

SUPREME COURT OF INDIA

State of Tamil Nadu

Vs.

Abdullah Kadher Batcha

Crl.A.No.231 of 2001

(Dr. Arijit Pasayat, P. Sathasivam and Aftab Alam JJ.)

12.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Madras High Court quashing the order of detention passed under the provisions of Section 3(1)(i) of the *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974* (hereinafter referred to as the 'Act') in respect of one Abdullah Kadher Batcha (hereinafter referred to as the 'detenu') who was directed to be detained. The order of detention was passed on 11.8.1999. The detenu made a representation on 4.9.1999. It is the stand of the detenu that he had sought for some documents including the judgment passed by the High Court in Writ Petition No.13514 of 1999 which was dismissed on 10.8.1999. The Writ Petition was filed by the detenu on the apprehension that he may be detained under the Act. In the representation the detenu made a reference to the judgment dated 10.8.1999 and also to the writ petition. It was pointed out in paragraph 7(x) that in order to make the effective and meaningful representation, the detenu requires the copy of the order passed by the High Court. A request was made to supply the copy at an early date. It was stated in the representation that the detenu did not know English and, therefore, representation which was made in English language was prepared under his instruction and was read over and explained to him in Tamil. State Government rejected the request by communication dated 21.9.1999 and it was indicated that the documents were not relied upon for the purpose of detention. Copy of the order of the writ petition was however supplied. High Court observed that in view of non supply of the documents a protection available, under Article 22(5) of the *Constitution of India, 1950* (in short the 'Constitution'), was violated.

2. The High Court further held that in the absence of the required documents the detention was rendered illegal and accordingly the habeas corpus petition was allowed.

3. In support of the appeal it has been stated that the documents in question which were requested by the detenu to be supplied had nothing to do with the order of detention. It was pointed out that there is a difference between the narration of facts and the ground of

detention. Undisputedly, the copy of the order in the writ petition which was sought was in fact supplied though at a later point of time. It is not understood as to how the order passed in writ petition which was dismissed can be a document about which the detenu had no knowledge. The High Court erroneously came to the conclusion that the relied upon documents were not supplied. Actually, the factual scenario is just to the contrary.

4. As rightly contended by learned counsel for the State the documents were read over and an endorsement to that effect has been made by the detenu.

5. In *Radhakrishnan Prabhakaran v. State of T.N. and Ors.*¹, it was observed as follows:

“8. We may make it clear that there is no legal require-ment that a copy of every document mentioned in the or- der shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admit- ted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned counsel emphasised that the counter filed by the Department was a relevant docu- ment, a copy of which has not been supplied to him.”

6. The view in Radhakrishnan Prabhakaran's case (supra) was reiterated in *J. Abdul Hakeem v. State of T.N. and Ors.*² and *Sunila Jain v. Union of India and Anr.*³.

7. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents.

8. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.

9. The High Court has lost sight of the relevant factors and, therefore, the impugned order of the High Court is clearly unsustainable and is therefore set aside.

10. In *State of Tamil Nadu & Anr. v. Alagar*⁴ it was noted as follows:

“The residual question is whether it would be appropriate to direct the respondent to surrender for serving remaining period of detention in view of passage of time. As was noticed in *Sunil Fulchand Shah v. Union of India*⁵ and *State of T.N. v. Kethiyan Peruma*⁶ it is for the appropriate State to consider whether the impact of the acts, which led to the order of detention still survives and whether it would be desirable to send back the detenu for serving remainder period of detention. Necessary order in this regard shall be passed within two months by the appellant State. Passage of time in all cases cannot be a ground not to send the detenu to serve remainder of the period of detention. It all depends on the facts of the act and the continuance or otherwise of the effect of the objectionable acts. The State shall consider whether there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the present order.”

11. Considering the nature of the order of detention which is essentially preventive in character, it would be appropriate for the State Government and the detaining authority to consider whether there is any need to take the detenu back to detention for serving the remainder of the period of detention which was indicated in the order of detention. The exercise shall be undertaken within two months.

12. The appeal is allowed to the aforesaid extent.

¹(2000 (9) SCC 170

²(2005 (7) SCC 70)

³(2006 (3) SCC 321)

⁴(2006(7) SCC 540)

⁵[2000(3) SCC 409]

⁶[2004(8) SCC 780]