

KERALA HIGH COURT

Balakrishnan

Vs

District Magistrate Kozhikode

(P. Govindan Nair, C. J.)

15.11.1974

JUDGEMENT

P. Govindan Nair, C. J.

(1.) THIS is a petition under Art.226 of the Constitution by one Sri. A. Balakrishnan praying for the issue of a writ of Habeas Corpus for the release of his father Sri A. Karthikeyan who has been detained by the order of the 1st respondent, the District Magistrate and District Collector, Kozhikode, purporting to act under sub-clause (i) of clause (c) of sub-section (1) of S.3 of the Maintenance of Internal Security Act, 1971, for short, the Act, as amended by Ordinance No. 11 of 1974, the Maintenance of Internal Security (Amendment) Ordinance, 1974. The order, dated 30-9-1974 has been produced and marked as Ext. P1. The grounds of detention furnished to the detainee as required by Art.22 (5) of the Constitution read with S.8 (1) of the Act are contained in Ext. P2 communication dated 3-10-1974 addressed by the 1st respondent to the detainee. It will be necessary to read the order Ext. P1 as well as the communication Ext. P2 and we shall extract the full text of the order Ext. P1 as well as the memorandum containing the grounds of detention: "PROCEEDINGS OF THE DISTRICT MAGISTRATE, KOZHIKODE No. S2. 29700 of 74 dt. 30-9-1974 Order under sub clause (i), of clause (c) of Sub-section (I) of S.3 of the Maintenance of Internal Security Act, 1971 as amended by Ordinance No. 11 of 1974. Whereas from the materials placed before me I am satisfied that with a view to preventing Sri A. Karthikeyan S/o Ambali Krishnan Vydier, House No. 1 of 10-A, West Hill, Kozhikode-5 from smuggling goods, it is necessary to detain him. Now therefore in exercise of the powers under clause (a) of Sub-section (2) of S.3 of the Maintenance of Internal Security Act, 1971 I hereby direct that the said Karthikeyan be detained in the Central Jail, Cannanore. District Magistrate."- "Ref. S2. 29700/74 Collectorate, Kozhikode Dt. 3-10-74 MEMORANDUM In pursuance of S.8 (1) of the Maintenance of Internal Security Act, 1971 (Central Act 26 of 1971) Sri. A. Karthikeyan is informed that the grounds of his detention (not taking in those which are considered to be against the public interest to disclose) are the following: On 4-8-1969 Customs Officers seized from the house of Sri. Karthikeyan, 90 bottles of foreign liquor, four transistor radios, one tape recorder and 2 Binoculars, all of foreign make. The Additional

Collector of Customs, Cochin by his order C. No. VIII/10/2/69 'Cus. Adj. dt. 2-1-71 confiscated the articles seized and imposed a penalty of Rs. 20,000/- on Sri. Karthikeyan. He was convicted by the District Magistrate, Calicut and sentenced to pay a fine of Rs. 7000/-in default to three months simple imprisonment in his judgment in C. C. 287/71 dt. 10 -9-71. I have reliable information that Sri. Karthikeyan had amassed his wealth through smuggling activities and that he continues to indulge in smuggling. I am therefore satisfied that with a view to preventing Sri. Karthikeyan from smuggling goods it is necessary to detain him. Therefore in exercise of the powers under clause (a) of sub-S. (2) of S.3 of the Maintenance of Internal Security Act. 1971 the detention of Sri. Karthikeyan has been ordered by me on the 30th day of September 74. Sri. Karthikeyan is informed that he has a right to make a representation in writing against the order under which he is kept under detention. If he wishes to make any representation he should address it to the Chief Secretary to the Government of Kerala and forward the same through the Superintendent, Central Prison, Trivandrum within 15 days from the date of receipt of this memorandum. He is also informed that if he does not submit his representation against the order of detention within the aforesaid period to the Chief Secretary, it will be deemed that he has no representation to make. District Magistrate & District Collector, Kozhikode."

(2.) COUNSEL on behalf of the petitioner raised before us four points. The first related to the constitutional validity of Ordinance 11 of 1974. He emphasised that the order Ext. P1 must go for the short reason that all the grounds which were admittedly taken into account for the detention have not been communicated to the detainee and that this is clear from the communication Ext.P2. . Ext. P2 states that the detainee "is informed that the grounds of his detention (not taking in those which are considered to be against the public interest to disclose) are the following". On this aspect, the arguments were that it is clear from the communication Ext. P2 that certain grounds had not been furnished to the detainee and that actually such other grounds existed and that no grounds could be withheld in any circumstances. The third point urged was that S.8(1) of the Act had not been complied with in that the grounds were not furnished to the detainee within the period of five days provided by the section and that there were no exceptional circumstances that would justify the delay, and that the reasons stated in Ext. P3 are not sufficient to explain the delay in serving the grounds. It is seen from Ext. P1 that the order of detention was on 30-9-1974 and it is admitted that the grounds were served only on 8-10-1974. Finally it was argued that what was stated in the grounds would not spell out any prejudicial act. Further it was urged that even assuming that it was a prejudicial act, and that what was stated in Para.1 of Ext. P2 is relevant there is no nexus or rational connection between the ground and the detention as the incident stated in Para.1 of Ext. P2 took place in the year 1969. As regards the statement in Para.3 of Ext. P2 it was contended that it was far too vague and could not validly form a ground for detention. The Advocate General countered all the points and urged that the Ordinance has been passed with competence and is valid and that what is stated in Ext. P2 is only that facts available supporting the grounds stated in Ext. P1 were not disclosed in public interest. He also contended that Ext. P3 has furnished valid reasons for the delay in serving the grounds of detention. He urged that the petitioner must be taken to have smuggled the goods which were

confiscated by the order referred to in Para.1 of Ext. P2 in view of the definition of the word "smuggling" in the Ordinance which in turn refers to S.2(39) of the Customs Act, 1962. "Smuggling" has been defined in that Act in S.2(39) in these terms: " 'Smuggling', in relation to any goods, means any act or omission which will render such goods liable to confiscation under S.111 or S.113;" The Advocate General further urged that whether a ground is vague or not must depend on the circumstances and that when the third paragraph of Ext. P2 is read with the second paragraph, there is no reason for holding that there has been any vagueness or lack of nexus. He invited our attention to the decisions of the Supreme Court in *The State of Bombay v. Atma Ram Sridhar Vaidya*¹ *Lawrence Joachim Joseph D'Souza v. The State of Bombay*² and *Naresh Chandra Ganguli for Shri Ram Prasad Das. v. The State of West Bengal and others*³

(3.) WE consider it unnecessary to deal with the question about the constitutional Validity of Ordinance 11 of 1974 in this petition, for, we think the case can be disposed of, assuming but without deciding that the statute is valid. WE also consider it unnecessary to deal with in detail points 3 and 4 urged by counsel on behalf of the petitioner, for, we think point No. 1 has to be accepted. Now we shall turn to Art.22 (5) and (6) of the Constitution which read thus: "(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose." It is clear that the grounds mentioned in Art.22 (5) are different from the facts mentioned in Art.22 (6). This is also well-established by a number of decisions of the Supreme Court. It may be necessary in order to satisfy Art.22 (5) that apart from the conclusions which may form the grounds of detention, certain other essential facts must also be disclosed to the detainee in order to enable him to make an effective representation. It will be open to the detaining authority if he is satisfied that it would be against public interest, to withhold such facts, but in no circumstances, the authority would be entitled to keep back any of the grounds for detention. ;

Cases Referred.

1AIR. 1951 S.C. 157

2AIR. 1956 S.C. 531

3AIR. 1959 S.C. 1335