

Union of India and Others

Vs

Parasmal Rampuria

Criminal Appeals Nos. 289-293 of 1998

(S. B. Majmudar, S. P. Kurdukar JJ)

16.03.1998

JUDGMENT

MAJMUDAR, J. –

1. Delay condoned.

2. Leave granted.

3. We have heard learned counsel for the parties.

4. In our view, a very unusual order seems to have been passed in a pending appeal by the Division Bench of the High Court. It is challenged by the Union of India in these appeals. A detention order under Section 3(1) of the COFEPOSA Act was passed by the authorities on 13-9-1996 against the respondent. The respondent before surrendering filed a writ petition in the High Court on 23-10-1996 and obtained ad interim stay of the proposed order which had remained unserved. The learned Single Judge after hearing the parties vacated the ad interim relief. Thereafter, the respondent went in appeal before the Division Bench and again obtained ad interim relief on 10-1-1997 which was extended from time to time. The writ appeal has not been still disposed of.

5. When the writ petition was filed, the respondent had not surrendered. Under these circumstances, the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had an opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution of India. It is true as the learned Senior Counsel for the respondents submits that the appeal is partly heard before the Division Bench and the last hearing was over on 4-6-1997 and thereafter, the Bench has not reassembled. It is obvious that for the same neither the respondent nor the appellant is at fault. However, the fact remains that the detention order dated 13-9-1996 has still not been executed and the respondent has not surrendered. Under these circumstances, in our view, it will be appropriate to direct that the ad interim relief which is extended from time to time by the Division Bench of the High Court and which was continued all throughout, shall stand vacated. We also vacate the further orders of extension of interim relief and direct the respondent to surrender in the light of the detention order. After surrendering it will be open to the respondent to amend his writ petition and to take all permissible legal grounds to challenge the detention order and these grounds will have to be considered by the High Court on their own merits after hearing the parties. These appeals have been moved also against various extensions of interim relief orders passed by the Division Bench pending the appeal. All these extension orders are also set aside. We make it clear that we make no

observation on the merits of the controversy centering round this detention order. The said controversy will have to be resolved by the High Court in the pending writ petition after hearing the contesting parties.

6. At the request of the learned Senior Counsel for the respondent the writ appeal which is pending, is permitted to be withdrawn as he rightly submits that it has become infructuous pursuant to this order. The appellant is given liberty to execute the detention order forthwith as its execution is already delayed by more than one year and six months.

7. Before parting with the case, we must mention one contention canvassed by the learned Senior Counsel for the respondent. He submitted that though the detention order was dated 13-9-1996, it was not executed against the respondent till he obtained interim relief from the learned Single Judge, on 23-10-1996 and thereafter also subsequently there was no interim relief from 12-11-1996 to 10-1-1997, yet the order of detention was not executed. Therefore, according to him, the order of detention has become stale. This contention can be canvassed by proper amendment to the writ petition after the respondent surrenders. As and when such amendment is moved, it will be open to the appellants to contest the amended petition on all legally permissible grounds and to have their say as to why the order was not executed during the time when there was no stay. All these questions are kept open for consideration of the High Court in the pending writ petition.

8. The appeals are allowed accordingly.