

Issac Babu

Vs

Union of India and Another

Criminal Appeal No. 267 of 1990

(B. C. Ray, A. M. Ahmadi JJ)

11.04.1990

ORDER

1. Special leave granted.

2. Heard counsel on both sides. From the facts of the case, it is evident that the house of the main culprit Sirajudeen was searched on November 30, 1986 and his statement under Section 108 of the Customs Act, 1962 was recorded on the same day. In the course of his statement, he disclosed the name of the present detenu as one of the persons involved in the act of smuggling. Thereafter, the matter was under investigation. It appears that the detenu had applied for bail and he was enlarged on bail. The detention order was however passed as late as on October 7, 1987 and was executed on May 23, 1988. One of the contentions raised by the detenu is that the Detaining Authority has not explained the reasons why the detention order was delayed for almost 11 months, after the involvement of the petitioner was revealed to the concerned authorities. In the counter filed in this behalf, the Detaining Authority has contended that even though the seizure was effected on November 30, 1986 the investigation ended in April 1987 i.e. five months after the seizure, even thereafter the proposal for detention was not moved till August 26, 1987. This delay of almost four months is sought to be explained by the following statement founded in paragraph 27 of the counter :

"After investigation the case records were processed for issue of show cause notice as it is mandatory under the Customs Act, 1962 to issue show cause notice to the persons involved in the case within 6 months from the date of detection of the case. In this case, show cause notice was issued on May 18, 1987 to the detenu and others. After the issue of show cause notice the voluminous records were processed for initiating COFEPOSA action."

We do not think this is a satisfactory explanation. It was not incumbent on the authorities to wait till the issue of the show cause notice. The need to issue a show cause notice within 6 months has nothing to do with the processing of the detention papers. In our view, therefore, this explanation is far from satisfactory.

3. In the result, we allow the appeal and quash the detention order. The detenu shall be released forthwith unless required in any other case. No costs.

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