

Vijay Kumar Dharna Alias Koka

Vs

Union of India and Others

Criminal Appeal No. 73 of 1990

(S.R. Pandian, A.M. Ahmadi, K. Jayachandra Reddy JJ)

09.02.1990

JUDGMENT

AHMADI, J. -

1. Special leave granted.

2. By an order dated July 13, 1989 passed under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called 'the Act'), the appellant was detained with a view to preventing him from abetting the smuggling of goods. The appellant challenged his detention by a writ petition filed under Article 226 of the Constitution in the High Court of Delhi which, however, came to be dismissed on December 12, 1989. The appellant has, therefore, approached this Court by special leave which we have granted.

3. The learned counsel for the appellant submitted that the appellant who knows the Gurmukhi script only was supplied with copies of the detention order the grounds of detention in that language along with the detention order and grounds of detention in English. He submitted that the detention order and the grounds of detention in Gurmukhi are at variance apart from their being at variance with the English version also. According to him because of this discrepancy he was unable to effectively represent against the impugned detention order. There is considerable force in this contention.

4. In the Gurmukhi version of the detention order it was stated that the detention order had become necessary 'with a view to preventing him from smuggling goods and from abetting the smuggling of goods'. It is, therefore, clear that according to the Gurmukhi version the detenu was taken in detention under clauses (i) and (ii) of Section 3(1) of the Act. However, when we turn to the grounds of detention the detaining authority records his satisfaction as under :

"I am satisfied it is necessary to detain you under COFEPOSA Act, 1974 with a view to preventing you from concealing, transporting smuggled goods as well as dealing in smuggled goods."

This satisfaction clearly reflects the grounds contained in clauses (iii) and (iv) of Section 3(1) of the Act. The above satisfaction does not speak of smuggling of goods or abetting the smuggling of goods which are the grounds found in the Gurmukhi version of the detention order. There is, therefore, considerable force in the contention urged by the learned counsel for the appellant that on account of this variance the detenu was not able to effectively represent his case before the concerned authorities, In fact according to him the appellant was confused whether he should

represent against his detention for smuggling of goods and/or abetting the smuggling of goods or for engaging in transporting and concealing smuggled goods and/or dealing in smuggled goods. Besides the English version of the detention order was only for abetting the smuggling of goods. The satisfaction recorded in the Gurmukhi version of the grounds for detention is not consistent with the purpose for detention found in the detention order. It left the detenu confused whether he should represent against the grounds in the detention order or the satisfaction recorded in the grounds of detention. We are, therefore, of the opinion that because of this variance the detenu was unable to make an effective representation against his detention and was thereby denied his right under Article 22(5) of the Constitution.

5. In the above view that we take, we cannot, allow the impugned detention order to stand. We, therefore, allow this appeal, quash the detention order and direct that the detenu shall be set at liberty at once.

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