

(1991) 05 PAT CK 0006

In the Patna High Court

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

Jhonny Singh @ Rajpal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-05-1991

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 28, 29
Bihar Control of Crimes Act, 1981 — Section 2, 3, 7(2)
Penal Code, 1860 (IPC) — Section 290, 291

Citation : (1992) 2 PLJR 774

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In this writ petition, the Petitioner seeks for quashing the proceedings 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 1 1991, it appears that the District Magistrate has initiated a proceeding on two materials, namely, (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 with 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 Petitioner 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 headquarter and the matter was directed to be put up on 15th 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. Narain Roy, Govt. Advocate, appearing on behalf of the District Magistrate. We enquired from Mr. Narain Roy how can the District Mrgistrate proceed against the Petitioner on the ground stated by her. Mr. Roy fairly submitted that Section 3 proceeding could only be taken against such persons who fall within the definition of Section 2(d) of the Act defining "Anti-Social element".

4. On a bare perusal of the definition of "Anti-Social element" 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-Soecial element reads as follows:

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

(i) either by himself or as a number of or leader of gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code;

(ii) habitually commits or abets the commission of offences under the Supression of Immoral Trafic 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 against women or girls or,

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

6. The first ground of pendency of Chaibassa Sadar P.S. Case No. 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 47(e) 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) Shyaia 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 any other case. The writ petition is thus allowed.

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