
(1965) 09 KAR CK 0018
In the Karnataka High Court
Case No : Criminal Petition No. 338 of 1965

M.N. Ugrappa

APPELLANT

Vs

The Government of Mysore and Others

RESPONDENT

Date of Decision : 30-09-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 79, 80
Defence of India Rules, 1962 — Rule 30, 30 (6) (a)

Citation : AIR 1966 Kar 207 : (1966) CriLJ 929 : (1965) 2 MysLJ 584

Hon'ble Judges : M. Sadasivayya, J;K.R. Gopivallabha Iyengar, J

Bench : Division Bench

Judgement

Gopivallabha Iyengar, J.

(1) The petitioner is a detenu arrested and detained under the Order dated 29-12-1964 of the Deputy Commissioner and Additional District Magistrate Mysore District (second respondent) issued in exercise of the powers conferred to him by R. 30(1)(b) of the Defence of India Rules 1962 (hereinafter referred to as the rules). The petitioner was arrested on the 30th December 1964 and is now in detention in the Mysore Jail. This order of detention was confirmed by the first respondent. The State of Mysore under the provisions of Clause (a) of sub-rule (6) of Rule 30 a of the Rules on 8th April 1965 and the order of confirmation is marked Ex. "B" Under the provisions of R. 30-A Sub-rule (7) of the Rules, the first respondent by its order dated 23rd June 1965 it directed the continuance of the order detention made by the second respondent on 29th December 1964. The petitioner complains by his detention is illegal and that the respondent have no power vested in them under the provisions of the Defence of India Act 1962 to know him in detention.

(2) The petitioner made an application 11-8-1965 before this court raising addition to grounds in support of his petition and seeks confirmation to implead the Union Government proviso. He has been allowed to do so. The additional contention is that though there is a proclamation of emergency dated 26th

October 1962 by the President of India under Clause (1) of Art. 352 of the Constitution Art 352 there is no valid order of the President under Art. 359(1) suspending the right of any person for the enforcement of the fundamental rights conferred by Arts. 14, 21 and 22 of the Constitution during the period of emergency. It may be mentioned that the two presidential orders under Art. 359(1) of the Constitution are issued on 3rd November 1962 and 11th November 1962 and they are as follows:

"GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS

ORDER

New Delhi 3rd November 1962.

G.S.R. 1464--In exercise of the powers conferred by Clause (1) of Art. 359 of the Constitution, the President hereby declares that the right of any person to move any court for enforcement of the rights conferred by Art. 21 and Art. 22 of the Constitution shall remain suspended for the period during which the Proclamation of Emergency issued under Clause (1) of Art. 352 thereof on 26th October 1962 and in force, if such person has been deprived of any such rights under the Defence of India Ordinance 1962 (4 of 1962) or any rule or order made thereunder.

No.F.4/62 Poll (Spl)

P. Viswanathan Secy."

"46.

"GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS

ORDER

New Delhi the 11th November 1962.

G.S.R. In exercise of the powers conferred by Clause (1) of Art. 359 of the Constitution the President hereby makes the following amendment in order No. G.S.R. 1464, dated the 3rd November 1962, namely:

In the said order for the word and figures Art. 21". the words and figure "Art. 14 Art. 21" shall be substituted

(No 4/62-Poll (Spl)

Hari Sharma Addl. Secy."

The above contention of the petitioner is based on the fact that the earlier presidential order is president of in, Ministry of Home Affairs, and the later one is by the Additional Secretary of the Ministry of Home Affairs; and it is urged that these officers have no authority to issue these orders. It is submitted that the President alone is competent to issue an order under Art 359 of the Constitution and that none else the authenticate the said presidential orders.

(3) In support of the earlier contention of the detention of the petitioner is illegal and the said Shri. L. Srikantiah the learned counsel for the petitioner, urged several grounds. He in these our attention to the provisions of R. 30, (6-A) of the Rules. The Rule reads s allows:

"30. (6-A)--an order under Clause (b) of sub-rule (1) may be executed of any place is India in the manner provided for the execution of warrants of arrest under the Cr. P. C., 1898.

It is contended that by virtue of this rule, the order of detention should be executed strictly in compliance with the provisions of Ss. 79 and 80 of the Cr.P.C., which according to him, prescribe the manner in which a warrant of arrest issued under the Cr.P.C., can be executed Sections 79 and 80 of the Cr.P.C. read as follows:

"Section 79 Warrant directed to police officer.--A warrant directed to any police officer may also the executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed."

"Section 80. Notification of substance of warrant--The Police Officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant."

It is pointed out that from the affidavits filed in the case, it is clear, that the arrest of the petitioner was effected by two Police Inspectors and that their names are not endorsed by the Superintendent of Police Mysore District Mysore, to whom the detention order had been sent so as to enable the Police Inspectors to effect the arrest. It is further contended that the petitioner was not notified of substance of the order nor was he shown the detention order. A further contention is advanced to the effect that the detention order having been issued under a special enactments, if should be executed by the Officer to whom it was addressed and in this case the Superintendent of Police himself. It is also contended hat the requirements of R. 141 of the Rules have not been complied with in effecting the service of the order of detention on the petitioner.

(4) To appreciate the contentions above stated, it is necessary to set out the order of detention--dated 29th December 1964. It is as follows.

"GOVERNMENT OF MYSORE

No. Clause P.R. 61/65

OFFICE OF THE DEPUTY COMMISSIONER & ADDITIONAL

DISTRICT MAGISTRATE, MYSORE DISTRICT

Mysore dated the 29th December 1964.

ORDER OF UNDER RULE 30 OF THE DEFENCE OF INDIA RULES 1962.

Whereas I am satisfied with respect of Shri M.N. Ugrappa Secretary, Mysore

District Communist Party Clock Tower Square, Mysore residing at M.L. Urs Buildings Jayalakshmipuram V.V. Mohalla City that with a view to preventing him from acting in a manner prejudicial to public safety and peace, it is necessary to make the following Order :

Now, therefore in exercise of the power vested in me by Government under R. 30 of the Defence of India Rules, 1962, I, Vasudev Rao Additional District Magistrate, Mysore District Mysore, do hereby direct that the said M.N. Ugrappa, shall be arrested and detained in Mysore Jail, Mysore until further orders.

Given under my hand and the seat, this the 29th day of December 1964.

(Vasudev Rao) Additional District Magistrate Mysore District MYSORE."

With reference to the last part of the above contention the learned Advocate General invited our attention to the provisions of R. 30 (6-A) of the Rules and also to the opening words of R. 141 of the Rules. Rule 141 can apply only when there is no specific rule governing the manner in which any order made under the rules is to be served. In view of the specific provisions under R. 36 (6-A), the provisions of R. 141 do not apply to the service of an order passed by the authority under Clause (b) of sub-rule (1) of R. 30 of the Rules. We may mention that in view of this legal position the above contention was not passed.

(5) The next question for consideration is whether the provisions of Ss. 79 and 80 apply to an order of detention passed under R. 30(1)(b) of the Rules. The petitioner's contention is that an order of detention is identical with a warrant of arrest issued under the Cr.P.C.: but, this is refuted by the learned Advocate-General. It is submitted by the Advocate-General that a warrant of arrest issued under S. 75 of the Cr.P.C. is addressed to a particular officer for the purpose of execution, while a detention order issued under the rules is not addressed to any particular officer in the way in which a warrant of arrest is done. A reference to From No. 2 Sch. V of the Cr.P.C., would make this clear. It is further submitted by the Advocate-General that the manner of arrest is prescribed under the sub-heading "A--Arrest generally" Under Ch. V. of the Cr.P.C., and that in this case the manner of executing the detention order is required to be in conformity with S. 46 of the Cr.P.C. It is pointed out that Ss. 79 and 80 do not refer to the manner in which the order of detention is to be executed.

In support of this contention, the Advocate-General relies on the decisions reported in S.N. Tangri Vs. State of Uttar Pradesh, and AIR 1963 J&K 23 Kesar Singh v. State of J & K. It appears to us that there is much force in the contention of the Advocate-General. A careful reading of R. 30 (6-A) of the Rule and Chapter V "A--Arrest Generally" of the Cr.P.C. leaves no doubt that the manner of execution of the detention order should be as prescribed in the above part of the Cr.P.C. Section 79 deals with a warrant directed to a particular Police Officer. This section can have no application to a detention order which does not direct or require its execution by any particular Police Officer, but has been merely forwarded to the Superintendent of Police for having it executed. The

provisions of S. 80 also will have no application, as they refer to acts which follow the execution of a warrant of arrest. i.e. after the person is arrested. We find in the affidavit of the Sub-Inspector of Police who executed the order of detention that the petitioner at the time of his arrest was told the substance of the order and as he did not request the arresting officer to show the order, the same was not shown to him. It is further averred that the order was shown to him in the Mysore Jail by the Jail Superintendent, who is the third respondent in this case and who has also filed an affidavit to that effect. The petitioner in his affidavit states that between 30-12-1964 when he was arrested and 10-4-1965 when Ex. B was delivered to him, he was kept in ignorance as to the reasons for his detention. This averment cannot be accepted in view of the fact that on 6-1-1965 within a week after his arrest, the petitioner addressed a letter to the Chief Secretary stating that he was arrested under the Defence of India Rules on 30-12-1964 and was kept in Mysore Jail and making a request that he should be classified as a First Class Prisoner during his detention and a family allowance of Rs. 150-00 per mensem may be made to him.

(6) As pointed out by the Advocate-General, there is a market distinction between a warrant of arrest and an order of detention. We cannot agree with the contention of the petitioner that all the provisions of the Cr.P.C. relating to a warrant of arrest apply to an order of detention issued under R. 30 of the Defence of India Rules. The Officer to whom the order of detention is sent for execution can take suitable steps for the arrest and detention of the person referred to in the order. Want of endorsement as specified in S. 79 would not render the execution of the order and detention of the petitioner invalid or void. We are unable to accept the contention of the petitioner that his detention is invalid on the ground that the provisions of Ss. 79 and 80 of the Cr.P.C. have not been observed. It is not contended that the provisions of S.46 have not been complied with. Therefore, the manner of arrest of the petitioner cannot be assailed.

(7) Next we advert to the contention of the petitioner that the presidential orders dated 3-11-1962 and 11-11-1962 are invalid. The contention is that under the provisions of Art. 359 of the Constitution, the President must personally satisfy himself before any declaration is made under the provisions thereof. The petitioner's counsel submits that it cannot be said in this case whether the President has made the declaration or not or whether he has been satisfied that the declaration should be made. With reference to this contention, the learned Advocate-General points out that under Art. 53 of the Constitution, the executive power of the Union is vested in the President and it can be exercised by him directly or through offices subordinate to him in accordance with the Constitution. Further, under Art. 77(2) it is provided that :

"Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which suit so

authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President."

Under the provisions of Art. 77(2), Rules called "The Authentication (Orders and other Instruments) Rules, 1958." Have been framed and R. 2(a) thereof reads as follows:

"2. Orders and other instruments made and executed in the name of the President shall be authenticated--(a) by the signature of a Secretary (Special Secretary). Additional Secretary, Joint Secretary, deputy secretary under Secretary or Assistant Secretary to the Government of India.

As is clear from the orders dated 3-11-1965 and 11-11-1962, the orders are authenticated by the Secretary and the Additional Secretary respectively. In view of the provisions of Art. 77 that the validity of an order or instrument which is authenticated shall not be called in question on the ground that it is not an order or instrument made and executed by the President the validity of the above orders cannot be called in question on the ground that they are not made or executed by the President. It is not disputed in this case that the above declarations issued by the President have been duly published in the official gazette of the Union Government. Therefore, there is no doubt that the President of in has made the orders dated 3-11-1962 and 11-11-1962 and they have duly authenticated as required under the law and published. Under Art. 359(3) of the Constitution these orders will have been laid before each House of Parliament. It is impossible to accept the petitioner's submission that it cannot be said in this case whether the President to accept the petitioner's submission that it cannot be said in this case whether the President has made these declarations or whether he has been satisfied that the declaration should be made.

The above said declarations have been the subject-matter of several decisions of the Supreme Court and the High Courts in our country. These orders apply to the entire Indian Territory and are of very great consequence inasmuch as the right of a person to move the court for enforcement of his fundamental rights under Arts. 14, 21 and 22 is suspended. It is inconceivable the these orders are not issued by the President or his being satisfied of the need to issue the same. Therefore, the additional contention raised by the petitioner also fails.

(8) One other contention raised by Shri. L. Srikanth is that the order of detention must be scrutinised very strictly to find out whether it is in conformity with the provisions of R. 30(1)(b) of the Rules Shri Srikantiah points out that the order refers to "Public safety and peace" and argues that the word "peace" is not found in the provisions of R. 30(1)(b) and therefore sufficient care has not been taken by the second respondent before the order of detention is made. It appears to us that there is no substance in this contention also. The reference to public safety in the order of detention satisfies the requirements of R. 30(1)(b) The additional reference to "peace" which is not wholly unrelated to public safety will not have the effect of vitiating the order. As stated by us in Cri.P. No. 332 of 1965: AIR

1966 Mys 202 relying on the observations of the Supreme Court in Godavari Shamrao Parulekar Vs. State of Maharashtra and Others, . It is the substance of the order that should be looked into. Therefore, it appears to us that the inclusion of the word "peace" in the order of detention does not detract from the validity of the aid order in any manner.

(9) In the result, all the contentions advanced by the petitioner fail and this petition is dismissed

(10) Petition dismissed