

STATE OF TAMIL NADU & ANR.
v.
ABDULLAH KADHER BATCHA & ANR.
(Criminal Appeal No. 231 of 2001)

NOVEMBER 12, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ.]

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 – s.3(1)(i) – Order of detention – Representation by detenu and request for supply of certain documents – Rejected by State Government – Writ petition by detenu – Allowed by High Court – On appeal, Held: It is the duty of Court to examine whether the detenu was deprived of making an effective representation in absence of documents – Primarily copies of documents which form ground of detention are required to be supplied – High Court did not examine the effect on detenu on account of non supply of the documents.

An order of detention was passed on 11.8.1999 under s.3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. High Court quashed the order of detention.

Detenu made a representation and also requested for supply of some documents and copy of order passed by High Court. State Government rejected the request and indicated that documents were not relied upon for the purpose of detention. Copy of order of High Court was however supplied.

High Court allowed the writ petition holding that in view of non supply of documents, a protection available under Article 22(5) of the Constitution of India was

A violated.

In the instant appeal, it was contended for the appellants that the documents in question which were requested by the detenu to be supplied had nothing to do with the order of detention.

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Partly allowing the appeal, the Court

C HELD: 1.1. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents. [Para 7] [1103-H; 1104-A]

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Radhakrishnan Prabhakaran v. State of T.N. and Ors. (2000) 9 SCC 170; *J. Abdul Hakeem v. State of T.N. and Ors.* (2005) 7 SCC 70 and *Sunila Jain v. Union of India and Anr.* (2006) 3 SCC 321, relied on.

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1.2. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would cause prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced. The High Court has lost sight of the relevant factors and, therefore, the impugned order of the High Court is clearly unsustainable and is therefore set aside. [Paras 8 and 9] [1104-B-D]

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State of Tamil Nadu & Anr. v. Alagar (2006) 7 SCC 540, A
relied on.

2. Considering the nature of the order of detention which is essentially preventive in character, it would be appropriate for the State Government and the detaining authority to consider whether there is any need to take the detenu back to detention for serving the remainder of the period of detention which was indicated in the order of detention. [Para 11] [1105-B-C] B

Case Law Reference: C

(2000) 9 SCC 170	relied on	Para 5
(2005) 7 SCC 70	relied on	Para 6
(2006) 3 SCC 321	relied on	Para 6
(2006) 7 SCC 540	relied on	Para 10

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 231 of 2001.

From the final Order dated 30.3.2000 of the High Court of Judicature at Madras in Habeas Corpus Petition No. 1754 of 1999. E

T.L.V. Iyer, Sr. Adv. V.G. Pragasam for the Appellants.

K.K. Mani, C.K.R. Lenin Sekar, Mayur R. Shah, Rajni Singh and B. Krishna Prasad for the Respondents. F

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Madras High Court quashing the order of detention passed under the provisions of Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') in respect of one Abdullah G
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- A Kadher Batcha (hereinafter referred to as the 'detenu') who was directed to be detained. The order of detention was passed on 11.8.1999. The detenu made a representation on 4.9.1999. It is the stand of the detenu that he had sought for some documents including the judgment passed by the High Court
- B in Writ Petition No.13514 of 1999 which was dismissed on 10.8.1999. The Writ Petition was filed by the detenu on the apprehension that he may be detained under the Act. In the representation the detenu made a reference to the judgment dated 10.8.1999 and also to the writ petition. It was pointed out
- C in paragraph 7(x) that in order to make the effective and meaningful representation, the detenu requires the copy of the order passed by the High Court. A request was made to supply the copy at an early date. It was stated in the representation that the detenu did not know English and, therefore,
- D representation which was made in English language was prepared under his instruction and was read over and explained to him in Tamil. State Government rejected the request by communication dated 21.9.1999 and it was indicated that the documents were not relied upon for the purpose of detention. Copy of the order of the writ petition was however supplied.
- E High Court observed that in view of non supply of the documents a protection available, under Article 22(5) of the Constitution of India, 1950 (in short the 'Constitution'), was violated.
- F 2. The High Court further held that in the absence of the required documents the detention was rendered illegal and accordingly the habeas corpus petition was allowed.
3. In support of the appeal it has been stated that the documents in question which were requested by the detenu to be supplied had nothing to do with the order of detention. It was pointed out that there is a difference between the narration of facts and the ground of detention. Undisputedly, the copy of the order in the writ petition which was sought was in fact supplied though at a later point of time. It is not understood as to how
- H the order passed in writ petition which was dismissed can be

a document about which the detenu had no knowledge. The High Court erroneously came to the conclusion that the relied upon documents were not supplied. Actually, the factual scenario is just to the contrary.

4. As rightly contended by learned counsel for the State the documents were read over and an endorsement to that effect has been made by the detenu.

5. In *Radhakrishnan Prabhakaran v. State of T.N. and Ors.* (2000 (9) SCC 170, it was observed as follows:

"8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned counsel emphasised that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him."

6. The view in *Radhakrishnan Prabhakaran's* case (supra) was reiterated in *J. Abdul Hakeem v. State of T.N. and Ors.* (2005 (7) SCC 70) and *Sunila Jain v. Union of India and Anr.* (2006 (3) SCC 321).

7. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of

A the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents.

B 8. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the
C copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.

D 9. The High Court has lost sight of the relevant factors and, therefore, the impugned order of the High Court is clearly unsustainable and is therefore set aside.

E 10. In *State of Tamil Nadu & Anr. v. Alagar* (2006(7) SCC 540) it was noted as follows:

F "The residual question is whether it would be appropriate to direct the respondent to surrender for serving remaining period of detention in view of passage of time. As was noticed in *Sunil Fulchand Shah v. Union of India* [2000(3) SCC 409] and *State of T.N. v. Kethiyan Peruma* [2004(8) SCC 780] it is for the appropriate State to consider whether the impact of the acts, which led to the order of detention still survives and whether it would be desirable to send back the detenu for serving remainder period of
G detention. Necessary order in this regard shall be passed within two months by the appellant State. Passage of time in all cases cannot be a ground not to send the detenu to serve remainder of the period of detention. It all depends on the facts of the act and the continuance or otherwise of
H the effect of the objectionable acts. The State shall

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consider whether there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the present order."

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11. Considering the nature of the order of detention which is essentially preventive in character, it would be appropriate for the State Government and the detaining authority to consider whether there is any need to take the detenu back to detention for serving the remainder of the period of detention which was indicated in the order of detention. The exercise shall be undertaken within two months.

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12. The appeal is allowed to the aforesaid extent.

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Appeal partly allowed.

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