

(2014) 01 GUJ CK 0061
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1032 of 2013 in SCA No. 8955 of 2013 etc.
etc.

Jayvijaysinh Kishorsinh Chauhan

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2014) CriLJ 1431

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : N.D. Nanvati, Sr. Counsel, Hriday Buch, Satyam Y. Chhaya, Advocate for the Appellant; P.K. Jani, Govt. Pleader, Advocate for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—We have heard Mr. N.D. Nanavati learned Senior Counsel with Mr. H.C. Buch and Mr. Satyam Y. Chhaya learned advocates for the appellant and Mr. P.K. Jani learned Government Pleader for the respondent-State. Both these appeals arise out of the judgment and order dated 19.8.2013 passed by the learned single Judge in Special Civil Application No. 8955/2013, whereby, the learned Judge has dismissed the writ petition qua petitioner No. 2 and allowed the writ petition qua petitioner No. 1. Therefore, Letters Patent Appeal No. 1032/2013 is preferred by the appellant - Jayvijaysinh Kishorsinh Chauhan and Letters Patent Appeal No. 1185/2013 is preferred by the State.

2. The matter of third detenu has been decided by this Court in LPA No. 1134/2013, who had preferred Special Civil Application No. 8718 of 2013 and his case is remanded to the learned single Judge. The observations in paras 10 and 11 of the said decision will apply to the facts of the appellant-detenu before us.

3. The brief facts of the present appeals are that the appellant of LPA No. 1032 of 2013 has filed writ petition apprehending his detention under the PASA Act on the grounds, more particularly, pleaded in the main application, but mainly to the effect that since other persons who are co-accused with the petitioner in some of

the complaints filed against them, are detained, and he also apprehends his detention and therefore, the petitioner has prayed to quash the order of detention and respondent of LPA No. 1185/2013 filed writ petition to quash the detention order dated 13.5.2013 passed against him on the ground that the detention order is passed against him on an ulterior ground on the basis of criminal cases registered against him.

4. It is to be noted that the detention of Ori. Petitioner No. 1 has been rightly interfered with by the learned single Judge. It is now considered to be a post detention matter as the detenu had already undergone certain period of detention. Though earlier, when the petition was filed, it was a pre-detention matter, however, later on, he has surrendered and was detained. The learned single Judge seems to have decided the matter likewise, and therefore, we are also considering both these appeals separately.

5. The learned single Judge has summed up the legal position in the impugned judgment as emerging from the judgment of the Supreme Court in the case of Subhash Popatlal Dave Vs. Union of India (UOI) and Another, , which is extracted herein below:--

Thus, to summarize the total outcome of the Judgment dated 16.7.2013, in the case of Subhas Popatlal Dave (supra), it can be said that:--

(1) No petition can be entertained to quash the proposed order of detention without it being served upon the detenu and without considering the grounds on which, he is detained since subjective satisfaction can be considered only after order of detention has been served. Thereafter, petitioner is permitted to submit his grievance against such order and it is scrutinized by the Court.

(2) Petitioner is not entitled to argue or allege that there is no link nor nexus between the order of detention and the actual detention at any later date when he has evaded the execution of detention order on any ground like abscondment or protection by the Court's order.

(3) The subjective satisfaction of the detaining authority is to be considered as on date of the detention order and not on the date of its scrutiny and therefore, material or fact after the date of order of detention, which may include absence of further illegal and nefarious activities subsequent to the order of detention, cannot be the ground for quashing the order of detention.

6. This Court has already considered the said directions while deciding LPA No. 1134 of 2013. In paras 10 & 11, this Court has directed as follows:--

10. It is trite that at a pre-execution stage the proposed detenu has no right whatsoever to access the detention order and grounds of detention so as to enable him to articulate the grounds of challenge. At the same time, when, as per the settled proposition of law, the High Court under Article 226 of the Constitution of India and the Honourable Supreme Court under Article 32 of the Constitution of India are invested with the power of review to ascertain whether

the detention order passed by the detaining authority, which is yet to be executed upon the detenu is legally tenable or not. This exercise can be done only if the detention order along with grounds of detention are made available to the court for perusal unless the detention order and grounds of detention it would not be possible for the High Court to satisfy its conscience as to whether the detention order stands scrutiny on the yardstick prescribed by the Supreme Court in the case of Alka Subhash Gadia (supra) in para 30.

11. The learned single Judge has dismissed the writ petition filed by the appellant without perusing the order of detention and the grounds of detention solely on the premise that as per the prevailing position of law the writ petition to challenge the order at pre-execution stage is not maintainable and that the authorities cannot be directed to produce the detention order and the grounds on the record of the petition. It is bounden duty of the Court to call for the order of detention for its own perusal to satisfy itself as to the validity of the detention order. Unless the Court directs the authorities to produce the detention order for its perusal, it would not be possible for the Court to test the detention order and come to the conclusion whether the detention order stands scrutiny of the norms and the guiding principles enunciated in the case of Alka Subhas Gadia (supra) and Subhash Popatlal Dave (supra). In this premise, we are of the opinion that the impugned judgment of the learned single Judge cannot be sustained. The matter needs to be remanded to the learned single Judge to decide the petition afresh after calling for the detention order and grounds for detention for its own perusal and to independently decide whether it is a fit case to quash the detention order at a pre-detention stage or not. The appeal, therefore, succeeds to the aforesaid extent. Interim relief, if any, granted in this appeal shall continue till final disposal of the main writ petition by the learned single Judge. In view of the disposal of main appeal, no order is required to be passed on the Civil Application and the same stands disposed of accordingly. Direct service permitted.

7. This would enure for the benefit of the petitioner - Jayvijaysinh Kishorsinh Chauhan, we are constrained to observe that the factual scenario as carved out in the judgment is interfered only because the learned single Judge has not given specific finding as to why the case of the appellant of LPA No. 1032/2013 is different from the case of his brother Brijesh Kishorsinh Chauhan - respondent of LPA No. 1185/2013, against whom similar allegations are made.

8. The pre-detention petition could not have been dismissed by the learned single Judge only on the ground enunciated by the learned single Judge, as observed by this Court. Hence, without delving into further merits of the matter, it would otherwise come in the way of the State or appellant herein. Therefore, Letters Patent Appeal No. 1032/2013 is required to be disposed of by remanding the matter back to the learned single Judge, and the interim relief shall operate till the learned single Judge decides the writ petition afresh after considering the observations made in LPA No. 1185/2013 preferred by the State challenging the legality and validity of the order quashing the detention order of the respondent

therein Brijeshsinh Kishorsinh Chauhan. The only distinction which has been made out by the learned single Judge is that his case is considered as post-detention and the case of other two detenu as pre-detention.

9. So far as LPA No. 1185 of 2013 preferred by the State is concerned, it is a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, , wherein, it is held as under:--

.....This court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

10. Therefore, while considering the intra court appeal, the observations made by the Apex Court for dealing with the appeals arising out of acquittal and/or discharge would have to be looked into and we are convinced that the order of the learned single Judge does not suffer any vice of perversity the reason being that all the three grounds which have been found in favour of the present respondent are there. The State has not been able to dislodge any of them and we concur with the same and as held by the Apex Court we do not give separate reasons but it goes without saying that while considering the case under the provisions of PASA Act, the learned single Judge has rightly held that the present respondent cannot be said to be property grabber. The judgment on which reliance was place, more particularly, we feel that the incidents were of the year 2008-2012, and therefore also, the said order has been rightly quashed. Hence, the LPA preferred by the State being devoid of merits and requires to be dismissed. In the result, Letters Patent Appeal No. 1032 of 2013 is disposed of with a direction to the learned single Judge to decide the writ petition afresh. Interim relief shall continue till final disposal of the main writ petition by the learned single Judge. In view of disposal of main appeal, no order is required to be passed on Civil Application No. 9319 of 2013 and the same is disposed of accordingly. Letters Patent Appeal No. 1185/2013 is dismissed. In view of dismissal of main appeal, no order is required to be passed on Civil Application No. 8955 of 2013 and the same is disposed of accordingly.