

SUPREME COURT OF INDIA

A. Mohammed Farook

Vs.

Jt. Secy. To G.O.I.

(S Kurdukar and S S Quadri JJ.)

02.11.1999

ORDER

1. This Writ Petition under Article 32 of the Constitution of India is filed by the petitioner-detenu challenging the legality and correctness of the detention order dated February 25, 1999 passed by the detaining authority and the Joint Secretary to the Government of India under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended) for short COFEPOSA Act, The detaining authority after recording his subjective satisfaction on the basis of the material produced before him opined that with a view to preventing the petitioner in future from acting in any manner prejudicially to the Conservation of Foreign Exchange it is necessary to make order of detention under Section 3(1) of the COFEPOSA Act.

2. The enforcement authorities attached to the Enforcement Directorate Chennai and Madurai on March 17, 1998 searched the business and residential premises of the petitioner and seized some incriminating documents from those premises under the provisions of the Foreign Exchange Regulation Act, 1973 (for short FERA). The petitioner's statement was also recorded on 17.3.98 wherein he alleged to have admitted commission of offence under the COFEPOSA Act. The petitioner was arrested on March 18, 1998 and when he was produced before the Magistrate along with remand application he was ordered to be released on bail on May 20, 1988. The sponsoring authority, namely, FERA authorities on the basis of material collected requested the detaining authority to pass the detaining order under COFEPOSA Act on the basis of material on record. The detaining authority on perusal thereof passed the impugned order. The order of detention came to be executed on April 5, 1999 pursuant to which the petitioner came to be detained.

3. Several contentions have been raised in this Writ Petition but, however, it is not necessary to deal with all these contentions save and except the one which relates to delay in executing the order of

detention. The precise contention in this behalf is taken by the petitioner in this petition in paragraph 6(ii). It is stated that although the detention order was made on February 25, 1999 but the authorities have not executed the same immediately. On the contrary the authorities have chosen to execute the detention order only on April 6, 1999 after an inordinate and unreasonable delay of nearly 40 days. It is further stated that during this period the petitioner did not abscond but he was very much available in his office and residence at Chennai.

4. It is then stated that the petitioner during this period was regularly attending his office. In addition thereto he also appeared before the learned Additional Chief Metropolitan Magistrate on February 25, 1999 and March 25, 1999 when his case was listed before him. Despite the availability of the petitioner as indicated above the detaining authorities took no steps to execute the order. It is because of this delay in executing the order, it is stated that apprehension entertained by detaining authority as regards the likelihood of future activities of the petitioner being prejudicial under the COFEPOSA Act were neither real nor genuine and therefore the impugned order is nothing but a punitive. This inordinate delay and unreasonable delay in executing the detention order has vitiated the subjective satisfaction of the detaining authority.

5. In reply to these averments the detaining authority in its affidavit in reply has stated as thus:

II. As regards the averments made in ground 6(ii) that the Detention Order was executed only on 6.4.99 after an inordinate delay and unreasonable delay of nearly 40 days it is submitted that the detenu actually detained on 5.4.99 and not on 6.4.99 as stated by detenu. It is denied that during this period the petitioner was available in his office and residence at Madras. In fact, the detenu was not available at his residence or his office at all the known addresses and, therefore, the order could not be executed immediately.

6. As regards detenu's submission that he appeared before the Ld. ACMM on 25.2.1999 and 25.3.1999 in some case it is submitted that the detenu might have appeared in the Court in relation to some other Court proceedings not initiated by the Department in this case and, therefore, there was no occasion for any of the officials of the Department to be present in the Court on 25th March, 1999 when the detenu stated to have appeared before the Court. The Department did not even file the prosecution complaint in this case by that time and, therefore, officers of the Department could not have come to know or to believe that he would appear in the Court. The Respondents are not aware in what connection the petitioner has stated to have appeared before the Court on 25.2.1999 and 25.3.1999.

7. It is further submitted that as per Order dated 16.3.1998 of the Hon'ble Court of Metropolitan Magistrate E.O. II, Madras passed on detenu's petition for relaxation of conditions of bail, the petitioner was required to appear before the Enforcement Officer, Chennai on the 1st and 15th day of every month, but the petitioner/detenu did not appear on either of the date and it was only on 5th April, 1999, when he appeared before the Enforcement Officer the Detention Order was executed. In view of the foregoing submissions there is no inordinate or unexplained delay in the execution of the order of detention."

8. The Detaining Authority vide its supplementary affidavit has corrected the mistake in its earlier affidavit to the effect that the petitioner might have appeared in different case. It is now admitted position that the petitioner appeared before the Metropolitan Magistrate in the very same case arising out of his arrest pursuant to the action initiated by the Enforcement Directorate, Chennai on

17.3.1998/18.3.1998. In view of the above averments and the reply thereto filed on behalf of the Detaining Authority the question that falls for our consideration in this Writ Petition is as to whether the subjective satisfaction of the detaining authority is vitiated by reason of inaction on its part to execute the detaining order after a lapse of period of 40 days.

9. Learned counsel for the petitioner fairly conceded that delay in execution ipso facto may not vitiate subjective satisfaction in a given case and the detaining authority may give its explanation explaining the delay and if it is found acceptable the subjective satisfaction may not be vitiated. While commenting upon the explanation of delay given by the detaining authority counsel urged that this is no explanation whatsoever in as much as no details are furnished as to what steps were taken by the executing agency in serving the detention order upon the detenu. He, therefore, urged that in the absence of satisfactory explanation as regards the delay in serving the detention order it must be held that the detaining authority was not very serious in serving the detention order and thereby subjective satisfaction of the detaining authority in issuing the detention order is vitiated.

10. Learned counsel for the petitioner in support of this contention drew our attention to the decisions of this Court in 1. 1992(2) SC 295 (K.P.M. Basier v. State of Karnataka and Anr. and 2. (Smfsultan Abdul Kader v. Jt. Secretary to Government of India and Ors.)

11. There is catena of judgments on this topic rendered by this Court wherein this Court emphasised that the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in this behalf we do not propose to refer to other judgments which were brought to our notice.

12. As indicated earlier the only explanation given by the detaining authority as regards the delay of 40 days in executing the detention order is that despite their efforts the petitioner could not be located at his residence or in his office and therefore the order could not be executed immediately. No report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention order. In the absence of any satisfactory explanation explaining the delay of 40 days, we are of the opinion that the detention order must stand vitiated by reason of non execution thereof within a reasonable 5 time. From Annexure P.2 (the proceeding sheet of the M.M. Court Madras) it appears that the petitioner (accused) was present in the court of Additional Chief Metropolitan Magistrate on 25.2.1999 as well on 25.3.1999. 10 Despite such opportunities neither the detaining authority nor the executing agency as well as sponsoring authority were diligent to serve the detention order on the petitioner at the earliest. In this view of the matter, we 75 are of the opinion that the subjective satisfaction of the detaining authority in issuing detention order dated February 25, 1999 is vitiated It is in these circumstances it is not possible for us to sustain the 20 detention order.

13. In the result the detention order dated 25.2.1999 passed by the detaining authority is quashed and set aside and the detenu is ordered to be released forthwith if not 25 required in any other criminal case.

14. The Criminal Writ Petition is allowed.