

(1980) 11 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No's. 150 and 151 of 1979

Rameshwar Koeri @ Rameshwar Mahto

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 28-11-1980

Acts Referred:

Arms Act, 1959 — Section 25, 27, 28

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 112

Citation : (1981) 29 BLJR 445 : (1981) PLJR 132

Hon'ble Judges : V. Mishra, J;M.P. Verma, J

Bench : Division Bench

Judgement

V. Mishra, J.—These two writ applications have been taken up together as the points involved are the same. Twice before they were dismissed for default but were later restored.

2. These are applications under Articles 226 and 227 of the Constitution of India for quashing the notices issued by the District Magistrate of Saran on 4-5-1979 u/s 3(1) of the Bihar Control of Crimes Ordinance 1979 (annexure "1" to each of the petition). The main ground is that the notices are vague and they do not give sufficient details to the petitioners so as to enable them to submit any show cause. They are also said to have been mechanically issued without the District Magistrate having applied his mind to them. In this view of the matter, the notices are said to be without jurisdiction and as such liable to be quashed.

3. Counter affidavits have been filed in each case by the State in which it has been tried to establish that the petitioners have got criminal history. The notices are claimed to be quite in accordance with the Bihar Control of Crimes Ordinance, 1979 (hereinafter referred to as the Ordinance). It is also said that show cause has been filed in each case which has not yet been proved.

4. The learned Counsel for the petitioners took us through the notices contained in annexure "1" to show that they are more or less only repetition of the

provisions contained in Section 3 of the Ordinance. Specific instances to enable the petitioners to give an effective show cause are absolutely lacking. They have been described as antisocial elements" but it was contended that they do not come within the definition of "anti social element" contained in Section 2 (c) of the Ordinance. They are said to have been accused in cases under Sections 25 and 26 of the Arms Act, 1959. The definition of "anti social element" given in Section 2 (e) of the Ordinance applies only in respect of persons who have been convicted under these sections and does not apply to persons, who are only standing trial for the offences under those sections. There is no dispute on this point. The learned Counsel for the petitioners also showed the notice that has been served on Yogendra Rai, one of the petitioners here. That is a cyclostyled copy in which only the name and address have been filed in. This is enough to show that the notices have been issued mechanically without the District Magistrate having applied his mind to individual cases. In course of argument, therefore, the learned Counsel for the State, Mr. Lala Kailash Bihari Prasad, conceded that the notices in both the cases are too vague to enable the petitioners to meet the charges against them. The fact that they have been mechanically issued could also not be contested in view of the original served on Yogendra Rai which is nothing but a copy of the cyclostyled from (kept on record).

5. The learned Counsel for the State, however, raised only one point, and that was that these petitioners had filed their respective show cause petitions before the District Magistrate in pursuance to the notices, and as such they are now debarred from challenging those notices in the Court. In support of his plea he relied upon the case of Lawrence Joachim Joseph D'souza Vs. The State of Bombay, . That is a case on Section 7 of the Preventive Detention Act. The allegation against D'souza was of espionage in the affairs of Goa. The High Court of Bombay had taken the view that the grounds could not be considered to be vague. In the peculiar circumstances of the case, the Supreme Court also agreed with the High Court. That case therefore has no application in the cases under consideration before us. The State counsel also referred to an unreported Division Bench decision of this Court in the case of Krishna Singh v. The State of Bihar Cr. W.J.C. No. 33 of 1980 disposed of on 22-4-1980. That was also a case where a notice, issued under Sub-section (1) of Section 3 of the Ordinance, had been challenged and the petitioner had filed his show cause. But the order simply shows that after some arguments, the applications were withdrawn and as such they were dismissed as withdrawn. There was thus no occasion for a discussion of the point raised by the State Counsel here. This cannot, therefore, be an authority, as the learned State counsel thinks, for the proposition that after filing a show cause petition the notice cannot be challenged on the ground of jurisdiction. It will not be out of place to mention that the ground of vagueness has also been taken in the show cause petition filed in the lower Court. Though the State counsel has not filed, along with the counter affidavits, any copy of the show cause petition, the learned Counsel for the petitioners read out the same to us from his personal copies,

6. On the other hand the first case relied upon by the petitioners' counsel is of *Rasibuddin and 39 Ors. v. The State of Bihar* 1971 P.L.J.R. 193. That is a case relating to initial orders under Sections 107 and 112 of the Code of Criminal Procedure. That is an authority to say that if the party accepts vague notice and waits till the disposal of the proceeding he cannot challenge the order on the ground of lack of jurisdiction. In the cases before us, the petitioners have not waited for the decision rather they have filed the show cause and have come straight to this Court challenging the notices. Another authority referred to is the case of *Sushila Devi and Anr. v. Daibati Devi and Ors.* 1972 B.L.J.R. 705 wherein it has been held that merely filing the written statement does not debar the petitioner from challenging the jurisdiction of the Magistrate in passing the order. The case of *Mahabir Prasad v. The State of Bihar and Anr.* 1979 B.B.C.J. 793 (Division Bench) is a case u/s 3 of the Ordinance itself. It lays down that a notice under the . Ordinance which does not contain material allegation in respect of Clauses (a) and (b) of Section 3 (I) of the Ordinance has to be struck down on the ground of vagueness. This position is not disputed by the State counsel as already said above.

7. It is thus clear that the notices contained in annexure "1" to the petitions are too vague and mechanical to be sustained in law and as such they are without jurisdiction. The applications are accordingly allowed and the impugned notices are quashed.

M.P. Verma, J.—I fully agree with my brother, but I would like to add a few words. The writ petitions have raised a short point relating to the vagueness of the notices served on them u/s 3 of the Bihar Control of Crimes Ordinance (hereinafter referred to as "the Ordinance").

2. The District Magistrate acts u/s 3 of the Ordinance when it appears to him that any person is an anti-social element and he shall, while taking action by notice in writing, inform the person of the general nature of the material allegation against him and shall give him a reasonable opportunity of tendering an explanation regarding the same. And social element has been defined u/s 2 of the Ordinance. The law relating to the subject has been elaborately dealt with by my learned brother. The two notices (annexure "1" in both the writ petitions, in question do not show that the writ petitioners were ever convicted for any offence under the Arms Act, 1959. If it is found that any person has been convicted of offences under Sections 25, 26, 27, 28 or 29 of the Arms Act of 1959, and as such if it appears to the District Magistrate that person concerned is an anti-social element, he may proceed to take action against the person concerned accordingly. Admittedly the notices do not show that the writ petitioners were ever convicted of such charges. From the two impugned notices, it only transpires that some case under the Arms Act is pending against them. This does not justify the requirements of the Ordinance nor the petitioners can be described and known as anti-social elements. This alone is sufficient ground to strike down the two notices. I would be only repeating at this stage that the

learned Counsel for the State has fairly conceded that the two notices in question were quite vague and ambiguous and do not disclose any material allegation against these petitioners either in respect of Clause (a) or Clause (b) of Section 3 of the Ordinance. But however, the State Counsel maintained the view that once the petitioners have filed their show cause, they cannot challenge the jurisdiction of the District Magistrate at this stage. It has also been submitted that the District Magistrate may furnish the petitioners supplementary notices giving details regarding material allegation, which has been indicated in the counter affidavit filed by the State. The argument does not appeal to me. It is not a case that the petitioners have submitted to the jurisdiction of the District Magistrate. I can understand a situation that once a person allows the proceeding to continue then at the termination of the proceeding if the order goes adverse to him, he may not be allowed to challenge the initial defect regarding jurisdiction. In the instant case the petitioners have challenged jurisdiction before final order could be passed inasmuch as Counsel for the petitioners has submitted that the jurisdiction of the District Magistrate has been challenged even in the show cause, filed by the petitioners before him. It has, therefore, rightly been said that the petitioners may very well challenge the jurisdiction before the termination of the proceeding and passing of the final order. Furnishing of fresh show cause, in my opinion, will not validate an illegal order which is initially wrong and suffers from want of jurisdiction unless otherwise the Ordinance provides for the same.