

SUPREME COURT OF INDIA

P. Saravanan

Vs.

State of T.N.

(K.T. Thomas and R.P. Sethi JJ.)

20.09.2000

ORDER

1. This writ petition is filed under Article 32 of the Constitution by the petitioner in challenge of a detention order passed against him on 17-12-1999.

2. The detention order was preceded by the following facts:

On 2-6-1999 one N. Prabhakaran and Mohamed Ibrahim Abbas were caught on the allegation that they tried to smuggle foreign exchange to the tune of Rs. 72/- lacs out of India. When they were questioned by the authorities on the 3rd and 4th of June, 1999 respectively they revealed, inter alia, that petitioner was also involved in the same activities. On 7-11-1999 petitioner was arrested. A statement was recorded from him in which he confessed having associated with the aforesaid two persons as well as with another person called Sowkath Ali in the smuggling activities. But petitioner moved a bail application on 16-11-1999 in which he alleged that the statement had been extracted from him by resorting to coercive tactics and that statement is not voluntary. In fact he adopted such a stand in a representation forwarded by him on 11-11-1999 itself.

3. Sowkath Ali arrested in connection with the same smuggling activities and a statement was elicited from him on 27-11-1999.

4. The detaining authority has specifically relied on the confession made by the petitioner in the statement dated 7-11 -1999 though retracted by him. The detaining authority further relied on the confession made by Sowkath Ali in his statement dated 27-11-1999. It is apparent that the two confessions, one rendered by the petitioner himself which was retracted subsequently and the other rendered by Sowkath Ali on 27-11-1999 emboldened the detaining authority to reach a subjective satisfaction that petitioner has to be preventively detained under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA Act'). Accordingly, detention order was passed against the petitioner.

5. Mr. K.K. Mani, learned Counsel for the petitioner adopted different contentions among which the following alone need to be considered at the present juncture:

6. He highlighted that the detaining authority was not supplied with a material fact that Sowkath Ali himself has retracted from his confession on 27-11-1999 itself when he moved for bail before the Magistrate concerned. Further again on 30-11-1999 the said Sowkath Ali expressed retraction from

the confession by way of a letter addressed to the sponsoring authority. It is now fairly admitted that the detaining authority was not supplied with the aforesaid two retractions made by Sowkath Ali though such retractions were made much prior to the date of passing of the order of detention.

7. Mr. T.L. Viswanatha Iyer, learned senior counsel appearing for respondent No. 2 Union of India, attempted to salvage the detention order on a twin strategy adopted. First is that the confession made by Sowkath Ali was not really a ground which would have influenced the detaining authority, for, the confession made by the petitioner on 7-11-1999 itself was good enough for the detaining authority to reach his subjective satisfaction. Second is that even if the confession made by Sowkath Ali was considered among the grounds which enabled the detaining authority to reach the subjective satisfaction that ground can be split up from the main ground i.e. the confession made by the petitioner himself. In support of his second contention learned senior counsel relied on Section 5A of the COFEPOSA Act.

8. When we went through the grounds of detention enumerated by the detaining authority we noticed that there is no escape from the conclusion that the subjective satisfaction arrived at by the detaining authority was the cumulative result of all the grounds mentioned therein. It is difficult for us to say that the detaining authority would have come to the subjective satisfaction solely on the strength of the confession attributed to the petitioner dated 7-11-1999, particularly because it was retracted by him. It is possible to presume that the confession made by the co-accused Sowkath Ali would also have contributed to the final opinion that the confession made by the petitioner on 7-11-1999 can safely be relied on. What would have been the position if the detaining authority was appraised of the fact that Sowkath Ali had retracted his confession, is not for us to make a retrospective judgment at this distance of time.

9. The second contention that non-placement of the retraction made by Sowkath Ali would not have affected the conclusion as petitioner's confession stood unsullied, cannot be accepted by us. The detaining authority had relied on different materials and it was a cumulative effect from those materials which led him to his subjective satisfaction. What is enumerated in Section 5A of the COFEPOSA Act cannot, therefore, be applied on the fact situation in this case.

10. In this context it is to be mentioned that the detention order passed against Sowkath Ali was quashed by this Court when he challenged that detention order under Article 32 of the Constitution [vide A. Sowkath Ali v. Union of India.

11. We are therefore unable to sustain the detention order passed against this petitioner and accordingly we quash the same. We order petitioner to be set at liberty if his further detention is attributable only to the detention order challenged in the writ petition.

12. Accordingly, this writ petition is disposed of.