
(2004) 03 OHC CK 0019

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 194 of 2003

Bapu alias Jyotikanta Parida

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2004) 28 OCR 602 : (2004) 1 OLR 551

Hon'ble Judges : S.B. Roy, C.J.; Bimal Prasad Das, J

Bench : Division Bench

Advocate : R.N. Mohanty, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.B. Roy, C.J.—By this writ petition the petitioner seeks to challenge the order of detention dated 25.7.2003 passed by the District Magistrate, Jagatsinghpur under Annexure-1 in exercise of the power conferred upon him by Sub-section (2) of Section 3 of the National Security Act, 1980 on the ground that the petitioner was acting in any manner prejudicial to the maintenance of public order.

The impugned order of detention reads as under :

"OFFICE OF THE DISTRICT MAGISTRATE, JAGATSINGHPUR

ORDER NO. 1509/Con. Dated 25.7.2003

Whereas, I Sri Brundaban Rath, District Magistrate, Jagatsinghpur has been directed in Government of Orissa, Home Department (Special Section) Order No. 2931/C dated 16.6.2003 to exercise powers conferred by Sub-section (2) of Section-3 of the National Security Act, 1980.

Whereas, I am satisfied that with a view to prevent Sri Bapu " Jyotikanta Parida, aged-24 years, Son of Sukadev " Gajendra Parida of viliage-Sandhapur, P.S. Kujang, District-Jagatsinghpur, at present, Housing Board Colony, Madhuban, P.S.

Paradeep, District-Jagatsinghpur, from acting in any manner prejudicial to the maintenance of public order, provisions of Sub-section-(2) of Section 3 of the National Security Act, 1980 is necessary to be invoked.

Therefore, in exercise of the powers conferred by Subsection-(2) of Section-3 of the National Security Act, 1980, I, hereby direct that the said Sri Bapu " Jyotikanta Parida, son of Sukadev " Gajendra Parida of village Sandhapur, P.S. Kujang, District-Jagatsinghpur, at present Housing Board Colony, Madhuban, P.S. Paradeep, District-Jagatsinghpur be detained in the sub-jail, Kujang, District-Jagatsinghpur until further orders.

Sd/- (Brundaban Rath) District Magistrate, Jagatsinghpur."

Simultaneously, along with the order of detention the petitioner was served with the Grounds of Detention, dated 25.7.2003 under Annexure-2. In the said Grounds of Detention it was, inter alia, stated that the petitioner's criminal conduct and the antisocial activities jeopardizing the public order are evident from the following incidents :

1. Paradeep P.S. Case No. 178 dt. 20.7.2000(A) GR 297/ 00) u/s 452/341/323/506/380/294/34 IPC.
2. Paradeep P.S. case No. 204 dt. 18.8.2000(A) GR 334/ 01 u/s 341/323/324/307/379/34, IPC (ST 866/01)
3. Paradeep PS case No. 96 dt. 10.4.2001 (A) GR 207/ 01 u/s 341/323/294/452/336/354/506/34 IPC
4. Paradeep PS case No. 137 dt. 20.5.200KA) GR 280/ 01 u/s 341/323/325/294/506/34 IPC
5. Paradeep P.S. case No. 148 dt. 2.6.2001 (A) GR 305/ 01 u/s 341/323/294/506/34 IPC.
6. Paradeep P.S. case No. 194 dt. 31.7.2001 u/s 341/294/324/307/379/34 IPC
7. Paradeep PS case No. 125 dt. 27.5.2002 u/s 341/323/324/325/506/34 IPC.
8. Paradeep PS case No. 143 dt. 13.6.2002 u/s 341/294/307/324/506/34 IPC.
9. Paradeep PS case No. 158 dt. 4.7.2002 u/s 341/324/307/506/34 IPC.
10. Paradeep PS case No. 41 dt. 26.2.2003 u/s 506/34 IPC.
11. Kujang P.S. case No. 87 dt. 28.5.2003 u/s 395 IPC/ 25 Arms Act.
12. Paradeep PS case No. 105 dt. 27.5.2003 u/s 395/397 IPC/25/27 Arms Act.

2. It is submitted by the learned counsel for the petitioner that out of the aforesaid 12 Police Cases, the petitioner was acquitted from the first 5 police cases, long before the order of detention was passed against the petitioner. On this ground learned counsel for the petitioner contends that this petition must be

allowed and impugned order of detention should be quashed. However, the petitioner made his representation against the aforesaid order of detention by his letter dated 2.8.2003 before the State Government, the Central Government as well as the Advisory Board constituted under the said Act. Subsequently, the order of detention of the petitioner was approved and confirmed.

3. Opposite Party No. 2 has filed a counter affidavit. It appears from paragraph 9 of the said counter affidavit that no material regarding the fact that the petitioner was acquitted, was made available before the detaining authority when he issued the impugned order of detention. However, from the materials placed before him by the Office of the Superintendent of Police, Jagatsinghpur it appeared to him that the aforesaid police cases were either under investigation or were subjudice. Accordingly, acting upon such materials that all the cases against the petitioner referred to above were either under investigation or were subjudice, the impugned order of detention was issued. However, from the rejoinder filed on behalf of the petitioner it appears that the certified copies of judgments delivered in the first five police cases as referred to above, have been annexed and it further appears therefrom that in all the aforesaid cases the petitioner was acquitted long before the order of detention was issued against him. All those judgments were delivered either in 2001 or in 2002. Detention order was issued long thereafter on 25.7.2003.

4. On the basis of the aforesaid factual position, learned counsel for the petitioner submits that the impugned order cannot be sustained and must be quashed. To buttress his aforesaid contention, learned counsel for the petitioner cited a decision of the apex Court in *Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another*, It has been, inter alia, held by the apex Court in the aforesaid decision that the requisite subjective satisfaction of the detaining authority, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. Where at the time the detaining authority passed the detention order the vital fact, namely, the acquittals of the detenu in two of the cases shown in the table appended to the grounds of detention had not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases was pending, the non-placing of the material fact-namely the acquittal of detenu in the above-said two cases resulting in non-application of mind of the detaining authority to the said fact vitiated the requisite subjective satisfaction, rendering the detention order invalid.

5. Again the apex Court in another decision in *Ramesh Vs. State of Gujarat and Others*, reiterated the same view.

Following the aforesaid two judgments of the Supreme Court, our High Court also

in the case of Md. Abdul Zahur Vs. State of Orissa and Others, reiterated exactly the same view.

6. It, therefore, appears that non-placement of material that the detenu was acquitted from five police cases before the detaining authority when the impugned order of detention was issued has vitiated the same.

7. In the circumstances, and in view of the aforesaid binding authorities upon us, we are left with no option but to allow the petition and quash the impugned order of detention. We further direct that the petitioner be set at liberty forthwith.