

## **Rumana Begum vs State Of Andhra Pradesh And Anr. on 5 August, 1992**

**Equivalent citations: 1992(3)SCALE27, 1993SUPP(2)SCC341, AIRONLINE 1992 SC 96, 1993 SCC (CRI) 551 1993 SCC (SUPP) 2 341, 1993 SCC (SUPP) 2 341**

**Bench: M.N. Venkatachaliah, P.B. Sawant, N.P. Singh**

### **ORDER**

1. Under Article 136 of the Constitution of India, Rumana Begum, wife of Mohammad Ishaq, seeks special leave to appeal to this Court from the order dated 22.4.1992 of the High Court of Andhra Pradesh, dismissing her Writ Petition No. 4072 of 1992 assailing her husband's detention under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Act). We have heard learned Counsel on both sides. Special leave granted.

2. On 30th August, 1991, the appellant's husband was detained pursuant to the order of detention made by Secretary to Government, Government of Andhra Pradesh, General Administration Department, Hyderabad, in exercise of powers under Section 3(1) of the Act. This detention was challenged before the High Court on grounds, inter alia, that the representation made by the detenu to the Governor of Andhra Pradesh on 6.10.1991 for the revocation of the order of detention was not disposed of expeditiously, but was delayed by over 174 days in transmitting the representation to the State Government and the representation came to be disposed of only on the 7th of April 1992. The appellant urged that the representation made to the Governor is for intents and purposes one made to the State Government. The delay in considering and disposing of the representation it was alleged violated the detenu's constitutional and legal rights which require the representation to be considered and disposed of with reasonable despatch. The Detaining Authority, however, contested the Writ Petition and took the stand that the representation dated 6.10.1991 was not eligible to be treated as a statutory representation or as one made in exercise of the constitutional rights, but ought to be considered as a mere non-statutory representation in view of the fact that, as urged by the Detaining Authority, there were three earlier representations made by the detenu which had been dealt with and disposed of expeditiously by the appropriate authority. It was also urged that the representation made to the Governor was really drawing a red-herring across the path as both the detenu and his wife knew that the representation had to be addressed to the Chief Secretary to Government and that the representation submitted to the Governor was a subterfuge resorted to by the detenu.

3. The contentions urged did not commend themselves to the High Court. The High Court said:

No doubt, as pointed out by the learned Counsel for the petitioner, a detenu can make a representation to the Governor because under the General Clauses Act the State Government means the Governor and the Governor is bound to forward the

representation to the concerned authorities in the State Government. But, the contention in this case is that the petitioner and her husband knowing fully well that the representation has to be sent to the Chief Secretary of the Government have deliberately sent the representation to the Governor on 6.10.1991 to create a ground for delay and to seek the detention order quashed on that ground.... From these circumstances, it is obvious that the petitioner had sent the representation to the Governor on 6.10.1991 deliberately though she and the detenu were aware that the representation should be sent to the Chief Secretary, with a view to create a ground for challenging the detention on the ground of delay in the disposal of the representation....

The Governor's Secretariat may be receiving several representations every day and obviously the Governor's Secretariat was not aware of the urgency in a representation sent regarding preventive detention. It is only after the writ petition was filed the Government came to know about the representation sent by the petitioner to the Governor and then sent a reminder to the Governor's Secretariat and as soon as it is received by the Government on 31.3.1992, it was disposed of expeditiously by 7.4.1992. Therefore, the petitioner knowing fully well that the representation has to be sent to the Chief Secretary, deliberately sent to the Governor and there is some delay on the part of the Governor's Secretariat in forwarding the same to the State Government but the Government after receiving the representation disposed of the same without any delay....

4. We may here advert to the other defence that the representation dated 6th October, 1991 was not the first representation and as the earlier representations had been disposed of with promptitude the delay in dealing with this repetitive and non-statutory representation does not vitiate the detention. We are afraid that none of the so-called earlier representations did really raise the question of the validity of the order of detention, nor contain a prayer for its revocation. In one of them the detenu aired a grievance that the records of medical treatment of his son who had undergone a serious cranial surgery had not been restored. Another representation pertained to matters other than the validity of the detention.

5. We have been taken through the contents of the earlier representations relied upon by the Detaining Authority as having in effect and substance raised the validity of the detention. We are satisfied that the purport and content of the representations cannot be understood the way the Detaining Authority wants us to understand. They dealt with matters other than the validity of the detention, the first and the only representation made by the detenu which raised the question of the validity of the detention was the one made on 6.10.1991 to the Governor for consideration which was greatly delayed. The position that a representation made to the Governor must be treated as one made to the Government was rightly accepted by the High Court on the analogy of the pronouncement of this Court in *Raghavendra Singh v. Superintendent, Distt. Jail, Kanpur and Ors.* The decisions in *Kubic Darusz v. Union of India and Ors.* and *Phillippa Anne Duke v. State of Tamil Nadu and Ors.* relied by Shri G. Prabhakar, learned Counsel for the State of Andhra Pradesh, do not advance its case any further. The first case is an illustration as to how a representation would

require to be construed in favour and for the benefit of the detenu. The second case deals with a non-statutory representation, presented to the Prime Minister in a foreign country.

6. In the facts of the case it requires to be held that the first representation made by the detenu for revocation was the one made to the Governor on 6.10.1991. That, as observed earlier, was not disposed of expeditiously. There was unexplained and unreasonable delay. That itself in our opinion, vitiates the detention. It is not, therefore, necessary to consider the other contentions urged.

7. Accordingly, this appeal is allowed; the order of the High Court of Andhra Pradesh in W.P. No. 4072/92 under appeal is set aside; the said writ petition is allowed; the order of detention dated 30.8.1991 is quashed and the detenu, Mohamad Ishaq, is directed to be set at liberty forthwith, unless required in any other case.