

Rajesh R. Khushlani

Vs

Mahendraprasad (Jt. Secretary, Ministry of Finance, Govt. of India) and Others

Ramesh Khushlani

Vs

Mahendraprasad (Jt. Secretary, Ministry of Finance, Govt. of India) and Others

Criminal Appeal No. 574 of 1992 With Writ Petition (Crl.) No. 573 of 1992

(R. M. Sahai, S. Ratnavel Pandian JJ)

22.09.1992

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. Leave granted and rule nisi.

2. The above appeal is preferred by the detenu's son Rajesh R. Khushlani challenging the judgment and order dated April 20, 1992 passed by the High Court of Bombay dismissing the Criminal Writ Petition No. 1412 of 1991 filed by him questioning the legality of the detention order, passed against his father, namely, Ramesh Khushlani by the first respondent, namely, the Joint Secretary to the Government of India in exercise of the powers conferred under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') with a view to preventing the detenu from acting in any manner prejudicial to the conservation of foreign exchange and directing him to be detained and kept in custody in the central prison, Bombay.

3. A few facts relevant to decide this appeal may be stated :

The Enforcement Directorate, Bombay received certain information that M/s Tushar Enterprises, M/s Aum Enterprises and M/s Shah Enterprises - all situated at Bombay had remitted abroad foreign exchange worth about Rs 5 crores on the strength of faked/bogus import documents through Union Bank of India. The proprietor of the said firms was one Shri Tushar M. Shah residing at Bombay. On the basis of the aforesaid information, enquiries were made with the Union Bank of India, Bombay and thereafter the residential and business premises of Tushar M. Shah were searched under Section 37 of the Foreign Exchange Regulation Act (for short FERA) on February 21, 1991 which resulted in the seizure of certain documents. The statements of Tushar M. Shah were recorded under Section 40 of the FERA on February 23 and 26, 1991, the details of which are incorporated in the grounds of detention. While explaining the modes operandi of remittance of the foreign exchange, Tushar Shah inter alia stated that as regards remittance sent in the name of Shah Enterprises one

Mr. Ram, resident of Hong Kong used to prepare the documents and the said Ram is a friend of the detenu; that the detenu used to collect Indian currency and fake import documents at the instance of the said Ram and give him for depositing in the bank for the purposes of effecting remittances abroad; that he had received approximately a sum of Rs 1.30 crores from the detenu; that the said Ram and the detenu used to receive 5 per cent each as their share; that Ram's job was to prepare the documents and send the same from Hong Kong; that the detenu used to bring the documents and money to him and that the job of Tushar Shah was to send money through bank. In the course of the statements, Tushar Shah has implicated some more persons including himself, namely, Kirit L. Shah and Pankaj Valia. On the basis of the information given by Tushar Shah separate statements were recorded from Kirit L. Shah on February 25, 1991, from the detenu and one Pankaj T. Valia on February 26, 1991. In addition, some more statements were also recorded from various other persons inclusive of the officials of the Union Bank of India. As a follow-up, the residential premises of Pankaj Valia and one Ramesh as well as some business premises were searched by the officials of the Enforcement Directorate. The detenu herein, Tushar Shah, Kirit L. Shah and Pankaj Valia gave their statements involving themselves in the illegal remittances of the foreign exchange. The first respondent, namely, the detaining authority on drawing the requisite subjective satisfaction on the materials placed before him passed separate orders of detention against all the above said four persons under the provisions of COFEPOSA. Now we are concerned only with the case of the detenu (Ramesh Khushlani) herein whose writ petition filed through his son has been dismissed by the High Court as aforementioned.

4. Mr. R. K. Jain, the learned senior counsel appearing on behalf of the appellant pressed two contentions by way of challenging the validity of the detention order. Those being :

(1) There is an unreasonable and unexplained delay of 6-1/2 months in passing the order of detention dated September 5, 1991 from the date of the recording of the statement of the detenu on February 26, 1991 and also there is a further unreasonable delay of two months in executing the order of detention on October 31, 1991. The above delay both in passing the order as well as in executing the order throws considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to an inference that there was no real and genuine subjective satisfaction as regards the necessity to detain the detenu. This delay renders the impugned order invalid because the 'live and proximate link' between the grounds of detention and the purpose of detention is snapped.

(2) Though in the grounds of detention it is stated that the detenu knows Tushar Shah for the last two years, in the reply affidavit filed by the first respondent it is stated "in the instant case, the detenu for about a period of 4 years was indulging in several acts of FERA infraction....." without any material for such an allegation.

5. The learned counsel, in passing, advanced one more contention stating that the retraction of the detenu was not taken into consideration, but he did not press this contention and pursue the same.

6. In support of the first contention two decisions of this Court were relied upon by Mr. R. K. Jain. Those being (1) T.A. Abdul Rahman v. State of Kerala [(1989) 4 SCC 741] and (2) Pradeep Nilkanth Paturkar v. Shri S. Ramamurthi [1993 Supp (2) SCC 61 : JT (1992) 3 SC 261]. In Abdul

Rahman case [(1989) 4 SCC 741] there was no denying the fact that the impugned order had been passed after a lapse of 11 months from the date of seizure of contrabands. It was having regard to the facts of that case the order of detention therein was quashed. However, it has been observed that "no hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf and it follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention." In Pradeep Nilkanth Paturkar case [1993 Supp (2) SCC 61 : JT (1992) 3 SC 261] there was an unexplained delay of 5 months and 8 days.

7. Coming to the case on hand, it is true that from the date of the recording of the statement of the detenu on February 26, 1991 there was a delay of 6-1/2 months. This delay is explained by the respondent stating that even after recording of the statement of the detenu, several voluminous documents were collected from the bank and statements of the Bank Managers were recorded on July 31, 1991 and August 5, 1991 and it was only thereafter the sponsoring authority placed the materials before the detaining authority. Hence if at all there is any delay, it is a delay of only one month at the most, from the date of the recording of the last statement of the Bank Manager on August 5, 1991, which statement also is relied upon for passing the impugned order of detention. In this connection, it would be worthwhile to refer to the allegations made in paragraph 16 of the grounds of detention :

"From the document information furnished by Union Bank of India, Bombay from time to time and from the statements, dated July 31, 1991 and August 5, 1991 of Shri S. V. Shitre, Deputy Manager, Foreign Exchange Department, Union Bank of India, Khand Bazar, Bombay the following facts have emerged."

8. In the list of documents furnished, it is specifically stated that the statements were recorded on July 31, 1991 and August 5, 1991 from the Deputy Manager of the Union Bank of India and a lot of documents were received under his statement dated August 5, 1991.

9. In the light of the above facts, we see much force in the submission made by Mr. K. T. S. Tulsi, the learned Additional Solicitor General that the complaint of 6-1/2 months' delay cannot be countenanced and the delay from the date of recording of the last statement of the Bank Manager is only one month. Voluminous documents were also seized as pointed out in the list of documents. Therefore, we see no force in the submission that there was undue and unreasonable delay in passing the order of detention. Regarding the contention that there was delay in execution of the order, it is stated that considerable time was consumed for translating the voluminous documents to be served on the detenu and this process had caused the delay in executing the order of detention. We see merit in this submission also. Hence having regard to the facts and circumstances of the case, the order cannot be said to have become invalid on the ground of delay in the execution of the order.

10. In this connection, it may not be out of place to refer to the observation made by this court in P. U. Iqbal v. Union of India [(1992) 1 SCC 434] to which one of us (S. Ratnavel Pandian, J.) was a party holding that the "question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case".

11. Coming to the second contention, it has been explained that the two years' period of acquaintance of the detenu with Tushar Shah was reckoned from the date of recording of the statement; but the 4 years' period mentioned in the counter relates to only his indulging in several

acts of FERA infraction activities and this period is calculated from the date on which the reply was filed in April 1992. According to Mr. Tulsi, the detenu is making much ado about nothing and this statement in no way affects the validity of the order. We are quite in agreement with this explanation and reject this contention as an unmerited one.

12. For the aforementioned reasons, we dismiss the appeal as devoid of any merit. Consequently, the writ petition filed regarding the same matter is also dismissed.

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