

Union of India and Another

Vs

Vasanbharthi and Others

Criminal Appeal No. 750 of 1989

(K. Jayachandra Reddy, S. Ratnavel Pandian JJ)

01.03.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. This criminal appeal preferred by the appellants, namely, Union of India and the Additional Secretary to the Government of India is against the judgment of the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 733 of 1987 dated April 11, 1988 quashing the order of detention dated June 19, 1987 passed by appellant 2 in exercise of the powers under subsection (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing respondent 1, Vasanbharthi Jivanbharthi from engaging in transporting smuggled goods. It seems that respondent 1 (detenu) has challenged the detention on numerous grounds, one of which being that none of the members of his household had been informed of the passing of the impugned order of detention and of the fact that the detenu had been taken into custody and also of the place where the detenu was detained. This ground was only subsequently added by an amendment with the permission of the court. The High Court holding that the detenu's relatives were not informed about the detention order or about the place where the detenu was detained in compliance with the observation by this Court in A. K. Roy v. Union of India ((1982) 1 SCC 271 : 1982 SCC (Cri) 152) concluded that the order has been vitiated by such non-compliance. Further, the High Court has rejected the plea of the appellants the relatives of the detenu knew about the detention order as well as the place of detention and stated as follows :

"Hence if the relatives of the detenu have not been informed and even if from the record, it is found that the relatives had come to know about it from some source, the order of detention would most certainly be invalidated."

2. In the result, the order of detention was quashed and the detenu was directed to be set at liberty.

3. Mr. Kapil Sibbal, the learned Additional Solicitor General has assailed the finding of the High Court stating that respondent 1 (detenu) was already an undertrial prisoner and his relatives inclusive of his maternal uncle had visited him at the jail within two days and, therefore, that the non-communication of a written intimation about the fact of passing of the order of detention and of the place of detention in pursuance of the detention order have no significance, and as such the observation made in A. K. Roy case ((1982) 1 SCC 271 : 1982 SCC (Cri) 152) can hardly be availed of by the detenu and the order cannot be said to be invalidated on that ground. This plea is taken specifically in paragraph 21 and in grounds I and II in paragraph 23 of the special leave petition. Besides the same in paragraph 9 of the application for ex-parte stay of the order of the High Court, the relevant portion of which reads thus :

"The affidavit in opposition was filed on behalf of the Union of India that the detenu was already undertrial prisoner and his relatives in fact knew that and also that the maternal uncle had immediately, within two days, visited him at the jail. Therefore, it was not necessary to inform the relatives of his detention and place of detention, as contemplated in the decision of the Supreme Court reported in A. K. Roy case (1982) 1 SCC 271 : 1982 SCC (Cri) 152."

4. No counter is filed by respondent 1 (detenu) in opposition to the above plea of the appellants.

5. In the above background, we shall now examine whether the High Court is justified in setting aside the order for the reasons mentioned supra on the basis of the decision in A. K. Roy case. (1982) 1 SCC 271 : 1982 SCC (Cri) 152).

6. The relevant portion of the observation in A. K. Roy (1982) 1 SCC 271 : 1982 SCC (Cri) 152). case reads thus : (SCC pp. 323-24, para 74)

"In order that the procedure attendant upon detentions should conform to the mandate of Article 21 in the matter of fairness, justness and reasonableness, we consider it imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time to time."

7. The object and purpose of the above observation, in our view, seem to be that the family members of the detenu should not be kept in darkness by withholding the information about the passing of the order of detention and the place of detention thereby preventing them from having any access and from rendering any help or assistance to the detenu and similarly the detenu should not be deprived of the privilege of meeting their relations and getting any help or assistance.

8. Coming to the present case, we are satisfied that the family members and sufficient knowledge about the detention of the detenu by virtue of the mittimus issued as well the place of detention. Therefore, no legitimate grievance can be made that there is a contravention to the observation in A. K. Roy case. (1982) 1 SCC 271 : 1982 SCC (Cri) 152).

9. Hence for the reasons mentioned above, we are unable to agree with the view taken by the High Court and accordingly we set aside the impugned judgment and remit the matter to the High Court of Gujarat for consideration of the other contentions raised by the detenu challenging the order of detention and to dispose of the case on its merit. We hope that the High Court will give priority to this matter and dispose of the same expeditiously.

10. Taking into consideration the fact that the detenu is now enlarged consequent upon the judgment of the High Court which we have set aside, the detenu shall not be taken into custody to serve the unexpired period of detention till the matter is finally disposed of by the High Court.

11. The criminal appeal is disposed of accordingly.

</html