

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
ARVIND SHERGILL & ANR.

DATE OF JUDGMENT: 13/09/2000

BENCH:
S. RAJENDRA BABU, J. & D.P. MOHAPATRA, J.

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :-

L...I...T...T...T...T...T...T...T...T...T...T..J

Leave granted.

Harinder Pal Singh Shergill, the husband of respondent No. 1, was arrested on 3.8.1998 by the Customs Authorities on the suspicion that he was in possession of foreign currency of 66217 US Dollars at Sahar International Airport, Mumbai and a statement made by him under Section 108 of the Customs Act was recorded. For seizure of the foreign currency a Panchnama was drawn. Then the said Shergill was produced before the Chief Metropolitan Magistrate, Mumbai, on 4.8.1998 who remanded him to judicial custody till 10.8.1998. Thereafter, the said Shergill was granted bail on 14.8.1998 by the Additional Chief Metropolitan Magistrate, Mumbai. Subsequently, on 17.11.1998 application filed by the appellants for cancellation of the bail in respect of the said Shergill was dismissed. On the same date appellant No. 2 passed an order directing the detention of the said Shergill in the custody of the Central Prison, Nasik and the grounds accompanying the said order indicated that the same was made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short COFEPOSA Act) on the basis that with a view to preventing him from smuggling of goods in future it was necessary to make the order. In the grounds it was further stated that though the said Shergill was found to have indulged in a solitary incident, the organised manner in which he indulged in such activity reflected his potentiality and propensity to continue to indulge in such activities in future and, therefore, it was necessary to detain him so as to prevent him from smuggling the goods. This was challenged by wife of the said Shergill by a writ petition filed before the High Court even before the said Shergill was apprehended by the concerned authorities. In the High Court on behalf of the appellants two preliminary contentions were raised one, as to the jurisdiction of the court and, other that it was a pre-detention case and, therefore, the court should not interfere with the same. The appellants also referred to various decisions on this aspect of the matter. The High Court held against the appellants in both the points. However, in the view we propose to take in the matter, we consider it unnecessary to consider the preliminary questions raised in the case.

We turn now to the merits of the matter. The High Court noticed that Section 3 of the COFEPOSA Act is a very drastic provision as also the stand of the respondents husband that his possession of the said foreign currency was valid. However, the High Court stated that it would not like to examine the merits of the case at this juncture because the adjudication proceedings and criminal case arising under the Customs Act are still pending. The High Court further observed as follows :-

It is not the case of the Union of India that the husband of the petitioner earlier had been taking out the currency to the foreign lands. Whether for a solitary act, even if it is assumed for the sake of arguments as correct, would it be proper on the part of the U.O.I. to invoke the provisions of Section 3(1) of the COFEPOSA Act. In this view of this Court, it may not be worthwhile as it defeats the very object of the Act which is preventive in nature. If the husband of the petitioner has committed a substantive offence, that offence should be tried by a competent court of jurisdiction but if in the adjudication proceedings, the husband of the petitioner is in position to explain the possession of the currency, it will have a direct bearing on the complaint which has been filed by the authorities before the Chief Metropolitan Magistrate, Mumbai. In the view of this court, the impugned order has been passed in haste without application of mind as to whether the impugned act attributed to the husband of the petitioner was, in fact, with the object of conservation and augmentation of foreign exchange.

Therefore, this Court is of the opinion that the impugned detention order, Annexure P-7 with the grounds of detention, cannot be sustained in the eyes of law and has to be quashed and I order accordingly.

The High Court has virtually decided the matter as if it was sitting in appeal on the order passed by the detaining authority. Action by way of preventive detention is largely based on suspicion and the court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist warranting the restraint on a person. The language of Section 3 clearly indicates that the responsibility for making a detention order rests upon the detaining authority who alone is entrusted with the duty in that regard and it will be a serious derogation from that responsibility if the court substitutes its judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded. The court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent the detenu from engaging in smuggling activity. The said satisfaction is subjective in nature and such a satisfaction, if based on relevant grounds, cannot be stated to be invalid. The concerned authorities have to take note of the various facts including the fact that this was a solitary incident in the case of the detenu and that he had been granted bail earlier in respect of which the application for cancellation of the same was made but was rejected by the court. In this case, there has been due application of mind by the concerned authority to that aspect of the matter as we have indicated in the course of narration of facts. Therefore, the view

taken by the High Court in the circumstances of the case cannot be sustained. However, the learned counsel for the respondent submitted that the order of detention was made on 17.11.1998, whereas the writ petition was filed on 21.4.1999 and order of stay was passed on the same date and subsequently that order continued till the disposal of the matter on 4.8.1999. Thus, he submitted that the facts upon which detention had been ordered and the actual detention not being effected till today, the nexus thereto has snapped and in the light of the decision of this Court in Sunil Fulchand Shah v. Union of India & Ors., 2000 (3) SCC 409, it would not be appropriate for this Court to direct detention of the husband of the respondent now. A bench of Five Judges of this Court examined this matter and majority of Judges held that a detenu need not be sent back to undergo the remaining period of detention after a long lapse of time when even the maximum prescribed period intended in the order of detention has expired, unless there is still a proximate nexus between the period of detention prescribed when the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the appellate order and the State is able to satisfy the court about the desirability of further or continued detention. It was also made clear therein that where a long time has not lapsed or the period of detention initially fixed in the order of detention has also not expired, the detenu may be sent back to undergo the balance period of detention. Therefore, in the present case, what we have to look is whether any long period has lapsed as it has happened in Sunil Fulchand Shahs case (supra) wherein the petitioner was directed to be detained for a period of one year with effect from 4.7.1986 and the said period of one year expired on 3.7.1987 and the matter was taken upon for hearing only on 16.2.2000. In the circumstance, when the period of detention itself had expired 13 years earlier, then this Court came to the conclusion as aforesaid. However, this is not the position in the present case at all. Husband of the respondent evaded arrest as is obvious and obtained an interim order from the High Court which was in force till the disposal of the writ petition and thereafter on quashing of the detention order question of detention made did not arise now. Therefore, we do not think that it would be appropriate to state that merely by passage of time the nexus between the object for which the husband of the respondent is sought to be detained and the circumstances in which he was ordered to be detained has snapped. However, we make it clear that if those circumstances did not exist, then it would be appropriate for the Government to revoke the order of detention and, if still certain circumstances as apprehended in the order of detention exist, it will be open to the Government to enforce the same. Making this position clear, we allow this appeal and set aside the order made by the High Court.