

K. Satyanarayan Subudhi

Vs

Union of India, and others

Criminal Appeal No. 212 of 1991

(B.C. Ray, M.N. Venkatachaliah, S.C. Agrawal JJ)

20.03.1991

JUDGMENT

1. Special leave granted.

2. Heard learned counsel for the parties. The only ground on which the impugned order of detention was clamped on the appellant under S. 3(1) of the COFEPOSA Act is that the appellant was found to have in his possession 13 pieces of gold biscuits and that he is alleged to have made a confessional statement that he purchased the same in Calcutta in order to transport it to his place at Cuttack and to sell them. This confessional statement, it is alleged, was extracted from him while the detenu was in the custody of the customs authorities by assaulting him. The detenu, however, as soon as he was produced before the Magistrate retracted the confessional statement. The order dated 20th May, 1990 passed by the Addl. Chief Judicial Magistrate (Special), Cuttack which contained the retraction was not made available before the detaining authority and the detaining authority could not consider the same while forming his subjective satisfaction in making the order of detention in question. This has been found by the High Court while dealing with the writ petition filed by the detenu. But the High Court, however, held that there was another ground i.e. that 13 gold biscuits were found on search from the person of the detenu. So the High Court held that though the first ground was available to the detaining authority, the order of detention can still be sustained on the second ground.

3. We have considered the same very minutely and carefully and it appears to us that in fact there were not two grounds but only one ground and the non-placement of the retraction of the confessional statement by the detenu before the detaining authority and non-consideration of the same while arriving at his subjective satisfaction in making the order of detention goes to the root of the order of detention and in our considered opinion makes the order of detention invalid.

4. In these circumstances we do not think that the decisions of this Court in *Prakash Chandra Mehta v. Commr. and Secy. Govt. of Kerala*, (1985) Supp SCC 144: (AIR 1986 SC 687) as well as *Madan Lal Anand v. Union of India*, (1990) 1 S CC 81 are applicable to the instant case. We have also considered another aspect of the matter i.e. the detenu is under detention for over eight months and the order of detention is for a period of one year. Considering this aspect also along with that other aspect mentioned hereinbefore we think it just and proper to quash the order of detention and direct for the release of the detenu appellant forthwith provided he is not wanted by any other order. The appeal is thus allowed and the order of detention is quashed.

Appeal allowed.

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