State Of Gujarat vs Adam Kasam Bhaya on 18 September, 1981

Equivalent citations: 1982 AIR 2005, 1982 SCR (1) 740, AIR 1981 SUPREME COURT 2005, 1981 (4) SCC 216

Author: Baharul Islam

Bench: Baharul Islam, A.P. Sen

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
ADAM KASAM BHAYA

DATE OF JUDGMENT18/09/1981

BENCH:
ISLAM, BAHARUL (J)
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ISLAM, BAHARUL (J)
SEN, A.P. (J)

CITATION:
1982 AIR 2005 1982 SCR (1) 740
1981 SCC (4) 216 1981 SCALE (3)1563

ACT:
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974-Limitation for appeal, whether coextensive with the maximum period of detention reckoned from the date of order of the detention-Constitution of India, 1950-Article 226-Jurisdiction of the High Court in the law of preventive detention, explained.

HEADNOTE:
Allowing the State appeal, the Court
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HELD: 1. In section 10 of COFEPOSA, both in the first and the second part of the section, it has been expressly mentioned that the detention will be for a period of one year or two years, as the case may be, from the date of detention and not from the date of the order of detention. If the submission that the appeal has become infectious in view of the fact that the maximum period of detention

mentioned in section 10 of the Act has expired, was accepted, two unintended results follow: (1) if a person against whom an order of detention is made under section 3 of the Act, he can successfully abscond till the expiry of the period and altogether avoid detention; and (2) even if the period of detention is interrupted by the wrong judgment of a High Court, he gets the benefit of the invalid order which he should not. The period of one or two years, as the case may be, as mentioned in section 10 will run from the date of his actual detention, and not from the date of the order of detention. If he has served a part of the period of detention, he will have to serve out the balance. [741-H, 742 A-C]

2. The High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been based by the detaining authority on materials on record, then the Court cannot go further and examine whether r the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in section 3 of the Act is the satisfaction of the detaining authority and not of the Court. [742 E-F]

3. By implication, the High Court has erroneously imported the rule of criminal jurisprudence that the guilt of an accused must be proved beyond reasonable doubt to the law of detention. [742 D]

741

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 92 of 1981.

From the judgment and order dated the 16th January, 1980 of the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 186 of 1979.

J.L. Nain and R.N. Poddar for the Appellant. O.P. Rana (amicus curiae) for the respondent. The Judgment of the Court was delivered by BAHARUL ISLAM, J. This appeal by special leave is by the State of Gujarat and is directed against the judgment and order of the Gujarat High Court quashing the order of detention passed by the appellant against the respondent.

2. The facts material for the purpose of disposal of this appeal and not disputed before us may be stated in a narrow compass. In exercise of powers conferred on it by sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called 'the Act'), the appellant passed the order of detention dated 7th May 1979 against the respondent on the grounds that the respondent and three others, namely, Hasan Haji Ismail

Subhania, Gulam Hussain Hasan Subhania and Salemamad Allarakha Jasraya were found in a trawler containing eight packages with 4,645 contraband wrist watches valued at Rs. 10,48,700.00. The petitioner and Salemamad were members of the crew. Hasan Haji was the owner of the trawler and his son, Gulam Hussein, was the tindal of the, vessel. They were interpreted by the Customs Authorities who seized the contraband goods and the trawler. The petitioner made a statement on 21st January, 1979 before the Customs officer, admitting that he was a member of the crew but denied any knowledge of the contraband goods. He stated that he was engaged as a member of the crew by the owner on the daily-wage basis at the rate of Rs. 10.00 per day. It was also stated in the grounds that in the statement dated 21st January, 1979, the respondent admitted that he was the tindal of the vessel 'Shahe-Nagina' which had been seized by the Customs officer in 1977 for smuggling wrist watches and that a penalty of Rs. 5,000.00 was levied against him.

3. The respondent moved the High Court of Gujarat. A Division Bench of the High Court by the impugned order quashed the order of detention on the ground that the respondent at the time of joining the vessel as a member of the crew had no "full knowledge that the vessel was to be used for smuggling activity". The High Court held, "the above material on the record, therefore, was not sufficient for reaching a genuine satisfaction that the petitioner was engaged in smuggling activity and it was necessary to detain him with a view to preventing him from indulging in that activity in future" (emphasis added). According to the High Court, "the satisfaction reached by the detaining authority cannot be said to be genuine on the material which was placed before the detaining authority".

4. At the outset Mr. Rana, appearing for the respondent as amicus curiae, raises a preliminary objection The objection is that in view of the fact that the maximum period of detention mentioned in Section 10 of the Act has expired, and as such the appeal has become infructuous. It may be mentioned, to appreciate the preliminary objection, that the order of detention against the respondent was made on 7th May, 1979 and this appeal was being heard on 15th September, 1981, which was beyond two years. Section 10 of the Act is in the following terms:

> "The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 do not apply and which has been confirmed under clause (f) of section 8 shall be a period of one year from the date of detention or the specified period, whichever period expires later, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 apply and which has been confirmed under clause (f) of section 8 read with sub- section (2) of section 9 shall be a period of two years from the date of detention or the specified period, whichever period expires later."

We have not been told by Mr. Rana whether the first part or the second part of Section 10 applies to the facts of the case. He has made the submission on the assumption that the second part of Section 10 applies and the period of two years prescribed by the second part already expired. In our opinion, the submission has no force. In Section 10, both in the first and the second part of the section, it has been expressly mentioned that the detention will be for a period of one year or two years, as the case may be, from the date of detention, and not from The date of the order of detention. If the

submission of learned counsel be accepted, two unitended results follow:

> (1) if a person against whom an order of detention is made under Section 3 of the Act, he can successfully abscond till the expiry of the period and altogether avoid detention; and (2) even if the period of detention is interrupted by the wrong judgment of a High Court, he gets the benefit of the invalid order which he should not. The period of one or two years, as the case may be, as mentioned in Section 10 will run from the date of his actual detention, and not from the date of the order of detention. If he has served a part of the period of detention, he will have to serve out the balance. The preliminary objection is overruled.

5. Now to turn to the merit. The order of High Court is clearly erroneous. The High Court has misdirected itself to its jurisdiction to inquire into the order of detention by an authority. The High Court, accepting the contention of the counsel of the detenu, before it has held that there was no material on record to prove knowledge of the detenu with the contraband goods in the vehicle. By implication, the High Court has erroneously imported the rule of criminal jurisprudence that the guilt of an accused must be proved beyond reasonable doubt to the law of detention. The High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been based by the detaining authority on materials on record, then the Court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in Section 3 of the Act is the satisfaction of the detaining authority and not of the Court. The judgment of the High Court, therefore, is liable to be set aside. We set aside the order of the High Court and allow the appeal. G S.R. Appeal allowed.