

CASE NO.:  
Appeal (crl.) 1074 of 2005

PETITIONER:  
J. Abdul Hakeem

RESPONDENT:  
State of Tamil Nadu & Ors.

DATE OF JUDGMENT: 24/08/2005

BENCH:  
K.G. Balakrishnan & P.P. Naolekar

JUDGMENT:  
J U D G E M E N T  
(Arising out of S.L.P. (Crl.) No.878 of 2005)

P.P. NAOLEKAR, J.

Leave granted.

This appeal is preferred by the detenu, appellant challenging the order of the High Court dated 10th December 2004 whereby the High Court has confirmed the order of detention dated 23rd July 2004 made under the provision of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred to as "the COFEPOSA Act"). As per the impugned detention order the officers of the Directorate of Revenue Intelligence, Chennai received an intelligence on 16.7.2004 to the effect that detenu was arriving at Anna International Airport, Chennai from Colombo by Sri Lankan Airlines Flight UL-123 bringing electronic goods and other items in trade quantity in order to smuggle the same without payment of appropriate customs duty. In pursuance of the intelligence received, the appellant was intercepted by the customs authorities on his arrival on 16.7.2004. A personal search was conducted by the customs officials but nothing was found. However, from his personal baggage and hand baggage, custom officials found huge quantity of electronic goods valued at Rs.19,92,200/-. The said goods were seized. Appellant was arrested and he gave a statement before the officials of the Directorate of Revenue Intelligence and on the basis of the said material found on 23.7.2004, an order of detention was issued. The appellant was served with the grounds of detention on 27th July 2004.

On 6th August 2004, detenu submitted a representation to the State and the Central Authority and, thereafter made representation to the Advisory Board. The representation made to the Advisory Board was rejected on 8.9.2004. The order of detention was confirmed on 24.9.2004. Thereafter, the appellant-detenu preferred a writ petition, challenging the order of detention which was dismissed by the High Court. Hence, the present appeal by Special Leave.

Learned counsel for the appellant has submitted that while passing the order of detention, authorities concerned made reference of two seized passports of the appellant but copies of the same were not supplied to the appellant. The detenu has a right to be

furnished along with grounds of detention, copy of the documents relied upon and if there is failure or even delay in furnishing those documents, it tantamounts to denial of the right to make an effective representation guaranteed under Article 22 (5) of the Constitution of India. Detenu has not been supplied with the copies of the passports, entries of which have been relied upon by the detaining authority for passing the detention order. The detention order, therefore suffers with the non-compliance of the constitutional protection and thus liable to be quashed.

In the grounds of detention it is said that on 17.7.2004 the detenu gave a statement in his own hand-writing in Tamil before the Senior Intelligence Officer, D.R.I., Chennai stating inter alia that he is the resident of Pudur Village in Sivagangai District. He arrived at Chennai on 16.7.2004 by Sri Lankan Airlines Flight UL-123; that he had obtained Passport bearing No.B-5315177 at Trichi. From the year 2002, he has been going abroad to procure electronic and other goods; that he had gone to Hong Kong and Singapore many times; that whenever he returned to India from abroad, he used to come through Chennai Airport only; that while returning to Chennai from abroad, he used to bring foreign goods, particularly, wrist watches; that he used to smuggle the goods through green channel and sell them outside; that this time on 14.7.2004 he went by UL-124 flight to Sri Lanka and from there on 15.7.2004 he went to Hong Kong; that on 15.7.04 he boarded the flight UL-123 at 7 O' Clock in the evening and arrived at Chennai and while returning, he brought 4 checked-in baggages and an hand baggage and paid Rs.2000/- towards excess baggage charges. Under the old Passport he travelled about 23 times to Sri Lanka, 10 times to Hong Kong via Sri Lanka and once to Singapore and under the current Passport he travelled 4 times to Hong Kong via Sri Lanka. The authorities examined the value of the goods brought by the detenu which was in excess of the declared value and, therefore, the officers seized those goods. After considering the various factors and the legal provisions of the Foreign Trade (Development & Regulation) Act 1992, The Foreign Trade (Exemption from Application) Order 1993 and the Customs Act 1996, goods of foreign origin in trade quantities brought by the detenu by making false declaration were valued at Rs.19,92,200/-. The said goods were seized and confiscated. The appellant-detenu is liable for penal action under Section 112 of the Customs Act 1962 read with Section 11 (1) of the Foreign Trade (Development & Regulation) Act 1992; that the burden of proving the licit nature of the watches in trade quantity seized from the baggage lies on him; that he has also admitted that he has been making foreign travels for bringing foreign goods for sale in India and that he had made about 23 foreign trips under his old passport and 4 trips to Hong Kong via Colombo under the current passport; that the said passports contain entries of foreign visits made by him. The bone of contention of the counsel is based on last two lines of this ground, that having utilized the passport entries for issuing a detention order, the detenu should have been served with the copies of those documents although they belong to the detenu-appellant himself.

In the matter of M. Ahmadkuty Vs. Union of

India & Another (1990) 2 S.C.C. 1, while considering the provisions of COFEPOSA, this Court said that the detaining authority are duty bound to afford the detenu the earliest opportunity of making the representation against the order of detention and the representation to be made effective, the copies of the documents relied upon by the detaining authorities on the grounds are necessary to be supplied. The detenu has a right to be furnished with the grounds of detention along with documents so referred or relied upon. In Paragraph 20 the Court said that it is immaterial whether the detenu already knew about their contents or not; it is being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention. Supply of the relevant document which is made basis for passing the detention order, whether demand was made for such a document or not, has to be given to the detenu as a constitutional safeguard enshrined in Article 22 (5) of the Constitution of India.

In the latter decision of this Court, in the matter of Badhrunnissa Vs. Union of India and Others (1991) 1 S.C.C. 128, this Court reaffirmed the right of the detenu to receive the document which was taken into consideration by the detaining authority while formulating the grounds of detention. The Court further said that a duty and obligation is cast on the detaining authority to supply copies of those documents in the language known to the detenu; having said, the Court put a rider; but it is not that non-supply of each and every document provide a ground for setting aside the detention order. It is for the detenu to establish that the non-supply of copies of the documents has impaired the detenu's right to make an effective and purposeful representation. The demand made by the detenu of the document merely on the ground that there is a reference in the grounds of detention, cannot vitiate the otherwise legal detention order. No hard and fast rule can be laid down in this behalf. What is essential is that the detenu must show that the failure to supply the documents had impaired his right, however slight or insignificant it may be.

The principle of supply of the material documents to the detenu was considered by this Court in the matter of Radhakrishnan Prabhakaran Vs. State of Tamil Nadu and others (2000) 9 S.C.C. 170. In Para 8, this Court has said:

"We make it clear that there is no legal requirement that a copy of every document mentioned in the order 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"

From the aforesaid authorities it is clear that the detenu has a right to be supplied with the material documents on which the reliance is placed by the detaining authority for passing the detention order but the detention order will not be vitiated, if the document although referred to in the order is not supplied which is not relied upon by the detaining authority for

forming of its opinion or was made basis for passing the order of detention. Crux of the matter lies in whether the detenu's right to make a representation against the order of detention, is hampered by non-supply of the particular document.

In the present case although the detaining authority in the grounds of detention had referred to the passports and the entries made therein for the foreign trips made by the detenu but that cannot be said to have been relied upon by the detaining authority for passing the detention order. The detenu-appellant has admitted in his statement dated 17.7.2004 which was in his own hand-writing, that he had an old passport under which he travelled 23 times to Sri Lanka out of which 10 visits were made to Hong Kong via Sri Lanka; that he had traveled once to Singapore and under the current passport he had traveled 4 times to Hong Kong via Sri Lanka. It is this statement of the detenu-appellant made before the authorities on 17.7.2004, was the basis for passing of the detention order and reference of the two passports containing entries of the foreign visits by the detenu is only a passing reference. The passport entries are not made the basis of detention order. The basis is admission of the foreign visits made by the detenu in his statement. We fail to understand as to how non-supply of copies of the passports of the appellant-detenu prejudicially affect his right to make a proper representation against the order of detention. The non-supply of copies of the passports will not have the effect of vitiating the detention order.

For the aforesaid reasons, we dismiss the appeal without any order as to costs.