

Smt. Dharmista Bhagat

Vs

State of Karnataka and Another

Criminal Appeal No. 258 of 1989

(B. C. Ray, S. R. Pandian JJ)

07.04.1989

ORDER

1. Special leave granted. Arguments heard.

2. This appeal on special leave is against the judgment and order passed by the High Court of Karnataka on October 5, 1988 dismissing the Writ Petition No. 93 of 1988 filed by Smt. Dharmista Bhagat, sister of the detenu, Balakrishna S. Mehta against the order of detention made under Section 3(1)(iii) of COFEPOSA Act. The order of detention was made on April 30, 1988 and the detenu was arrested and detained on May 11, 1988. He was served with the order of detention made by respondent 1 along with the grounds of detention. The detenu was also served with the relevant documents mentioned in the grounds of detention. On May 21, 1988, the detenu made a representation to respondent 1 stating that some of the documents supplied with the grounds of detention are not at all legible and as such requested for supplying him typed copies of those documents in order to enable him to make an effective representation. On May 27, 1988 a reply was sent to the said letter under the signatures of Mr. K. N. N. Karaniha, Under Secretary to the Government, Home Department (COFEPOSA Cell) wherein it has been stated that those documents are legible and as such the request for furnishing typed copies of the said documents cannot be conceded. On June 6, 1988 the detenu made a representation to respondent 1 against the said order of detention which was rejected by respondent 1. Thereafter a writ petition was filed assailing the order of detention as illegal and bad. After hearing the learned counsel for both the parties the High Court dismissed the writ petition and confirmed the order of detention holding that :

"The recovery of five gold biscuits, the positive statements made by the detenu himself accepting the recovery of the gold biscuits from him, the opinion of the goldsmith that the gold is of 24 carat purity and of foreign origin and the relevant material placed in that regard, leave no manner of doubt that the satisfaction formed by the detaining authority is on the basis of the relevant material."

3. Against this impugned order rendered by the High Court the instant appeal has been filed before this Court. The sole contention advanced before this Court on behalf of the appellant is that the non-supply of legible copies of the vital documents referred to in the grounds of detention supplied to the detenu in spite of the representation to that effect made by the detenu renders the impugned order of detention illegal and bad inasmuch as the detenu was prevented from exercising his right to make an effective representation against the purported order of detention issued against him, under Article 22(5) of the Constitution of India. It has been urged in this connection that the document, panchnama (mahajar) dated February 12, 1988 which has been specifically referred to in the list of documents supplied pari passu with the grounds of detention was not legible. The detenu

immediately after receipt of the grounds made a request to the detaining authority on May 21, 1988 for giving him typed copy of the said document. This request was turned down by the detaining authority and no legible or typed copy of the said document was supplied to the detenu to enable him to make his effective representation against the impugned order of detention made under Section 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

4. It has, therefore, been submitted that the procedural safeguards provided in Article 22 of the Constitution of India having not been complied with the impugned order of detention is illegal and so it is liable to be quashed and set aside.

5. The learned counsel appearing on behalf of respondent 1, Union of India has contended that even though legible copy of panchnama referred to in the list of documents mentioned in the grounds of detention has not been supplied to the detenu yet the fact that five gold biscuits of foreign marking were recovered from the possession of the detenu was sufficient for subjective satisfaction of the detaining authority in making the said order of detention. So the detention order cannot be termed as illegal and bad for non-supply of legible/typed copy of the said document i.e. panchnama dated February 12, 1988. The panchnama dated February 12, 1988 which had been referred to in the list of documents referred to in the grounds of detention and a copy of which had been given to the detenu along with the grounds of detention, is not at all legible as is evident from the copy served on the detenu. It is also not in dispute that on receiving the documents along with the grounds of detention the detenu had made a representation to respondent 1 stating that some of the documents including the panchnama which had been supplied to him are illegible and as such a request was made for giving typed copies of those documents to enable the detenu to make an effective representation against the same. The detaining authority on receipt of the said representation sent a reply denying that the copies of those documents were illegible and refusing to supply typed copies of the same. It is clearly provided in sub-article (5) of Article 22 of the Constitution of India that :

"(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Therefore, the non-supply of legible copy of this vital document i.e. panchnama dated February 12, 1988 in spite of the request made by the detenu to supply the same renders the order of detention illegal and bad. This Court in *Mehrunissa v. State of Maharashtra* ((1981) 2 SCC 709 : 1981 SCC (Cri) 592 : AIR 1981 SC 1861) has observed that : (SCC p. 710).

"The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documents vitiated the detention, as has been held by this Court in the two cases cited by counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released

forthwith."

6. In *Bhupinder Singh v. Union of India* ((1987) 2 SCC 234 : 1987 SCC (Cri) 328) the detenu made a complaint before the Advisory Board that the copies of the documents which were supplied to him along with the grounds of detention were not legible and he placed before the Advisory Board a copy of representation said to have been made by him for supply of legible copies of the documents. The legible copies of the documents were, however, supplied to the detenu after the detention order was confirmed. It was held that the detenu was denied the opportunity of making a representation and as such there was a clear contravention of the right guaranteed by Article 22 of the Constitution. The detenu was, therefore, set at liberty.

7. Considering these decisions we are constrained to hold that the refusal on the part of the detaining authority to supply legible copies of the said relevant document to the detenu for making an effective representation infringed the detenu's right under Article 22(5) of the Constitution. The order of detention is, therefore, set aside and the detenu is directed to be released forthwith. The appeal is thus allowed.

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