Chowdarapu Raghunandan vs State Of Tamil Nadu And Others on 15 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1460, 2002 (3) SCC 754, 2002 AIR SCW 1322, 2002 (4) SRJ 365, 2002 CRILR(SC&MP) 330, (2002) 3 JT 110 (SC), 2002 CRILR(SC MAH GUJ) 330, 2002 SCC(CRI) 714, 2002 (2) SCALE 638, 2002 ALL MR(CRI) 1183, 2002 (2) SLT 548, (2002) 143 ELT 26, (2002) 102 ECR 1, (2002) 2 EFR 405, (2002) 2 RAJ CRI C 493, (2002) 2 RECCRIR 241, (2002) 2 SCJ 469, (2002) 2 CURCRIR 6, (2002) 2 SUPREME 573, (2002) 2 ALLCRIR 1060, (2002) 2 SCALE 638, (2002) 44 ALLCRIC 954, (2002) 2 ALLCRILR 460, (2002) 2 CRIMES 47, 2002 (1) ANDHLT(CRI) 289 SC

Author: M.B. Shah

Bench: M.B. Shah

CASE NO.:
Writ Petition (crl.) 218 of 2001

PETITIONER:
CHOWDARAPU RAGHUNANDAN

Vs.

RESPONDENT:
STATE OF TAMIL NADU AND OTHERS

DATE OF JUDGMENT: 15/03/2002

BENCH:
M.B. Shah

JUDGMENT:

Shah, J.

Petitioner has challenged the detention order dated 28th May, 2001 passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA") with a view to prevent him from smuggling goods in future. The allegations against the petitioner in the grounds of detention are that he was holding an Indian

Passport dated 26th October, 1994 and he arrived from Singapore on 30th March, 2001 at Chennai Airport. After completing migration formalities, he collected his baggages and was proceeding to exit gate where he was intercepted by Customs Intelligence Officer on suspicion that he might be carrying any dutiable goods. From his possession, Panasonic GD 92 Cellphones with accessories 100 Nos., Nokia 3310 Cellphones with accessories 50 Nos., Siemens C35 Cellphones with accessories 50 Nos., Nokia cellphone adapter 100 Nos., Nokia 5110 cellphone batteries 100 Nos. were recovered. According to the grounds of detention, the value of the seized goods was Rs.13,90,000/-. His Boarding Pass and Customs Declaration Card were also seized. It is alleged that in his voluntary statement he admitted that he had visited Singapore twice earlier as a 'tourist'; he had gone to Singapore on 29th March, 2001 and that his friend helped him in procuring cellphones to market them in India for monetary consideration.

Petitioner was arrested on 31st March, 2001 and his bail application was rejected by the trial court. Thereafter, he sent a representation dated 24th April, 2001 to the Commissioner of Customs, Chennai through the Superintendent, Central Prison, Chennai, stating that the seized goods did not belong to him. Thereafter, on 28th May, 2001, the impugned detention order was passed.

At the time of hearing of the matter, learned counsel for the petitioner submitted that there was total non-application of mind by the detaining authority before passing the impugned order; relevant record was not placed before the detaining authority and that there was delay in considering the representations. For the first ground, it has been contended that the petitioner was not involved in any smuggling activities and for the time being presuming that goods seized were of the petitioner it would hardly be a ground for detaining him under the COFEPOSA. The detaining authority has not considered the fact that it was the contention of the petitioner all throughout that he had not brought the said cellphones. For that purpose, he submitted that the boarding card was his but the baggages having no tags were not belonging to him. In any set of circumstances for the alleged incident, criminal prosecution was pending against him and his bail applications were rejected, therefore, there was no necessity of detaining the petitioner.

As against this, learned counsel for the respondents submitted that even though it is a solitary incident, goods worth Rs.13 lakhs and above were found from the possession of the petitioner and that it has been admitted by him that previously also he had gone twice to Singapore, therefore, subjective satisfaction of the detaining authority cannot be said to be, in any way, arbitrary.

Before deciding the contention raised by the petitioner, it is to be reiterated that the Preventive Detention is not a punitive Act and it is not alternative to criminal trial under the law. It does not empower the authority to punish a person without trial. Its purpose is to prevent a person from indulging in activities, such as smuggling and/or such other anti social activities as provided under the Preventive Detention Law.

In Mohd. Subrati alias Mohd. Karim v. State of West Bengal [(1973) 3 SCC 250, 256] this Court observed thus:

> "It must be remembered that the personal liberty of an individual has been given an honoured place in the fundamental rights which our Constitution has jealously protected against illegal and arbitrary deprivation, and that this Court has been entrusted with a duty and invested with a power to enforce that fundamental right."

Dealing with solitary act in a preventive detention matter, Krishna Iyer J. in Anil Dey v. State of West Bengal [(1974) 4 SCC 514] observed as under: -

> "A swallow cannot make a summer ordinarily, and a solitary fugitive act of criminality may not normally form the foundation for subjective satisfaction about the futuristic judgment that the delinquent was likely to repeat his offence and thereby prejudicially affect the maintenance of supplies and services essential to community."

The Court finally dismissed the matter after considering grounds of detention but observed thus:-

> "But to jail a man on subjective satisfaction of possible prejudicial activity and to forget about him after the statutory formalities have been performed is not fair to the constitutional guarantees. It is appropriate for a democratic government not merely to confine preventive detention to serious cases but also to review periodically the need for the continuance of incarceration."

It appears that the aforesaid aspect to review periodically the need for the continuance of incarceration is forgotten.

Similarly, in Debu Mahato v. State of West Bengal [(1974) 4 SCC 135 at page 138] this Court observed as under: -

> "We fail to see how one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking. No criminal propensities for wagon breaking could reasonably be inferred from a single solitary act of wagon breaking committed by the petitioner in the circumstances of the present case. We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can

> reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. It may be easier to draw such an inference where there is a series of acts evincing a course of conduct but even if there is a single act, such an inference may justifiably be drawn in a given case. Here, however, that is not possible. We do not think that one single act of wagon breaking attributed to the petitioner was of such a character that any reasonable man could be satisfied, merely on the basis of the commission of such a solitary isolated act, that the petitioner would be likely to indulge in further acts of wagon breaking in future and in order to prevent him from doing so, he must be detained."

The aforesaid judgment was considered by the Constitution Bench in Attorney General for India and others v. Amratlal Prajivandas and others [(1994) 5 SCC 54] and it was held thus:

> "Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity."

The Court further observed (in para 53) thus:

> "In matters touching liberty, greater care is called for on the part of the authorities exercising powers of detention."

Recently, this Court in V.C. Mohan v. Union of India & Ors. [JT 2002 (2) SC 365] held as under:

> "The accepted methodology of governmental working should always be in tune with the concept of fairness and not de hors the same a person is being placed under detention without trial and there is neither any scope for overzealous nor acting in a manner without due and proper application of mind in either of the situation law Courts should be able to protect the individual from the administrative ipse dixit. The draconian concept of law has had its departure quite some time back and rule of law is the order of the day. It is this rule of law which should prompt the law Courts to act in a manner fair and reasonable having due regard to the nature of the offences and vis--vis the liberty of the citizens."

The Court further observed thus:-

> "Preventive detention admittedly is an 'invasion of personal liberty' and it is a duty cast on the law Courts to satisfy itself in regard to the circumstances under which such a preventive detention has been orderedin the event, however, the same does not conform to the requirements of the concept of justice as is available in the justice delivery system of the country, the law Courts would not shirk of its responsibility to

> provide relief to the person concerned. The guardian-angel of the Constitution stands poised with a responsibility to zealously act as a watchdog so that injustice does not occur : Let us not be understood to mean however that there ought to be any over zealousness since the same may lend assistance to a situation which is otherwise not compatible with social good and benefit."

In the present case, it has been pointed out that the petitioner specifically made representation on 24.4.2001 to the Commissioner of Customs that the baggages without tags were not belonging to him. Same thing was contended in the bail applications which were rejected. It was submitted that other passenger travelling with the petitioner who arrived in the same flight and whose baggages were mixed up with that of the petitioner, was served with the summons by the authorities but thereafter nothing is known about him. In representation to the Commissioner, it was pointed out that he was Managing Director of Padmaja Infotech limited, a public limited company, having office at Hyderabad, Andhra Pradesh and that he had gone to Singapore regarding his company's business. He only purchased some toys and clothes for his children. As he was not having any dutiable item, he decided to go by green channel. To the officer who checked him, he informed that baggages were not belonging to him but the officer told him that he was pushing the trolley and, therefore, he without listening him opened the baggages without tags. It was also pointed out that the officer arrested him for no fault and locked him with unclaimed baggages without tags under some mistake. Hence, it is submitted that the State Government without applying its mind to the aforesaid facts and alleged solitary incident erroneously arrived at the conclusion that there was likelihood of petitioner indulging in such prejudicial activities again while on bail, even though the bail application of the petitioner was rejected.

It is true that in appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent, it was necessary to detain him. It is also settled law that an order of preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. If there is non-application of mind by the authority on this aspect, then the Court is required and is bound to protect the citizen's personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. The question, therefore, would befrom the past conduct of the petitioner as set out in the grounds of detention or other circumstances, whether reasonable inference could be drawn that he is likely to repeat such acts in the future. In the present case, past conduct of the petitioner is that he is Engineering graduate and at the relevant time he was managing director of a public limited company. There is no other allegation that he was involved in any other anti-social activities. Only allegation is that he visited Singapore twice as a 'tourist'. Admittedly, the petitioner has filed bail application in a criminal prosecution for the alleged offence narrating the fact that his so-called statement was not voluntary and was recorded under coercion. The baggages were not belonging to

him and there were no tags on the same so as to connect him with the said baggages and the crime. At the time of hearing of this matter also, it is admitted that the baggages were without any tags. It is also an admitted fact that there is nothing on record to hold that the petitioner was involved in any smuggling activity. However, the learned Additional Solicitor General submitted that in the statement recorded by the Customs Department petitioner had admitted that previously he had visited Singapore twice as a 'tourist', and, therefore, it can be inferred that the petitioner might have indulged and was likely to indulge in such activities. This submission is far fetched and without any foundation. From the fact that a person had visited Singapore twice earlier as a 'tourist', inference cannot be drawn that he was involved in smuggling activities or is likely to indulge in such activities in future. Hence, from the facts stated above it is totally unreasonable to arrive at a prognosis that the petitioner is likely to indulge in any such prejudicial activities.

In the result, the writ petition is allowed. The impugned detention order is quashed and set aside. The petitioner be released forthwith if not required in any other case.

.J. (M.B. SHAH) March 15, 2002.