RATTAN SINGH ETC. ETC.

v.

STATE OF PUNJAB & ORS. ETC. ETC.

October 22, 1981

[Y.V. CHANDRACHUD, C.J., A. VARADARAJAN AND AMARENDRA NATH SEN, JJ.]

Conservation af Foreign Exchange and Prevention of Smuggling Activities Act 1974—Petitioner's representation to Central Government submitted through Jail Superintendent not forwarded—Effect of—Scope of power of Central Government under section 11(1).

The petitioner, who was detained under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 made (on April 19, 1981) through the Jail Superintendent representations simultaneously to the State Government as well as the Central Government against the order of his detention. In his petition under Article 32 of the Constitution he contended that the failure of the Central Government to consider his representation inspite of the long passage of time had rendered his detention illegal.

The Jail Superintendent in his affidavit stated that the representation was forwarded to the State Government. The State Government after considering his representation rejected it.

Allowing the petitions

HELD : The detention is illegal. [1012 F]

The petitioner had been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. Laws of preventive detention afford only a modicum of safeguards to person detained under them and if freedom and liberty are to have any meaning in our democratic set up it is essential that at least those safeguards are not denied to the detenu. If the power conferred on the Central Government by section 11(1) of the Act to revoke an order of detention even if it was made by the State Government or its officers is to be real and effective, it must imply the right in a detenu to make a representation to the Central Government against the order of detention. In the instant case the failure on the part either of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government has deprived him of the valuable right to have his detention revoked by that Government. [1012 C-F]

Tara Chand v. *State of Rajasthan*, [1980] 2 S.C.C. 321 and *Shyam Ambalal Siroya* v. *Union of India*, [1980] 2 S.C.C. 346, referred to.

ORIGINAL JURISDICTION : Writ Petition Nos. 3614 & 3647 of 1981. A

Harjinder Singh for the Petitioner.

N. S. Das Bahl and *M. S. Dhillon* for Respondent No. 1. B

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. : By this petition under Article 32 of the Constitution the petitioner challenges the validity of an order dated March 27, 1981 passed by respondent 1, the State of Punjab, under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. C

On April 19, 1981, while the petitioner was in detention, his advocate, Shri Harjinder Singh, wrote a letter to the Superintendent of Central Jail, Amritsar, enclosing therewith two representations drafted on behalf of the petitioner, one of which was addressed to D the Joint Secretary, Department of Home, Government of Punjab, Chandigarh, and the other to the Secretary, Union Ministry of Finance, Department of Revenue, New Delhi. The Jail Superintendent was requested by the aforesaid letter that the representations be forwarded to the State Government and the Central Government after obtaining the signatures of the detenu thereon. The contention E of the petitioner is that in spite of the long passage of time, the representation to the Central Government has not so far been considered by it, rendering his detention illegal.

In his counter-affidavit dated July 29, 1981, the Under Secretary to the Government of India, Ministry of Finance (Department F of Revenue), COFEPOSA Unit, New Delhi says that "no representation by or on behalf of the detenu relating to his detention has been received by the Central Government. As such, the question of any delay in the disposal of such a representation does not arise". In his affidavit dated July 21, 1981 the P.P.S. (I), Superintendent, Central Jail, Amritsar says that the representation of the detenu G Rattan Singh was forwarded to the Punjab Government. The affidavit of Smt. Shyama Mann, Joint Secretary to Government, Punjab, Home Department, Chandigarh shows that the representation of the detenu was considered by the Government of Punjab and was rejected on April 28, 1981. H

A There is no difficulty in so far as the representation to the Government of Punjab is concerned. But the unfortunate lapse on the part of the authorities is that they overlooked totally the representation made by the detenu to the Central Government. The representations to the State Government and the Central Government were made by the detenu simultaneously through the B Jail Superintendent. The Superintendent should either have forwarded the representations separately to the Governments concerned or else he should have forwarded them to the State Government with a request for the onward transmission of the other representation to the Central Government. Some one tripped somewhere and the representation addressed to the Central Government was appa- C rently never forwarded to it, with the inevitable result that the detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. May be that the detenu is a smuggler whose tribe (and how their numbers increase !) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modi- D cum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus. Section 11(1) of COFEPOSA confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and E effective, must imply the right in a detenu to make a representation to the Central Government against the order of detention. The failure in this case on the part either of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. The coutinued F detention of the detenu must therefore be held illegal and the detenu set free.

In *Tara Chand* v. *State of Rajasthan*(1), it was held by this Court that even an inordinate delay on the part of the Central Government in consideration of the representation of a detenu G would be in violation of Article 22(5) of the Constitution, thereby rendering the detention unconstitutional. In *Shyam Ambalal Siroya* v. *Union of India*(2) this Court held that when a properly addressed representation is made by the detenu to the Central Government for

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(1) [1980] 2 S.C.C. 321.
(1) [1980] 2 S.C.C 346.

revocation of the order of detention, a statutory duty is cast upon the Central Government under section 11, COFEPOSA to apply its mind and either revoke the order of detention or dismiss the petition and that a petition for revocation of an order of detention should be disposed of with reasonable expedition. Since the representation was left unattended for four months, the continued detention of the detenu was held illegal. In our case, the representation to the Central Government was not forwarded to it at all.

These then are our reasons for the order dated October 1, 1981 whereby we directed that the detenu be released,

Writ Petition No. 3647 of 1981.

For the reasons given above in Writ Petition No. 3614 of 1981, this Petition must also succeed and the detenu set at liberty as directed in our Order dated October 1. It was on July 2, 1981 that the detenu made a representation to the Central Government through the Superintendent of Jail, Amritsar, and it is not denied that the representation has still not been considered by that Government. The counter-affidavit of the Under Secretary to the Government of India shows that the representation made by the detenu was not forwarded at all to the Central Government which explains the statement in the affidavit that no representation was received by the Central Government and that therefore the question of delay in consideration of the representation did not arise.

P.B.R. *Petitions allowed.*