State Of Gujarat vs Sunil Fulchand Shah & Another on 8 February, 1988

Equivalent citations: 1988 AIR 723, 1988 SCR (2) 903, AIR 1988 SUPREME COURT 723, 1988 (1) SCC 600, 1988 (16) IJR (SC) 68, 1988 (1) JT 274, (1988) 16 ECC 16, (1988) 1 SCJ 578, (1988) 1 CRILC 460, (1988) ALLCRIC 176, (1988) 1 CRIMES 854

Author: L.M. Sharma

Bench: L.M. Sharma, A.P. Sen

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
SUNIL FULCHAND SHAH & ANOTHER

DATE OF JUDGMENT08/02/1988

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
SEN, A.P. (J)

CITATION:
1988 AIR 723 1988 SCR (2) 903
1988 SCC (1) 600 JT 1988 (1) 274
1988 SCALE (1)257
CITATOR INFO :
R 1990 SC 136 (14)

ACT:
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974: Section 3-Detention order-Mere error in description of a document in grounds of detention-Whether vitiates detention order-Filing of affidavit by detaining authority-Not an inflexible rule-Not necessary to mention in grounds of detention the reaction of the detaining authority to every piece of evidence.

HEADNOTE:
%

The second respondent in the appeal was detained under subsection (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

The grounds of detention-Annexure 'B' served on the detenu stated that information was received by the custom staff that a notorious smuggler and his gang was likely to land packages of contraband goods on the Saurashtra Coast and that the modus operandi of the smugglers' gang would be to remove the goods to trucks, cover them with cargo of vegetables and grain, and then to drive away. Vigilance was stepped up by the authorities. A Truck, an Ambassador Car in the service of the respondent-detenu, and a jeep were stopped by the Officers and several persons travelling therein were detained and interrogated. Incriminating documents were recovered indicating involvment of other vehicles. Goods of foreign origin valued at over Rs.68 lakhs were also recovered. The arrested persons gave vital clues about the clandestine business of smuggling that was being carried on and named the 2nd respondent-detenu as being directly involved in the business.

The co-conspirators made an application for bail on 2.10.1984 and on the following day i.e. 3.10.1984 they filed an application before the Chief Judicial Magistrate retracting some of their earlier statements.

Though the detention order was passed on October 20, 1984, it could not be served on the detenu earlier than July 4, 1986 as he was absconding. On his arrest the first respondent-his nephew, challenged the detention order in the High Court on several grounds, but the High
904
Court allowed the writ petition and quashed the order of detention only on one ground viz. non-application of mind by the detaining authority to a vital document i.e. the second application dated 3.10.1984 whereby the other accused persons retracted their earlier statements, and held that this had vitiated the subjective satisfaction of the detaining authority.

In the appeal to this Court it was contended on behalf of the State-appellant that the second application dated 3.10.1984 was also placed before the detaining authority and that he had applied his mind thereto. The document was mentioned in the grounds-Annexure 'B', served on the detenu although it was not actually described as a petition containing the retraction. The original file dealing with the detenu's case was also produced for the Court's perusal.

The appeal was contested on behalf of the respondents by stating that the plea of the State that the second application dated 3.10.1984 had been considered by the detaining authority should be rejected in the absence of an affidavit by the detaining authority, and that it was necessary to have mentioned in the grounds-Annexure 'B', served on the detenu that the detaining authority was of the view "that not much credence could be given to the

statements made in the petition dated 3.10.1984".

Allowing the Appeal,

^

HELD: 1. It is true that in a given case the detaining authority should personally affirm on oath the stand taken on its behalf, but this cannot be suggested as an inflexible rule applicable to all detention cases irrespective of the circumstances. [908D-E]

In the instant case, a further affidavit by the Deputy Secretary, Home Department of the State of Gujarat was filed stating that the Home Minister who was authorised under the Rules of Business to pass orders on behalf of the Government in detention matters, had ceased to be a Minister before the filing of the affidavit in the High Court, and he was, therefore not available. The then Deputy Secretary, Home Department who was fully conversant with the case had to file the affidavit. [908E-F]

2. The original file dealing with the detenu's case produced in Court shows that the Home Minister, State of Gujarat, while passing the order for detention made a detailed note running in several para-

905

graphs and in paragraph 2 he pointedly mentioned both the bail application dated 2.10.1984 and the petition dated 3.10.1984. The notes also show that the detaining authority correctly appreciated the nature and purport of the 3rd October document but was of the view that not much credence could in the circumstances be given to it. [908B-C]

3. So far as the inference drawn by the detaining authority from the materials on the records and his subjective satisfaction were concerned, they are expressly stated in the grounds and there cannot be any grievance on that score. [909B-C]

4. It is not necessary to mention in the ground of detention the reaction of the detaining authority in relation to every piece of evidence separately. [909D-E]

In the instant case, the recital in Annexure 'B' that the detaining authority formed his opinion after consideration of the document dated 3.10.1984 by itself clearly implied that he was not impressed by the statement therein. [909E]

5. Several other questions were raised in the writ petition which were not considered by the High Court, and since the order of the High Court by which it allowed the writ petition has been set aside, it becomes necessary to decide the other questions. The matter is remanded for further hearing and disposal to the High Court. [909G]

P.C. Mehta v. Commissioner and Secretary, Govt. of Kerala and others, [1985] Supp SCC 144, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 80 of 1988.

From the Judgment and Order dated 20.11.1986 of the Gujarat High Court in Spl. Crl. A. No. 886 of 1986.

T.U. Mehta and M.N. Shroff for the Appellant. V.A. Bobde, Mrs. H. Wahi and Mrs. Kamini Jaiswal for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. The order of detention of the respondent No. 2, Mahendra V. Shah, passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, was challenged by his nephew, respondent No. 1, before the Gujarat High Court under Article 226 of the Constitution. By the impugned judgment the detention order was quashed. The State of Gujarat has impugned the High Court's decision by the present Special Appeal Application.

2. Special leave is granted.

3. The detention order was passed on the 20th of October, 1984, but could not be served on the detenu earlier than 4.7.1986 as he was absconding. The grounds of detention served on him as mentioned in Annexure-B state that information was received by the Customs staff of Ahmedabad on 26.9.1984 that a notorious smuggler, Juwansinh Jadeja, had shifted his smuggling activites to the coast of Chorwad in Saurashtra, and was working on behalf of two citizens of Pakistan. Information about Jadeja's main associates was also received. The authorities were informed that the gang was likely to land about 180 packages of contraband goods within a couple of days and vigilance activities were therefore stepped up. The officers further learnt that the modus operandi of the smugglers' gang would be to remove the goods to trucks and to cover them with cargo of vegetables and grains and then to drive away. An Ambassador car bearing registered no. MRH 6595 which was earlier in the service of the respondent detenu a resident of Bombay was spotted in the late night of 28.9.1984 and they suspected it to be on the road in that connection. They proceeded in the same direction and found a truck loaded with bags of vegetables. The truck was intercepted but the driver ran away. The Ambassador car was also passing by, but on being signalled to stop, it took a sharp turn and got away. The officers unsuccessfully chased it for some time. The suspicion of the officers was thus confirmed and they searched the truck and discovered the contraband goods. Two other vehicles, a Jeep and another car also arrived and were stopped by the officers and several persons travelling therein including Jadeja were taken to the Excise Office for interrogation. Incriminating documents were recovered, inter alia, indicating that several other trucks were also involved. All available Customs and police officers thereafter became active and two other trucks were seized. They also found the Ambassador car MRH 6595 abandoned. The goods found in the first truck were all of foreign origin and were valued at over Rs.68 lakhs. Similar contraband goods were discovered in the other trucks also. Later a fourth truck was also intercepted. The arrested persons gave vital clues about the clandestine business of smuggling and named respondent Mahendra V. Shah as being directly involved in the business. It was inter alia stated that Mahendra V. Shah had gone to the coast where the goods were received. The grounds have mentioned the various activities of the detenu including the fact that he was travelling in the Ambassador car MRH

6595. We do not consider it necessary to mention here all the details of his activities.

4. As stated earlier, although the order of detention was made in October 1984, it could not be served on the detenu before July 1986 as he was absconding. On his arrest the writ application was filed by his nephew the respondent no. 1. The other persons involved in the affair were also detained. These co-conspirators made an application for bail on 2.10.1984 and on the next day, that is, on 3.10.1984, they filed an application before the Chief Judicial Magistrate, Junagadh retracting some of their earlier statements.

5. One of the points urged on behalf of the detenu was that the retraction by the aforesaid other persons (co- conspirators) was not placed before the detaining authority and was, therefore, not considered by him. The High Court held that this point by itself vitiated the detention order. The other grounds urged were not considered on merits.

6. It has been contended on behalf of the State that the second application dated 3.10.1984 whereby the other accused persons retracted their earlier statements was also placed before the detaining authority and he had applied his mind thereto. It was pointed out that the said document was mentioned in the grounds Annexure B, served on the detenu although it was not accurately described as a petition containing the retraction. The mis-description was in the following words:

> "While arriving at the above satisfaction the Detaining Authority has taken into consideration the bail applications dated 2.10.1984 and 3.10.1984 filed jointly by Jayantilal Damji Thakker and nine others before the Chief Judicial Magistrate, Junagadh....."

In paragraph 6 of the State's counter affidavit this fact was pointedly mentioned and it was stated that the mistake in the description was of drafting, and the detaining authority had considered the same while passing the order of their detention and that there was no substance in the point taken on behalf of the detenu.

7. The stand of the State that the petition dated 3.10.1984 was considered by the detaining authority appears to be right. The original file dealing with the detenu's case was produced in Court for our perusal, and we found that the Home Minister, State of Gujarat, while passing the order for detention made a detailed note running in several paragraphs and in paragraph 2 he pointedly mentioned both the bail application dated 2.10.1984 and the petition dated 3.10.1984. The notes also show that he (detaining authority) correctly appreciated the nature and purport of the 3rd October document but was of the view that not much credence could be in the circumstances given to it. The first point urged on behalf of the respondent must, therefore, be rejected. The error in the description of the document in the grounds cannot in the situation be said to have vitiated the order.

8. Mr. Bobde, the learned counsel for the respondent, contended that the plea of the State should be rejected in absence of an affidavit by the detaining authority. Although it is not an essential requirement of law, the learned counsel proceeded, but the Court in every detention case must insist on such an affidavit to be filed. It is true that in a case where a point as mentioned above arises the

detaining authority should personally affirm on oath the stand taken on his behalf, but it cannot be suggested as an inflexible rule applicable to all detention cases irrespective of the circumstances. In the present case a further affidavit by Sri Pavitra Narayan Roy Chaudhary, Deputy Secretary, Home Department (Special) of the State of Gujarat was filed stating that the Home Minister Sri Prabodh Raval who was authorised under the Rules of Business framed under Article 166 of the Constitution to pass orders on behalf of the Government in detention matters had ceased to be a Minister before the filing of the affidavit in the High Court, and he was, therefore, not available. Sri M.T. Parmar, the then Deputy Secretary, Home Department was fully conversant with the case and had filed his affidavit. The original file was produced before us to dispel any suspicion about the detaining authority having considered the document dated 3.10.1984 and having felt satisfied that it was a proper case for detention of the respondent. In this background we do not attach much importance to the fact that the affidavit was not filed by the detaining authority personally.

9. The next point urged by Mr. Bobde was that it was necessary to have mentioned in the grounds (Annexure B) served on the detenu the fact that the detaining authority was of the view that "not much credence could be given to the" statements in the petition dated 3.10.1984. The state of the mind of the detaining authority while holding that much credence could not be given to the document should be treated to be a ground essential to be served on the detenu. Reliance was placed on the observations in P.C. Mehta v. Commissioner and Secretary, Government of Kerala and others, [1985] (Supp.) SCC 144. The contention is that factual inference is included in the expression "grounds" and has to be expressly and specifically stated. We are afraid, the assumption on which the argument is founded is not correct. So far as the inference drawn by the detaining authority from the materials on the records and his subjective satisfaction in this regard are concerned, they are expressly stated in the grounds and there cannot be any grievance on that score. The objection of the respondent, properly analysed, comes to this, that the reason why the detaining authority is not impressed by a particular piece of evidence or on the other hand the reason why he prefers to rely on any other evidence should be detailed in the grounds. Mr. Bobde urged that if the respondent had known that the detaining authority did not attach much credence to the statements in the petition dated 3.10.1984 he would have attempted to impress upon the relevant authorities to take a contrary view. We do not find any merit in this contention and hold that it is not necessary to mention in the grounds the reaction of the detaining authority in relation to every piece of evidence separately. Besides, the recital in Annexure B that the detaining authority formed his opinion after consideration of the aforesaid document by itself clearly implied that he was not impressed by the statement therein. The detenu cannot, therefore, be heard to say that he was prejudiced in any manner.

10. As mentioned above, the points pressed on behalf of the respondents before us have been rejected. Mr. Bobde has contended that several other questions also arise in this case which have not been dealt with by the High Court. He appears to be right. The impugned judgment states that several other questions were also raised which were not necessary to be considered as the writ application was succeeding on the first point. Now in view of our finding mentioned above, it becomes necessary to decide the other questions also. In the circumstances, we think that the case should go back to the High Court for further hearing. Accordingly, the impugned judgment is set aside, and the matter is remanded for further hearing and disposal of the case in accordance with

law.

N.V.K. Appeal allowed.