
(1997) 05 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 15947, 38930, 35860 and 16144 of 1993

Ram Naresh Chaudhary and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-05-1997

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68A, 68A(1), 68A(2), 68B, 68E

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 3, 3(1)

Citation : (1998) CriLJ 2346 : (1998) 3 RCR(Criminal) 607

Hon'ble Judges : G.P. Mathur, J;D.C. Srivastava, J

Bench : Division Bench

Advocate : M.D. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mathur, J.—These petitions have been filed for quashing the orders dated 24-4-93 and 30-4-93 passed under Sections 68-E and 68-F of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) by respondent No. 2. The controversy raised in the writ petitions is identical and therefore they are being disposed of by a common order. The writ petitions have been heard along with the records of Habeas Corpus Petition No. 12529 of 1993 and Habeas Corpus Petition No. 15948 of 1993.

2. Chapter V which deals with forfeiture of property derived from, or used in, illicit traffic was inserted by Act 2 of 1989 in Narcotic Drugs and Psychotropic Substances Act with effect from 29-5-1989. Section 68-E provides for identifying illegally acquired property and Section 68-F provides for seizure or freezing of illegally acquired property. The material part of Section 68-A of the Act, which is relevant for the decision of the writ petitions, is reproduced below :

68-A. (1) The provisions of this Chapter shall apply only to the persons specified

in Sub-section (2).

(2) The persons referred to in Sub-section (1) are the following, namely:-

(a) to (b)...

(c) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 (46 of 1988), or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (J and K Act XXIII of 1988):

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a court of competent jurisdiction :

(d) every person who is a relative of a person referred to in Clause (a) or Clause (b) or Clause (c); (e)to(f)....

3. Section 68-B is the definition clause for the purposes of Chapter V-A. Sub-section (b) defines "associate" and Sub-section (i) defines "relative". In view of Sub-section (1) of Section 68-A provisions of Chapter V-A are applicable to every person who is a "relative" of a person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act provided such order of detention has not been revoked on the report of the Advisory Board or such order of detention has not been set aside by a court of competent jurisdiction.

4. One Babban Chaudhary son of Ram Naresh Chaudhary resident of Mallah Toli Sahninda, P. S. Mohammadabad, District Ghazipur was detained u/s 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as PITNDPS Act) by the order dated 30-1-93 passed by the State Government. After the aforesaid order was passed, the competent authority passed an order on 24-4-93 against some of his relatives u/s 68-E and 68-F of the Act. These persons are relatives of Babban Chaudhary within the meaning of Sub-section (1) of Section 68-B of the Act. The writ petition No. 15947 of 1993 and writ petition No. 28930 of 1993 have been filed on behalf of such persons. Similarly Manoj Kumar Chaudhary son of Shiv Bachan Prasad Chaudhary President of Mohalla Shahmida, P.S. Mohamedabad District Ghazipur was also detained u/s 3 of PITNDPS Act by the order dated 30-1-1993 passed by the State Government. The competent authority passed the impugned orders under Sections 68-E and 68-F of the Act against some of his relatives. These persons are relatives within the meaning of Sub-section (i) of Section 68-B of the Act. The writ petition No. 16144 of 1993 and writ petition No. 35860 of 1993 have been filed on behalf of these persons.

5. Babban Chaudhary filed Habeas Corpus petition No. 12529 of 1993 in this Court on 15-4-93 praying that he may be set at liberty. Manoj Kumar Chaudhary also filed Habeas Corpus petition No. 15948 of 1993 in this Court on 4-5-93

praying that he may be set at liberty. At the time when the writ petition No. 15947 of 1993 (Ram Naresh Chaudhary and Anr. v. State of U.P. and Ors.) and writ petition No. 38930 of 1993 (Smt. Usha Chaudhary and Ors. v. State of U.P. and Ors.) were filed, the Habeas Corpus petition filed on behalf of Babban Chaudhary had been admitted and was pending for hearing. Similarly at the time writ petition No. 16144 of 1993 (Smt. Badami Devi and Anr. v. State of U.P. and Ors.) and writ petition No. 35860 of 1993 (Smt. Devanti Devi and Anr. v. State of U.P. and Ors.) were filed, the Habeas Corpus petition filed on behalf of Manoj Kumar Chaudhary had been admitted and were pending for hearing. However, subsequently both the Habeas Corpus Petitions have been allowed and the detains have been ordered to be set at liberty. The record of the Habeas Corpus Petition No. 12529 of 1993 (Babban Chaudhary v. State of U.P. and Ors.) shows that the petition was allowed by a Division Bench of this Court on 5-11-93 with the following observation and he was directed to be set at liberty forthwith :

In the result, we find that there has been no reasonable explanation for the delay in passing the order of detention. There was, therefore, no live link between the date of activity and the date of passing the order of detention which was snapped. This means that the satisfaction arrived at by the detaining authority to detain the petitioner u/s 3(1) of PITNDPS Act was vitiated. Consequently, the detention of the petitioner in pursuance of the order dated 30th January, 1993, u/s 3(1) PITNDPS Act passed by the State Government is bad in the eye of law.

The record of Habeas Corpus petition No. 15948 of 1993 (Manoj Kumar Chaudhary v. State of U.P. and Ors.) shows that the petition was allowed by a Division Bench of this Court on 5-11 -93 with the following observation and he was directed to be set at liberty forthwith :

...Accordingly, it is clear that when the State Government had considered the question of detention of the petitioner, the relevant information had not been placed before it. Thus, it is held that in the absence of the aforesaid relevant material/documents, subjective satisfaction of the State Government to detain the petitioner stands vitiated. Consequently continued detention of the petitioner in pursuance of the aforesaid detention order is bad in the eye of law.

6. The learned counsel for the respondents has not disputed the factual position that no appeals were preferred against the judgments of this court by which the Habeas Corpus petitions filed by Babban Chaudhary and Manoj Kumar Chaudhary were allowed and the same became final.

7. The proviso to Sub-clause (c) of Sub-section (2) and Sub-section (1) of Section 68-A of the Act shows that provisions of Chapter V-A shall not apply if the order of detention passed under the PINDPS Act against the person concerned has been set aside by a Court of competent jurisdiction. In the present case, the impugned orders under Sections 68-E and 68-F were passed against the relatives of Babban Chaudhary and Manoj Kumar Chaudhary and they are petitioners in the four writ petitions. Since the detention order passed

against Babban Chaudhary and Manoj Kumar Chaudhary has been set aside by this Court and they were directed to be set at liberty, in view of the proviso to Sub-clause (c) of Sub-section (2) of Section 68-A, the provisions of Chapter V-A of the Act cannot be made applicable to the writ petitioners. In these circumstances, the impugned orders cannot be sustained and have to be set aside.

8. In the result, the writ petitions succeed and are hereby allowed. The impugned order dated 24-4-1993 passed against the petitioners of writ petition No. 15947 of 1993 and writ petition No. 38930 of 1993 and also the order dated 30-4-1993 passed against the petitioners of writ petition No. 16144 of 1993 and writ petition No. 35860 of 1993 are quashed. If any property of the petitioners had been seized, the same shall be returned to them, forthwith.