

Maharunissa Vs State of Tamilnadu and Union of India (UOI)

Court: Madras High Court

Date of Decision: July 5, 2006

Acts Referred: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 â€” Section 11, 11(1)

Constitution of India, 1950 â€” Article 22(5)

Hon'ble Judges: V. Dhanapalan, J; P. Sathasivam, J

Bench: Division Bench

Advocate: B. Kumar for R. Loganathan, for the Appellant; M. Babu Muthu Meeran, A.G.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Sathasivam, J.

The petitioner herein challenges the impugned order of detention, dated 22.12.2005, detaining her husband, by name,

Mohamed Ali Jinnah under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Heard Mr. B. Kumar, learned Senior Counsel for the petitioner; Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor for R-1;

and Mr. P. Kumaresan, learned Additional Central Government Standing Counsel for R-2.

3. Mr. B. Kumar, learned Senior Counsel for the petitioner, after taking us through the grounds of detention, materials supplied to the detenu and

all other connected papers, has raised the following contentions,

a. The seizure mahazar states that the price of the goods was arrived at with the assistance of Customs Officers. The detenu, in his representation

to the respondents, sought to apprise him of the basis on which valuation was arrived at in respect of the goods, ie., watches, seized from him. On

25.01.2006, the Government replied to the representation stating that the valuation had been made as per the general guidelines. According to the

learned Senior Counsel, the reply of the Government is improper and irrelevant inasmuch as the mahazar proceeds on the basis that the value of

the watches was made with the assistance of the Customs Officers and they cannot change the basis of calculation of the value; and the counter

also says that the value was made only with the assistance of the Customs Officers; hence, it leads to a presumption that the Government has been

misguided and consideration of the representation has become invalid.

b. The guidelines have not been adopted on the face of it since plastic watches are to be valued only at Rs. 60, whereas the calculation has been

made at Rs. 100/- per piece. Likewise, cheap quality of metal watches are to be valued at Rs. 75/- per piece, whereas, valuation was made at Rs.

100/- per piece in the mahazar. Thus, the document itself shows total non-application of mind.

c. In the representation dated Nil the petitioner has referred to several details including the fact that the watches seized have no commercial value

and they would be sold only at the rate of Rs. 25/- or 30 /- per piece. In the same representation, the petitioner has pointed out that the DRI

Officials ought to have fixed the value of the seized watches as in the case of one Mohammed Asghar Khan, who is a copassenger and who also

brought similar watches from Hong Kong. In spite of the specific claim that the valuation in respect of the watches seized from the detenu is inflated

and the calculation was made not in accordance with the guidelines by resorting to the methodology adopted in respect of others, the first

respondent, without considering the same, sent a stock reply that the valuation was made as per the guidelines. Hence, the consideration of the

representation is vitiated.

4. Learned Additional Public Prosecutor, by placing relevant records, contended that there is no procedural flaw or error in the order of detention;

and prayed for dismissal of the petition.

5. We have considered the rival contentions and perused the relevant records.

6. It is seen from the particulars that on 18.11.2005, the detenu came from Hong Kong. He resorted to red channel and declared the goods

brought by him as watches valued at Rs. 25,000/-. The goods were inventoried and the value of the same was arrived at Rs. 6,55,800/-. They

were seized on the ground that they were in trade quantities and that misdeclaration has been made in respect of the value. A statement was

recorded and on the same day, ie., on 18.11.2005, he was arrested and remanded to custody on 19.11.2005. On 22.12.2005, detention order

was passed against the detenu to prevent him from indulging in smuggling goods.

7. In the seizure mahazar, regarding value, it has been stated that the price of the seized goods was arrived at by the Officers with the help of

Customs Officers. It is further stated that the total value of the goods was arrived at Rs. 6,55,800/- as against the declared total value of Rs.

25,000/-. As rightly pointed out, in the counter, it is stated that the value was made only with the assistance of the Customs Officers, however,

while replying to the the representation, the Government came forward with a statement that the valuation was arrived at in respect of the seized

watches as per the guidelines. Though in the mahazar and in the counter, it is stated that value of the goods was arrived at with the assistance of the

Customs Officers, it is the stand of the Government that the value was arrived at as per guidelines.

8. Mr. B. Kumar, by pointing out the details mentioned in the mahazar, dated 18.11.2005, submitted that the Officers have not adopted the value

as shown in the guidelines and fixed the same according to their whims and fancies. He also pointed out that the valuation differs from person to

person although they all stand on the same footing. Referring to the guidelines, he mentioned that plastic watches are to be valued only at Rs. 60,

whereas, the calculation has been made at Rs. 100/- per piece. Likewise, he also mentioned that cheap quality of metal watches are to be valued

at Rs. 75/- per piece, whereas, value has been made at Rs. 100/- per piece in the mahazar. As rightly pointed out, except stating that the valuation

was arrived at based on the guidelines, there is no information furnished either in the reply or in the counter affidavit regarding the discrepancies

pointed out.

9. In the representation dated Nil, after stating that watches similar to the seized ones are being sold in Ratan Bazaar and N.S.C. Bose Road even

at the rate of Rs. 25/- to 30/- per piece, it is pointed out that though in the case of one Mohammed Asghar Khan, the DRI Officers fixed a

reasonable value, they failed to adopt the same in the case of the detenu. At the end of the said representation, the petitioner has specifically

mentioned, For this, the first respondent sent a reply on 25.01.2006 stating that the value of the seized watches has been arrived at as per the

guidelines of the Customs Department. As rightly pointed out, it is apparent that this is only a bald statement made by the authority without

considering the specific details furnished in the representation.

10. In this regard, Mr. B. Kumar, learned Senior Counsel contended that Courts have taken a view that the Government cannot reject the

representation of detenu in a casual or mechanical manner. He also contended that the Government is expected to dispose of the representation

with an unbiased mind. It will be useful to refer the dictum laid down by the Hon"ble Supreme Court in various decisions as to how a

representation has to be considered and disposed of,

A. In the case of John Martin Vs. State of West Bengal, , a Three Judge Bench of the Hon"ble Supreme Court, while considering the

representation of the detenu, has concluded,

3. ... This, however, does not mean that the appropriate Government can reject the representation of the detenu in a casual or mechanical manner.

The appropriate Government must bring to bear on the consideration of the representation an unbiased mind. There should be, as pointed out by

the Court in Haradhan Saha's case, "a real and proper consideration" of the representation by the appropriate Government. We cannot over-

emphasis the need for the closest and most zealous scrutiny of the representation for the purpose of deciding whether the detention of the petitioner

is justified.

B. The law laid down in John Martin's case was subsequently followed in the case of A.C. Razia v. Government of Kerala reported in 2004 SCC

(Cri.) 618, which is also a Three Judge Bench decision. While considering the power of the Central Government in considering the representation

made by the detenu, Their Lordships have concluded,

22. ... The exercise of the power u/s 11 should not be a mere formality or a farce. Care and vigilance should inform the action of the Government

while discharging its supervisory responsibility. As observed in Haradhan Saha case 1974 SCC (Cri.) 816 and reiterated in K.M. Abdulla Kunhi

case 1991 SCC (Cri.) 613, what is required is "real and proper consideration". The following observation in Sk. Abdul Karim and Others Vs.

State of West Bengal, are quite opposite in this context.

But it is a necessary implication of the language of Article 22(5) that the State Government should consider the representation made by the detenu

as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to a proper consideration

of the representation by the authority to whom it is made. The right of representation under Article 22 (5) is a valuable constitutional right and is not

a mere formality.

23. The same proposition has been highlighted by Rajendra Babu, J. By observing that "there should be full and independent application of mind.

Even in the dissent judgment, Hon"ble Mr. Justice S.B. Sinha, has accepted the above proposition and concluded,

50. It is therefore, trite that all facts which are relevant for the purpose of giving relief to the detenu are required to be considered. In that view of

the matter, the quality of an order passed by the Central government in terms of Section 11(1)(b) of the Act cannot be different from that of the

authority which had passed the order.

11. The above decisions make it clear that considering the representation of detenu is not a mere formality, but the same has to be disposed of with

an unbiased mind and it requires closest and most zealous scrutiny for the purpose of deciding whether the detention is justified or not.

12. It is also useful to refer to the decision rendered by a Division Bench of this Court (to which one of us was a party (P.SATHASIVAM, J.),

reported in 2006 1 MLJ 131 (Cri) (Mohiadeen Sahib, P.M.S. v. State of Tamil Nadu). In the said decision, while considering disposal of the

representation of the detenu, after referring to all the above referred decisions, it was concluded that the representation of the detenu is not a mere

formality and the same has to be considered with an unbiased mind. It was also held that when several particulars are furnished, it is but proper on

the part of the Government to verify those details from the officers concerned and an order has to be passed after due consideration.

13. In respect of similar contention and with reference to the goods seized on the same day, while accepting identical point, this Court quashed the

detention order in HCP No. 4 of 2006 dated 28.06.2006. The said decision is directly applicable to the case on hand.

14. We have already noticed that the petitioner herein, in her representation dated Nil referred to the valuation fixed in respect of the watches

brought by a co-passenger of the detenu and that there is no specific detail available in the reply dated 17.01.2006 of the second respondent,

divulging the basis on which valuation was made at Rs. 35/- per watch. Likewise, in the affidavit filed in support of the above petition, the petitioner

has specifically stated that the Customs Authorities have diligently considered the issue of valuation of the watches, similar to ones brought by the

co-passenger and fixed the value less than Rs. 33/- per watch and also collected the duty thereon. It is also stated that since in respect of

contemporaneous import of similar goods, valuation was made by the Customs Authorities at less than Rs. 33/- per piece, then, a different

yardstick cannot be adopted for the detenu. For the above specific allegation, there is no proper discussion or explanation in the counter affidavit.

Learned Senior Counsel has also placed a Xerox copy of the baggage receipt & assessment made by the D.R.I. Officers in the case of

Mohammed Asghar Khan. As rightly pointed out, this singular aspect of valuation applied to a co-passenger by name Mohammed Asghar Khan

shows that the methodology adopted by the DRI Officers in respect of the detenu is totally unacceptable and it leads to a presumption that the

same was done with a view to arrest and detain the detenu.

16. Though learned Additional Public Prosecutor has submitted that valuation of the goods seized is immaterial for the purpose of passing the

detention order, as pointed out earlier and it is also not in dispute, no arrest ought to be made under the Customs Act on the ground of suspected

evasion of customs duty unless value of the goods in respect of which the evasion of duty is suspected exceeds Rs. 5,00,000/-. In such

circumstances, proper valuation by the authority concerned is paramount, as otherwise, the detenu would be handicapped in giving proper reply in

respect of excessive valuation. Learned Additional Public Prosecutor also relied on the Division Bench decision, dated 06.04.2006, in HCP No.

1174 of 2005. He very much emphasised para 15 therein and submitted that the valuation cannot be questioned in this Petition. We perused the

entire judgment. We have no quarrel with the proposition laid therein. But, in the case on hand, we find that the relevant details, though specifically

stated, were not considered while disposing of the representation. Only on the ground of improper disposal of representation, we are inclined to

interfere.

17. In the absence of any explanation by the respondents in respect of valuation of similar watches brought by Mohammed Asghar Khan, fixing the

value at Rs. 33/- per watch, the contention of the petitioner cannot be rejected as unacceptable. On other other hand, we are of the view that there

is force in the said contention. On this ground also, the impugned order is liable to be quashed.

18. In these circumstances, we are satisfied that the petitioner has made out a case and that the impugned order of detention cannot stand,

accordingly, the same is quashed. Consequently, the detenu is directed to be set at liberty forthwith from custody unless he is required in

connection with any other case or cause.