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**(2012) 03 JH CK 0137**

**In the Jharkhand High Court**

**Case No : Writ Petition (Cri) No. 258 of 2011 (DB)**

Baliram Yadav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 28-03-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2012) 3 JCR 162**

**Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J**

**Bench : Division Bench**

**Advocate : Rajeeva Sharma and Mithilesh Singh, for the Appellant; Ajit Kumar, AAG, for the State, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

1. This writ application under Article 226 of the Constitution of India has been filed for quashing the orders of detention of the petitioner under Jharkhand Control of Crimes Act. 2002 [the Act for short]. Mr. Rajeeva Sharma learned senior counsel appearing for the petitioner submitted as follows:

- (i) The order of detention was not been approved within twelve days;
- (ii) Approval by the Chief Minister is not the approval of the Government in view of the judgment of Bachhittar Singh Vs. The State of Punjab, .
- (iii) The orders suffer from non-application of mind. Even the cases in which the petitioner was acquitted, or Final Form was submitted, were relied for passing the impugned orders. Moreover such cases were registered during the years 2001-08. Thereafter only one case was registered on 15.04.2011 under the Arms Act. Moreover, two "sanhas" of May, 2011 could not be considered. The petitioner was in jail but the District Magistrate, while communicating the Order, passed order to arrest him.
- (iv) Only on the basis of one case under the Arms Act, it cannot be said that the

petitioner was a threat to public order.

(v) He lastly submitted that due to rivalry between the petitioner and one Dahu Yadav, he has been falsely implicated in the said Act under the Arms Act.

2. On the other hand, counsel for the State supported the impugned orders and referred to the counter-affidavit and the original records.

3. It appears that the order dated 27.06.2011 passed by the District Magistrate was approved on 05.07.2011 by the Chief Minister holding the portfolio of Home Ministry also. It further appears that there was some confusion whether the order was approved within twelve days or not? But it was rightly clarified on 13.07.2011 that it was within twelve days as the day on which the order of detention was passed by the District Magistrate was to be excluded [Please see (1989) SCC 653 Jitender Tyagi etc.]. Then on 16.07.2011, the communication was issued by the State Government.

Moreover, the said contentions raised by Mr. Rajeeva Sharma were also raised by him in the case of Dahu Yadav v. State of Jharkhand and others, [W.P.-H.B. (Cr.) No. 246 of 2011 (03-)] which was dismissed on 22.09.2011. Paragraph 9 of the said judgment reads as follows:

9. While replying to the argument that the approval was granted beyond the prescribed period of twelve days, the State counsel has placed Annexure-1 to the counter-affidavit which is an extract of the proceedings and noting in the file of the Home Department and the Special Officer, who approved the order on 5th July, 2011. Signature of the Chief Minister is also on the order-sheet, though the order was communicated on 16th July, 2011. The date of communication is not to be taken into consideration since the Act requires that the State Government should grant approval within twelve days.

In view of the Judgment of Dahu Yadav, it is not possible to accept the contention of Mr. Rajeeva Sharma that the detention order passed by the District Magistrate was not approved within twelve days and therefore, it expired.

4. Regarding the other contention of non-application of mind by the concerned authorities, it appears that the four cases of 2001, 2002, 2005 and 2008 were indicated to show the involvement of the petitioner in the said cases but then the case under the Arms Act has been registered in the year 2011 against him apart from the two sanhas in May, 2011. Moreover, in view of Section 12A of the Act, it is not possible to accept the said submission of Mr. Rajeeva Sharma. It further appears that the petitioner was in Sub-Jail, Sahebganj when the Order dated 29.06.2011 was passed. The District Magistrate, while passing the order, directed to keep him in Central Jail, Dumka but while communicating the order, the District Magistrate, it appears, inadvertently used the word "arrest" in the order.

5. In the case of Arun Ghosh Vs. State of West Bengal, , relied by Mr. Sharma, the position was different. In that case, all acts were directed against a particular family. It was also observed in that case that there is no formula by which the

case of public order and law and order can be distinguished. In our opinion the judgment of Aran Ghosh (supra) is of no help to the petitioner.

6. After hearing the parties at length and carefully going through the records of the present case and the case of Dahu Yadav (supra), it appears that all the contentions raised by Mr. Rajeeva Sharma in the present case were also raised by him in the said case. The facts and circumstances of both the cases are also similar. In other words, the present case is fully covered by the judgment of Dahu Yadav (supra) whose writ petition involving the similar questions, was dismissed. We are not persuaded to take a different view. In the result, there is no merit in the writ petition and it is accordingly, dismissed.