

(1995) 12 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 733 of 1995

Subash Chander

APPELLANT

Vs

Union of india and Others

RESPONDENT

Date of Decision: Dec. 20, 1995

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3(1)
- Constitution of India, 1950 - Article 226, 227, 32
- Foreign Exchange Regulation Act, 1973 - Section 34, 36, 40

Citation: (1996) CriLJ 2784

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: R.C. Okai and Bipin Ghai, for the Appellant; D.D. Sharma, Addl. Cen. Govt. Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jain, J.

This petition has been filed under Article 226/227 of the Constitution of India for quashing of the detention order No. F.M. 673/33/95-C VS-VIII dated 12-5-1995 (Annexure P. 1) passed by respondent No. 1 against the petitioner under S.3(l) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act).

2. The necessary facts for the disposal of the petition can be gathered from the return filed on behalf of respondent Nos. 1 and 2.

On specific information, the officers of the Enforcement Directorate, Jalandhar held a naka on 6-3-1995 opposite District Jail Hoshiarpur. Car No. PB 11 -E 9295 was

intercepted. Occupants of the car introduced themselves as Subhash Chander Gupta (Petitioner herein) and Sanjay Gupta son of the petitioner. As a result of the search of the car conducted in the presence of the witnesses u/s 36 of the Foreign Exchange Regulation Act, 1973 Registration and Insurance Certificates were recovered from the dash board of the car and a sum of Rs. 1,22,400/- was recovered from right front door of the car kept concealed. As a result of the personal search of the petitioner conducted u/s 34 of the Foreign Exchange Regulation Act, 1973 incriminating documents indicating sale-purchase of foreign exchange in code words and foreign exchange as detailed in para 2 of the return were recovered. Statement of the petitioner u/s 40 of Foreign Exchange Regulation Act, 1973 was recorded on 6-3-1995 and 7-3-1995 wherein he admitted the recovery of the Indian currency concealed in the right front door of the car, foreign exchange and incriminating documents as per panchnama. He also decoded the codes used by him in the seized documents. He also admitted that during the last one year he had purchased foreign currency worth Rs. 4,25,00,000/- and sold the same after keeping the profits. As per documents seized from him he had purchased foreign currency to the tune of Rs. 9,58,284/- during one week. The petitioner was arrested on 7-3-1995 and was produced before the Duty Magistrate on 8-3-1995. The representation made by the petitioner was considered and suitable reply was sent. Thereafter the impugned detention order was passed by the Joint Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi.

3. The case of the petitioner is that no such recovery was effected from him and all the allegations are false. He was picked up from his house on 6-3-1995 and his signatures were obtained on certain papers. He denied recovery of incriminating documents, foreign exchange or Indian currency from his possession. It is further stated that the prejudicial activity dated 6-3-1995 and the impugned detention order has been passed on 12-3-1995, thus there is a delay of 2 1/2 months in passing the said detention order. It has also been stated that the petitioner was granted bail on 20-4-1995 and it is only to thwart the order of grant of bail that the impugned detention order has been passed.

4. In the return filed on behalf of respondent No. 1 it is stated that the detention order has been passed by the concerned authority after subjective satisfaction on the basis of the material placed before it. The petitioner is avoiding arrest and the present petition is a mala tide one. Averments regarding the recovery of Indian and Foreign currency as well as the in-criminating documents from the possession of the petitioner, have been reiterated. It is further stated that there is no delay in passing the detention order. Finally it is stated that this Court will not interfere under Article 226 of the Constitution at the very execution stage.

5. Having heard the learned counsel for the parties. I do not find any merit in the present petition. The apex Court has examined the scope of exercising the extra-ordinary and equitable jurisdiction under Arts. 32 and 226 of the Constitution

in a matter like the present one. In *Additional Secretary to Government of India v. Smt. Alka Subhash Gadia*, 1992 SCC 301, after reviewing the case law regarding the challenge to a detention order at the pre-arrest stage, their Lordships explained the position of law as follows :-

The jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. Courts cannot disregard all these time-honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, the Courts have power to entertain grievances against any detention order prior to its execution and they have used it in proper cases although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in its scope and number, viz., where the Courts are prima facie (i) that the impugned order is not passed under the Act under which it is purported to have been passed. (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the Courts to use their extra ordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground, does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

It was made clear by their Lordships that the detenu is not entitled to get the order of detention stayed prior to its execution. It can be challenged on its pre-execution stage on the limited grounds available.

6. In the present case the impugned detention order has been passed after the alleged huge recovery of Indian and Foreign currency including in-criminating documents which are alleged to have been decoded by the petitioner himself. According to the incriminating documents, it is alleged that the petitioner has been indulging in purchase sale of foreign currency to a large extent. The impugned order has been passed by a competent authority under the Act. It is sought to be executed against a proper person i.e. the petitioner. The purpose of passing this order cannot be said to be wrong nor it can be said that the detention order has been passed on vague, extraneous and irrelevant grounds. None of the grounds laid down by their Lordships of the Supreme Court in the aforesaid authority for challenging the detention order at the pre-execution stage has been made put by the petitioner.

7. As a result of the above discussion. I do not find any merit in this petition and the same is hereby dismissed.