

(2003) 06 BOM CK 0126

In the Bombay High Court

Case No : Criminal Writ Petition No. 1115 of 1996

Rajesh Ramrao Raut

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151, 151(1), 151(3), 3

Citation : (2003) 2 ALD(Cri) 143 : (2003) BomCR(Cri) 1073 : (2003) CriLJ 4174 : (2003) 4 RCR(Civil) 174

Hon'ble Judges : V.G. Palshikar, J; D.B. Bhosale, J

Bench : Division Bench

Advocate : S.R. Chitnis, for the Appellant; K.K. Kapoor, APP, for the Respondent

Final Decision : Dismissed

Judgement

Palshikar J.

1. By this petition, the petitioner has challenged his detention u/s 151 of Criminal Procedure Code 1973 by police station Palghar during the Ganesh Festival of the year 1996. He was detained from 15th September 1996 to 21st September 1996 and was released thereafter.

2. The basis contention on behalf of the petitioner is that this order of detention is totally without jurisdiction and void and therefore his detention becomes illegal. The order, according to the petitioner, is therefore liable to be quashed.

3. On 15th September 1996 the police officer made a report to Judicial Magistrate First Class, Palghar, praying for extension of time and to detain the petitioner beyond the period of 24 hours as he was a known criminal and was an extremist, who move around with knife etc. would create havoc during the Ganesh festival going on in village Safala. The learned Magistrate considering the report made by the police u/s 151(3) of Cr.P.C. accepted the contention of the police and permitted them to detain the petitioner till 21st September 1996. Accordingly the petitioner was detained till 21st September and released

thereafter.

4. This order passed by the learned Magistrate u/s 151(3) Cr.P.C. is impugned in this petition on several grounds mentioned in the petition as also canvassed before us by the learned counsel for the petitioner Mr. Chitnis. The basis attack of the learned counsel for the petitioner in this order is that it is wholly outstanding the scope of Section 151(3) and therefore could not have been passed. According to the learned counsel, by that order, the action of accepting the report made by the police u/s 151 Cr.P.C. was culpably illegal and therefore liable to be quashed. The learned counsel took us through the provisions of Section 151 as amended by Maharashtra State and placed heavy reliance on two judgments of this court and contended that a perusal of the report does not disclose that the petitioner has any design to commit cognizable offence affecting the public peace or law and order. Therefore the learned Magistrate did not have any jurisdiction to make that order u/s 151(3). In order to understand the contention of the petitioner, it will be better to consider the provisions of Section 151 in extenso. Section 151 of Cr.P.C. (hereinafter referred to as the Code) provides that the police may have prevention of crime or arrest without orders of the Magistrate and without warrant, any person so designing, they may require by this section, the persons so arrested shall be kept in custody maximum for 24 hours and within that time he should also be produced before appropriate court. This section has been amended by the Government of Maharashtra and Sub-section 3 has been added. It gives power to the Magistrate to relax the condition of releasing the accused in 24 hours and permitting the Magistrate to consider the report of the police and grant them permission to detain a man for maximum period of 30 days from initial arrest. The power under Clause (3) cannot be exercised by the magistrate as submitted by the learned counsel, unless he is satisfied that:

- 1) That person proposed to be detained for more than 24 hours has design to commit any cognizable offence, and
- 2) the circumstances of the case are such that is being at large is likely to be prejudicial to the maintenance of public order.

The submission of the learned counsel is that even a man has design to commit cognizable offence, having such design by itself is not sufficient and the circumstances of the case should indicate that his commission of the offence is likely to be prejudicial to the maintenance of public order. According to the learned counsel, there is nothing in the entire report recorded by the police u/s 151(3) to show that the petitioner was likely to commit any cognizable offence endangering maintenance of public order and therefore the order was wholly illegal.

5. The provisions of Section 151 as amended were challenged before this court in Criminal Writ Petition No. 423 of 1984. It was decided on 24th April 1985. The judgment is reported in 1985 B. L. R 114. The Division Bench of this court after considering carefully the entire law on the point of detention as also the

prevention being a temporary detention, came to the conclusion that the provisions of Section 151(3) are necessary for maintaining public order and therefore upheld the provision. The learned counsel therefore did not challenge the validity of the provision, but relied on another judgment of this court reported in 1990 M.L.J 838, where the scope and extend of the power u/s 151 of Cr.P.C. was examined by this court, where this court has extended the scope of Section 151(3) and has held that the power being of stringent nature, should be exercised by the Magistrate with circumspection and care. The submission, by relying on these two cases as made by Shri Chitnis is that, the report of the police officer u/s 151(3) must disclose that the accused has design of committing cognizable offence likely to affect maintenance of public order. Mere design to commit a cognizable offence unaffected with public order or its maintenance is not covered by the provisions of Section 151(3). According to the learned counsel, that being the scope and extend of the provision, the report must disclose that the accused has design to commit cognizable offence affecting maintenance of public order. Such disclosure is not there in the police report. He took us to the police report very carefully and tried to contend that the report itself does not disclose any design to commit cognizable offence affecting maintenance of public order. Then relying on certain portions of the report he submitted that even if it is assumed that the accused had design to commit some cognizable offence, there is nothing in this report to show that the design to commit cognizable offence was such as was going to affect the maintenance of public order. In the absence of any such concrete statement in the police report, making of an order u/s 151(3) according to him, is not permissible.

6. It will be better if we consider the provisions of Section 151(3) in extenso. The section reads thus:

151(3)(a) "Where a person is arrested under this section and the officer making the arrest, or the officer in charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than twenty-four hours from time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary by reason that-

- (i) The person is likely to continue the design to commit, or is likely to commit, the cognizable offence referred to in Sub-section (1) after his release; and
- (ii) the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order.

the officer making the arrest, or the officer in charge of the police station, shall produce such arrested person before the nearest Judicial magistrate, together with a report in writing stating the reasons for the continued detention of such person for a period longer than twenty-four hours.

(b) notwithstanding anything contained in this Code or any other law for the time being in force, where the Magistrate before whom such arrested person is

produced is satisfied that there are reasonable grounds for the temporary detention of such person in custody beyond the period of twenty-four hours, he say, from time to time, by order remand such person to such custody as he may think fit;

Provided that, no person shall be detained under this section for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person.

c) When any person is remanded to custody under Clause (b), the Magistrate shall, as soon as may be communicate to such person the grounds on which the order has been made and such person may make a representation against the order to the Court of Session. The Sessions Judge may, on receipt of such representation after holding such inquiry as he deems fit, either reject the representation, or if he consider that further detention of the arrested person is not necessary, or that it is otherwise proper and just so to do, may vacate the order and the arrested person shall then be released forthwith."

7. From the scrutiny of the above section, it will be clear that the power under this sub-section can be exercised by the Magistrate only if a person is likely to commit or continue to design to commit a cognizable offence and the commission of that cognizable offence should be such as is likely to be prejudicial to the maintenance of public order. In order to sustain the exercise of power under this sub-section by the Magistrate, the State has to prove that both the conditions referred to above, extended when the report was made. We therefore, proceed to analyses the report and examine whether the exercise of power under the above section was proper or not. The report dated 15th September 1996 say that the petitioner is an extortionist and extremist. It says that Ganesh festival will be celebrated between 15th September to 26th September and during that period the police have reason to believe that this person that the present petition will commit some cognizable offence due to which public peace will be in danger. The report goes to show that he is a man of murdering tendency and move around with lethal weapon like knife. However all Safala people have suffered a lot because of his gundagiri. He goes in the market of Safala village and threatens the citizens there and nobody is in a position to make a complaint against him. The report then proceeds to say that the Ganesh festival should be celebrated with peace and order. In order to achieve that the police prayed for grant of permission to extend the detention of accused for 11 days. The criticism of Mr. Chitnis the learned counsel, regarding this report is that there is no mention that the petitioner would commit cognizable offence endangering maintenance of public order. According to him, the breach of public peace is not a question of maintenance of public order and therefore the entire tenure of the report being breach of public peace by the absence of accused, there is no question of public order or its maintenance being affected and therefore power u/s 151(3) could not be exercised. We are unable to accept the contention of this learned counsel as there is sufficient material on record which proved that the petitioner had

design to commit cognizable offence affecting maintenance of public order. The report categorically says that in order to allow Ganesh festival to be over peacefully, and there should not be any disturbance of public peace and order in our opinion there should be maintenance of public peace. Therefore when there is clear mention that for maintenance of peace and law and order, detention is necessary, no further elaboration of the statement is necessary even i.e. extending in the report. The report says that the petitioner would definitely commit some offence endangering public peace as he always moving around with lethal weapons. That, in our opinion, has to be read as opinion of the police officer that the petitioner is likely to commit cognizable offence endangering maintenance of public order. All the necessary ingredients of Section 151(3) are therefore fulfilled by the police. The learned counsel then established that the order of the Magistrate is warranting application of mind and mechanical in nature. According to the learned counsel, there is no finding given by the Magistrate that the petitioner is likely to commit cognizable offence having creating problem of maintenance of public order. Therefore the order is made. This contention of the learned counsel is also not acceptable for the reason that the order impugned is a clear and complete order regarding the police fulfilling the requirement of Section 151(3). No doubt the order of the learned Magistrate is a single page order but in that he precisely stated that why the detention is duly extended. He has observed that he has perused the police report. He has noticed that the police apprehension that the petitioner may commit cognizable offence int eh approaching Ganesh festival. Therefore the police prayed for the detention of the petitioner for 11 days for maintenance of peace and harmony in the society at large and therefore there is no find that the order is likely to affect the maintenance of public order. We are unable to accept the submission that the maintenance of peace and harmony is not maintenance of public order. It is an integral part of the public order and therefore the observation or finding of the Magistrate that eh detention of the accused to maintain peace and harmony is a finding of maintenance of public order. It will be seen from the impugned order that though the detention was asked for 11 days, the learned Judge granted it only for 7 days, taking into consideration the fact that most of the Ganesh festivals are over in the first six days. A clear finding is also recorded by the learned Magistrate by saying that detaining a person will resulting the maintenance of peace and harmony in the society in the crucial period of Ganesh festival. In our opinion, therefore the learned Magistrate has carefully considered the police report and scrutinised it, accepted it and found that the petitioner had designs to commit cognizable offence affecting maintenance of peace and order and therefore granted detention to certain days. There is no error in this order and there is therefore no substance in the petition. The same is liable to be dismissed and the same is dismissed with costs of Rs. 750/-