
(2013) 04 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11254 of 2012

Deepak Purohit

APPELLANT

Vs

State of M.P., District Magistrate and Senior Superintendent
of Police

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 22, 22
Penal Code, 1860 (IPC) — Section 294, 307, 323, 324, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2013) ILR (MP) 1561 : (2013) 2 JLJ 293 : (2013) 3 MPHT 534 :
(2014) 1 MPJR 34 : (2013) 2 MPLJ 595

Hon'ble Judges : Vimla Jain, J;Rakesh Saxena, J

Bench : Division Bench

Advocate : J.A. Shah, for the Appellant; Yogesh Dhande, Deputy Government
Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Saxena, J.—Petitioner, the detenu, by this petition under Art. 226 of the Constitution of India, has invoked the writ jurisdiction of this Court seeking quashment of the order dated 8.6.2012 (Annexure-P/1) whereby he has been detained under the provisions of National Security Act, 1980. The aforesaid detention order was passed by District Magistrate, Indore on the following grounds:

The aforesaid order was passed on the representation made by Superintendent of Police, West district Indore on 7.6.2012. On the same day, the grounds of the order along with its particulars were supplied to detenu and he was sent to Central Jail, Rewa in execution of the detention order. An information in this regard was supplied to his father Radheshyam Purohit on the same day. Detention order was approved by the Government.

2. Petitioner has challenged his detention order mainly on the grounds that the said order was issued without affording any opportunity of hearing to him or giving any show cause notice to him and that the grounds on which the detention order was passed pertained merely to the law and order and not to public order since they did not affect the public at large.

3. As far as the first ground of challenge is concerned, the provisions of detention under National Security Act find roots in Arts. 21-22 of the Constitution of India. Art. 21 postulates that no person shall be deprived of his life or personal liberty except to the procedure established by law. Before a person is deprived of his life or personal liberty, the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected. Although Art. 19 guarantees the freedom of all citizens to move freely throughout the territory of India, but it is subject to reasonable restrictions imposed by the Constitution of India. In the beginning in *Gopalan A.K. Vs. State of Madras* AIR 1957 SC 688, the Apex Court held that the rights conferred by Art. 19 are the rights of free men and a person whose personal liberty has been taken away under a valid law of punitive [Art. 21] or preventive [Art. 22] detention cannot complain of the infringement of any of the fundamental rights guaranteed by Art. 19. According to this view, Arts. 21-22 formed a self-contained code to which the other provisions of Part III were not attracted. Though this view has, however, been overturned, bit by bit, by the Supreme Court itself, but in cases of *Khudiram Das Vs. The State of West Bengal and Others*, and *Haradhan Saha Vs. The State of West Bengal and Others*, the Supreme Court held that even though Art. 19 may be applicable, a law of preventive detention, which complies with the requirements of Art. 22(5), cannot be held to offend against Art. 19, as the elements of procedural reasonableness and natural justice are embodied in Art. 22(5) itself. Even otherwise the law of preventive detention is not punitive, since the objective of preventive detention is to prevent a person from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order. Therefore, the grant of opportunity of hearing or issue of show cause notice before passing of the detention order would essentially frustrate the objective of the law. What the detaining authority is bound to do, is to follow the procedure strictly provided in the statute, as such we are of the view that detenu can claim no right of peremptory hearing or a show cause notice, before the detention order is passed by the authority.

4. Next ground of challenge of the detention is that the incidents, which have been made grounds for passing the detention order, are either stale or do not pertain to "public order".

5. In the order dated 8.6.2012, District Magistrate mentioned that in the year 2006, detenu committed five offences like Maar-peet, stabbing and attempt to commit murder etc. which affected public order of the society. For preventing such activities of the detenu time to time preventive measures were also taken.

6. The latest ground relates to the incident dated 4.6.2012 wherein it is alleged that in the night at about 10 o'clock detenu and his associate, Kalu @ Purushottam caused knife injury to Gopal when he did not give water to them for consuming liquor. Knife injury was caused on his thigh. When his father Narayan Mandloi tried to save him, Kalu also caused injury on his hand. It is alleged that by this incident an atmosphere of terror was created in the area and the public order was disrupted. On report being lodged with the police, offence u/s 307 /34 I.P.C. and section 3(2)(v) of SC/ST (Prevention of Atrocities) Act was registered.

7. On perusal of the first information report of the aforesaid incident, it is revealed that it was lodged at 11:00 p.m., but it was not disclosed in it that any terror was caused in the locality or it affected anybody else than the victims of the incident. Though the said incident is said to have taken place near the shop of one Agrawal, but no particulars about the fact that the incident in any manner affected the public or the locality at large or unleashed a terror in the locality were given.

8. Supreme Court in number of cases held that there is clear distinction between "law and order" and "public order" and pointed the difference between the two. In case of Smt. Victoria Fernandes Vs. Lalmal Sawma and others, Supreme Court held:

The distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it would raise the problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed ? This question has to be faced in every case on its facts. [See: Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; Arun Ghosh Vs. State of West Bengal,); Ram Ranjan Chatterjee Vs. The State of West Bengal, Ashok Kumar Vs. Delhi Administration and Others,

9. Keeping in view the above proposition of law, if we examine the aforesaid ground, we find that the act of detenu was merely individual in the sense that it affected only two injured persons, but did not affect the peace or tranquility of rest of the community in any manner, therefore, it could not be held to be a breach of public order constituting the basis of detention of the petitioner.

10. The ground relating to the incident dated 4.3.2006 is that because of an old dispute petitioner abused complainant and his brother and intimidated them by knife for which offence under sections 324, 323, 294, 506, 34 of the Indian Penal

Code was registered. Apparently this incident also related to individual person and did not cause any breach of public order. Apart from it, it is stale also, since it cannot be held to be proximate or relevant for forming the subjective satisfaction of the detaining authority in the year 2012.

11. Other ground that on 11.3.2009 detenu committed theft of the scooter of Rakesh Galani and thereby committed offence u/s 379 of the Indian Penal Code, in our opinion, cannot by any stretch of imagination be held to have caused breach of public order, in the absence of any particulars about the desperate character of the detenu indicating his indulgence in such type of activities regularly and affecting the public at large.

12. In the ground pertaining to the incident dated 15.7.2010 detenu along with his associates is said to have assaulted and intimidated complainant Sanjay Kamle for illegally extorting money from him. Similarly on 2.9.2010 he and his associates demanded money from complainant Mukesh Luniya for liquor and on not yielding his demand, hurled abuses and in an attempt to cause death, assaulted him with sword, iron rod and stick causing serious injuries to him. On report being lodged by complainant a case under sections 294, 307 /34 I.P.C. was registered against detenu and his associates. On examining the first information reports of both the aforesaid incidents, it transpires that the incidents occurred at public places and detenu and his associates attempted to extort money from the complainants and also caused injuries to complainants. In the later incident, they reached armed with weapons at the milk diary of complainant in the night at about 8:30 p.m. and after abusing and intimidating him, caused serious injuries to him.

13. Looking to the nature of the above incidents, it can be concluded that the aforesaid acts of detenu could have impact upon large section of the community and have affect on the public order, but the fact remains that detaining authority passed the detention order on 8.6.2012 on the basis of incident which occurred in the night of 4.6.2012. As we have already found that the said incident did not amount to be an activity of detenu affecting the public order, it is difficult to hold that the detention order could have been passed on the basis of incidents, which occurred in the year 2010, i.e. about 2 years earlier to the passing of detention order. The activities of detenu which could have been prejudicial to the maintenance of public order in the year 2010 cannot be held to be proximate and relevant for forming subjective satisfaction of the detaining authority for passing the detention order on 8.6.2012. No doubt, had the incident dated 4.6.2012 affected the public order of the society, the activities of detenu which affected public order of the society in the year 2010 could have been relevant, as the past conduct or antecedent history of detenu, and could appropriately be taken into account in making the detention order.

14. Since the detaining authority passed the detention order making the incident of 4.6.2012 a ground of detention of petitioner which we have found not affecting the public order, merely on the basis of past history of the detenu

which, in our opinion, was not proximate or relevant for constituting the subjective satisfaction for passing the detention order, in our opinion, the impugned detention order cannot be sustained. For the aforesaid reasons, we allow the petition and quash the detention order No. 30/Detn./St./2012 dated 8.6.2012 passed against the petitioner. Respondents are directed to release the petitioner immediately if not required in any other case.