Criminal Appeal No. 920-923 of 2001

INDERJEET AND ANR.
v.
UNION OF INDIA AND ORS.

AUGUST 7, 2008

[Dr. Arijit Pasayat and Dr. Mukundakam Sharma, JJ]

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. In the present appeals, challenge is to the order of detention passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (hereinafter referred to as 'the Act'). The said order was passed on the ground that gold was being smuggled from abroad by the Inderjeet Singh, the appellant No.1. He and the other appellant - Varinder Singh were intercepted on 17.12.1999 in the Customs Arrival Hall at Netaji Subhash Chandra Bose International Airport, Calcutta. They were found smuggling 77 pieces of gold bars of foreign origin weighing about 8.816 Kg. and valued at about Rs.39 Lacs. A representation was made to the detaining authorities to revoke the detention. Representation was also made to the Advisory Board and to the Central Government. The representations were considered and rejected. Writ petitions were filed before the Delhi High Court which were numbered as Criminal Writ Petition Nos.477 of 2000 and 479 of 2000. The main ground of challenge was that the Central Government did not dispose of the representations within a reasonable time when the second representation was made. Strong reliance was placed before the High Court on a decision of this Court in *Smt. Gracy Vs. State of Kerala and Anr.* (44 (1991) Delhi Law Times – 1. The High Court found that the decision had no application and also the decision of this Court in *Jasbir Singh Vs. Lt. Governor, Delhi and Anr.* (1999 (4) SCC 228) had no application. Therefore, the writ petitions were dismissed. Subsequently, an application for review of the order dated 18.12.2000 was filed which was also dismissed.

2. Challenge in these appeals is to the aforesaid orders of the High Court.

3. None appears for the appellants.

4. We have heard learned counsel for the Union of India and respondent No.3 – the Superintendent of the Central Jail.

5. At this juncture, it would be relevant to note that the ratio in Smt. Gracy's case (Supra) was analysed by this Court in *R. Keshava Vs. M.B. Prakash and* Ors. (AIR 2001 SC 301). It was inter-alia observed as follows:

"A perusal of the aforesaid Section and other relevant provisions of the Act makes it abundantly clear that no duty is cast upon the Advisory Board to furnish the whole of the record and the representation addressed to it only to the Government along with its report prepared under Section 8(c) of the Act. It may be appropriate for the Board to transmit the whole record along with the report, if deemed expedient but omission to send such record or report would not render the detention illegal or cast an obligation upon the appropriate government to make inquiries for finding out as to whether the detenu has made any representation, to any person or authority, against his detention or not. We are of the opinion that in Gracy's case (supra) it was not held that any such duty was cast upon the Board but even if the observations are stretched to that extent, we feel that those observations were uncalled for in view of the scheme of the Act and the mandate of the Constitution.

In Nand Lal Bajaj v. State of Punjab & Anr. [1981 (4) SCC 327] this Court made the following observations: "The matter can be viewed from another angle. We were informed that the Advisory Board did not forward the record of its proceedings to the State Government. If that be so, then the procedure adopted was not in consonance with the procedure established by law. The State Government while confirming the detention order under Section 12 of the Act has not only to peruse the report of the Advisory Board, but also to apply its mind to the material on record. If the record itself was not before the State Government, it follows that the order passed by the State Government under Section 12 of the Act was without due application of mind. This is a serious infirmity in the case which makes the continued detention of the detenu illegal."

6. Apart from the fact that the period of detention is over, we also find that on merit, the appellants have not made out any case for interference. The appeals are, accordingly, dismissed.