

(1982) 05 AHC CK 0094
In the Allahabad High Court

Ramesh Chandra Gupta

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Constitution of India, 1950 — Article 22
Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 379, 395, 397, 411, 412

Citation : (1983) CriLJ 184

Hon'ble Judges : S. Saghir Ahmad, J;K.S. Verma, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

K.S. Verma, J.—This writ petition is directed against the order dated 13-4-1982 passed by District Magistrate, Kheri u/s 3 of the National Security Act by which the petitioner has been detained in the district jail, Kheri. The order was passed on the satisfaction of the District Magistrate to the effect that in order to prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, the detention of the petitioner was necessary.

2. The order and grounds of detention were served on the petitioner in the district jail, Kheri. A perusal of the grounds of detention would show that there were four grounds which were the basis of the order of detention. These may be summarised as below:

(a) On 19-3-1982 at 11.20 A.M. a written report was lodged at Police Station Mitauli, district Kheri by one Sri B. P. Shukla, Junior Engineer, State Electricity Distribution Division (ii). Lakhimpur Kheri in which it was stated that a theft was committed in the godown on 8-3-1982 at about 4.00 in the evening and four drums of AC, SRC Aluminium Electric Wire (32.8 Kilometer in length) and 182 pieces of n KV Pin Insulators had been stolen. These were removed on truck No.

UPI 8705. The Value of the stolen goods was stated to be Rupees 1,20,000/-. Crime Case No. 30/1982 u/s 379 I.P.C. was registered on the basis of the said report at Police Station Mitauli district Kheri and investigation of the case was taken up by S. I. Sri V. D. Singh. During the course of investigation, driver of the aforesaid truck, namely, Sri Ram Swaroop was interrogated and he disclosed that the stolen goods had been kept in the petitioner's godown situated at Basanti Nagar, police station, Juhi, Kanpur. Consequently, S. I. Sri V. D. Singh, along with Sri B. P. Shukla (Junior Engineer/Complainant) and other officials and witnesses went to the petitioner's godown at Basanti Nagar on 21-3-1982 at 10.30 A. M. It is stated that petitioner was present at his godown and that Sri Ram Swaroop, truck driver, on seeing the petitioner, stated that he has supplied two truck loads of electric wire to him. Stolen articles were recovered from the possession of the petitioner. He was arrested and godown of the petitioner containing stolen articles was sealed.

(b) On 28-2-1982 at 13.45 hours, one Satya Bhan Singh. Junior Engineer, lodged a report at police station Panchgawan district Kheri that the electric wire which was to be utilised for the installation of 220 KV electric line from Sitapur to Shahjehanpur had been stored at village Govindpur near Jang Bahadur Ganj, police station Panchgawan, district Kheri. In the night of 28-2-1982 at 23.30 hours about 20 persons, who were armed with guns, came there and looted the property. The whole drum containing electric wire was removed on a truck. On this report Crime Case No. 57/1982 under Sections 395/397 of Penal Code was registered at police station Panchgawan, district Kheri, The value of the looted property was stated to be Rs. 80,000/-. This property was also recovered from the petitioner's godown on 21-3-1982 at 21.00 hours in the night. The police took into possession the aforesaid property and sealed it in presence of the petitioner in his godown. The petitioner was produced before Chief Metropolitan Magistrate on 22-3-1982 and a remand was obtained for twenty four hours. During interrogation of the petitioner it was found that the petitioner had participated in the dacoity on the basis of which Crime Case No. 57/1982 under Sections 395/397 of penal Code was registered. The petitioner was brought to Lakhimpur Kheri where he was produced before the Judicial Magistrate on 23-3-1982 and was sent to the district Jail.

(c) District Kheri is at present under Rural Electrification Project and that a number of places in the district electric goods including electric wires have been stored for the purposes of installation of the electric lines. The petitioner had looted the aforesaid properties and had stored the same in his godown at Basanti Nagar, police station Juhi, Kanpur for disposal. Petitioner had also purchased the electric wire knowing it to be stolen property. The petitioner, in this way, acted prejudicially to the maintenance of supplies and services essential to the community.

(d) The petitioner had already been released in the Crime Case No. 30/1982 under Sections 379/411 of Penal Code by the Sessions Judge, Kheri. His bail

application in other case, namely, Crime Case No. 57/1982 under Sections 395/397/412 of Penal Code was pending. It was fixed for hearing on 15-4-1982 in the court of Sessions Judge, Kheri. There was strong possibility of bail being granted to the petitioner in the aforesaid case on 15-4-1982 and that the petitioner would soon come out of the district jail, Kheri. The petitioner was likely to indulge in similar activities in district Kheri which would disturb the essential service of distribution of electricity.

3. On the basis of the aforesaid grounds, as stated earlier, the petitioner was detained under the provisions of National Security Act.

4. The learned Counsel appearing on behalf of the petitioner has challenged the order of detention a copy of which together with grounds is annexure I to the writ petition, on three grounds. He contends that even if allegation contained in the aforesaid two First Information Reports were treated, for the sake of arguments, to be correct, they could not legally form the basis of an order of detention under "he National Security Act. In "his connection he further contends that electric wire or other electric appliances or goods had not been declared as essential commodities under the Essential Commodities Act and. therefore, there was no question of passing an order of detention under the provisions of National Security Act. Even if these articles were treated to be essential articles within the meaning of Essential Commodities Act, an order of detention could only be passed under the provisions of Prevention of Black Marketing and Maintenance of Essential Supplies Act, 1980.

5. We are not impressed by the above submission. The relevant portion of Section 3 of the National Security Act may be reproduced below.

3(1) x x x x x x x x x x (2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or, from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it is necessary so to do, make an order directing that such person be detained.

The Explanation appended to Sub-section (2) of Section 3 of the National Security Act reads as follows:

Explanation - For the purposes of this sub-section acting in any manner prejudicial to the maintenance of supplies and services essential to the community "does not include" "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to Sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980) and accordingly no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

6. A perusal of the aforesaid Explanation would clearly indicate that an order of detention can be passed under the provisions of Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 in respect of articles or commodities which have been declared essential under the Essential Commodities Act or in respect of which an order has been passed by appropriate Government by which their prices have been fixed or controlled. The remaining articles/commodities which might not have been declared as essential commodities under the provisions of Essential Commodities Act, are, however, covered by the aforesaid Explanation. In order to prevent a person from acting in a manner prejudicial to the maintenance of supplies and services essential to the community, an order under the provisions of National Security Act can be passed in respect of those articles which are not covered by Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Thus, even if the electric wire or insulator, which are said to have been stolen by the petitioner, were not essential commodities within the meaning of Essential Commodities Act, an order in respect thereof could be passed under the National Security Act.

7. It has been next contended by the learned Counsel for the petitioner that although during the course of investigation, the police had recorded statement of Sri Ram Swaroop, truck driver, u/s 161 of Criminal P. C., its copy had not been supplied to him. His contention is that it is clearly mentioned in the grounds of detention that complicity of the petitioner had come to the notice of the police authorities on the statement of the aforesaid Ram Swaroop and, therefore, a copy of this document ought to have been supplied to him. The learned Deputy Government Advocate appearing on behalf of State has however, referred to the counter-affidavit of Sri Indu Kumar Pandey, District Magistrate, Kheri, specially para 23 thereof in which it is stated as under:

23...It may be stated that recovery memo gives out all the details. The petitioners will be provided with all the papers when the charge-sheet will be filed. However, recovery memo referred to above contain the gist of the statement u/s 161 Cr. P.C. of the Truck Driver Ram Swaroop on whose pointing out the recovery was made. The statement u/s 161 Cr. P.C. or 164 or any other paper were not before the deponent at the time of the passing of the detention order except the recovery memo and the papers given to the petitioner alone with the grounds of detention." It is thus admitted to the District Magistrate, Kheri that a statement of truck driver Ram Swaroop was recorded by the police u/s 161 of the Criminal P. C. It is, however, stated that the gist of this statement was contained in the recovery memo, of which a copy was supplied to the petitioner as part of the grounds of detention. We have looked into the copy of recovery memo which is contained on page 32 of the writ petition. It is stated in the recovery memo that "Ram Swaroop uproot ki nishandehi per Bansanti Nagar men makan No. 117 lie purafa bagai bane huye hale godam men aye to dekhani ki godam ka malik Ramesh Chandra putra Uma Shanker Gupta sakin 265 Anadpuri thana Juhi Kanpur 10 x 30 baje din maujud mila Jifce dekhte hi driver

Ram Swaroop ne bataya ki isi admi ko maine isi godam men 2 truck bijli ka chori ka tar diya hai aur anya jaghon se bhi iske yahan chori ka tar wa bijli Id chori ka saman cabil aadi ata hai aur yeh chori ka hial kharidtg hai." This statement clearly appears to have been made by Sri Ram Swarooo at the time of recovery of the stolen articles at the godown of the petitioner and cannot be said to be gist of the statement recorded u/s 161 of Criminal P. C. Ground No. 1 of the order of detention would indicate that Ram Swaroop (truck driver) had already been interrogated earlier and, admittedly, statement u/s 161 of Criminal P.C. was recorded which, admittedly; also was not supplied to the petitioner.

8. In view of the provisions of Article 22(5) of the Constitution of India, a detenu has to be supplied all the material including the documents relied upon by the detaining authority while passing the order of detention to enable him to make an effective representation against an order of detention before the appropriate Government. These materials and documents have to be supplied as part of the grounds of detention (see Khudi Ram Das v. State of West Bengal, 1975 SCC (Cri) 435 : (1975 Cri LJ 446) and Smt. Shalini Soni v. Union of India 1981 SCC (Cri) 38 : (1980 Cri LJ 1487)).

9. In the instant case, the petitioner was not mentioned in the First Information Reports which were lodged on 19-3-1982 at 11.30 hours at police station Mitauli on the basis of which Crime Case number 30/1982 was registered u/s 379 of Penal Code. The complicity of the petitioner had come to light during the course of investigation on the interrogation of truck driver Sri Ram Swaroop by the Investigating Officer Sri V. D. Singh. It is mentioned in ground No. 1 that "Vivechna ke dauran ukt Iruck ke driver Sri Ram Swaroop niwasi Saidhri thana Kotwali zila Kheri se poonch tanch ke dauran yeh gyat huwa ki apke godam sthit Basanti Nagar thana Juhi Nagar Kanpur men yeh mall rakkha huwa hai." which clearly indicates that the statement u/s 161 of Criminal" P. C, has already been recorded by the Investigating Officer. The petitioner has raised a clear grievance that a copy of this statement has not been supplied to him. This is controverted by the District Magistrate by saying in his counter-affidavit that "copy of the recovery memo...has been given to the petitioner.... However, recovery memo referred to above contains gist of the statement u/s 161 of Cr. p. C. of the truck driver Sri Ram Swaroop on whose pointing out recovery was made ..." We have already pointed out that recovery memo does not contain gist of the statement of Sri Ram Swaroop, truck driver recorded u/s 161 of the Criminal P. C. Even if the gist of that statement, as claimed by the District Magistrate, is contained in the recovery memo, of which a copy was, admittedly supplied to the petitioner, it would not amount to a compliance of the provisions of Article 22(5) of the Constitution. The affidavit filed by the District Magistrate to the effect that a copy of the statement u/s 161 of the Criminal P. C. was not before him when he had passed the order of detention, would be of no avail. In order to find out whether or not the statement of Sri Ram Swaroop (truck driver) recorded u/s 161 of the Criminal P. C, was relied upon by the District Magistrate for the purposes of his satisfaction we have to look to the order of detention and the grounds on which

the said order was passed. The order as also the grounds clearly indicate that the statement of Sri Ram Swaroop (truck driver) was relied upon and considered by the District Magistrate while passing the order of detention u/s 3(2) of National Security Act. Since there had been glaring non-compliance of the provisions of Article 22(5) of the Constitution, the order of detention passed by District Magistrate, Kheri cannot be sustained.

10. Since the writ petition is being disposed of on second ground, as discussed above, we need not look into the third ground urged by the learned Counsel for the petitioner to the effect that ground No. 4 contained in the order of detention is irrelevant and in any case vague inasmuch as the documents or material on the basis of which District Magistrate was of the opinion that there was "strong possibility" of bail being granted to the petitioner in Crime Case No. 57/1982 under Sections 395/397. 412 of Penal Code, had not been indicated in the said ground or had they been furnished to him.

11. In view of the above, the impugned order of detention contained in annexure I to the writ petition is hereby quashed. The petitioner shall be set at liberty forthwith unless his detention is required in connection with some other case.