

Nutan J. Patel (Ms)

Vs

S. V. Prasad and Another

Criminal Appeal No. 1562 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

22.11.1995

ORDER

1. Leave granted.

2. The detenu, Jayantibhai Rambhai Patel, was detained on 1-4-1992 under COFEPOSA Act. The appellant on behalf of her husband, filed a writ petition in A.P. High Court. The High Court in the first instance dismissed the writ petition. Subsequently two other detenus filed a writ petition on the ground that copies of the documents supplied to the detenus were illegible and that they have been deprived of their valuable right to make a representation to the Advisory Board, to the State Government and the Central Government. That contention was found acceptable and, therefore, the detention order was quashed. Thereafter, the appellant filed another writ petition and contended that the detenu had not been informed of his right to make a representation to the Specified Officer. Therefore, he has been denied of the constitutional right under Article 22(5) of the Constitution. A Division Bench of the High Court under the impugned order dated 10-3-1993 made in Writ Petition No. 15974 of 1992 dismissed the writ petition on the ground that the detenu had known that he had a right to make a representation but he did not exercise that right and that, therefore, the order of detention is not vitiated on the ground of non-intimation of the right to make representation to the Specified Officer. Thus, this appeal by special leave.

3. The controversy is no longer res integra. The Constitution Bench of this Court in Kamleshkumar Ishwardas Patel v. Union of India [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] laid down the law thus : (SCC p. 68, para 38)

"Having regard to the provisions of Articles 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act, the question posed is thus answered : Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the

person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation."

4. In relation to the detention of the detenus in Criminal Appeals Nos. 850 and 915 of 1994 under PIT NDPS Act, the Madras High Court allowed the writ petition and set aside the order of detention on the ground that the detenus were not informed of their constitutional right to make a representation to the detaining officer and it vitiates the right guaranteed under Article 22(5) of the Constitution. The Court had upheld the above view. It is seen that the detenu was informed on 20-4-1992 that he was at liberty to make a representation to the State Government, Central Government and to the Advisory Board. It was asserted that he made a representation through the prison authorities to the Government of Andhra Pradesh. In other words, from these facts, it would be clear that the detenu was not informed of his constitutional right to make a representation to the Specified Officer for reconsideration of his detention. In view of the law laid down by this Court, the failure on the part of the Specified Officer to inform the detenu that he has a constitutional right to make representation to the Specified Officer against the order of detention, violates Article 22(5) of the Constitution. The order of detention gets vitiated.

5. It is contended for the respondents that since the detenu had already undergone the period of detention, the question becomes one of academic interest. We cannot accede to the contention. Since the order of detention would form the foundation to consequential actions to ensue, we are of the view that it would be proper to consider validity of the order of detention, though the detenu had undergone the period of detention by the time the matter came up for final disposal.

6. In these circumstances, the appeal is allowed. The order of detention stands quashed.