
(2009) 07 JH CK 0053
In the Jharkhand High Court

Amalesh Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2009) 07 JH CK 0053

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—While the petitioner was in jail custody at Jamshedpur in connection with Sakshi P.S. case No. 240 of 2007, he was served with an order dated 20.10.2008 (Annexure 1) passed u/s 12 (2) of the Jharkhand Control of Crimes Act, 2002 (hereinafter referred to as the Act) by the District Magistrate, East Singhbhum, Jamshedpur, respondent No. 4 on 21.10.2008 along with the grounds of detention whereby and whereunder the order of detention was passed for a period of 12 months. Subsequently, the State Government, vide its order dated 1.11.2008 (Annexure 2) approved the order of detention in exercise of power conferred u/s 12(3) of the Act, copy of which was also served upon the petitioner. Thereupon the petitioner filed his representation on 20.11.2008 before the Secretary, Department of Home, Government of Jharkhand, Ranchi, respondent No. 2 with a prayer to revoke the order of detention which was rejected by the State Government, vide order dated 2.12.2008 (Annexure 4). Thereafter the order of detention was confirmed by the State Government in exercise of power u/s 21(1) and 22 of the Act, vide its order dated 17.12.2008 (Annexure 5), copy of which was served upon the petitioner and under this situation, the order of detention effective for a period of 12 months as contained in memo No. 1994/Law/C dated 20.10.2008 (Annexure 1) and also the order dated 17.12.2008 under which the order of detention has been confirmed by the State Government were sought to be quashed on various grounds.

2. Learned Counsel appearing for the petitioner submits that the District Magistrate, East Singhbhum, Jamshedpur, respondent No. 4 while passing the order of detention in terms of Section 12(2) of the Act has based his satisfaction on four grounds and besides that, three grounds, namely, Sidgora P.S. case No. 60 of 2004, Sonari P.S. case No. 12 of 2004 and Sakchi P.S. case No. 14 of 2003 have also been taken into consideration but in those cases, the petitioner had already been acquitted of the charges and so far other four cases are concerned, one of them is Sidhgora P.S. case No. 49 of 2007 which is an outcome of business rivalry whereas in Sakchi P.S. case No. 240 of 2007, the petitioner has never been alleged directly to have committed an offence of murder and the third one is a simple case of assault and as such, the petitioner can never be said to be anti-social element in terms of Section 2(d) of the Act and moreover, the act of the petitioner was never prejudicial to the public order or tranquility and as such, the order of detention can certainly be said to have been passed without application of mind which proposition gets strengthened further from the fact that the detaining authority also took into consideration those cases in which the petitioner had already been acquitted and as such, this ground alone is sufficient to hold the order of detention to be bad.

3. Learned Counsel in support of his submission has referred to a decision rendered in a case of Smt. Bimla Dewan v. Lieutenant-Governor of Delhi 1982 SCC 484.

4. Learned Counsel appearing for the petitioner further submits that while the detention order was passed, the petitioner was in jail custody and as such, the order of detention should have been passed in compelling necessity satisfaction/ reason of which should have been recorded by the respondent but since it is not there in the impugned order, it vitiates the order of detention.

5. Lastly it was submitted that the order of detention was passed on 20.10.2008 which was approved by the Government of Jharkhand on 1.12.2008 in terms of the provision as contained in Section 12(3) of the Act which is beyond 12 days from the date of making of the order and as such, the order of detention ceased to be in force and on this ground it is fit to be quashed.

6. In support of his submission learned counsel has referred to a decision rendered in a case of Jagadish Prasad Gupta Detenu Central Jail Vs. The State of Andhra Pradesh and Another, and also in a case of Kuruvilla Abraham Vs. The State of Kerala and Another, .

7. As against this, learned Counsel appearing for the State submits that the District Magistrate, East Singhbhum, Jamshedpur while passing the order of detention has taken into account the criminal act of the petitioner whereby he assaulted the informant openly in the court premises and thereby he created terror in the locality which was prejudicial to the public order and that the detention order passed u/s 12(2) has been approved by the State Government in exercise of its power u/s 12(3) within 12 days and hence, the order of detention

can never be said to be illegal.

8. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that the District Magistrate, East Singhbhum, Jamshedpur respondent No. 4 on being satisfied that the petitioner being an anti-social element, cannot be prevented from indulging in the criminal activities otherwise than the order of detention, passed the order of detention with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order. According to the District Magistrate, indulgence of the petitioner in three cases had posed threat and danger to maintenance of public order and tranquility as the petitioner allegedly assaulted the person openly and even in court premises.

9. There has been no denying of the fact that subjective satisfaction of the detaining authority is of prima importance in cases of preventive detention of a person. The Courts exercising powers of judicial review are not expected to consider the challenge to an order of detention, as if sitting as appellate Courts, weighing and reappreciating and going into the question and basis of subjective satisfaction. But at the same time, the court may not lose sight of the fact that since an order of detention in prison involves curtailment of fundamental right of liberty of citizens, freedom of movement and pursuit of normal life the authorities passing, approving and confirming the order of detention cannot claim absolute immunity in regard to the decision arrived at and it is open to the Courts to see whether there has been due and proper application of mind and all the vital and relevant materials have been noticed and considered. However, at the same time no activity of anti-social element should be allowed to pose threat and danger to maintenance of public order and tranquility. In this background, if the detention order is tested, one would find that there was ample material on record to satisfy the detaining authority to arrive at the conclusion that the acts committed by the petitioner were prejudicial to the maintenance of public order, peace and tranquility if the petitioner is enlarged on bail.

10. In this regard, it be stated that one of the grounds on which detention order has been sought to be quashed is that the detaining authority while passing an order of detention of the petitioner, who was in custody, has not recorded reason or satisfaction that the petitioner would likely to commit offence, if released on bail. But from perusal of the impugned order (Annexure 1), it does appear that the detaining authority after being satisfied with the situation that the petitioner, who is trying to come out from the jail on bail, would indulge himself in the criminal activity which would be prejudicial to the public order recorded the order of detention and as such, submission advanced in this regard does not appear to be tenable.

11. Further it be noted that the Respondent No. 4 in drawing his satisfaction has taken into consideration certain cases, reference of which has already been given, in which the petitioner had been acquitted and therefore, on the basis of the ratio laid down in a case of *Smt. Bimla Dewan v. Lieutenant-Governor of Delhi* (supra) impugned orders have been sought to be quashed as the same has

been passed without application of mind. It is true that the reference of some cases, in which petitioner is said to have been acquitted, have been given under the order of detention but that cannot be a ground for holding order of detention to be bad particularly in view of the introduction of Section 12-A in the Act in 1993 which reads as follows:

12A. Grounds of detention severable-(1) Where a person has been detained in pursuance of an order of detention whether made before or after the commencement of the Bihar Control of Crimes Act, 1981 u/s 12 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly -

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are

(i) vague,

(ii) non-existent,

(iii) non-relevant ,

(iv) not connected or not proximately connected with such person or

(v) invalid for any other reason whatsoever and it is not therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 12 with reference to the remaining ground or grounds and made the order of detention.

(b) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

12. Thus, even if reference of some cases which are nonexistent, non-relevant are there it would not make order of detention invalid. In this respect, I may refer to a decision rendered in a case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, wherein it has been held that the order of detention can be based only on one ground as even one prejudicial act can be treated as sufficient for forming the subjective satisfaction for detaining a person. It has been clarified that if three grounds of detention are there and two of the grounds for detention are either vague or irrelevant but third ground is relevant, the order of detention cannot be held to be invalid. Similar view has been reiterated in the case of Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, .

13. Under this situation, decision relied upon on behalf of the petitioner is not at all helpful to the case of the petitioner.

14. Other submission on which the order of detention has been sought to be quashed or be declared invalid is that order of detention passed u/s 12(2) needs to be approved in terms of Section 12(3) of the Act within 12 days from the date

of order but in the instant case, the order in terms of Section 12(3) has been passed on the 13th day and as such, order of detention in view of the decision rendered in a case of Jagadish Prasad Gupta v. State of Andhra Pradesh and Anr. (supra) is invalid.

15. Submission advanced in this respect is contrary to law laid down by the Hon"ble Supreme Court in a case of Jitender Tyagi Vs. Delhi Administration and another, wherein the question posed before the Hon"ble Supreme Court was that in computing the period of 12 days within which detention order passed by an officer u/s 3(2) of the National Security Act is to be approved by the State Government, the day on which the order of detention is passed, is to be excluded. The Court on taking note of the provision as contained in Sub-section (4) of Section 3 giving clear indication as to the computation of 12 days held that the period of 12 days has to be calculated after making the order of detention. Thus, it has been held that the day on which the order or detention was passed is to be excluded in computing 12 days. Similar provision as that of Sub-section (4) of Section 3 appears to be there in Bihar Control of Crimes Act in Section 12(3) and therefore, no other conclusion than what has arrived at in the aforesaid decision could be drawn and therefore, the day on which the impugned order (Annexure 1) was passed is to be excluded in computing 12 days and under this situation, the detention order can certainly be said to have been approved in terms of Section 12(3) within 12 days.

16. For the reasons discussed above, I do not find any merit in this application and hence, the impugned orders need no interference. Accordingly, this application is dismissed.