
(1975) 02 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7436 of 1974

Ramesh Chandra Agarwal

APPELLANT

Vs

District Magistrate, Agra

RESPONDENT

Date of Decision : 12-02-1975

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 3(a)(iii)
Uttar Pradesh Kerosene Oil Control Order, 1962 — Rule 11

Citation : (1975) 02 AHC CK 0025

Hon'ble Judges : R.L.Gulati, J

Final Decision : Allowed

Judgement

R.L. Gulati, J.

The petitioner has challenged the warrant of arrest dated March 9, 1974, issued against him by the District Magistrate, Agra, under Section 3 (a) (iii) of the Maintenance of Internal Security Act, 1971, (hereinafter referred to as the Act), by means of this petition.

The petitioner is a wholesale dealer in Kerosene Oil at Agra carrying on the business in the name and style of Ramesh Brothers. He holds a wholesale licence under the U.P. Kerosene Control Order, 1962, It is alleged that on three different dates between March 8 and March 14, 1973, he purchased 30,500 litres of superior kerosene oil from the Indian Oil Corporation Ltd., New Delhi, from its depot at Shakoor Basti. He disposed of the entire stock of kerosene oil surreptitiously with making it available for fair distribution to the consumers at a time when there was a great scarcity of this commodity. He did not enter this quantity of kerosene oil in his stock register, nor did he show it in the weekly and fortnightly returns submitted by him to the District Supply Officer, Agra. He did not produce his records, such as stock register, sale register and cash memo, etc., before the District Supply Officer in spite of several demands made on him between June 19, 1973 to February 12, 1974. On May 22, 1973, the District Supply Officer served a notice upon the petitioner as to why his licence under the

Kerosene Control Order be not suspended. On September 4, 1973 his licence was suspended. On September 14, 1973, he filed in this court a writ petition under Article 226 of the Constitution being writ petition No. 5993 of 1973 against the order suspending his licence. The petition was allowed on October 17, 1973 on the ground that the licence of the petitioner could not be suspended pending an enquiry beyond a period of two weeks as provided in the second proviso to rule 11 of the rules framed under the Kerosene Control Order. No further steps were taken by the authorities to cancel the petitioner's licence. Eventually on March 9, 1974, a warrant of arrest was issued against him by the District Magistrate Agra, under Section 3 (a) (iii) of the Act.

It has been alleged in the counteraffidavit of the District Magistrate, Agra, that it has not been possible to execute the warrant of arrest as the petitioner has been absconding and proceedings have been taken against him under Sections 87, 88 and 89 of the Code of Criminal procedure.

The only question arising in this case is as to whether the warrant of arrest is justified in law.

Under Section 3 (a) (iii) of the Act, a person can be detained, if the District Magistrate is satisfied that it is necessary to do so with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. Such an order of detention cannot be made as a measure of punishment for something which a person has already done, even if it is prejudicial to the maintenance of supplies and services essential to the community. The detention can be ordered only to prevent him from repeating the prejudicial act in future. For his past conduct he can be dealt with under the law and punished, if found guilty. However, the past conduct and antecedent history of a person can be relevant in forming the belief that such a person may act in the same manner in future and a preventive detention order can be passed against him. But the past conduct and antecedent history must not be very remote. It must relate to recent past so as to induce the necessary belief in the mind of the District Magistrate that it is necessary to prevent the person concerned from indulging in the same antisocial activity. This view has been firmly established by the Supreme Court in its various decisions.

In *Nagen Murmu v. State of West Bengal* A.I.R. 1973 S.C. 844 the Supreme Court in paragraph 2 observed that the past conduct or antecedent history of person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. But in order to justify such an inference it is necessary to bear in mind that such past conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. In that case the order of detention was passed more than two years after the prejudicial act had been committed. The same view has been expressed in

Lakshman Khatik v. State of W. B. A.I.R. 1974 S.C. 1264 and Abdul Munna v. State of W. B. A.I.R. 1974 S.C. 2066. In the latter case the prejudicial act took place on June 7, 1971 and the detention order was passed nearly nine months later on March 6, 1972. The Supreme Court held that the prejudicial act was too remote to provide a reasonable basis for the detention order.

In the instant case the necessary information with regard to the purchase of Kerosene Oil by the petitioner was supplied by the Indian Oil Corporation, Delhi to the District Supply Officer, Agra, by its letter dated May 6, 1973, and on May 9, 1973 the petitioner's business premises were inspected when certain records were seized and the petitioner's Munim was taken into custody. The impugned warrant was issued more than ten months later on March 9, 1974. The prejudicial act attributed to the petitioner is too remote from the date of the warrant of arrest. It has not been shown that during this interval of ten months the petitioner had indulged in similar activity so as to induce a belief in the mind of the District Magistrate that it was necessary to detain and prevent him from acting in a prejudicial manner again. To me it appears that the detention order was passed because the petitioner was not cooperating with the authorities by producing its records etc. in connection with the investigation of the alleged unauthorised sale of kerosene oil purchased in March, 1973. Plainly a preventive detention order could not be passed on that ground.

That apart, I am of opinion that a preventive detention order in a case like the present one would not have been necessary at all, if the authorities had taken other appropriate action against him. If the District Magistrate really believed that it was necessary to prevent the petitioner from repeating his antisocial activity of purchasing and disposing of kerosene oil surreptitiously, the easiest thing for him was to cancel the petitioner's licence under Rule 11 of the U.P. Kerosene Oil Control Order. Without a licence the petitioner would not have been able to handle kerosene oil at all. That was the speediest and most effective way of preventing the petitioner from indulging in the antisocial activities attributable to him.

Detention without a trial is a serious encroachment on the personal freedom of a citizen and resort should not be had to it, if there are other ways of achieving the object without affecting a person's freedom and liberty. As stated earlier, the petitioner could have been prevented from dealing in kerosene oil by cancelling his licence under the Kerosene Control Order. It is really strange that the authorities did not take this step against the petitioner and instead resorted to the provisions of the Maintenance of Internal Security Act, 1971.

In the result the petition succeeds and is allowed. The warrant of arrest against the petitioner issued by the District Magistrate, Agra, dated March 9, 1974, is quashed. I, however, make no order as to costs.