

CASE NO.:
Writ Petition (crl.) 218 of 2001

PETITIONER:
CHOWDARAPU RAGHUNANDAN

Vs.

RESPONDENT:
STATE OF TAMIL NADU & OTHERS

DATE OF JUDGMENT: 15/03/2002

BENCH:
Doariswamy Raju

JUDGMENT:

RAJU, J.

I am in respectful agreement with the judgment of my esteemed and learned brother that the impugned order of detention in this case need be quashed and the Writ Petition be allowed by releasing the detenu. But, I would like to confine the ground for the same on the question of non-application of mind to all the relevant facts than make any observations on the general principles of law, which, in my view, are well and firmly settled.

The petitioner has been ordered to be detained by the orders of the Government of Tamil Nadu in G.O. No. SR.I/531-7/2001 Public (SC) Dept. dated 28.5.2001 in exercise of the powers under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [hereinafter referred to as "The Act"] and kept in custody in the Central Prison, Chennai. From the grounds on which the said order came to be made, it could be seen that the incident said to have occurred on 30.3.2001 when the petitioner arrived from Singapore by IC 556 at Chennai Anna International Airport was the main basis. The allegation against the petitioner is that though he brought in his baggage (a) Panasonic GD92 Cell phones with accessories 100 Nos; (b) Nokia 3310 Cell phone with accessories 50 Nos; (c) Siemens C35 Cell phones with accessories 50 Nos; (d) Nokia Cell phone adapter 100 Nos; (e) Nokia 5110 Cell phone batteries 100 Nos without having any valid document for their lawful import, not only he grossly mis-declared the value of the goods in his possession, but after completing immigration formalities and collection of his baggage and moving towards the Exit Gate when intercepted by Customs Intelligence Officer and asked, the petitioner gave a negative reply as if he is not in possession of any dutiable goods in trade quantity. After opening the baggage, the above-referred goods were said to have been found in his baggage and seized after following the required procedure. Beside the same, he was also arrested on 31.3.2001 and lodged in prison after following the procedure therefor. On the above materials, the

petitioner was considered to have committed violations justifying action under Section 111 (d) (i) (1), & (m) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 in addition to rendering himself to be proceeded against for committing an offence punishable under Sections 132 and 135 of the Customs Act. The CIF value of the goods seized was said to be Rs.13,90,000/- and the market value of the same was Rs.20,85,000/- on the date of the seizure.

It is on the above materials, in addition to the adjudication proceedings and prosecution to be pursued further against the petitioner, the Detaining Authority was said to have been satisfied that it was necessary to detain the petitioner under the Act with a view to prevent the petitioner from indulging in smuggling goods in future. On that view of the matter, the impugned detention order came to be passed and the same is challenged by means of the above Writ Petition under Article 32 of the Constitution of India, for the alleged violation of his fundamental rights.

Heard Shri A.T.M. Sampath, learned counsel for the petitioner, and Shri Mukul Rohtagi, learned Additional Solicitor General for respondents No. 2 & 3 and Shri S. Balakrishnan, Senior Advocate for the State of Tamil Nadu. The extreme stand taken for the petitioner as a ground based on law that at a solitary incident, even if it be true, though the involvement of the petitioner in the occurrence is seriously questioned, cannot be the basis for invoking the powers of detention necessarily obligated to be learned Additional Solicitor General also to take a contra stand to the other extreme. Though, several decided cases have been brought to our notice, including the latest decision since reported in *VC Mohan vs Union of India & Others* [JT 2002(2) SC 365], I consider it unnecessary to deal with every one of them.

The decision rendered in *Attorney General for India & Ors. vs Amratlal Prajivandas & Ors.* by a Constitution Bench of 9 Judges reported in [1994 (5) SCC 54], has laid down the law on the said aspect succinctly and conclusively in the following terms:

"48. Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. In *Debu Mahato v. State of W.B.* It was observed that while ordinarily speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case one act may suffice. That was a case of wagon-breaking and having regard to the nature of the Act, it was held that one act is sufficient. The same principle was reiterated in *Anil Dey v. State of W.B.* It was a case of theft of railway signal material. Here too one act was held to be sufficient. Similarly, in *Israil SK v. District Magistrate of West Dinajpur* and *Dharua Kanu v. State of W.B.* single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively was held sufficient to sustain the order of detention. In *Saraswathi Seshagiri v. State of Kerala*, a case arising under COFEPOSA, a single act, viz., attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an

organized act or a manifestation of organized activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organization. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention."

In the above context, what is required to be seen is as to whether on the materials placed on record, it could reasonably be said to indicate any organized act or manifestation of organized activity or give room for an inference that the petitioner would continue to indulge in similar prejudicial activity warranting or necessitating the detention of the person to ensure that he does not repeat his activity in future. So far as the facts on record in this case are concerned, it is seen that a stand has been taken for the petitioner, at any rate, from the time of filing the bail application on 18.4.2001, that the baggage in question did not belong to him, that the earlier statement obtained was under threat, coercion and undue influence and that those baggage did not contain any tag also to connect the same with him. That apart the specific stand taken for the petitioner is also that the baggage containing the goods in question were in the name of one Babu with his ticket number and address and no action could be taken against him before recording a finding properly and deciding on the basis of any concrete material the ownership of the disputed baggage. All the more so when the Department itself has been after the said person also and the matter has not reached to any final conclusion. As for the grievance that these relevant materials have not been adverted to or considered by the Detaining Authority before ordering the detention of the petitioner, in the counter affidavit filed on behalf of the 1st respondent Detaining Authority, it is admitted that investigation is still pending to ascertain the involvement and role of the other person but that may not have any significance or relevance in the teeth of the admission contained in the confessional statement of the petitioner and that at any rate the Detaining Authority was very much aware of those facts when the order of detention came to be passed.

Though, no doubt Courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal re-appreciating the materials, yet since an order of

detention in prison involves the fundamental rights of citizen, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the respondents as to the decision arrived and it is open to the Courts to see whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted to and considered. So far as the facts of the present case are concerned, the plea on behalf of the petitioner is not that someone else also is concerned with the offending act but that he has nothing to do with it and that the baggage containing the contraband really belonged to such other person. Such plea cannot be also brushed aside in this case as one merely invented in the air but seem to have necessary basis from the fact that baggage ticket Nos. 0021777 and 0021771 were registered in the name of one Babu and that concedingly action and investigation in this regard is still pending and has not concluded so far. If the baggage really belonged to another person as was stated to have been registered, it necessarily follows that the petitioner cannot be the owner of the very same baggage. The seriously doubtful position about the elementary and basic fact regarding the ownership of the baggage and the admitted inconclusive stage of the investigation in this regard could not legitimately help the authorities to pass any order of detention against the petitioner on the perfunctory and inchoate materials relied upon. Apart from the absence of any positive or concrete materials to connect the baggage in question with the petitioner, the nature of stand disclosed in the counter affidavit filed on behalf of the 1st respondent on this aspect does not really help the Authority to prove that the said material and such vitally relevant aspect was either adverted to or really considered before passing the order of detention. Consequently, the impugned order suffers the vice of total non-application of mind to a relevant and vital material touching question of the culpability as well as the necessity to order the detention of the petitioner. The impugned order of detention, therefore, has been rightly quashed and the writ petitioner ordered to be released from detention in prison.

J.
[Doraiswamy Raju]

March 15, 2002.