

(2012) 10 JH CK 0023

In the Jharkhand High Court

Case No : Writ Petition (HB) (Cr.) (DB) No. 282 of 2012

Nizamuddin @ Md. Nizamuddin Siddique

APPELLANT

Vs

The State of Jharkhand, District Magistrate, Palamau at
Daltonganj and Superintendent of Police, Palamau at
Daltonganj

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 28, 29

Bihar Control of Crimes Act, 1981 — Section 12, 12(2), 2(d), 2(d)(v)

Citation : (2012) 10 JH CK 0023

Hon'ble Judges : Prashant Kumar, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : R.S.P. Sinha and M/s Rakesh Kumar Sinha, Md. Faruque Ansari, for the Appellant; Ram Nivas Roy, G.P.-III, for the Respondent

Judgement

D.N. Patel, J

1. Present writ petition has been preferred challenging the order passed by respondent No. -2, District Magistrate, Palamau at Daltonganj dated 04th of July 2012 which is Annexure-3 to the memo of petition, whereby the order has been passed u/s 12(2) of Bihar Control of Crimes Act 1981 and petitioner has been detained under preventive detention. Counsel appearing for the petitioner submitted that looking to the order at Annexure-3, petitioner is not falling within the definition of Section 2(d) of the Antisocial element, because as per Section 12 of the Bihar Control of Crimes Act 1981, order of detention can be passed when petitioner is an antisocial element. Counsel for the petitioner has also pointed out that several cases which are pending under the Arms Act, but none of them have been converted into conviction. These cases are not only pending but few of them for example serial No. 2 and 3 of the impugned order, in which final report has been filed by the police. Thus, there is thoroughly non application of mind by the detention authority and hence also the order of detention, which is at Annexure-3, be quashed and set aside. Counsel for the petitioner has also

pointed out that several other irregularities committed by the detention authority in passing the order of detention. He has also submitted that for these reasons, detention order passed by the District Magistrate can be quashed by this Court. Counsel for the petitioner has also relied upon the decision reported in 1991 B.B.C.J. 159.

2. We have heard counsel for the State who has submitted that petitioner is frequently committing offences under Arms Act and therefore he is antisocial element because of his activities. Thus, activities of the petitioner affects the public order and therefore the District Magistrate has rightly passed the order u/s 12(2) of the Bihar Control of Crimes Act 1981. Petitioner is indulged in such type of antisocial activities again and again. This aspect of the matter has been considered by the detention authority and the impugned order passed by the District Magistrate and hence the petition deserves to be dismissed.

3. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the order passed by District Magistrate Palamau at Daltonganj dated 04th July 2012, which is at Annexure-3, to the memo of petition for the following facts and circumstances.

(I) Impugned order has been passed u/s 12 of the Bihar Control of Crimes Act 1981 on the ground that petitioner is antisocial element. Looking to the definition of antisocial element, the said definition is enshrined in Section 2(d) of the Bihar Control of Crimes Act 1981 which runs as follows :-

2. (d) "Anti-Social element" means a person who-

(i) either by himself or as a member of or leader of a 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; or

(ii) habitually commits or abets the commission of offences 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 was been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.

(Emphasis Supplied)

(II) In view of the aforesaid definition, petitioner must be the antisocial element. Looking to the impugned order at Annexure-3, it appears that few cases are pending against the petitioner under Arms Act 1959. Pendency of the case under Arms Act 1959 is not sufficient in view of the definition of Section 2(d) of the Bihar Control of Crimes Act 1981.

(III) Looking to Section 2(d)(v), if any person is already convicted for the offence under Sections 25, 26, 27, 28 or 29 of the Arms Act of 1959, then he will be antisocial element. But looking to the facts of present case, District Magistrate, Palamau at Daltonganj has mentioned six cases which are pending against the present petitioner under Arms Act. Out of the six cases in the case of serial No. 2 and 3, final report has already been submitted by the police, thus only four cases are pending under the Arms Act. Thus, it appears that there is no conviction in these cases even as per the respondents. Thus without appreciating this aspect of the matter, impugned order of detention has been passed.

(IV) Once the petitioner is not an antisocial element u/s 2(d), no order u/s 12 of the Bihar Control of Crimes Act can be passed for preventive detention and no man can be sent to jail unnecessarily and de horse provision of law. Provision of the constitution has been referred rightly by the counsel for the petitioner that preventive detention cannot be passed, de horse of the provision of law. Looking to the aforesaid aspect of the matter, this is a clear breach of constitutional mandate and hence we hereby quash and set aside the order passed by District Magistrate, Palamau at Daltonganj dated 04th of July 2012 which is at Annexure-3. Respondents are directed to forthwith release the petitioner from jail if his presence is not required in any other case.

4. As a cumulative effect of the aforesaid facts and reasons, this petition is allowed and disposed of. Registry is directed to communicate this order to the concerned respondent authorities forthwith to release of petitioner in view of the aforesaid direction, if his custody in jail is not required in any other case.