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**(2012) 09 RAJ CK 0080**

**In the Rajasthan High Court**

**Case No : DB Civil Writ (Habeas Corpus) Petition No. 7850 of 2012**

Bhikho

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

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**Date of Decision : 10-09-2012**

**Acts Referred:**

Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 3(1), 3(2)

**Citation : (2012) 09 RAJ CK 0080**

**Hon'ble Judges : R.S. Chauhan, J;Govind Mathur, J**

**Bench : Division Bench**

**Advocate : S.S. Rathore, for the Appellant; K.R. Bishnoi,A.G.A., for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

1. Being detained under the order dated 12.4.2012, passed by District Magistrate, Jaisalmer, exercising powers under the Rajasthan Prevention of Antisocial Activities Act, 2006 (hereinafter referred to as "the Act of 2006"), the mother of detainee Shri Kamruddin has preferred this petition for writ. The argument advanced by counsel for the petitioner is that the Government of Rajasthan empowered the District Magistrate for exercising powers as per Section 3(1) of the Act of 2006 without satisfying with the circumstances prevailing or likely to prevail in the area concerned those may effect the public order prejudicially. The argument advanced is supported by a judgment of this Court in DB Civil Writ Petition No. 6123/2012, Kishan Singh v. State of Rajasthan & Anr., decided on 27.8.2012. In the case aforesaid we held as under:-

As already noticed, the object of the Act of 2006 is to provide for preventive detention of the boot-leggers, dangerous person, drug offenders, immoral traffic offenders and property grabbers for preventing their antisocial and dangerous activities prejudicial to the maintenance of public order. As per the scheme of the Act of 2006 the State is empowered to detain a person on being satisfied that the detention of such person is necessary with a view to prevent him from acting

in any manner prejudicial to the maintenance of public order.

This authority of the State may be delegated to a District Magistrate, if the State Government is satisfied that the circumstances prevailing or likely to prevail in any area within the jurisdiction of any District Magistrate demand so. Meaning thereby, as per Section 3(1) of the Act of 2006 the State Government is required to satisfy itself with regard to the activities of an individual which are prejudicial to maintenance of public order and this power can be further delegated to a District Magistrate, if circumstances prevailing or likely to prevail in any area within his jurisdiction are of such grave nature that local consideration of individual activities is necessary. This power of delegation appears to have been given by the legislature to the State Government to meet extraordinary circumstances existing or apprehended in any specific area or region of the State. There may be serious threat in any part of the State in maintenance of the public order due to the activities of boot-leggers, dangerous person, drug offenders, immoral traffic offenders and property grabbers at large and to meet such serious threat the power of the State as per Section 3(1) of the Act of 2006 can be delegated to the District Magistrates concerned, but not otherwise. Such delegation can be made as postulated u/s 3(2) of the Act of 2006 by considering the circumstances prevailing or likely to prevail in the area concerned. For passing of its authority to a District Magistrate, the State is not supposed to consider the activities of any individual, but the objective circumstances prevailing or likely to prevail. There may be a boot-legger, dangerous person, drug offender, immoral traffic offender and property grabber in a district or a part thereof, but that in itself is not sufficient to make delegation of powers to a District Magistrate. The stray incidents of an individual may be of cases pertaining to the issue of law and order, but not of public order. The State Government has to satisfy itself with the material available regarding the situation arisen in the area concerned that the public order is in endanger and that is sufficient for delegation of the powers of Section 3(1) of the Act of 2006 to the District Magistrate.

2. We have examined the original nothings on basis of which the State Government exercised the powers u/s 3(2) of the Act of 2006 to empower the District Magistrate, Jaisalmer for exercising the powers u/s 3(1) of the Act aforesaid. From perusal of the record it reveals that the Additional District Magistrate, Jaisalmer by referring certain cases of individual persons made a request for granting power to the District Magistrate as per Section 3(1) of the Act of 2006. The matter then was referred to the Assistant Legal Remembrance to avail his opinion. The Assistant Legal Remembrance on 29.8.2011 while referring a Division Bench judgment of this Court opined that the powers u/s 3(1) of the Act of 2006 can be delegated to the District Magistrate only if the circumstances prevailing or likely to prevail adversely effects the public order, a recommendation was made to avail a detailed report from the District Magistrate. A note then was made by the Special Secretary to the Government of Rajasthan, Department of Home posing a question in the terms that "does it have to be on a

case by case or can power be delegated to the District Magistrate generally?" The Assistant Legal Remembrance then opined that to exercise powers u/s 3(2) of the Act of 2006 the State Government is required to examine the circumstances prevailing and likely to prevail effecting the public order adversely. A definite opinion was given by the Assistant Legal Remembrance that in view of the Division Bench judgment of Rajasthan High Court in the case of Anil Nayak (Pilani) v. State & Ors. (2010 (1) CJ (Cr.) (Raj.) 379), no general delegation can be made as per provisions of Section 3(2) of the Act of 2006. A report then was availed from the District Magistrate, Jaisalmer. The District Magistrate again by referring certain cases of individuals made a request to empower him to act as per Section 3(1) of the Act of 2006. The matter then was referred to the Assistant Legal Remembrance, but it appears that he was maintaining his earlier opinion. A note "speak ALR", then was made by the Special Secretary (Law) on 28.12.2011. Subsequent thereto on 6.1.2012 the Assistant Legal Remembrance drew his opinion as under:-

Words, "circumstances prevailing or likely to prevail" in an area of local limits of its jurisdiction of district magistrate, cast legal obligation upon the state Govt. to record its satisfaction particularly about an area of a district where "circumstances are prevailing or likely to prevail", calling for conferment of powers upon the district magistrate of that area, which can certainly be in the entire district or the state but there must exist material, on record to show the satisfaction having been arrived at or recorded by State Government for conferring powers upon a district magistrates u/s 3(2) for entire State or a particular district or wherever necessary.

3. The matter then was placed before other higher executives and a notification dated 16.5.2012 as per provisions of Section 3(2) of the Act of 2006 came to be published in Rajasthan Gazette Extraordinary in its addition dated 18.5.2012.

4. From the facts stated above, it is apparent that as a matter of fact no circumstances prevailing or likely to prevail in the area concerned were taken into consideration by the State Government. The Assistant Legal Remembrance rightly pointed out at first instance that the District Magistrate is required to consider the circumstances prevailing and likely to prevail in the area concerned to exercise powers u/s 3(2) of the Act of 2006. It appears that he changed his opinion after having deliberations with Law Secretary.

5. Be that as it may, from perusal of the record available we are satisfied that the State Government before exercising powers u/s 3(2) of the Act of 2006 has not taken into consideration the prevailing circumstances and the circumstances likely to prevail in District Jaisalmer adversely effecting public order. The notification dated 13.1.2012 bearing No. F.36(10) Home-9/2011 notified by the State Government exercising powers u/s 3(2) of the Act of 2006 delegating powers u/s 3(1) of the Act of 2006 to the District Magistrate, Jaisalmer is illegal and the same deserves to be quashed. Accordingly, this petition for writ is allowed. The notification dated 13.1.2012 bearing No. F.36(10) Home-9/2011 is

declared illegal, therefore, the same is quashed. The order of detention dated 12.4.2012 too is declared illegal and, therefore, the same is also quashed. The detenue Kamruddin be released from detention forthwith, if not otherwise required to be detained in any other case.