

(2010) 03 JH CK 0081
In the Jharkhand High Court

Ram Kishun Gope

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2), 12(3)

Citation : (2010) 03 JH CK 0081

Hon'ble Judges : R.R. Rrasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Rrasad, J.—While the petitioner was in judicial custody in Birsa Munda Central Jail, Hotwar, Ranchi, he was served with an order dated 18.4.2009 (Annexure 1) passed by the District Magistrate, Ranchi, Respondent No. 4 whereby and whereunder the District Magistrate, Ranchi in exercise of power conferred under Sub-section (2) of Section 12 of the Bihar Control of Crimes Act (hereinafter referred to as 'the Act') read with notification No. 171 dated 15.1.2009 passed the order of detention of the petitioner. Subsequently, the Deputy Secretary, Government of Jharkhand in exercise of power u/s 12(3) of the Act approved the order of detention, vide its order dated 27.4.2009 (Annexure 2). Thereafter the State Government in exercise of power u/s 21(1) read with Section 22 of the Act confirmed the order of detention, vide its order dated 25.5.2009 (Annexure 3). On being served with the said orders, the petitioner filed a representation before the District Magistrate, Ranchi as also before the Deputy Secretary, Government of Jharkhand praying therein to release him as he has never been a member of a gang nor he has indulged himself in anti-social activities but nothing fruitful came out and as such, this writ application has been filed whereby the order of detention has been challenged to be bad on several counts.

2. Learned counsel appearing for the petitioner submitted that the order of detention was passed while the petitioner was in custody and as such, the order

of detention should have been passed in compelling necessity, satisfaction/ reason of which should have been recorded by the respondent but the detaining authority while passing the order of detention has not recorded any reason whatsoever and, therefore, the order becomes bad in view the of the decision rendered in a case of Sayed Abul Ala v. Union of India and Ors. 2007 (12) SCALE 345.

3. The other ground on which the impugned orders have been sought to be quashed is that there was no valid conferment of the power on the District Magistrate, Ranchi to make a detention order as the notification No. 171 dated 15.1.2009 read with notification No. 1151 dated 23.3.2009 (Annexure A to the counter affidavit) under which the State Government in exercise of power u/s 12(1) of the Act conferred power upon to all the District Magistrates of the State of Jharkhand to pass order in terms of Section 12(2) of the Act within his territorial jurisdiction, is conspicuously silent as to whether power has been conferred upon all the District Magistrates to pass detention order in terms of Section 12(1) of the Act either on the circumstances prevailing on the date of the order preventing the detenu from acting in any manner prejudicial to the maintenance of the public order or in the circumstances likely to prevail during three months for which power has been conferred.

4. Upon the said fact it was submitted that since both the notifications (Annexure A) is silent, as to under what circumstances either in the circumstances prevailing on the date of the order or in the circumstances likely to prevail during three months, the power has been conferred by the State Government upon all the District Magistrates of the State, the said notification can be said to have been issued mechanically without application of mind, and as such, the said notifications are invalid in view of the ratio laid down in a case of Abhay Shridhar Ambulkar Vs. S.V. Bhave, Commissioner of Police and Others, which have been followed by this Court in a case of Babar Khan @ Rasid Hussain v. State of Jharkhand and Ors. 2009 (4) JCR 537. Thus, it was submitted that notifications being invalid, any order passed pursuant to power vested through the said notification by the detaining authority for detention of the petitioner becomes quite bad and is fit to be set aside.

5. A counter affidavit has been filed where it has been stated that the petitioner by operating a gang in the area of Bariatu and also in the rural area like Ratu has indulged themselves in extorting money from the people and whoever dares to defy his order, he becomes victim of the criminal act committed by the petitioner and thereby the petitioner had disturbed the public order. Taking into account the criminal activities of the petitioner, the District Magistrate, Ranchi on he recommendation of the Senior Superintendent of police has passed the order of detention which is absolutely in accordance with law and hence, the order of detention needs not to be interfered with by this Court.

6. Having heard learned Counsel appearing for the parties, it be stated that earlier in a case of Babar Khan @ Rasid Hussain v. State of Jharkhand and Ors.

(supra) when the order was passed by the District Magistrate by virtue of the power conferred by a notification, vide notification No. 1151 dated 23.3.2009, the order of detention was challenged on the ground that notification is never in terms of Section 12(1) of the Act as the notification was silent on the point of satisfaction as required u/s 12(1) of the Act, the said notification in view of the ratio laid down in a case of *Abhay Shridhar Ambulkar v. S.B. Bhawe*, Commissioner of Police and Ors. was held to be invalid. The relevant part of the judgment reads as follows:

So far the present case is concerned, the notification under which power has been conferred to the District Magistrate by the State Government in exercise of power u/s 12(2) of the Act, neither speaks about the satisfaction as required u/s 12(1) of the Act nor it can be said to have been empowered the District Magistrate separately either to pass detention order in the circumstances prevailing or in the circumstances that are likely to prevail. Thus, in view of the aforesaid decision, notification dated 23.3.2009 has got to be declared as invalid. Consequently the District Magistrate, Jamshedpur will have no jurisdiction to exercise the power of detaining authority u/s 12(1) of the Act.

7. Similar is the case here, the detaining authority, i.e. respondent No. 4, the District Magistrate, Ranchi, on being conferred power, vide notification No. 171 dated 15.1.2009 (Annexure 1) passed the order of detention. On perusal of the said notification (Annexure A to the counter affidavit), it does appear that it is in the same term as that of the notification bearing No. 151 dated 23.3.2009 which has been held to be invalid. Therefore, notification No. 171 dated 15.1.2009 (Annexure 1) has got to be held invalid. That being so, the District Magistrate, Ranchi will have no jurisdiction in exercise of power of detaining authority u/s 12(2) of the Act and, therefore, the order of detention passed by the District Magistrate, Ranchi is fit to be quashed. The detention order also suffers from other defect. Admittedly, detention order was passed while the petitioner was in custody and, therefore, the order of detention should have been passed in compelling necessity, satisfaction/reason of which should have been recorded by the respondent but the order of detention would go to show that no such reason has been recorded by the respondent and, therefore, on this count also the order of detention is bad.

8. Accordingly, the order of detention as contained in Annexure 1 and also the order whereby it has been approved and has been confirmed are hereby quashed.

9. Consequently, the petitioner is directed to be released forthwith unless he is required to be detained in any other case.

10. In the result, this application is allowed.