

State of Maharashtra

Vs

Ramesh Kumar Shobhraj Jain and Others

Criminal Appeal No. 453 of 1987

(G.L. Oza, B.C. Ray, K. Jagannatha Shetty JJ)

12.01.1988

ORDER

1. The habeas corpus petition filed by the respondents was allowed by the judgment of the Bombay High Court dated February 13, 1987 where it has been specifically stated that : "It is not disputed that at the time the grounds were formulated, the detaining authority had before it documents only at Serial No. 6 was actually received and considered by the detaining authority on February 24, 1986". The documents were really received by the detaining authority on February 24, 1986 and it is on the basis of this that the learned Judge allowed the habeas corpus petition.

2. The learned counsel appearing for the appellant contended that this statement of fact contained in the judgment is not correct and it is contended that this has been stated in the special leave petition. But it is clear that the affidavit of the counsel who was present before the High Court of Bombay when this matter was heard, has not been filed. In such a situation, we cannot accept any statement excepting the statement made in the judgment about the facts.

3. The learned Judge on the basis of this admitted situation of facts came to the conclusion that on the date on which the grounds were finalised all the documents on which reliance is placed were not before the detaining authority and in such a situation the judgment of the High Court could not be assailed. The only contention advanced by the learned counsel for the appellant was that this statement of fact as quoted above that it is not disputed that all documents were not before the detaining authority is not correct. Except this no other ground is raised and as stated earlier this contention cannot be accepted without an affidavit filed by the learned counsel who was present at the hearing in the High Court. We therefore see no reason to entertain this appeal. It is therefore dismissed. The order passed by the High Court is maintained. It appears that the respondent has been taken into custody under orders of this Court on grant of leave. It is therefore directed that he be set at liberty forthwith.

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