

(1952) 07 GAU CK 0012

In the Gauhati High Court

Case No : Criminal Revision No. 123 of 1951

Achinta Kumar Bhattacharjee

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-07-1952

Acts Referred:

Assam Maintenance of Public Order Act, 1947 — Section 2(6), 3(6)

Citation : AIR 1953 Guw 54

Hon'ble Judges : T.V. Thadani, C.J.; Haliram Deka, J

Bench : Division Bench

Advocate : S.K. Ghose, for the Appellant; R.K. Goswami, G.A. (Jr.), for the Respondent

Final Decision : Allowed

Judgement

Thadani, C.J.—This is a revision application under the provisions of Section 439, Criminal P. C. directed against an appellate judgment passed by the learned Additional Sessions Judge, U. A. D., by which he confirmed the conviction and sentence passed by the trial Court--a Magistrate of the First Class, Silchar against the petitioner u/s 2(6)(b) of the Assam Maintenance of Public Order Act of 1947 (Act V of 1947). The sentence passed upon the petitioner was twelve months" R. I.

2. It appears that an order of detention against the petitioner was made by the Deputy Commissioner of Cachar on 5-1-49. The Deputy Commissioner, Cachar, is also the District Magistrate of Cachar and as District Magistrate, Cachar in virtue of the power delegated to him u/s 9 of the Assam Maintenance of Public Order Act, 1947 read with Section 2(1)(a), he passed the order of detention against the petitioner. In express terms the order of detention was to remain in force for a period of two months, that is to say, it was to lapse on 5th of March, 1949. It appears that on 17-1-49 the District Magistrate of Cachar resorted to the provisions of Section 2(6)(a) of the Assam Maintenance of Public Order Act, 1947 and issued a proclamation which was duly published in the Assam Gazette on

20-1-49. Mr. Goswami for the State has conceded that this proclamation issued by the District Magistrate on 17-1-49 must be disregarded as it was not a proclamation issued in accordance with law. Under Sub-section (6) of Section 2 of the Assam Maintenance of Public Order Act, 1947, if it is intended to take action under Clause (a) of Sub-section (6) of Section 2, it is the Provincial Government who is to make a report in writing of the fact, namely, that the person against whom an order of detention is made has absconded or is concealing himself to a Magistrate of the First Class having jurisdiction. Mr. Goswami concedes that no report was made in this case- by the Provincial Government in writing or otherwise to a Magistrate of the First Class. This date, namely, 17-1-49, therefore, must be omitted from consideration altogether.

3. The next material date is 10-4-1949, on which date an order was made by the District Magistrate, Cachar,--an order which was notified in the official Gazette on 13-4-49, purporting to be made under Clause (b) of Sub-section (6) of Section 2 of the Assam Maintenance of Public Order Act, 1947. By this order, the petitioner was required to appear before the learned District Magistrate of Cachar within 15 days. The petitioner failed to appear. He was subsequently arrested some two years later in Calcutta and brought to Assam, and at a trial held by the First Class Magistrate of Silchar, he was convicted and sentenced, as we have stated in the earlier part of our judgment.

4. Mr. Ghose who appears for the applicant contends that on 10-4-49, the District Magistrate of Cachar had no jurisdiction to make an order under the provisions of Clause (b) of Sub-section (6) of Section 2 of the said Act; that it was on 10-4-49 for the first time, more than a month after the order of detention had lapsed by efflux of time, that the District Magistrate, acting as a delegate of the Provincial Government, had reason to believe that the petitioner in respect of whom the order of detention had been made had absconded or was concealing himself; reason to believe that the petitioner has absconded or is concealing himself must be entertained during the period during which the order was in force, namely, two months from 5-1-49, and not after the duration of the order had expired.

5. We are inclined to accept this contention, for, the words "so that the order cannot be executed" in Sub-section (6) of Section 2 must mean that but for the fact that the petitioner has absconded or is concealing himself, the order can be executed against him. In this case, on 10-4-49, the date on which the District Magistrate, acting on behalf of the Provincial Government, came to believe that the petitioner had absconded or was concealing himself, the order itself had lapsed and could not possibly have been executed against the petitioner--not because he had absconded or was concealing himself, but because it was not in force and, therefore, could not be executed. To put it shortly, once the duration of the order of detention has expired, the authorities competent to act under the Assam Maintenance of Public Order Act, 1947, are debarred from making any order under the provisions of the Act, the effect of which is to revive a lapsed

order. The order of detention not being in force on 10-4-49, the District Magistrate was incompetent to act on that day under any of the provisions of the Assam Maintenance of Public Order Act, 1947. Mr. Goswami for the State contends that for the purposes of an order under Sub-section (6) of Section 2, it is immaterial whether the order of detention was in force on the date on which the order under Sub-section (6) of Section 2 was made. We are unable to accept this contention. If an order under Sub-section (6) of Section 2 of the Assam Maintenance of Public Order Act, 1947 can be made irrespective of the fact whether the order of detention is in force or not, there was no need to add the words "so that the order cannot be executed" in Sub-section (6) of Section 2. The words "so that the order cannot be executed" have advisedly been put in the present tense so as to connect the order made under Sub-section (6) of Section 2 with an order of detention which is in force, but which cannot be executed because the person against whom the order is in force has absconded or is concealing himself. In this view, we set aside the conviction and sentence passed upon the petitioner. He will be released, if not otherwise liable to be detained. His bail bond will be cancelled.

6. We wish to point out that the sentence of a year's imprisonment for failure to appear in answer to the notification which we have characterised as without jurisdiction, was unduly severe. The detention proposed was for a period of two months only. The sentence of twelve months' imprisonment is the maximum prescribed under the Act for failure to appear in answer to the notification. We think the Courts below were not justified in passing the maximum sentence in the circumstances of this case. A sentence of a month or so, or even less would have served the ends of justice.

7. In the result, the application is allowed. The Rule is made absolute.

Deka, J.

8. I agree.