

CASE NO.:
Appeal (crl.) 913 of 2003

PETITIONER:
Safiya

RESPONDENT:
Vs.
Government of Kerala & Ors.

DATE OF JUDGMENT: 28/07/2003

BENCH:
M.B. Shah & Dr. AR. Lakshmanan.

JUDGMENT:

JUDGMENT

(Arising out of Special Leave Petition (Criminal) No. 1215 of 2003)

Dr. AR. LAKSHMANAN, J.

Leave granted.

This appeal is directed against the final judgment and order dated 11.2.2003 passed by the High Court of Kerala in O.P. No. 29561 of 2002 filed by the appellant herein, who is the wife of the detenu - T.P. Moideen Koya who is under preventive detention under the COFEPOSA Act vide order of detention dated 21.02.2001.

The case of the prosecution in brief is that on 18.08.2001 a search was conducted by the Superintendent, Central Excise and Customs on the residence of one Kunjumon. In the search Indian and Foreign currencies and Gold biscuits were found. During the course of investigation, the statement of Mohd. Mustaffa, driver and employee of the said Kunjumon and P. Mohammed, the cousin of Kunjumon were recorded. According to the prosecution, the detenu is involved in dealing in smuggled goods and, therefore, report was made to the detaining authority for detaining the detenu under Section 3(i) (iv) of the COFEPOSA Act, 1974. The detenu was detained in execution of the order of detention on 04.09.2002 and detained in Central Jail, Thiruvananthapuram. The detenu submitted his representation to the Detaining Authority and the Central Government and the same were rejected.

Safiya, the wife of the detenu, filed a writ petition before the High Court of Kerala challenging the detention of her husband T.P. Moideen Koya (the detenu) on the grounds that the order of detention of the detenu is primarily based upon the statement recorded from Mohammed Mustaffa, an employee of Kunjumon and that an order of detention was passed against the said Mohammed Mustaffa and he was detained by an order of detention dated 17.10.2001 passed by the detaining authority. The said case was placed before the Advisory Board and the Advisory Board submitted in its opinion that there is no ground for detaining the said Mohammed Mustaffa. In accordance with the report of the Advisory Board, the detaining Authority, the State of Kerala, by its order dated 15.01.2002 revoked the detention against the said Mohammed Mustaffa. It is the case of the appellant that since the facts relating to the said Mohammed Mustaffa is similar and arising out of the same set of circumstances and the order of detention having been held to be improper by the Advisory Board and subsequently having been revoked by the State Government, the said facts and materials ought to have been placed before the detaining Authority by the Sponsoring Authority and the

same ought to have been considered before passing the order of detention against the detenu herein. The appellant also raised the contention that there has been inordinate delay in considering and disposing of the representation of the appellant. It was also contended that there is no material to justify the involvement of the detenu and, therefore, the order of detention is based on no material.

The High Court dismissed the writ petition holding that the delay in disposing of the representation was reasonable. The High Court passed a detailed judgment considering all the contentions raised by the counsel for the appellant before it including the rulings cited before it. Aggrieved by the said judgment, the present appeal has been filed before this Court.

We have perused the pleadings and the other Annexures filed along with this appeal and also the counter affidavits filed by the State Government of Kerala and the Government of India both in the High Court and also in this Court. We heard Mr. B. Kumar, learned senior counsel for the appellant and Mr. R.N. Trivedi, learned Additional Solicitor General for the Union of India and Mr. T.L. Viswanatha Iyer, learned senior counsel for the State of Kerala.

Mr. B. Kumar after inviting our attention to the pleadings raised the following three contentions:-

1. Non-placing of the opinion of the Advisory Board which has opined that there is no sufficient case for detention of the detenu Mohammed Mustaffa involved in the same occurrence which opinion was rendered even in December, 2001, long before the passing of the order of detention in the instant case on 22.01.2002 amounts to non-placing of relevant and important document such that the subjective satisfaction stands vitiated.
2. There is inordinate delay in considering the representation of the detenu.
3. Several documents on which the grounds of detention are substantially based are only in Malayalam and no translation thereof into English has been provided and, therefore, the consideration of the representation without taking into the consideration of these vital material is no consideration in the eyes of law as in all probabilities the person who dealt with the representation and took a decision thereof on behalf of the second respondent could not be knowing Malayalam. Mr. Kumar also submitted that in the facts disclosed in the grounds of detention it would be a case of no material against the detenu and sweeping allegations of violations of the Customs Act and dealing in smuggled goods to a huge figure has been arrived at totally unsupported by any material. Therefore, he would submit that the detention order is vitiated since the conclusion is not supported by any material annexed to the grounds of detention.

Learned Additional Solicitor General appearing for the Union of India submitted that the appeal is devoid of any merit or substance and deserves to be rejected outright by this Court and that the delay, if any, on the part of the Central Government has been properly explained in para 3 of its counter affidavit filed in this Court. He, therefore, submitted that the time of six days taken by the competent authority was not a negligence or callous in action on the part of the Central Government and since there has been no undue or unexplained delay in disposing of the representation of the detenu, the appeal is liable to be rejected by this Court.

Mr. T.L. Viswanatha Iyer appearing for the Government of Kerala drew our attention to the relevant paragraphs in the counter affidavit and submitted that the appellant has no case on merits and, therefore, is liable to be dismissed.

In regard to contention No.1, the answering respondent submitted that the case against the detenu was not built upon the statement of Mohammed Mustaffa alone. The records clearly show that Mohammed Mustaffa was dealing in gold biscuits and distributing tube money as instructed by Kunjumon and that the business between Kunjumon and the detenu was not done through Mohammed Mustaffa. In our opinion, the revocation of the detention order issued against Mohammed Mustaffa has no relevance as far as the detenu T.P. Moideen Koya is concerned. The detenu was personally heard by the Advisory Board. After hearing the detenu and perusing the records, the Advisory Board opined that there were sufficient grounds for the detention of the detenu. Under the circumstances, we are of the opinion that the non-placing of the order revoking the detention order of Mohammed Mustaffa before the Advisory Board does not vitiate the detention order issued against the detenu. The detention order was issued after perusing the relevant and material documents and after arriving at subjective satisfaction of the authorities. We are, therefore, of the view that the High Court has rejected the said contention, rightly so in our opinion.

In regard to contention No.2 delay in consideration of representation, the Central Government has clearly and explicitly explained the reasons for the delay insofar as they relate to the Central Government. It is seen from the records produced that a copy of the representation dated 26.09.2002 in Malayalam language of the detenu, sent by the Superintendent, Central Prison, Thiruvananthapuram dated 26.09.2002 was received in the COFEPOSA unit of the Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, New Delhi. Parawise comments and the English translation of the representation were called from the Sponsoring Authority on the same day i.e. 30.09.2002. The comments on the representation along with English translation, sent by the Sponsoring Authority vide their letter dated 04.10.2002 were received in the COFEPOSA unit on 07.10.2002 (in between 05.10.2002 and 06.10.2002 were holidays, being Saturday and Sunday). The case filed along with relevant material was submitted to the Under Secretary, COFEPOSA on 07.10.2002. The Under Secretary processed the case and put up to the Joint Secretary on the same day i.e. 07.10.2002. The Joint Secretary submitted the file to the Secretary, Ministry of Finance, Department of Revenue on 07.10.2002 itself. The Secretary, Ministry of Finance, Department of Revenue, considered the said representation on behalf of the Central Government and rejected the same on 17.10.2002 (in between 12th and 13th October, 2002 were holidays being Saturday and Sunday and 14th and 15th October, 2002 were holidays being Mahanavami and Dussehra festivals. The file was received back from the office of the Secretary, Revenue on 18.10.2002. Memorandum of rejection of representation was issued to the detenu herein through the concerned Jail Authority at Thiruvananthapuram on 18.10.2002 and the same was received by the detenu through the concerned Jail Authority on 21.10.2002. The dates and other details given above in the counter affidavit by the Central Government would only show that there has been no undue or unexplained delay in disposing of the representation of the detenu herein. The said contention is, therefore, rejected.

Regarding the third contention, we are of the opinion that the same has no merits. In this regard, it is submitted by the respondents that the Detaining Authority of the Government of Kerala had forwarded to the Central Government the report under Section 3(2) of the COFEPOSA Act, which consisted of Detention Order, the ground of detention and relied upon documents including the English translation of the documents which were in Malayalam language. Thus, the English translation of the Malayalam representation of the detenu and the English translation of the documents relied upon were available before the second respondent at the time of consideration of the representation of the detenu was also available. Therefore, the allegation of the petitioner that English translation of the documents which were in Malayalam language has not been supplied to the

second respondent is baseless.

A careful perusal of the records placed before this Court would show that there are enough materials to show the involvement of the detenu in the smuggling activities. The State Government (Detaining Authority) have considered all the aspects and perused the relevant material documents before issuing the detention order. Such detention order was issued based on the subjective satisfaction as to the necessity of detaining the detenu by invoking the provisions of the COFEPOSA Act. The detenu, therefore, in our opinion, is not entitled to challenge the subjective satisfaction arrived at by the detaining Authority in these proceedings.

Learned senior counsel for the appellant, contended that there is non-application of mind on the part of the detaining Authority. This contention has no merits. It is argued that the detention order was issued against the detenu with a view to prevent him from dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. A perusal of the representation submitted by detenu dated 26.09.2002 shows that he has understood the grounds of detention properly and has made an effective and meaningful representation for revoking the detention order. The translated version of the ground of detention has also been furnished to the detenu. While serving the grounds of detention on the detenu on 12.09.2002, he has made an endorsement to the effect that he has read and understood the grounds of detention and he has no complaint in this regard. We are not required to decide whether subjective satisfaction of the Authority is justified or not, yet a perusal of the records would reveal that the Detaining Authority has considered all the relevant aspects borne out from the aforesaid records before issuing the detention order and after arriving at the subjective satisfaction as to the necessity of detaining him by invoking the provisions of the COFEPOSA Act. The seized documents show that the detenu in this case had dealt with 290 smuggled gold biscuits valued at Rs. 1.5 crores with Kunjumon and had carried out transactions worth Rs. 18 crores during the period 01.08.2001 to 15.08.2001. Mr. Bapu who was involved in the contribution of tube money stated that the detenu is an accomplice of Kunjumon and he had telephoned him at his residence on the No. 370444 appearing in his note book.

It is also seen from the counter affidavit filed by the Government of Kerala in this Court (para 2.11) that about 9,300 smuggled gold biscuits were transported by Kunjumon as per the documents seized from his residence and out of this the detenu T.P.Moideen Koya had transacted about 290 gold biscuits valued approximately Rs. 1.5 crores. Out of 40 crores of Hawala transactions made by Kunjumon, the detenu Moideen Koya had transacted about Rs. 18 crores. This, according to the respondent, is a very vital evidence establishing their smuggling activities.

As already seen, the case against the detenu is not built upon the statement of Mohammed Mustaffa alone. The said Mustaffa was also dealing in gold biscuits and distributing tube money as instructed by Kunjumon.

Since we are disposing of the appeal on factual basis and on the basis of the records placed before us, we are not referring to the judgments cited by the learned counsel for both the sides.

The liberty of a citizen is undoubtedly very important. It is our duty to ensure that there is strict compliance with the provisions of law. In our view, strict compliance of the provisions of law has been made. The Court, in our opinion, cannot lose sight of the fact that those who commit economic offences do harm to the national interest and economy. Thus, the High Court, while examining the case, has taken a cumulative view of the situation and

had seen all the relevant facts.

On a consideration of the totality of the circumstances, the High Court came to the conclusion that the detenu has violated the provisions of law and his activities are not in the larger national interest and that the Court should be slow to come to the aid of the detenu. We agree with the conclusion arrived at by the High Court.

The instant appeal filed by the wife of the detenu is totally devoid of any merit or substance and as such we have no hesitation in rejecting the same. The appeal shall stand dismissed.

JUDIS