

CASE NO.:
Appeal (crl.) 500 of 2005

PETITIONER:
K.S.NAGAMUTHU

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 16/11/2005

BENCH:
B.P.SINGH & R.V.RAVEENDRAN

JUDGMENT:
J U D G M E N T

This appeal, by special leave, has been preferred against the judgment and order of the High Court of judicature at Madras dated 6th August, 2004 in Habeas Corpus Petition No.164 of 2004. The High Court, by its impugned judgment and order, dismissed the Writ Petition preferred by the appellant challenging the order of detention dated January 9, 2004 passed under Section 3(1)(i) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA').

The grounds of detention are that the appellant holding an Indian passport arrived from Singapore by Indian Airlines flight on 28.12.2003. He had one checked-in baggage with him namely, a JVC colour T.V. 20". He was intercepted by the Custom Intelligence Officers near the exit gate of the Anna International Terminal while he was going out of the hall opting for the green channel. Since he was suspected to be carrying contraband in his baggage, he was intercepted and the two baggages with him were searched. Since the T.V. set was found to be unusually heavy, it was dismantled and it was found that the picture tube was tampered with. The picture tube was broken open and it was found to contain cellphones stuffed in the hollow space of the picture tube, 110 in number, of Sony Erricson T610 and 15 cellphones of Samsung SGH E415. The cellphones were valued at Rs.16,25,000/-. The said cellphones had not been declared by the appellant.

It is the case of the respondent that the appellant gave a voluntary statement admitting his guilt and, therefore, he was arrested on 29.12.2003 and remanded to judicial custody.

The case of the appellant is that on 6.1.2004 he gave a letter retracting his so called voluntary statement made on 28.12.2003 and alleging that the same had been secured from him by applying third degree methods and by coercion, and that the contraband did not belong to him but belonged to some other person, and he was merely carrying the T.V. to India without knowledge of the fact that the contraband was concealed in the T.V. According to the appellant, the retraction was communicated to the concerned authorities and the said letter was received on 7.1.2004 as is evidenced by endorsement made by the Assistant Commissioner (Adjudication-AIR), Customs House, Chennai-1. It appears that the letter of retraction was addressed to the Superintendent of Customs (Air), Customs House, Chennai-1.

The sole point urged before us is that this document namely, the letter of the appellant retracting the alleged voluntary statement made before the Customs officials was not placed before the detaining authority who passed the impugned order on January 9, 2004. It is not disputed before us that if such a document had been sent to the concerned authority, it was a document which was relevant and ought to have been considered by the detaining authority. In view of the admitted position, the only matter to be examined is whether the appellant had sent a letter of retraction to the concerned authority.

It is not disputed before us that the letter was addressed to the Superintendent of Customs (Air), Customs House, Chennai-1 and was sent through the Counsel for the appellant. The receipt disclosed that the letter was received on 7.1.2004 and the acknowledgment contains the seal of the Assistant Commissioner of Customs (Adjudication-AIR), Customs House, Chennai-1. These facts are not in dispute but the contention urged on behalf of the respondents is that the letter was not addressed to the concerned authority.

According to the respondents the concerned authority in this case was the sponsoring authority namely, the Additional Director General, Directorate of Revenue Intelligence, Chennai. According to the respondents, the letter was never delivered in the office of the sponsoring authority and therefore, there was no proper communication by the appellant. It was submitted that the appellant ought to have given the letter to the Superintendent of Jail who would have sent it to the concerned authority, but he chose to send the letter through his Advocate.

The appellant on the other hand, urged before us that for non-consideration of this relevant document the order of detention is vitiated.

It was urged before us that having regard to the facts of the case, three proceedings could have been resorted to namely, a prosecution under the ordinary law, an adjudication proceeding under the Customs Act, and a detention under COFEPOSA. The submission urged on behalf of the respondents assumes that the detenu could well anticipate that he shall be detained under the provisions of COFEPOSA, an assumption which cannot be justified in the facts of this case. The appellant had been arrested and remanded to custody. Since all detainees are entitled to legal assistance, he thought it safe to send his letter of retraction through his Advocate, and we find no fault with that, provided the letter was handed over to the concerned authority. The question, however, is who should be considered to be the concerned authority in the facts and circumstances of this case.

We cannot accept the contention urged on behalf of the respondents that the letter should have been addressed to the sponsoring authority in this case namely the Additional Director General, Directorate of Revenue Intelligence, Chennai-1 on whose recommendation the detaining authority passed the order of detention. This is because the date on which the said retraction was made and communicated by the appellant, no detention order had been passed and therefore, there was no question of the detenu knowing that the communication has to be addressed to the sponsoring authority. In fact, on that date, to the knowledge of the appellant detenu there was no sponsoring authority. The question then arises as to whom the letter should have been addressed. It appears that

the detenu had handed over the letter of retraction to his Advocate, who got it delivered in

the office of the Assistant Commissioner of Customs (Adjudication-AIR), Customs House, Chennai-1, though it was addressed to the Superintendent of Customs (AIR), Customs House, Chennai-1. It appears that both the offices are located in the same building namely, the Custom House at Chennai. Having regard to the facts and circumstances of the case, we cannot say that the letter was not communicated to the appropriate authority because on that date, the appellant had no knowledge that the order of detention was about to be passed under COFEPOSA. The letter undoubtedly was received by Assistant Commissioner of Adjudication-AIR whose office was located in the Custom House. The Assistant Commissioner of Customs is a responsible officer and should have known to whom such letters should be sent. In these circumstances, we cannot accept the submission urged on behalf of the respondents that the letter of retraction was not communicated to the appropriate authority. It is not disputed that the letter addressed to the Superintendent of Customs (AIR), Customs House, Chennai was, in fact, delivered on 7.1.2004 as is apparent from the seal on the receipt and as admitted in the counter affidavit by the State of Tamil Nadu. There is no reason why it should not have been placed before the detaining authority for his consideration. It has not been disputed that the said letter of retraction contained relevant material, which ought to have

been considered by the detaining authority before passing an order of detention. Since relevant material was withheld from the detaining authority, the order of detention must be struck down as being illegal. We accordingly, quash the order of detention.

We should not be understood to have laid down a broad proposition to the effect that a letter addressed to any officer of any Department of the Government would amount to service thereof on the State. It depends on the facts and circumstances of each case. In the facts of this case, we have found that the detenu addressed the letter of retraction to a responsible officer of the Department of Customs and in the circumstances he had no choice in the matter, as he could not anticipate that an order of detention may be passed and therefore, the letter should be addressed to the sponsoring authority.

This appeal is, accordingly, allowed.