Supreme Court of India
Licil Antony vs State Of Kerala & Anr on 15 April, 1947
Author: .....J.
Bench: Chandramauli Kr. Prasad, Pinaki Chandra Ghose

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._872 OF 2014
(@SPECIAL LEAVE PETITION (CRL.) No.988 of 2014)

LICIL ANTONY ..... APPELLANT

VERSUS

STATE OF KERALA & ANR. .... RESPONDENTS

J U D G M E N T

Chandramauli Kr. Prasad Petitioner Licil Antony happens to be the wife of detenu Antony Morris and aggrieved by the order dated 6th of November, 2013 passed by a Division Bench of the Kerala High Court in Writ Petition (Criminal) No. 412 of 2013 declining to quash the order of detention passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as "COFEPOSA", has preferred this special leave petition.

Leave granted.

Shorn of unnecessary details, facts giving rise to the present appeal are that on the allegation that the appellant's husband Antony Morris, hereinafter referred to as the detenu, intended to export red sanders through International Container Trans-shipment Terminal, was arrested on 17th of November, 2012 by the Directorate of Revenue Intelligence and a case was registered against him. He was released on bail by the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. The Directorate of Revenue Intelligence, hereinafter referred to as 'DRI', by its letter dated 17th of December, 2012 made recommendation for the detenu's detention besides two others under Section 3 of the COFEPOSA alleging that they are part of a well- organised gang operating in smuggling of red sanders in India and abroad. The proposals of the DRI, hereinafter referred to as the sponsoring authority, were received in the office of the detaining authority on 21st of December, 2012. The detaining authority after scrutiny and evaluation of the proposals and the documents, decided on 25th of January, 2013 to place the proposals before the screening committee and forwarded the same to it on 1st of February, 2013. The proposals of the detenu's detention along with two others were considered by the screening committee which concurred with the recommendation of the sponsoring authority. The detaining authority considered the facts and

circumstances of the case as also the reports of the sponsoring authority and the screening committee and other materials running over 1000 pages and took decision on 15th of April, 2013 to detain the detenu and two others. Draft grounds for detention in English were approved on 19th of April, 2013 and as one of the detenue was a Tamilian, time till 3rd of May, 2013 was taken for translation of the documents relied on in Malyalam and Tamil and for preparation of sufficient number of copies. Ultimately, with a view to prevent the detenu from engaging in the smuggling of goods, the detaining authority passed order of detention dated 6th of May, 2013. It was served on the detenu on 11th of June, 2013. The grounds of detention dated 8th of May, 2013 were made available to the detenu on 13th of June, 2013. The detenu was produced before the Advisory Board, which found sufficient grounds for his continued detention and, accordingly, the detaining authority issued order dated 24th of August, 2013, and confirmed the order of detention for a period of one year with effect from 11th of June, 2013, the date of detention.

It is relevant here to state that detenu was earlier arrested in connection with Kallur Police Station FIR No.57 of 2012 under Section 29 and 32 of A.P. Forest Act, 1937; Section 29 of the Wildlife Protection Act, 1972; Section 55(2) of the Biological Diversity Act, 2002; Rule 3 of the A.P. Sandalwood and Red Sanders Wood Transit Rules, 1969 and Section 379 of the Indian Penal Code. Judicial Magistrate (First Class), Pakala by order dated 30th of November, 2012 released him on bail and while doing so directed him to appear before the concerned police station on specified days.

The appellant challenged her husband's detention before the High Court in a writ petition. By the impugned order the same has been dismissed.

Mr. Raghenth Basant, learned counsel for the appellant submits that there is inordinate delay in passing the order of detention and that itself vitiates the same. He points out that the last prejudicial activity which prompted the detaining authority to pass the order of detention had taken place on 17th of November, 2012; whereas the order of detention has been passed on 6th of May, 2013. He submits that delay in passing the order has not been explained.

Mr. M.T. George, learned counsel appearing on behalf of the respondents does not join issue and admits that the sponsoring authority wrote about the necessity of preventive detention in its letter dated 17th of December, 2012 for the prejudicial activity of the detenu which had taken place on 17th of November, 2012 and the order of detention was passed on 6th of May, 2013 but this delay has sufficiently been explained. He submits that mere delay itself is not sufficient to hold that the order of detention is illegal.

We have given our thoughtful consideration to the rival submissions and we have no doubt in our mind that there has to be live link between the prejudicial activity and the order of detention. COFEPOSA intends to deal with persons engaged in smuggling activities who pose a serious threat to the economy and thereby security of the nation. Such persons by virtue of their large resources and influence cause delay in making of an order of detention. While dealing with the question of delay in making an order of detention, the court is required to be circumspect and has to take a pragmatic view. No hard and fast formula is possible to be laid or has been laid in this regard. However, one thing is clear that in case of delay, that has to be satisfactorily explained. After all, the

purpose of preventive detention is to take immediate steps for preventing the detenu from indulging in prejudicial activity. If there is undue and long delay between the prejudicial activity and making of the order of detention and the delay has not been explained, the order of detention becomes vulnerable. Delay in issuing the order of detention, if not satisfactorily explained, itself is a ground to quash the order of detention. No rule with precision has been formulated in this regard. The test of proximity is not a rigid or a mechanical test. In case of undue and long delay the court has to investigate whether the link has been broken in the circumstances of each case.

There are a large number of authorities which take this view and, therefore, it is unnecessary to refer to all of them. In the case of Adishwar Jain v. Union of India (2006) 11 SCC 339, this Court observed as follows:

> "8. Indisputably, delay to some extent stands explained. But, we fail to understand as to why despite the fact that the proposal for detention was made on 2-12-2004, the order of detention was passed after four months. We must also notice that in the meantime on 20-12-2004, the authorities of the DRI had clearly stated that transactions after 11-10-2003 were not under the scrutiny stating:
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> "... In our letter mentioned above, your office was requested not to issue the DEPB scripts to M/s Girnar Impex Limited and M/s Siri Amar Exports, only in respect of the pending application, if any, filed by these parties up to the date of action i.e. 11-10-2003 as the past exports were under scrutiny being doubtful as per the intelligence received in this office. This office never intended to stop the export incentives occurring to the parties, after the date of action i.e. 11-10-2003. In the civil (sic) your office Letter No. B.L.-2/Misc. Am-2003/Ldh dated 17-5-2004 is being referred to, which is not received in this office. You are, therefore, requested to supply photocopy of the said letter to the bearer of this letter as this letter is required for filing reply to the Hon'ble Court."
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> 9. Furthermore, as noticed hereinbefore, the authorities of the DRI by a letter dated 28-2-2005 requested the bank to defreeze the bank accounts of the appellant.
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> 10. The said documents, in our opinion, were material.
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> 11. It was, therefore, difficult to appreciate why order of detention could not be passed on the basis of the materials gathered by them.

12. It is no doubt true that if the delay is sufficiently explained, the same would not be a ground for quashing an order of detention under COFEPOSA, but as in this case a major part of delay remains unexplained." Further, this Court had the occasion to consider this question in the case of Rajinder Arora v. Union of India, (2006) 4 SCC 796 in which it has been held as follows:

> "20. Furthermore no explanation whatsoever has been offered by the respondent as to why the order of detention has been issued after such a long time. The said

question has also not been examined by the Authorities before issuing the order of detention.

21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in T.A. Abdul Rahman v. State of Kerala (1989) 4 SCC 741 stating: (SCC pp. 748-49, paras 10-

11) "10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

22. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all." Bearing in mind the principles aforesaid, we proceed to examine the facts of the present case. Prejudicial activity which prompted the sponsoring authority to recommend for detention of the detenu under COFEPOSA had taken place on 17th of November, 2012. The allegation related to export of red sanders through International Container Trans- shipment Terminal. The sponsoring authority took some time to determine whether the prejudicial activity of the detenu justifies detention. During the inquiry it transpired that the detenu and two others were part of a well-organised gang operating in smuggling of red sanders in India and abroad. It is only thereafter that on 17th of December, 2012, the sponsoring authority made recommendation for the detention of the detenu and two others under Section 3 of the COFEPOSA. As the allegation had international ramification, the time taken by the sponsoring authority in making recommendation cannot be said to be inordinate. The proposals of the sponsoring authority were received in the office of the detaining authority on 21st of December, 2012. As detention affects the liberty of a citizen, it has to be scrutinised and evaluated with great care, caution and circumspection. The detaining authority upon such scrutiny and evaluation

decided on 25th of January, 2013 to place the proposals before the screening committee and forwarded the same to it on 1st of February, 2013. If one expects care and caution in scrutiny and evaluation of the proposals, the time taken by the detaining authority to place the proposals before the screening committee cannot be said to have been taken after inordinate delay. The meeting of the screening committee took place on 1st of February, 2013 in which the cases of the detenu and the two others were considered. The screening committee concurred with the recommendation of the sponsoring authority. As stated by the respondents in the counter affidavit, the record of the sponsoring authority, the screening committee and other materials consisted of over 1000 pages. As the final call was to be taken by the detaining authority, it was expected to scrutinise, evaluate and analyse all the materials in detail. After the said process, the detaining authority decided on 15th of April, 2013 to detain the detenu and two others. The time taken for coming to the decision has sufficiently been explained. After the decision to detain the detenu and two others was taken, draft grounds were prepared and approved on 19th of April, 2013. As one of the detenue was a Tamilian, the grounds of detention were translated in Malyalam and Tamil which took some time and ultimately sufficient number of copies and the documents relied on were prepared by 3rd of May, 2013. Thereafter, the order of detention was passed on 6th of May, 2013.

From what we have stated above, it cannot be said that there is undue delay in passing the order of detention and the live nexus between the prejudicial activity has snapped. As observed earlier, the question whether the prejudicial activity of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live link between the prejudicial activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated. We must bear in mind that distinction exists between the delay in making of an order of detention under a law relating to preventive detention like COFEPOSA and the delay in complying with procedural safeguards enshrined under Article 22(5) of the Constitution. In view of the factual scenario as aforesaid, we are of the opinion that the order of detention is not fit to be quashed on the ground of delay in passing the same. The conclusion which we have reached is in tune with what has been observed by this Court in the case of M. Ahamedkutty v. Union of India, (1990) 2 SCC 1. It reads as follows:

> "10..... Mere delay in making of an order of detention under a law like the COFEPOSA Act enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence, have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of the delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are stale or illusory or that there was no real nexus between the grounds and the impugned order of detention. In that case, there was no explanation for the delay between February 2, and May 28, 1987, yet it could not give

> rise to legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the order of detention." Mr. Basant, then assails the order of detention on the ground of its delayed execution. He points out that the order of detention was passed on 6th of May, 2013 whereas it was served on the detenu on 11th of June, 2013. He submits that had the detenu been absconding, the appropriate Government ought to have taken recourse to Section 7 of the COFEPOSA. Section 7 of the COFEPOSA confers power on the detaining authority to make a report to a competent Magistrate in relation to an absconding person so as to apply the provisions of Section 82, 83, 84 and 85 of the Code of Criminal Procedure. It also provides for publication of an order in the Official Gazette, directing the detenu to appear. It is an admitted position that no such report or publication was made. Accordingly, Mr. Basant submits that the order of detention is vitiated on the ground of delay in its execution also.

In support of the submission he has placed reliance on a large number of authorities. We are entirely in agreement with Mr. Basant that undue and unexplained delay in execution of the order of detention vitiates it, but in the facts of the present case, it cannot be said that such delay has occurred. As stated earlier, the order of detention dated 6th of May, 2013 was served on the detenu on 11th of June, 2013. It is expected of the detaining authority to take recourse to ordinary process at the first instance for service of the order of detention on a detenu and it is only after the order of detention is not served through the said process that recourse to the modes provided under Section 7 of the COFEPOSA are to be resorted. Here, in the present case, that occasion did not arise as the order of detention was served on the detenu on 11th of June, 2013. Therefore, in our opinion, the order of detention cannot be said to have been vitiated on this ground also.

Lastly, Mr. Basant submits that the detenu was arrested in a case at Andhra Pradesh and while granting bail, the trial court at Andhra Pradesh put following conditions:

> "7) The petitioner/accused No.4 shall appear and sign before the concerned Station House Officer in between 10.30 AM to 2.00 PM on the first week Wednesday of every succeeding month for a period till the date of filing of charge sheet or until further orders and co-operate with the Investigating Officer.

8) The petitioner/accused No.4 shall not tamper with the evidence of prosecution witnesses in any way." Mr. Basant submits that the order granting bail to the detenu and the conditions put have not been considered by the detaining authority, while passing the order of detention. He submits that an order of preventive detention deprives a citizen of his precious fundamental right of liberty and as such, the detaining authority erred in passing the order of detention without considering the same. Mr. George, however, submits that as the said order was passed by the trial court at Andhra Pradesh, it was not within the knowledge of the detaining authority. In any view of the matter, according to him, the same has no relevance in decision making process and, therefore, the omission to consider that will not render the order of detention unconstitutional. On thoughtful consideration of the rival submissions, the plea put forth by Mr. George commends us. We cannot expect the

detaining authority to know each and every detail concerning the detenu in different parts of the country. Not only this, the conditions imposed while granting bail to the detenu which we have reproduced above in no way restrains him from continuing with his prejudicial activity or the consequences, if he continues to indulge. We are in agreement with the High Court that the bail order passed by the trial court in Andhra Pradesh is not a crucial and vital document and the omission by the detaining authority to consider the same has, in no way affected its subjective satisfaction.

From the conspectus of what we have observed, we do not find any error in the order of detention and the order passed by the High Court, refusing to quash the same. In the result, we do not find any merit in the appeal and the same is dismissed accordingly.

.....J.

(CHANDRAMAULI KR. PRASAD) .....J.

(PINAKI CHANDRA GHOSE) NEW DELHI, APRIL 15, 2014.
