

Pankaj Kumar Sharma vs Union Of India & Ors on 9 January, 2019

Author: Hima Kohli

Bench: Hima Kohli, Manoj Kumar Ohri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 3008/2018 & CrI. M.A. No. 33406/2018 (stay)
PANKAJ KUMAR SHARMA Petitioner
Through: Mr. Varun Singh and Mr. Vikash,
Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Rajesh Kumar Gogna, CGSC for
R-1 and R-2.
Mr. Harpreet Singh, Advocate for R-3

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

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1. At the outset, Mr. Gogna, CGSC draws our attention to the order dated 26.6.2018, passed under Section 7(1) of The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short 'COFEPOSA Act') calling upon the petitioner to appear before the Director General of Police, Govt. of Bihar, Patna within seven days from the date of publication of the Gazette. Learned counsel states that the petitioner has not elected to appear before the Director General of Police, Govt. of Bihar, Patna in terms of the order dated 26.6.2018 and is still absconding.

2. On the first call, at the request of learned counsel for the petitioner the matter was passed over on the ground that Mr. Vikas Singh, Senior Advocate leading him in the matter was held up before another Court. On the second call also, learned Senior Advocate is not available.

3. Learned counsel for the petitioner states that in the meantime, he has obtained instructions to the effect that the petitioner shall be taking steps to challenge the order dated 26.6.2018 that has come to his knowledge only on the same being annexed by the respondents with C.M. No. 50268/2018, filed on 06.12.2018.

4. We would have thought that before filing the rejoinder affidavit in reply to the additional affidavit filed by the respondents No.1 and 2/UOI, the petitioner would have taken necessary steps in respect

of the order dated 26.6.2018. Be that as it may, it is for the petitioner to take appropriate steps before the competent Court vested with jurisdiction to assail the order dated 26.6.2018, in accordance with law.

5. On perusing the counter affidavit dated 25.10.2018 filed by Mr. S.D. Bhasor, Dy. Secretary, Ministry of Finance, it transpires that no mention has been made therein of the order dated 26.6.2018 issued by the Central Economic Intelligence Bureau, Deptt. of Revenue, Ministry of Finance whereunder, the petitioner was directed to appear before the Director General of Police, Govt. of Bihar, Patna. On going through the contents of said affidavit, we find that in para 11 thereof, under the heading 'Background of the Case' a specific averment has been made to the effect that the petitioner can challenge the detention order only upon his surrendering. A similar submission finds mention in paras 8 to 10 of the said affidavit but surprisingly, no mention has been made in the said affidavit of the order dated 26.6.2018 which appears to have seen light of the day only in December, 2018 on being enclosed by the respondents with their additional affidavit dated 06.12.2018.

6. Had the order dated 26.6.2018 been brought to the notice of this Court on time, we may not have been inclined to grant any interim protection to the petitioner, as was granted vide order dated 12.11.2018, which was incidentally passed in the presence of the learned counsel for the respondents. If the respondents were really aggrieved by the said order, they ought to have taken immediate steps for seeking vacation of the interim order dated 12.11.2018. But no such steps were taken in the matter either before 19.12.2018, the next date fixed or for that matter, till today. It is only when the case has been taken up today that learned CGSC states that the petitioner has been absconding despite the order dated 26.6.2018 and the interim order ought to be vacated. We are of the view that an explanation is required from respondents for withholding the order dated 26.6.2018, till 25.10.2018. Accordingly, the deponent of the counter affidavit dated 25.10.2018, shall remain present on the next date of hearing to explain the above.

7. Arguments on the present petition are deferred in view of the request of learned counsel for the petitioner that the Senior Advocate is unavailable today.

8. List on 28.1.2019.

9. Interim order dated 12.11.2018, shall continue to operate till the next date of hearing.

HIMA KOHLI, J MANOJ KUMAR OHRI, J JANUARY 09, 2019 ap