
(1974) 07 RAJ CK 0013
In the Rajasthan High Court

Banwarilal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-07-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1975) CriLJ 1450 : (1974) RLW 380 : (1974) 7 WLN 518 : (1974) 7 WLN 499

Hon'ble Judges : V.P. Tyagi, J;J.P. Jain, J

Bench : Division Bench

Judgement

V.P. Tyagi, J.—The detention of the petitioner u/s 3(1)(a)(iii) of the Maintenance of Internal Security Act, 1971 (hereinafter called the Act) ordered by the District Magistrate, Ganganagar on 30th of May, 1974, has been challenged before us, inter alia, on three grounds, viz. (1) that the grounds supplied to the petitioner by the District Magistrate do not disclose the satisfaction of the detaining authority, (2) that the prosecution of the petitioner for the acts which formed the ground for detention vitiates the impugned order, and (3) that the order passed by the detaining authority is mala fide.

2. The petitioner was served with the grounds of detention by the District Magistrate on 1st of June, 1974, which contained that the petitioner, who was carrying on business of a Kirana merchant in Hanumangarh town, was convicted by the Magistrate First Class, Hanumangarh, in case No. 294/1968 on 3rd of December, 1973 for selling adulterated vinegar (Sirka) and that the sample of "dhania" taken from the petitioner's shop under the provisions of the Prevention of Food Adulteration Act was found to be adulterated by the Chemical Analyst and on that account prosecution was launched against the petitioner in a competent court for which case No. 1715 of 1974 under the Prevention of Food Adulteration Act has been registered in the court of the Judicial Magistrate, Hanumangarh and that the sample of the tea leaves taken from the shop of the petitioner did not conform to the prescribed standard as was apparent from the

report of the public analyst. On account of these actions of the petitioner, the learned District Magistrate, Ganganagar, recorded his satisfaction that it was necessary with a view to preventing Shri Banwarilal from acting in any manner prejudicial to the maintenance of supplies essential to the community to detain him. In pursuance of the order of the District Magistrate dated 30th of May, 1974, the petitioner was detained under the provisions of the said Act.

3. The challenge thrown to the validity of the impugned order by the petitioner on the grounds mentioned above may be considered by us one by one.

4. The first ground taken by Mr. Bhargava is that the impugned order and the grounds following the impugned order do not disclose the satisfaction of the detaining authority that he had entertained a reasonable apprehension that if petitioner were not detained then he is likely to commit act prejudicial to the maintenance of supplies essential to the community. From the reply filed by the State, which has been accompanied by the affidavit of the District Magistrate, Ganganagar, it is clear that the learned District Magistrate while drafting the grounds for detention did mention certain acts of the petitioner which in the opinion of the detaining authority could give rise to an apprehension that if petitioner were not detained under the provisions of the Act, he is likely to act prejudicially to the maintenance of supplies essential to the community.

5. The position of law as pronounced by the Supreme Court is very clear that the Court cannot go into the sufficiency or otherwise of the grounds which led to the detention of the petitioner. It is the subjective satisfaction of the detaining authority about the probability of the detenu acting in manner prejudicial to the maintenance of supplies essential to the community. The "sine qua non" for passing the order of detention is that the detaining authority must satisfy itself about the prejudicial acts committed by the detenu and that those acts must satisfy the authority that it is necessary under the circumstances to exercise the power under the Act to pass an order for the detention of a person whose prejudicial acts have come to the notice of the detaining authority.

6. Supreme Court in *Khagen Sarkar v. The State of West Bengal* AIR 1971 SC 2051 : 1971 Cri LJ 1456 has clearly laid down that

the satisfaction on the basis of which Section 3 enables the State Government or the District Magistrate, as the case may be, to pass an order of detention is the satisfaction of the Government or the District Magistrate and not the satisfaction of this Court. The Act being one for preventive detention, this Court would not sit in appeal against the impugned order, and therefore, would not go into the question of sufficiency or otherwise of the materials for arriving at the satisfaction by the relevant authority u/s 3.

7. In the present case, it is not denied that the petitioner was convicted for the offence of selling adulterated vinegar and that a case has been registered against the petitioner for selling adulterated "dhanial" from his shop and also tea leaves taken from his shop were found to be adulterated by the Public Analyst. From

this material the detaining authority has recorded its satisfaction for the detention of the petitioner. It cannot be said that the impugned order of detention was passed without any material. If the detaining authority was satisfied on the material produced before it to pass the impugned order, then we feel that we cannot go into the sufficiency or otherwise of this material for ordering the detention of the petitioner,

8. The second ground on the basis of which the impugned order has been challenged is that two parallel actions cannot be taken against the petitioner and detention order cannot be passed if the authorities have chosen to carry the matter to the court of law to prosecute the petitioner for the acts which formed the basis for passing the impugned order.

9. The sample of "dhania" was taken from the petitioner's shop on 6-4-1971 and it is said that when it was not found to be in conformity with the prescribed standard, a complaint was lodged against the petitioner under the Prevention of Food Adulteration Act in the year 1971, but the case was registered as case No. 17,15 of 1974 only very recently. As regards the taking of tea leaves, it is alleged that the sample was obtained from the shop of the petitioner on 18-4-1974 and after receiving the report of the Public Analyst a complaint was lodged against the petitioner under the provisions of the Prevention of Food Adulteration Act in the court of the Judicial Magistrate on 23rd of May. 1974, Case No. 3160 of 1974 has been registered against the petitioner and is pending before the court.

10. Relying on a latest judgment of the Supreme Court in Writ Petition No. 23 of 1974 and Criminal Appeal No. 281 of 1973 - Biram Chand v. State of Uttar Pradesh decided on 28th March. 1974 : reported in Biram Chand Vs. State of Uttar Pradesh and Others, it is contended that detention of the petitioner is illegal in view of the fact that the petitioner has already been taken to the court of law and he is facing the trial for these very acts for which he is now being detained by the District Magistrate. Goswami, J. while dealing with this question whether detention is legal when a prosecution has already been launched in a competent court against the petitioner, observed as follows:

Secondly, the question is whether it is open to the detaining authority to choose two parallel proceedings against the detenu as in this case. The fact that the ground of detention could be a subject-matter of criminal prosecution is not enough to vitiate a detention order if the detaining authority does not choose to prosecute him and only passes an order of detention in accordance with law. In that case it will be no answer that the detenu must be prosecuted in the criminal court in an open trial. The choice of the authority concerned for the mode of tackling the illegal activity cannot per se be illegal and the order of detention will be judged on its merits in accordance with the law laid down by this Court. The position will be. however, entirely different if the authority concerned makes an order of detention under the Act and also prosecutes him in a criminal case on the same facts. This, in our view, is totally barred. The detaining authority cannot take recourse to two parallel and simultaneous proceedings nor can take

recourse to a ground which is the subject-matter of a criminal trial as in the case of the first information report dated 5th August, 1973, furnishing the grounds 9 and 10 of the detention order. That fact itself introduces a serious infirmity in the order of detention for which the same must be held to be invalid.

11. Mr. Shisodiya, on the other hand, relied on two authorities of the Supreme Court on this very point, namely. *Abdul Aziz Vs. The District Magistrate, Burdwan and Others*, and *Ashim Kumar Ray Vs. The State of West Bengal*, wherein, according to him, it has been clearly laid down by the Supreme Court that the prosecution of the detenu for the same act which provided the base for detention is no bar for passing an order under the Act. He further contended that these authorities have not been taken note of by Goswami, J. in *Biram Chand Vs. State of Uttar Pradesh and Others*, and that the judgments relied upon by him were pronounced by the Bench of three Judges in both these cases and, therefore this Court should not accept the dictum as pronounced in *Biram Chand's* case,

12. The Supreme Court in the authorities relied upon by Mr. Shisodiya has laid down that pendency of a prosecution will not be a bar for taking action to detain a person under the provisions of the Act. The learned Judges have gone to this extent that in conceivable cases it may become necessary to pass an order of detention in anticipation of an order of discharge or acquittal.

13. These two conflicting views of the Supreme Court raise an important question as to how this Court should resolve this controversy.

14. Mr. Bhargava argues that when conflicting views of the Supreme Court come before the High Court, then the only way open to it is to follow the latest pronouncement of the Supreme Court. In support of this view, he placed reliance on the observations of this Court in *Ghenaram v. State of Rajasthan* 1973 Raj LW 36 : 1973 Lab IC 1201.

15. Mr. Shisodiya, on the other hand, contends that the view expressed by this Court in *Chenaram's* case is not the correct view. He placed reliance on the observations of the Supreme Court in *Mattulal Vs. Radhe Lal*, wherein Bhagwati J. has observed that when there are two conflicting views on a particular point expressed by the Supreme Court, then the view given by the larger Bench must be followed. In that case the observations made in *Smt. Kamla Soni v. Rup Lal Mehra* Civil Appeal No. 2150 of 1966, decided on 26th September. 1969 : (reported in AIR 1969 NSC 186) were plainly in contradiction to what was said by the same Court earlier in *Sarvate T. B's* case 1966 MPLJ 26 (SC). His Lordship in that connection observed as follows:

Now there can be no doubt that these observations made in *Smt. Kamla Soni's* case are plainly in contradiction of what was said by this Court earlier in *Sarvate T. B's* case. It is obvious that the decision in *Sarvate T. B's* case was not brought to the notice of this Court while deciding *Smt. Kamla Soni's* case, or else this Court would not have Banded itself in such patent contradiction. But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the

observations in these two decisions. That being so, we must prefer to follow the decision in Sarvate T. B's case as against the decision in Suit. Kamla Soni's case as the former is a decision of a larger Bench than the latter.

16. From these observations this principle can be deduced that when there is a conflict in the decisions of the Supreme Court, the High Court should follow the verdict given by the larger Bench. The decision of *Chenaram's case* (1973 Lab IC 1201) wherein it has been held that the latter judgment would be a valid law, therefore cannot survive. Both these cases *Abdul Aziz v. The Distt. Magistrate, Bardwan* 1973 Cri LJ 590 and *Ashim Kumar Ray Vs. The State of West Bengal*, were decided by the Bench of three Judges whereas *Biram Chand Vs. State of Uttar Pradesh and Others*, is decided by a Bench of two Judges. Moreover, these two Supreme Court decisions were not brought to the notice of the learned Judges in *Biram Chand's case* and, therefore, we are left in no doubt that the dictum in *Biram Chand's case* is not binding on us. In *Bankat Lal v. The State of Rajasthan* (D.B. Criminal Habeas Corpus Petition No. 62 of 1974 decided on 6th May. 1974) (Raj.) this Court while following the Supreme Court judgments has held that the prosecution of the detenu for the same act which formed the basis for the satisfaction of the detaining authority cannot go to vitiate the order of detention. In view of the above discussion, we do not find any substance in this ground also.

17. The detention has been challenged on the ground of mala fides also. The petitioner in para. 8 of his petition has mentioned that four wholesalers of tea leaves of Ganganagar were also arrested three or four days earlier than the arrest of the petitioner and the tea found in their shops was also sub-standard, but they were not detained and the detaining authority chose to launch a prosecution against them u/s 420, Indian Penal Code. It is contended by Mr. Bhargava that the tea, the sample whereof was taken from the petitioner's shop, was supplied by these wholesalers and, therefore, if there was any responsibility for the sale of adulterated tea leaves, it was that of the wholesalers and not that of the petitioner. According to him, such wholesalers should have been detained under the provisions of the Act and not the petitioner. The action of the District Magistrate, according to him, is, therefore discriminatory and mala fide.

18. The petitioner has not supplied the details about the persons who were arrested three or four days before the arrest of the petitioner was made. The petitioner has also not mentioned in this paragraph the name and address of that wholesaler from whom the petitioner had purchased the tea leaves for sale in the market. In the absence of such details it was not possible for the opposite party to have submitted a reply about the facts mentioned in that paragraph. If a person has not been detained for a certain act then it cannot provide a material for the allegations about the bona fides of the detaining authority. The material disclosed by the petitioner in para. No. 8, in our opinion, is not sufficient to draw an inference, of mala fides on the part of the District Magistrate. The District Magistrate was present in the Court when the case was heard by us and we were

told by him that certain wholesalers were prosecuted u/s 420, Indian Penal Code because there was a racket going on for selling the adulterated materials in the market of Ganganagar. He was, however, not in a position to say whether the wholesaler who supplied tea leaves to the petitioner was amongst those from where the samples of tea leaves were taken by the authorities. In the absence of particulars, nobody could have answered the charge of mala fides levelled by the petitioner against the authorities. In this view of the matter, we feel that the ground of mala fides has not been made out by the Petitioner.

19. For the reasons mentioned above, the petition fails and it is hereby dismissed.