajasthan and Others

Criminal Appeal No. 129 of 1986

(O. Chinnappa Reddy, V. Khalid JJ)

11.02.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. Special leave granted.

2. Sitaram Somani is under detention pursuant to an order dated June 4, 1985 made by the State of Rajasthan under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1947. Earlier, on January 1, 1985, the officers of the Customs Department recovered eight foreign gold biscuits from Om Parkash Soni and immediately thereafter searched the residence of Sitaram Somani and recovered thirty-six foreign gold biscuits from a steel case in an almirah in the house. 12,100 US dollars were also recovered. A statement was recorded from Sitaram Somani. Sitaram Somani and Om Parkash were arrested and produced before the Additional Chief Judicial Magistrate on January 2, 1985. Bail was refused by the Magistrate. But hereafter on applications made by the two accused persons, the High Court of Rajasthan granted bail to both of them subject to certain conditions. One of the conditions was that the two accused should not leave India without the permission of the learned Sessions Judge. The passports of the accused had already been seized by the Customs Department. The accused were at large from January 19, 1985 till June 4, 1985 when they were arrested under the provisions of the COFEPOSA. Sitaram Somani moved the High Court of Rajasthan under Article 226 of the Constitution for the issue of a writ of habeas corpus. The application was rejected by the High Court and the present appeal is directed against the judgment of the High Court refusing to issue a writ of habeas corpus. Sitaram Somani has also filed Criminal Writ Petition No. 1475 of 1985 in this Court under Article 32 of the Constitution. The appeal and the writ petition have been heard together.

3. One of the principal points taken in the High Court and repeated before us was that there was no application of mind by the detaining authority as certain vital facts were not brought to the attention of the detaining authority and were, therefore, not taken into consideration by that authority. The ground raised by the appellant in the High Court in his own words is as follows :

That there has been non-application of mind in passing the detention order. The petitioner says that the following relevant facts which would have weighed the satisfaction of the detaining authority one way or the other and influenced the mind of the detaining authority have been purposely withheld and suppressed from the detaining authority thus vitiating the satisfaction :

#(a) * * *##

(b) That the petitioner in his bail applications (Annexure A and B) had retracted from the confessional statement and had denied any recovery of gold, foreign currency from his premises.

(c) Shri Om Parkash had also moved bail application in the court of Addl. Chief Judicial Magistrate, Session Court and High Court. He had retracted from his confessional statement and also his association with the petitioner.

(d) The petitioner has retracted from the statement by making an application to the Collector of Customs on January 19, 1985.

(e) Shri Om Parkash had also retracted from his confessional statement by making an application on January 18, 1985.

#(f) * * *(g) * * *##

The petitioner says that the above material being very relevant and material which would have influenced the mind of the detaining authority one way or the other has been suppressed from the detaining authority.

4. On behalf of the Union of India, who was the second respondent before the High Court, a counter-affidavit was filed in which it was stated :

It is not denied that the bail application moved by the petitioner was not submitted before the detaining authority but it is denied that they were not placed before the detaining authority purposefully with a view to suppress. The bail applications were not material to be placed before the detaining authority.....The representation dated January 18, 1985 of Shri Om Parkash Soni addressed to the Collector, Customs and its reply dated February 16, 1985 from the office of the Collector, Customs, Jaipur were not considered relevant to be placed before the detaining authority.

Later it was said in the same affidavit :

Moreover the documents enumerated in these paras were not considered and were not material. The petitioner has not suggested any material in the said documents which was over and above and very material relevant for the purpose of consideration for the detaining authority. Without that the petitioner cannot take any advantage on the same...The bail application can never be said to be material document for the purpose of consideration of the detaining authority when the representations were already considered

On behalf of the State of Rajasthan, two counter-affidavits were filed. In the first one, it was stated : "The documents referred to by the petitioner in this para are not relevant. However, all these documents were also considered at the time of confirming the detention order on August 14, 1985." In the second counter, it was claimed that the Screening Committee consisting of the Law Secretary, the Director General And the Inspector General of Police and the Collector of Customs met on April 4, 1985 and considered the question of detaining the appellant under the COFEPOSA. At that time, it was said : "All matters pertaining to confessional statements, retraction of confessional statements, bail applications, court's orders and all other records were placed before the Screening Committee by the Customs Department." It appears from the counter that thereafter the papers were processed

by the Deputy Secretary to the Government of Rajasthan, Shri Pagoria, who stated in the affidavit :

Before passing the detention order, the whole record of the Customs Department was called considered by me at the time of processing on May 21, 1985.

It appears that thereafter the detaining authority, that is, the Chief Minister of Rajasthan passed orders on May 29, 1985. From what has been stated in the counter filed by the Union of India and the two counters filed by the State of Rajasthan, it appears to be clear to us that the documents mentioned by the appellant in his petition were not placed before the detaining authority and, therefore, were not considered by the detaining authority. It is possible that they were placed before the Screening Committee in the first instance, but that is immaterial. It was the detaining authority that had to consider the relevant material before taking a decision whether it was necessary to detain the appellant under the COFEPOSA. That was not done and there was, therefore, a clear non-application of mind by the detaining authority to relevant material. Unfortunately, the High Court viewed it as a question of jurisdiction, that is to say, the High Court thought that the detaining authority had jurisdiction to make the order of detention despite the retraction by the accused of his earlier confessional statement and the pendency of the criminal case against the appellant in which bail had been granted subject to conditions. No one can dispute the right of the detaining authority to make an order of detention if on a consideration of the relevant material, the detaining authority came to the conclusion that it was necessary to detain the appellant. But the question was whether the detaining authority applied its mind to relevant considerations. If it did not, the appellant would be entitled to be released. The counters to which we have referred seem to us to make it clear that relevant material was not placed before the detaining authority and, therefore, there was no occasion for the detaining authority to apply its mind to the relevant material. In the circumstances, the appellant is entitled to be released. Before parting with the case, we must mention one circumstance. As at a certain stage, we were slightly perplexed by the counter filed on behalf of the Union of India, we requested Shri G.D. Gupta, learned counsel for the Union of India, to explain the statements in the counter. But he expressed his inability to do so on the ground that he had no records with him except the judgment of the High Court. He, however, offered to argue the case on the judgment of the High Court. We were not a little surprised that the learned counsel should have been so badly instructed that he did not have the relevant records. However, it does not make any difference to the result of the case in view of the contents of the three counters before us. The appeal is allowed and the appellant is directed to be set at liberty forthwith. In view of our direction in the appeal, no orders are necessary in the writ petition.

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