

State of T. N.

Vs

P. K. Shamsudeen

Criminal Appeal No. 392 of 1992

(Dr. T. K. Thommen, S. P. Bharucha JJ)

21.07.1992

JUDGEMENT

BHARUCHA, J.:-

1. Special leave to appeal granted.

2. This is an appeal against the judgment and order of a Division Bench of the High Court of Judicature at Madras issuing a writ of mandamus against the present appellant directing it to forbear from implementing the order of detention issued by it against one Sheik Ahamed Hajee, son of Mammoo under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA').

3. The detention order was issued on 8th March 1988. On 5th April 1989 the detenu filed a writ petition in the High Court of Judicature at Calcutta (being Writ Petition No.C.O.4202/W/ 89) impugning the detention order. The detenu stated therein that he was a resident of Aberdeen Bazar, Port Blair, and carried on business therefrom. The writ petition was admitted and the present appellant was restrained from detaining the detenu for a period of two weeks. On 19th April 1989 the injunction was extended to operate pending the disposal of the writ petition. On 12th April 1991, upon consideration of the counter-affidavit filed by the present appellant, the order of injunction was vacated. Thereupon, on 10th July 1991, the present writ petition was filed in Madras by the respondent to this appeal, who is a nephew of the detenu. By the judgment and order under appeal the writ petition was allowed upon the ground that there had been inordinate and unexplained delay in the implementation of the detention order. Emphasis was placed upon the fact that an advocate of Coimbatore had sworn an affidavit on 12th November 1991 wherein, as counsel for the detenu, he stated that the detenu had appeared before the Magistrate's Court in the related criminal proceedings taken against him under the Customs Act on various dates between 4th December 1987 and 3rd August 1988, which statements were, admittedly, correct.

4. Mr. V.R. Reddy, learned Additional Solicitor General, appearing on behalf of the present appellant, drew our attention to the judgment of this Court in *The Additional Secretary to the Government of India v. Smt. Alka Subhash Gadia*, (1991) 1 JT (SC) 549. This Court held thus:-

"It is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases

have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds, or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

In Mr. Reddy's submission, the case of the detenu did not fall within the limited scope set out in the aforesaid judgment and the High Court was, therefore, not justified in exercising its extraordinary powers to restrain the execution of the detention order.

5. Mr. B. Kumar, learned counsel for the present respondent, drew our attention to the judgment of this Court in *N. K. Bapna v. Union of India* (1992) 60 ELT 13 (SC). This Court there affirmed the judgment in the case of *Alka Subhash Gadia* (1991 (1) JT (SC) 549) aforementioned.

6. Much emphasis was laid by Mr. Kumar upon the delay in the execution of the detention order between 8th March 1988, when it was issued, and 5th April 1989, when the Calcutta High Court restrained its execution by an interim order. It was submitted that during this period the detenu had regularly appeared before the concerned Magistrate at Coimbatore and there was no satisfactory explanation for the failure of the authorities to detain him under the detention order. Reliance was placed upon this Court's judgment in *K.P.M. Basheer v. State of Karnataka* (1992) 2 SCC 295: (AIR 1992 SC 1353) and it was submitted that the live and proximate link between the grounds and purpose of detention had been snapped by the undue and unreasonable delay. The delay in detention in *K. P. M. Basheer's* case was of 5 months and 11 days but, it is important to note, detention had been effected before the writ petition was filed.

7. Clearly, the present case does not fall within the parameters outlined in the case of *Alka Subhash Gadia* (1991 (1) JT (SC) 549) justifying interference with the detention order at the pre-detention stage. There is no dispute that the detention order was passed under COFEPOSA, nor that it was sought to be executed against the right person nor that it had been passed for a wrong purpose, nor that it had been passed on vague, extraneous or irrelevant grounds, nor that the authority which had passed it had no authority to do so.

8. It is relevant also to note that the writ petition in Calcutta was filed on 5th April 1989. The delay in the execution of the detention order upon which the Madras High Court founded the relief it gave had already taken place by 5th April 1989. That the delay had taken place was, obviously, known to the detenu who himself was the writ petitioner in Calcutta. Nonetheless, the point of delay was not taken in Calcutta. It was taken only after the Calcutta High Court had on 12th April 1991 vacated the interim injunction restraining the present appellant from executing the detention order when the writ petition was filed by the present respondent in the Madras High Court on 10th July 1991. That a writ petition had been filed in Calcutta challenging the detention order was mentioned both in the Madras writ petition and in the reply filed thereto. We do not think that in these circumstances the High Court was justified in exercising its discretion to issue the high prerogative writ of mandamus to direct the appellant to forbear from executing the detention order passed by it.

9. In the result, the appeal succeeds and the judgment and order under appeal are set aside. There shall be no order as to costs. Appeal allowed.

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