

(1985) 12 BOM CK 0005

In the Bombay High Court

Case No : Criminal Writ Petition No. 819 of 1985

Ramesh Ganpat Ghanekar

APPELLANT

Vs

R.D. Tyagi and another

RESPONDENT

Date of Decision : 05-12-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 2 BomCR 537 : (1985) 87 BOMLR 667

Hon'ble Judges : S.M. Daud, J; R.R. Jahagirdar, J

Bench : Division Bench

Judgement

R.A. Jahagirdar, J.—An order of detention dt. 18th August 1985 issued by the Commissioner of Police, Thane, in exercise of powers under S. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981 (hereinafter referred to as "the said Act") in relation to the petitioner is challenged in this petition under Art. 226 of the Constitution. Along with the order of detention, the grounds of detention formulated in Marathi were supplied to the petitioner. The petitioner has challenged the said detention order by contending, among other things, that the Detaining Authority has taken into consideration irrelevant factors which would not justify the subjective satisfaction at which the Detaining Authority has arrived.

2. Before proceeding to consider the challenge of the petitioner to the order of detention, it would be advantageous to notice briefly the provisions of the said Act. Section 2(b) defines a bootlegger. A bootlegger means a person who indulges in, among other things, the manufacturing, storing, transporting and selling of any liquor in contravention of any provisions of the Bombay Prohibition Act, 1949, and the rules and orders made thereunder and also a person who does any of the said things by or through any other person or who abets in any other manner the doing of any such thing. It is, therefore, clear that if a person is found on material collected by the authorities that he is indulging in bootlegging either by himself or through any other person, he would be a

bootlegger within the meaning of Cl. (b) of S. 2 of the said Act.

3. But it is not enough for a person to be detained under the said Act to be a bootlegger. This Act which is a law relating to preventive detention has been enacted for the purpose of maintenance of public order. Only a person who acts or is likely to act in a manner prejudicial to the maintenance of the public order can be detained under the said Act. That is why it has been mentioned in S. 2(a) that "acting in any manner prejudicial to the maintenance of public order" means, in the case of a bootlegger, when he engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order. Therefore, it is only when any of the activities of a bootlegger affect or are likely to affect adversely the maintenance of public order and the authority under S. 3 is satisfied that it is necessary to prevent him from acting in such manner that an order of detention can be passed under S. 3 of the Act.

4. In the instant case, the grounds of detention after the opening paragraph have been mentioned in para 2 sub-cl. (a) to (g). Clauses (a) to (f) mention instances where the petitioner has through some other persons been carrying on bootlegging business as mentioned in the Act. We are proceeding on the basis that for each one of these instances mentioned there is a material on record and it has not been demonstrated by Mr. Chitnis appearing before us in support of this petition that the facts mentioned in Cls. (a) to (f) of para 2 are not supportable by the material on record. All these instances mentioned in Cls. (a) to (f) in para 2, therefore, sufficiently establish the fact that the petitioner is a bootlegger.

5. However, in cl. (g) of the same para, it has been mentioned that an application dt. 30th June 1985 was received by the Police Inspector of Kalyan in which several activities of the petitioner which were likely to affect or affected the maintenance of the public order were mentioned. Three such activities have been specifically detailed in Cl. (g) of para 2 and it was apparently the intention of the Detaining Authority that these activities mentioned in Cl. (g) of para 2 were such as to affect or likely to affect the maintenance of the public order. Once having found on the basis of the instances that the petitioner is a bootlegger, it was open to the Detaining Authority to come to a sustainable subjective satisfaction that it was necessary to detain the petitioner on the basis of the material mentioned in cl. (g) of para 2. In fact in para 3 of the grounds of detention, the Detaining Authority has stated as follows :

"From the abovementioned instances and from the enquiry made pursuant to an application made against you it is found that you are a bootlegger in Milindnagar at Kalyan and because of your violent and terrorist activities, there is an atmosphere of fright created in Milindnagar and surrounding areas."

Therefore, the Detaining Authority was satisfied that it was necessary to detain the petitioner under the said Act.

6. The question as to whether particular incidents are such as to result in the subjective satisfaction of the Detaining Authority to take action under the relevant detention law cannot be gone into by the Court unless it is demonstrated that the subjective satisfaction is clearly unsupportable by the material relied upon by the Detaining Authority. As far as the present Act is concerned, there are two conditions precedent before the taking of action under S. 3 of the Act. As we have already mentioned above, a person must be a bootlegger, but this by itself is not sufficient to support an action under S. 3 of the Act. But while arriving at a finding as to whether a particular person is a bootlegger or not, the Detaining Authority considers the material placed before him and on the material so placed before him he comes to an objective finding whether a particular person is a bootlegger or not. Here the question is not one of subjective satisfaction. If, therefore, several incidents are brought to the notice of the Detaining Authority and considering those incidents, he comes to a conclusion that a particular person is a bootlegger, then that will be an objective determination of fact and not a subjective satisfaction. In such a case, it cannot be said that if one or the other of the incidents is not supportable by the material on record, the determination that a particular person is a bootlegger made by the Detaining Authority is erroneous or cannot be sustained provided, however, that the other material on which he has based this finding can clearly support that finding.

7. On the other hand, considering the activities of a particular person such as a bootlegger under the said Act, if the Detaining Authority decides to act under S. 3, then he must be satisfied that considering the activities of the bootlegger, it is necessary to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order. This satisfaction is obviously subjective and is not amenable to judicial review excepting in certain exceptional circumstances. In order to be satisfied that it is necessary to detain a person with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order, naturally the authority will have to consider those incidents which have a bearing upon the maintenance of public order. To repeat, merely because a particular person is a bootlegger it is not a factor which has a bearing upon the maintenance of public order. It is only when any of his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order that the subjective satisfaction mentioned in S. 3 can legitimately be arrived at. These peculiar features of this Act must, therefore, be clearly borne in mind.

8. In the instant case, Mr. Chitnis has argued that the Detaining Authority has not kept in mind the distinction between the facts which go to establish that the petitioner is a bootlegger and the facts which are necessary to establish that his activities are prejudicial to the maintenance of public order. The Detaining Authority has proceeded on the basis that the mere fact that the petitioner is a bootlegger as defined under the said Act by itself is relevant in determining that his activities are prejudicial to the maintenance of public order.

9. This criticism has been in fact accepted by the Detaining Authority in his affidavit in reply dt. 8th November 1985. We have already mentioned above that Cls. (a) to (e) in para 2 only mention the various incidents which, in our opinion, establish that the petitioner is a bootlegger. None of those instances has any bearing on the activities which can be said to be prejudicial to the maintenance of public order. But the Detaining Authority has misdirected himself and regarded those instance as adversely affecting the maintenance of public order. This is what he says in his affidavit in reply :-

"..... I say that all the incidents enumerated at grounds 2(a) to 2(e) of the grounds of detention have relevance and direct nexus with the question of maintenance of public order." This is patently erroneous because, to repeat, merely being a bootlegger without doing anything more can never be a ground of detention and cannot have direct nexus with the question of maintenance of public order. On this admission of the Detaining Authority himself we are inclined to uphold the contention of Mr. Chitnis that the order of detention is vitiated by taking into consideration the factors which were wholly irrelevant to the formation of the subjective satisfaction under S. 3(1) of the said Act.

10. In the result, this petition succeeds on the narrow ground mentioned above. The order of detention dt. 18th August 1985 issued by the Commissioner of Police, Thane, in relation to the petitioner is set aside. The petitioner shall be set at liberty forthwith.

11. Petition allowed.