

(1991) 05 PAT CK 0013

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 77 of 1991 (R)

Jhonny Singh @ Rajpal Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-1991

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 28, 29
Penal Code, 1860 (IPC) — Section 290, 291

Citation : (1991) 39 BLJR 1207

Hon'ble Judges : S.B. Sanyal, J; R.N. Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In this writ petition, the petitioner seeks for quashing the proceeding taken against him under the Bihar Control of Crimes Act; 1981 (hereinafter referred to as the "Act") by issuance of a notice u/s 3 of the Act under the signature of the District Magistrate, Chaibassa, Mrs. Raj Bala Verma.

2. From the perusal of the order dated 4-4-1991 passed by the District Magistrate, Chaibassa, in Cr. Misc. (C.C.A.) 10 of 1991, it appears that the District Magistrate has initiated a proceeding on two materials, namely, (a) a case has been registered under Sections 290 and 291 of the Indian Penal Code on 9-1-1990 which has been numbered as Chaibassa Sadar P.S. Case No. 4 of 1990, and (b) on 21-3-1991 the petitioner was caught illegal country-made liquor, consequent upon which a case u/s 47(a) of the Excise Act has been registered being Chaibassa Sadar P.S. Case No, 4 of 1991. The District Magistrate further observed that she found necessary to issue warrant of arrest against the petitioners as provided under Clause (a) of Sub-section (2) of Section 7 of the Act. From the order-sheet it further appears that on 5-4-1991, when the petitioner was produced, he was remanded to jail custody because the District Magistrate was out of headquarters and the matter was directed to be put up on 1(sic)th April, 1991. We are told that because of the absence of the District

Magistrate, the matter has been further postponed, thus continuing the detention of the petitioner upon notice issued u/s 3 of the Act.

3. Heard Mr. Mazumdar appearing on behalf of the petitioner and Mr. NarainRoy, Government Advocate, appearing on behalf of the District Magistrate. We enquired from Mr. Narain Roy how can the District Magistrate proceed against the petitioner on the ground stated by her. Mr. Roy fairly submitted that Section 3 proceeding could only be taken against such person who fall within the definition of Section 2(d) of the Act defining "Antisocial element".

4. On a bare perusal of the definition of "Anti-Social clement". We find none of the conditions constituting anti-social Element is covered by the grounds served by the District Magistrate.

5. The definition of "Anti-social element" reads as follows:

(d) "Anti-social element" means a person who:

(i) either by himself or the member of or leader of gang, habitually commit the or attempt a to commit or abets the commission of offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or

(ii) habitually commits or abets the commission of offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing indecent remarks to, or teasing women or girls; or

(v) who has been convicted of an offence under Sections 25, 26, 27, 28 and 29 of the Arms Act of 1959.

6. The first ground of pendency of Chat bassa Sadar P.S. Case No. 4 of 1990 instituted under Sections 290 and 291 of the Indian Penal Code is not covered by Chapter XVI or Chapter XVII of the Indian Penal Code, nor a case u/s 47A of the Excise Act. To us it appears that the District Magistrate has acted in a casual cavalier manner in discharge of her duties and responsibilities, since the notice issued is beyond the purview of the Bihar Control of Crimes Act, We are at a loss to appreciate how an officer of the rank of District Magistrate is making a mockery in the application of Detention Law. Yesterday as well, we came across a case where she had acted somewhat in the same manner by resorting to Section 3 of the Act (Cr.W.J.C. No. 65 of 1991 (R) Shyam Lal Medasia v. The State of Bihar and Ors.) and we had to intervene.

7. Further, along with the issuance of notice u/s 3 of the Act against the petitioner, the District Magistrate also issued warrant of arrest, and after the

petitioner was produced on arrest, she kept on evading the proceeding, resulting in continued illegal detention of the petitioner for weeks and months. This is completely impermissible and casts a serious doubt about District Magistrate's objectivity. She must realise that State has to be administered by rule of law, and not by adoption of methods beyond it.

8. For all the aforesaid reasons we are constrained to quash the entire proceeding as the detention of the petitioner is wholly illegal and unjustified, with further direction that the District Magistrate in future must act with responsibility, so that such incidence may not visit this Court in future. The Jail Superintendent, Chaibassa (respondent No. 4) is directed to release the petitioner forthwith, if he is not required in other case. The writ petition is thus allowed.

9. Let a copy of this order be forwarded to the Chief Secretary, Government of Bihar, for information.